



## **THE SENATE MUST REFUSE TO CONFIRM TRUMP'S ILLEGITIMATE NOMINATION TO THE SUPREME COURT**

- **PIVOTAL MOMENT FOR COUNTRY:** The tragic passing of Supreme Court Justice Ruth Bader Ginsburg while a presidential election is underway has created an unprecedented moment for our nation. The American people must insist this Supreme Court seat is held open for the next president to fill.
- **SUPREME COURT IS GUARDIAN OF OUR CIVIL RIGHTS:** The stakes around this vacancy could not be higher. The rights of African Americans to fully participate in democracy and in every facet of social and economic life lie in the balance. The Supreme Court is vitally important to the progress of the Black community. From *Brown v. Board of Education* to *Shelby County v. Holder*, we have seen the power of the Court to both advance and undermine civil rights and equal justice under law. Every year, the Court decides critical cases involving voting rights, equal educational opportunity, fair employment, fair housing, environmental justice, and criminal justice. These decisions directly impact our lives.
- **HONOR JUSTICE GINSBURG'S CIVIL RIGHTS LEGACY:** Justice Ruth Bader Ginsberg was a fierce defender of equal justice. She was only the second civil rights lawyer to become a Supreme Court justice, after Thurgood Marshall. Her record on the Court includes legendary opinions involving disability rights (*Olmstead v. LC*) and gender equality in the military (*United States v. Virginia*), and powerful dissents in cases involving voting rights (*Shelby County v. Holder*) and gender equity in employment (*Ledbetter v. Goodyear Tire*). Her seat and legacy are worth fighting for. The next president should replace her with someone who will continue her legacy of championing civil rights and liberties.
- **TRUMP'S NOMINATION IS ASSAULT ON DEMOCRACY:** Trump's nomination in the middle of a presidential election is an illegitimate and corrupt power grab that cannot be allowed to stand. A nominee to the Supreme Court has never been confirmed so late in an election year. The American people are already voting for president and senators in this election, through early voting and voting by mail. Their voices must be heard and honored. The next president and the next Senate must fill this seat.
- **GOP SENATE BLOCKED OBAMA'S NOMINEE IN ELECTION YEAR:** When Justice Antonin Scalia died nine months before the 2016 presidential election, Senate Majority Leader Mitch McConnell immediately vowed to keep the seat open for the next president: "The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new president." When President Obama nominated Merrick Garland in March 2016, the Senate never even held a hearing. The seat remained open through the November election, and Trump nominated Neil Gorsuch in February 2017. Gorsuch was confirmed 14 months after Justice Scalia died.
- **NO TIME FOR CONFIRMATION:** The Senate cannot rush this Supreme Court confirmation. The Senate has a co-equal role in appointing a Supreme Court justice under the "advise and consent" clause of the Constitution. A nominee's record must be thoroughly and rigorously examined, which requires weeks of collecting, reviewing, and analyzing the nominee's record. Senate Judiciary Committee Chair Lindsey Graham's announcement that the confirmation hearing will begin on October 12 is preposterous.

- **SENATE MUST FOCUS ON CRISES CONFRONTING NATION:** The Senate must devote its time and energy to the dueling national crises devastating the Black community. The pandemic has killed more than 200,000 Americans, with African Americans three times more likely to die. Black employees have lost jobs, Black businesses have shuttered, and Black families have been evicted. At the same time, police violence against the Black community has reached an epidemic level. What we need from the Senate is comprehensive coronavirus relief and criminal justice reform. The Supreme Court vacancy can wait.
- **TRUMP’S THIRD WHITE NOMINEE TO SUPREME COURT:** Amy Barrett is a 48-year-old white woman who was born and raised in New Orleans. She received her B.A. from Rhodes College in Memphis, Tennessee, and her J.D. from Notre Dame Law School in 1997. She currently lives in Indiana. She is Trump’s third white nominee to the Supreme Court. Overall, Trump’s judicial appointments have been the least diverse in modern history. Of his 53 appointments to appellate courts, not one is Black.
- **LEGAL BACKGROUND:** Barrett served as law clerk to D.C. Circuit Judge Lawrence Silberman and Supreme Court Justice Antonin Scalia. She was in private practice in Washington DC from 1999 to 2002, and has scant litigation experience. Before becoming a judge, she spent most of her career as a law professor at Notre Dame Law School, from 2002 to 2017. Donald Trump appointed her to the U.S Court of Appeals for the Seventh Circuit in 2017.
- **OCCUPIES STOLEN JUDICIAL SEAT RIGHT NOW:** Amy Barrett is already sitting in an illegitimate judicial seat—a seat that was stolen by Republican Senators and Donald Trump. In May 2017, Donald Trump nominated Barrett to an Indiana seat on the Seventh Circuit, which covers Indiana, Illinois, and Wisconsin. This is the same seat to which President Obama nominated Myra Selby, a Black woman, in 2016. But Republican Senators blocked Selby’s confirmation and saved the seat for Donald Trump. After Trump was elected, the Seventh Circuit lost its only Black judge to retirement. The Shelby appointment would have retained diversity on this court. Instead, Trump appointed four white individuals, including Amy Barrett. The Seventh Circuit is now the only all-white federal appellate court in the country.
- **ROLE MODEL IS JUSTICE SCALIA:** Amy Barrett is a dangerous ideologue in the mold of Justice Antonin Scalia, for whom she clerked during the Supreme Court’s 1998-99 term. She has called Justice Scalia “the most staunchest conservative on the Court.” Barrett has written and spoken extensively about Scalia’s jurisprudence very favorably.
- **ON TRUMP’S SHORTLIST:** Amy Barrett was on Trump’s shortlist of Supreme Court candidates developed by radical right groups. There is every reason to believe she is a hard-core ideologue who will not protect civil rights and civil liberties on the Court. Instead, she will very likely provide a strong and consistent vote against communities of color on issues relating to voting rights, affirmative action, fair housing, economic justice, immigration, reproductive choice, and criminal justice.
- **UPHELD SEGREGATED WORKPLACE:** Barrett served as a judge for only several months before ruling against African Americans in an exceptionally hostile manner. The Equal Employment Opportunity Commission (EEOC) sued AutoZone—a Fortune 500 company—for segregating and classifying employees based on race in violation of Title VII of the Civil Rights Act of 1964. The lawsuit alleged that AutoZone assigned Black employees to stores in Black neighborhoods and Hispanic employees to stores in Hispanic neighborhoods, and went so far as to transfer a Black sales manager from a store in a Hispanic area to a store located in a Black neighborhood. A three-judge panel dismissed the case on the theory that the transfer did not constitute an “adverse action.” When the EEOC asked the full Seventh Circuit to rehear the case, Amy Barrett [voted](#) to deny the request with four of her colleagues.

The dissenting judges, including a George H.W. Bush appointee, strongly believed the case was worthy of the full court's attention "because of the seriousness with which we must approach all racial classifications." The dissent complained that Barrett's position effectively upheld a "separate-but-equal arrangement" as long as the "'separate' facilities really are 'equal,'" meaning the employees did not suffer diminished "pay, benefits or job responsibilities." They said this was contrary to the position of the Supreme Court as far back as *Brown v. Board of Education*: "Separate is inherently unequal, because deliberate segregation by its very nature has an adverse effect on the people subjected to it." The dissent also stated: "To the extent Title VII of the Civil Rights Act requires proof of an adverse effect apart from the inherent harms of racial segregation, the EEOC has made that showing. The ability to work at a particular store in a particular geographic area is itself a 'job opportunity,' within the plain meaning of the statute."

- **SEVERELY RESTRICTED LONGSTANDING CIVIL RIGHTS PRINCIPLE:** Amy Barrett joined a ruling in [Kleber v. CareFusion Corp.](#) to significantly narrow a decades-old civil rights enforcement principle known as "disparate impact." This tool is designed to counter discriminatory practices that appear neutral in theory but unfairly exclude groups protected by civil rights laws. A 58-year-old man was denied a job in favor of a younger applicant due to a company policy requiring applicants to have less than seven years of experience. He sued under the Age Discrimination in Employment Act, alleging that the policy limiting years of experience adversely impacted applicants on the basis of age. Barrett and three other Trump appointees joined the majority to rule that the Act applies only to current employees, not applicants. The dissent accused the opinion joined by Barrett of following a "deliberately naïve approach to an ambiguous statutory text, closing its eyes to fifty years of history, context, and application." The dissent complained that the majority failed to follow the Supreme Court's seminal 1971 decision in *Griggs v. Duke Power Co.*, interpreting identical language in Title VII of the Civil Rights Act of 1964 and including disparate impact protection for both job seekers and current employees. The dissent called the majority's interpretation, "180 degrees off course."

- **MAY POSE GRAVE THREAT TO VOTING RIGHTS:** Although Amy Barrett has yet to rule in voting rights cases, there is every reason to believe she poses a grave threat to the right to vote for people of color. The Trump administration has packed the courts with judges who have [long records](#) of defending voter suppression, and they are already [ruling against](#) voting rights at every turn, [including](#) Trump's two appointees to the Supreme Court. Amy Barrett's role model is Justice Antonin Scalia, who was notoriously opposed to voting rights. He joined the Court's horrendous decision to gut the Voting Rights Act in *Shelby County v. Holder*, and [called](#) the Voting Rights Act a "racial entitlement" during oral argument. Even during the year in which Amy Barrett clerked for him, Justice Scalia joined a dissent in [Hunt v. Cromartie](#), which would have upheld a lower court finding that the North Carolina legislature improperly relied on race in drawing a Congressional district that was 47% African-American. Finally, as a private lawyer, Barrett [worked](#) in defense of President George W. Bush in the election recount litigation of *Bush v. Gore*, even traveling to Florida. The law firm where she worked, Baker & Botts, was counsel to the Bush campaign.

- **DOES SHE BELIEVE *BROWN V. BOARD OF EDUCATION* WAS CORRECTLY DECIDED?** With over 30 of Trump's judicial appointees [refusing](#) to say that *Brown v. Board of Education* was correctly decided, Amy Barrett's position on this bedrock equal protection case is great cause for concern. Although Barrett identified *Brown* as on "most hit lists of superprecedent" in a 2013 [article](#), she has aggressively [defended](#) overturning precedents. She has [stated](#), "Stare decisis is not a hard-and-fast rule in the Court's constitutional cases. There is little reason to think reversals would do great damage. I tend to agree with those who say that a justice's duty is to the Constitution and that is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks is clearly in conflict with it." Barrett's approach to overturning precedent has been [called](#) "radical." One commentator recently [noted](#): "No nominee has openly endorsed views as extreme as Barrett's on the doctrine of stare decisis, the principle that the court should not lightly overrule its precedents. Barrett makes clear that in matters of constitutional interpretation, she would not hesitate to jettison cases with which she disagrees."

- **EASED ENFORCEMENT OF LAW BANNING GENDER DISCRIMINATION AGAINST STUDENTS:** In [Doe v. Purdue University](#), Barrett authored a panel opinion reinstating a lawsuit filed against a university by a student who had been found guilty of sexual violence under the school’s discipline process. Her decision made it easier for students to claim they are the victims of sex discrimination if they have been found responsible for sexual assault and disciplined by their schools, while sexual assault survivors are held to a higher standard in order to bring a case for sexual harassment under Title IX.
- **HARSH ON CRIMINAL JUSTICE:** Amy Barrett has repeatedly ruled against the rights of criminal defendants. For example, she [dissented](#) from a ruling which found “unprecedented” questioning by a state court judge of a defendant after the judge ordered his lawyer not to participate in a pre-trial hearing. The ruling indicated that a “silenced” lawyer is similar to an “absent lawyer,” and “not compatible with the American judicial system.”
- **OPPONENT OF IMMIGRATION:** Amy Barrett strongly defended the Trump administration’s barbaric “public charge” rule, which denied permanent residence to immigrants who received public assistance such as housing vouchers or food stamps. When the Seventh Circuit upheld a district court order blocking the Trump administration from enforcing the “public charge” rule in [Cook County v. Wolf](#), Barrett issued a bitter dissent. She wrote that the law had been amended to “increase the bite of the public charge determination,” and it is “not unreasonable to describe someone who relies on the government to satisfy a basic necessity for a year... as falling within the definition of a term that denotes a lack of self-sufficiency.”
- **WOULD UNDERMINE ACCESS TO HEALTH CARE:** Amy Barrett attacked the Supreme Court’s decision upholding the Affordable Health Care Act, [criticizing](#) Chief Justice John Roberts’ decision to uphold Congress’ authority to enact significant portions of the Act: “Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.” She also [supported](#) the dissent in [King v. Burwell](#), where the Court affirmed tax credits for millions of families: “Thus Justice Scalia, criticizing the majority’s construction of the Affordable Care Act..., protested that the statute known as Obamacare should be renamed ‘SCOTUScare’ in honor of the Court’s willingness to ‘rewrite’ the statute in order to keep it afloat.” With the Supreme Court set to hear oral arguments in November on the future of the Affordable Care Act, the stakes could not be higher, [particularly](#) for the 20 million Americans who could be deprived of coverage in the middle of a pandemic and the 130 million Americans who have pre-existing conditions.
- **AGAINST REPRODUCTIVE RIGHTS:** Amy Barrett’s legal writings and judicial opinions reflect a staunchly anti-abortion record. In a 2003 [article](#), she suggested that *Roe v. Wade* was an “erroneous decision.” As a judge, she joined a [dissent](#) expressing skepticism about a ruling that held unconstitutional an Indiana law banning abortions solely because of the race, sex or disability of the fetus. A three-judge panel struck down the law, but the dissent she joined stated: “None of the Court’s abortion decisions holds that states are powerless to prevent abortions designed to choose the sex, race and other attributes of children.” She also voted to reconsider a ruling that an Indiana law requiring young women to notify their parents before obtaining an abortion was unconstitutional. She joined the [dissent](#) from denial of rehearing which argued that blocking the law before it went into effect was a “judicial act of extraordinary gravity.”
- **STRONG PROPONENT OF GUN RIGHTS:** Barrett strongly objected to a Seventh Circuit ruling in [Kanter v. Barr](#) which upheld the constitutionality of laws restricting gun rights of people convicted of felonies. A defendant convicted of mail fraud had argued that laws prohibiting people with felony convictions from possessing a firearm violated his Second Amendment right. A majority rejected that argument on the basis that the laws reflected the government’s interest in keeping guns away from people convicted of serious crimes. Barrett issued a 37-page dissent, arguing that the laws were too broad and that the Second Amendment “confers an individual right, intimately connected with the natural right of self-defense.” Two judges appointed by President Reagan, noted that Barrett’s position was in conflict with every appellate court addressing the issue.