



Empowerment Programs

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October 9, 2020

The Honorable Lindsey Graham
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

**RE: OPPOSITION TO THE NOMINATION OF AMY CONEY BARRETT
TO THE SUPREME COURT OF THE UNITED STATES**

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots civil rights organization, I strongly urge you to oppose the nomination of Amy Coney Barrett to serve as Associate Justice on the Supreme Court of the United States.

I. INTRODUCTION

The U.S. Supreme Court has always been crucial to the progress of African Americans. Our rights to fully participate in democracy and in every facet of social and economic life, on an equal basis, lie in the balance. From *Brown v. Board of Education* to *Shelby County v. Holder*, we have seen the power of the Supreme Court to both advance and undermine civil rights and equal justice under law. Each year, the Court decides critical cases involving voting rights, equal educational opportunity, fair employment, fair housing, women's rights, access to healthcare, immigration, consumer rights, environmental justice, and criminal justice. These decisions directly impact our lives, our families, and our communities for generations.

The NAACP has fought for fair and independent Justices on the Supreme Court since our very beginning. In 1930, the NAACP opposed President Herbert Hoover's nomination of Judge John Parker to the Supreme Court because Parker believed that African Americans had no role in our democracy. NAACP members around the country urged their Senators to oppose the nomination and we testified before the Senate against the nominee. The Senate ultimately rejected John Parker's nomination by a vote of 39 to 41. The NAACP has stood guard over the Supreme Court ever since to ensure that it fulfills its solemn and sacred duty to uphold equal justice under law.

This vacancy on the Supreme Court comes at a critical time in our nation's ongoing efforts to address racial inequality and the stakes could not be higher. Justice Ginsberg was a fierce defender of equal justice, on and off the Court. Her 27-year tenure as a Justice includes legendary opinions and dissents on voting rights, racial justice, gender equality, and the rights of people with disabilities. Her place in history as the second civil rights lawyer to become a Supreme Court Justice, after Thurgood Marshall, is hugely significant to us. Her legacy must be preserved by the nomination of a strong champion of equal justice.

Donald Trump’s nomination of Amy Coney Barrett in the middle of a presidential election poses a grave threat to the integrity and legitimacy of the Supreme Court. Judge Barrett is the polar opposite of Justice Ginsburg and could direct the Court toward a monumental retreat in civil rights jurisprudence. She 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 staunchest conservative on the Court.”¹ At the Rose Garden ceremony announcing her nomination, Judge Barrett referred to the “incalculable influence” of her “mentor,” and told the American people: “His judicial philosophy is mine too.”² In writings as a law professor and during three years on the U.S. Court of Appeals for the Seventh Circuit, she has taken every opportunity to argue or rule against the civil rights for which we have fought so hard and so long. Her aggressive stance against judicial precedent threatens to unravel much of our progress. With her extreme views, she could lead the Court to repudiate freedoms and protections on which we have relied for decades.

II. ILLEGITIMATE NOMINATION

Donald Trump’s nomination of Amy Coney Barrett to the Supreme Court in the middle of a presidential election constitutes an illegitimate and corrupt overreach of power that cannot be allowed to stand. Voting in the 2020 presidential election commenced on September 4, when the State of North Carolina began sending out ballots. Justice Ginsburg passed away on September 17. Just eight days later, Trump announced his nomination of Amy Coney Barrett to Justice Ginsburg’s seat. Seven million Americans have already voted for president and senators in this election, through early voting and voting by mail. Their voices must be heard and honored. We recently joined other national civil rights organizations in strongly opposing the attempt to fill Justice Ginsburg’s seat prior to the presidential inauguration and commencement of a new Congress. We wrote: “Any such effort is an affront to democratic principles and a violation of the trust of the American people who, at this very moment, are voting in states all over this country to select their next president and senators, and it is only fitting that these newly-elected officials determine who will receive a lifetime seat on the most powerful and consequential court in the country.”³

There is absolutely no urgency to filling this vacancy before the 2021 inauguration. When Justice Antonin Scalia died nine months before the 2016 presidential election, the Republican-led Senate held the vacancy open for 14 months. At the time of Justice Scalia’s death, 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.”⁴ When President Obama nominated Merrick Garland one month later, the Senate never even held a hearing on his nomination. The Republican-controlled Senate blocked the nomination through the November election. Donald Trump then nominated Neil Gorsuch in February 2017, and he was confirmed in April—14 months after the vacancy opened. The Republican-controlled Senate was satisfied in 2016 that maintaining a vacancy on the Supreme Court would

¹ Chris Riotta, *Trump’s Potential Supreme Court Nominee Slammed Obama for Trying to ‘Dramatically Flip the Balance of Power,’* THE INDEPENDENT, Sept. 26, 2020, <https://www.independent.co.uk/news/world/americas/amy-coney-barrett-trump-supreme-court-nominee-merrick-garland-obama-b558365.html>.

² Ruth Marcus, *Amy Coney Barrett’s Alignment with Scalia has Implications Far Beyond Roe v. Wade,* WASHINGTON POST, Oct. 4, 2020, https://www.washingtonpost.com/opinions/amy-coney-barretts-alignment-with-scalia-has-implications-far-beyond-roe-v-wade/2020/10/02/d9278210-04e4-11eb-b7ed-141dd88560ea_story.html.

³ Civil Rights Leaders Issue Statement on Justice Ruth Bader Ginsburg’s Legacy and the Supreme Court’s Critical Role in Protecting Civil Rights, Sept. 24, 2020, <https://www.naacp.org/latest/civil-rights-leaders-issue-statement-justice-ruth-bader-ginsburgs-legacy-supreme-courts-critical-role-protecting-civil-rights/>.

⁴ Burgess Everett & Glenn Thrush, *McConnell Throws Down The Gauntlet: No Scalia Replacement Under Obama,* POLITICO, Feb. 13, 2016, <https://www.politico.com/story/2016/02/mitch-mcconnell-antonin-scalia-supreme-court-nomination-219248>.

not impede the final resolution of the presidential election that year. There is no greater reason this year, therefore, why the Supreme Court as it is presently constituted with eight justices cannot resolve any legal issues that may arise from this election.

The Senate simply cannot rush its constitutional obligations to review and scrutinize this nomination. The consideration of a Supreme Court nomination is one of the most serious and consequential duties of the Senate. Under the “advice and consent” clause of the Constitution, the Senate has a co-equal role in deciding appointments to the Court. A nomination must be thoroughly and meticulously examined, which requires weeks of collecting, reviewing, and analyzing the nominee’s record. In recent history, the average length of time between the creation of a vacancy on the Supreme Court and a nomination hearing has been nearly four months. The schedule set by this Committee has compressed that time to just over three weeks. Truncating this Committee’s crucial process for examining and evaluating a nominee’s record and judicial philosophy will undermine the public’s trust and confidence in the Senate itself. The recent revelation that Judge Barrett concealed from the Judiciary Committee an advertisement and letter advocating the reversal of *Roe v. Wade* is but one illustration of the way in which the Senate’s rush to confirmation is abdicating its sacred obligation to carefully scrutinize nominees to the highest court in this country.⁵

Moreover, conducting a hearing on a Supreme Court nomination now would endanger the health and safety of Senators, their staff, and all who work on the Capitol grounds. Two Senators serving on the Judiciary Committee, Mike Lee (R-UT) and Thom Tillis (R-NC), have announced that they have contracted coronavirus, likely at the White House announcement of the nomination of Judge Barrett. Another Senator, Ron Johnson (R-WI), has also tested positive. The entire Senate has closed down. Proceeding with a hearing in the face of these risks is unfathomable. Nor should this hearing be modified or limited in any way. A lifetime appointment to the Supreme Court requires complete transparency and the utmost public scrutiny. The American people are entitled to a comprehensive in-person hearing, where Senators can examine the nominee and witnesses in full view. A “hybrid” hearing, where certain Senators appear remotely, is wholly inconsistent with the accountability and scrutiny required under the Constitution.

Instead of forcing a Supreme Court nomination upon the American people, the Senate must instead focus on the national crises devastating the Black community, which are grounded in longstanding inequality and racial disparities. The coronavirus pandemic has killed more than 213,000 Americans, with African Americans three times more likely to die. The Black community has been disproportionately impacted by coronavirus in every other way imaginable: Black employees have lost jobs, Black businesses have shuttered, Black children have been denied equal educational opportunity, and Black families have been evicted. At the same time, police violence against the Black community has reached an epidemic level, with Black women and men dying brutal deaths at the hands of law enforcement with shocking frequency. We desperately need our leaders to address these urgent issues harming our communities. The Senate should devote its time and resources to passing comprehensive coronavirus relief and criminal justice reform. In these dangerous and desperate times, filling the Supreme Court vacancy can be delayed for a few months.

III. LACK OF RACIAL DIVERSITY IN JUDICIAL APPOINTMENTS

It is extremely disappointing to us that Amy Coney Barrett is Donald Trump’s third white nominee to the Supreme Court. Overall, Trump’s appointments to the federal judiciary have been the least racially diverse in modern history.

⁵ Sarah Al-Arshani, *Democrats Slam Amy Coney Barrett For Not Telling Senators She Signed Onto 2006 Letter Calling The Legacy of Roe v. Wade ‘Barbaric,’* BUSINESS INSIDER, Oct. 6, 2020, <https://www.businessinsider.com/democrats-slam-barrett-not-disclosing-calling-roe-v-wade-barbaric-2020-10>.

Although Trump has made over 215 lifetime appointments to the federal bench, his nominees have been, with few exceptions, white.⁶ Of Trump's 53 appointments to federal appellate courts, not a single one is Black.⁷ This historic retreat in judicial diversity undermines the integrity and legitimacy of the federal judiciary. Judges from different racial, ethnic, and other backgrounds enrich judicial decision-making and promote trust and confidence within the communities impacted by their rulings.

We also note that Amy Coney Barrett currently sits in a judicial seat that should have been filled by a Black woman. In 2017, Donald Trump appointed Barrett to an Indiana seat on the U.S. Court of Appeals for 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 Myra Selby's confirmation and saved the seat for Donald Trump. After Trump was elected, the Seventh Circuit lost its only judge of color to retirement. In total, Trump had four vacancies to fill on this circuit. Instead of nominating a person of color to restore diversity to the court, Trump appointed four white individuals, including Amy Barrett. The Seventh Circuit is now the only all-white federal appellate court in the country.

IV. HOSTILITY TO PRECEDENT

Judge Barrett's [radical](#) approach to precedent breaks with the Supreme Court's longstanding and bipartisan embrace of predictability in the law. As Chief Justice Rehnquist wrote nearly thirty years ago, respect for the Court's previous rulings "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."⁸ Without consistent application of past decisions—even those with which a judge personally disagrees—people can't anticipate what the law requires them to do. As a result, judges who fail to predictably apply rules from prior cases call into question the very legitimacy of the legal system, sowing chaos and disorder. Without predictability in the law, the courts would become political institutions, lurching from decision to decision based on nothing more than who is behind the bench.

Rather than exhibit a healthy respect for the decisions that have come before her time, Judge Barrett's scholarship shows a willingness, and even an eagerness, to cast aside the decisions with which she disagrees in favor of her personal view of what the law ought to be. The only question for her is when to cast aside the law on which all of us have come to rely.⁹ As she has written, she thinks it's "more legitimate" for a judge to apply her own views of the law than to follow the existing rules.¹⁰ Even Justice Scalia, whom Judge Barrett regarded as a role model, was sufficiently respectful of the importance of precedent that he often followed past decisions he thought were wrong because of the disruptive effects of overruling them.¹¹ Judge Barrett's expressed willingness to overrule precedent that does not comport with her personal view of the law, therefore, reveals her views of the law to be well-outside the mainstream of the judiciary.

Nor are the precedents she may be prepared to overturn minor features of our law. She has questioned whether *Brown v. Board of Education* was properly decided given evidence that the Fourteenth Amendment's guarantee of equal protection was originally understood to permit segregated schools, and even considered that the Fourteenth

⁶ Sofia A. Nelson, *White, Male and Conservative: Trump's Damaging Legal Legacy*, USA TODAY, July 3, 2020, <https://www.usatoday.com/story/opinion/2020/07/03/trump-and-judiciary-lack-diversity-column/5357852002/>.

⁷ *Id.*

⁸ *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

⁹ Amy C. Barrett & John C. Nagel, *Congressional Originalism*, 19 U. PA. J. CONST. L. 1, 43 (2016).

¹⁰ Amy C. Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1728 (2013).

¹¹ Amy C. Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1933-39 (2017).

Amendment *itself* might not have been properly adopted.¹² Along with questioning these pillars of American law, on which so much of our society rests, she said that many of the Supreme Court’s most historic decisions are on shaky ground and that, if given the chance, she might decide them differently. This is raw judicial activism, which those who nominated her claim to condemn. The consequences of placing Judge Barrett on the Supreme Court could be disastrous, as she considers rewriting hallowed legal precedents to suit her personal views of the law.

Judge Barrett tries to dismiss these concerns as unfounded, but her central defense would turn the principles of the American Constitution upside down. She says that those legal rules that are widely accepted will not be challenged and, if they are challenged, then they were not worth following to begin with. But the most important constitutional principles, and certainly those protected by the Bill of Rights, are vital to our country precisely because they protect rights or groups that may be unpopular from being overrun by the majority. Constitutional law is not a popularity contest. Judge Barrett’s views would sacrifice the sacrosanct interests protected by the Bill of Rights to the ever-changing views of the majority in this country. She also offers a second defense of her willingness to revisit hallowed legal precedents, but it is equally ineffective. She seeks to assure us that the Supreme Court can simply decline to review precedents with which she might disagree. As one of nine Justices of the Supreme Court, however, she will have a unique platform from which to promote, among her colleagues and the public, campaigns to revisit precedent with which she disagrees. Furthermore, she would be one of only four votes required to take up a challenge to settled law. This lame explanation does nothing to prevent a Justice bent on “fixing” what she perceives as error from upending the legal landscape as she sees fit.

For good reason, then, one commentator recently [noted](#) that “no nominee has openly endorsed views as extreme as Barrett’s [She] makes clear that in matters of constitutional interpretation, she would not hesitate to jettison decisions with which she disagrees.” Others have called her views on precedent [“more extreme”](#) than even those of Justice Scalia, and [“tailor-made to allow a conservative majority to slash and burn its way through important precedents.”](#)

V. VOTING RIGHTS IN JEOPARDY

The stakes for our democracy could not be higher with the Senate’s consideration of this nomination to the Supreme Court. Fifty-five years after passage of the Voting Rights Act, voter suppression targeting African Americans is rampant. [Thirty-six states](#) have voter ID laws and voter purges are at an [all-time high](#). We are in the middle of a global pandemic that is forcing voters—in the most consequential election in modern history—to choose between their lives and their vote.

Justice Ruth Bader Ginsburg was a fierce defender of full participation for communities of color in our democratic process. She famously authored the powerful dissent in *Shelby County v. Holder*, in which the Supreme Court gutted the heart of the Voting Rights Act by dismantling the requirement that jurisdictions with a history of discrimination preclear voting changes. She wrote: “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”¹³

The addition of Amy Coney Barrett to a Court already predisposed against voting rights protections threatens to further erode voting rights jurisprudence. During this election season, the Court has repeatedly used its “shadow docket”—summary orders issued quickly and without oral argument—to rule against voters of color seeking to

¹² Amy C. Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1925 (2017); *Congressional Originalism*, 19 U. PA. J. CONST. L. 1, 2 (2016).

¹³ *Shelby Cnty. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

protect their right to vote during a pandemic.¹⁴ And just this month, the Court agreed to hear a challenge to the most powerful provision of what remains of the Voting Rights Act, which prohibits electoral practices that disproportionately disenfranchise voters of color.¹⁵

Judge Barrett has written little about voting rights, but what she has said is deeply troubling.¹⁶ In dissenting from a decision that persons convicted of a felony or serious misdemeanor could be barred from owning a firearm, she argued that the right to own a firearm should have more protection under the Constitution than the right to vote.¹⁷ She relied on 18th and early 19th Century concepts of voting as a civic right that could be limited to “virtuous citizens.”¹⁸ While specifically addressing felony disenfranchisement, Judge Barrett did not limit her endorsement of the “virtuous citizen” requirement for voting to that situation. Inserting this analysis into modern voting rights jurisprudence would overthrow the Supreme Court’s twentieth-century precedent protecting the right to vote and potentially allow Congress or the states to deny people they regard as having “poor character” the right to cast a ballot.¹⁹

Additionally, Judge Barrett’s characterization of Justice Scalia as her role model, whose judicial philosophy she shares, strongly suggests that she may harbor views more extreme than any currently sitting Justice about the adequacy of protections against voter suppression. In the oral argument in the *Shelby County* case, Justice Scalia dismissed the Voting Rights Act as nothing more than a “racial entitlement” that only the Supreme Court could be trusted to get rid of.²⁰ Ignoring the history of suppressing the votes of racial minorities in this country, Justice Scalia referred to efforts to combat discrimination against such voters as creating “[racial preferment\[s\]](#)” because no similar legislation existed to serve white voters, notwithstanding that they have encountered few, if any, obstacles to voting. If Justice Scalia is Judge Barrett’s role model, then the Senate should explore carefully whether she is prepared to restore Jim Crow laws that disenfranchised African Americans for decades.

VI. ENDORSED DISCRIMINATION IN THE WORKPLACE

Judge Amy Coney Barrett’s record in employment discrimination cases reflects an extremely disturbing pattern of ignoring bedrock civil rights precedent and failing to consider all of the evidence. This is vitally important because fair employment cases comprise a substantial portion of the docket of federal civil rights cases and often reach the Supreme Court.

In one of her first acts as a judge, Judge Barrett voted to leave in place a decision which found that there is no “adverse effect” under the law when a private employer maintains racially segregated workplaces, forcing its employees to work at locations where the neighborhood demographics match their race. In [EEOC v. AutoZone](#),

¹⁴ Steve Vladeck, *The Supreme Court’s Most Partisan Decisions are Flying Under the Radar*, SLATE, Aug. 11, 2020, <https://slate.com/news-and-politics/2020/08/supreme-court-shadow-docket.html>; Leah Litman, *The Election is Already Underway in America’s Courts*, THE ATLANTIC, Sept. 23, 2020, <https://www.theatlantic.com/ideas/archive/2020/09/election-litigation/616439/>.

¹⁵ Ian Millhiser, *The Supreme Court Will Hear a Case that Could Destroy What Remains of the Voting Rights Act*, VOX, Oct. 2, 2020, <https://www.vox.com/2020/10/2/21498587/supreme-court-voting-rights-act-amy-coney-barrett>.

¹⁶ Judge Barrett has authored one opinion involving ballot access requirements. In that case, she applied binding circuit precedent to hold that the number of signatures a county required candidates to obtain before appearing on the ballot imposed a minimal, and permissible, burden on the candidates’ rights. See *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 946-47 (7th Cir. 2019).

¹⁷ *Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting).

¹⁸ *Id.*

¹⁹ *Id.* at 462-64.

²⁰ Transcript of Oral Argument at 47, *Shelby Cnty. v. Holder* (No. 12-96).

[*Inc.*](#),²¹ 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 so transferred a Black sales manager from a store in a Hispanic neighborhood to one in a Black neighborhood. A three-judge panel dismissed the case because it found the Black sales manager was not “adversely affected” by a forced transfer based on his race. Judge Barrett voted to deny rehearing by the full court of appeals.

The judges who would have reheard the case, including Chief Judge Diane Wood and a judge appointed by George H.W. Bush, strongly urged review because of “the seriousness with which we must approach all racial classifications.” As they explained, Judge Barrett’s position effectively upheld a “separate-but-equal arrangement” as long as the “‘separate’ facilities really are ‘equal’” in the pay, benefits, and job responsibilities afforded the racially segregated employees.²² These judges were struck, they said, that Judge Barrett’s position was contrary to the fundamental principle on which *Brown v. Board of Education* was decided in 1954: “[S]eparate is inherently unequal, because deliberate segregation by its very nature has an adverse effect on the people subjected to it.”²³ When the *Brown* decision is properly interpreted, these judges explained, the opportunity to have a work assignment chosen without regard to race plainly qualifies as a personnel action protected by the employment discrimination laws. That Judge Barrett did not find racially-based job assignments unlawful simply because they did not result in differences in pay, benefits, or job duties should be of grave concern to this Committee.

In [*Smith v. Illinois Department of Transportation*](#),²⁴ Judge Barrett authored a panel decision where she held that use of the n-word in the workplace by the plaintiff’s former supervisor was “an egregious racial epithet” and “plainly constitutes race-based harassment,” but found it was not necessarily grounds to sustain Smith’s hostile work environment claim.²⁵ That Judge Barrett was unpersuaded that use of the n-word in the workplace to refer to a Black worker created a hostile work environment places her views about race outside the mainstream. Even Justice Kavanaugh, then serving on the D.C. Circuit, regarded it as settled in 2013 that “being called the n-word by a supervisor . . . suffices by itself to establish a racially hostile work environment.”²⁶ And the means by which Judge Barrett reached this extraordinary conclusion, by relying on grounds that neither the trial court nor either party had raised, reveals the lengths to which she resorted in order to reach this extreme and highly troubling conclusion.

In another [employment discrimination case](#), Judge Barrett voted to deny recourse to four Black truck drivers who contend their employer gave favorable suburban routes to white truck drivers, and less desirable city routes to Black drivers.²⁷ Notwithstanding the Black drivers’ argument that the city routes were more difficult and more likely to lead to accidents, her opinion concluded that evidence was insufficient to show they were “materially worse” and therefore that their employer had discriminated against them.

Shockingly, Judge Barrett also was willing to severely restrict a longstanding civil rights enforcement tool, excluding an entire category of workers protected by federal civil rights laws. In [*Kleber v. CareFusion Corp.*](#),²⁸ she joined a ruling which continues the trend of narrowing the applicability of a decades-old civil rights enforcement

²¹ 875 F.3d 860 (7th Cir. 2017).

²² *Id.* at 861.

²³ *Id.*

²⁴ 936 F.3d 554 (7th Cir. 2019).

²⁵ Although the supervisor was also Black, Judge Barrett did not purport to rely on this fact in her reasoning.

²⁶ *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 580 (D.C. Cir. 2013) (Kavanaugh, J., concurring).

²⁷ *Harris v. YRC Worldwide, Inc.*, 811 F. App’x 989 (7th Cir. 2020).

²⁸ 914 F.3d 480 (7th Cir. 2019).

principle known as “disparate impact,” here by agreeing that while current employees may bring disparate impact claims for age discrimination, applicants for employment may not.

The principle that practices which have an unjustified adverse effect on a protected group violate the employment discrimination laws has been a vital part of this nation’s jurisprudence for nearly 50 years. In 1971, Chief Justice Burger, writing for a unanimous Court in *Griggs v. Duke Power Co.*,²⁹ held that a facially neutral test that disproportionately affected African Americans violated Title VII of the Civil Rights Act of 1964. Since then, the protections against practices which have an unjustified disparate impact on protected groups have prohibited a wide range of discriminatory conduct in areas of our society ranging from employment, to housing, education, transportation, the environment, and the criminal justice system. The disparate impact doctrine is the most successful civil rights enforcement tool for identifying and redressing systemic racism, and its preservation at this moment in history is more important than ever.

While protections against unjustified practices that have a disparate impact on protected groups have largely withstood efforts to erode their effectiveness, the addition of Judge Barrett to the United States Supreme Court would place those protections in serious jeopardy. Instead of narrowing the protection against practices with an unjustified adverse impact, Judge Barrett, like her mentor, Justice Scalia, limited the workers protected against these discriminatory practices.

In *Alexander v. Sandoval*,³⁰ for example, Justice Scalia, writing for the majority, held that private citizens could not challenge an English-only test requirement, which had an undeniably adverse effect on Spanish speakers, because he concluded they were not protected by the law. Similarly, Justice Scalia joined a dissent in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*,³¹ which would have found civil rights groups could not bring disparate impact claims under the Fair Housing Act challenging housing policies which had the effect of keeping neighborhoods segregated.

Following the model of Justice Scalia, Judge Barrett joined a decision in *Kleber* which held applicants for employment were not protected by the Age Discrimination in Employment Act. The plaintiff had challenged a company policy rejecting applicants with seven or more years of prior-job experience. Judge Barrett joined a decision which ruled applicants were not covered by the law. The dissent characterized the opinion Judge Barrett joined as a “deliberately naïve approach to an ambiguous statutory text, closing its eyes to fifty years of history, context, and application.”³² By taking this approach, and by ignoring the ruling by Chief Justice Burger in the *Griggs* case interpreting identical language found in Title VII, the dissent described the opinion Judge Barrett joined as “180 degrees off course.” In joining this wrong-headed opinion, Judge Barrett engaged in a misguided course of curtailing the laws prohibiting practices having an unjustified adverse effect and repudiating long-established precedent on which nearly a half-century of civil rights protections have relied.

VII. DENYING EQUAL EDUCATIONAL OPPORTUNITIES

Although Judge Barrett has not directly addressed affirmative action in her opinions or scholarship, her approach to Title IX—the landmark federal law prohibiting sex discrimination in education—suggests she would make it harder for governments and schools to expand opportunities for students of color. In *Doe v. Purdue*, Judge Barrett held that a man suspended from his university for sexually assaulting a classmate could sue the school for

²⁹ 401 U.S. 424 (1971).

³⁰ 532 U.S. 275 (2001).

³¹ 576 U.S. 519 (2018).

³² *Kleber v. CareFusion Corp.*, 914 F.3d 480, 490 (7th Cir. 2019) (Hamilton, J., dissenting).

discriminating against him because he was male. In doing so, she relied in large part on the Department of Education's efforts to fight campus sexual assault. Judge Barrett found that the Department's decision to take such violence "very seriously" suggested bias against men, as did the fact that the university at issue had recently been faulted for failing to properly investigate sexual assaults. This topsy-turvy reasoning, applied elsewhere, would turn efforts to combat discrimination into a sword to be wielded against schools and governments seeking to remedy educational inequality.

Judge Barrett's regressive approach suggests alignment with her mentor, Justice Scalia—a renowned foe of affirmative action and other means of combating discrimination in education. Justice Scalia referred to the Supreme Court's forty-year history of upholding consideration of race in college admissions as a "sorry line" of cases.³³ Elsewhere he called a school's consideration of race "a sham to cover a scheme of racially proportionate admissions" that violated the Constitution, and questioned whether race-conscious admissions policies hurt Black students by keeping them from going "to a less-advanced school, a slower-track school where they do well."³⁴ Judge Barrett has [said](#) that Justice Scalia's "judicial philosophy is mine, too," and constitutional law scholars [predict that](#), if a Justice Barrett is confirmed, "we can expect the court to hold race-based affirmative action unconstitutional in public universities and banned by statute for private colleges."

VIII. CLEAR AND CERTAIN DANGER TO LGBTQ COMMUNITY

Judge Barrett has demonstrated significant hostility toward LGBTQ rights. In 2016, when asked about the landmark marriage equality case, *Obergefell v. Hodges*,³⁵ she responded that, like Justice Scalia, she does not believe that the Constitution provides a substantive guarantee to due process. Judge Barrett went on to explain that under her reading, marriage equality (and reproductive freedom) are not guaranteed by the Constitution. Instead, she wrote, these issues and others like the right to die and, conversely, the death penalty, should be decided by state legislatures.³⁶ Judge Barrett's views are particularly worrisome in light of Justices Thomas and Alito's October 5, 2020 statement respecting the denial of certiorari in *Davis v. Ermold*, which went out of its way to state that the Court in *Obergefell* read a right to same-sex marriage into the Fourteenth Amendment that is found nowhere in the text of the Constitution.³⁷ With a Justice Barrett on the bench, marriage equality could very well be overturned less than a decade after it was decided.

In addition, the appointment of Judge Barrett to the Supreme Court could have swift repercussions for Americans who are treated differently because of their sexual orientation or sexual identity, as the day after Election Day, the Court is scheduled to hear *Fulton v. City of Philadelphia*, which considers whether the City must allow a taxpayer-

³³ *Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291, 317 (2014) (Scalia, J., concurring in the judgment).

³⁴ *Grutter v. Bollinger*, 539 U.S. 306, 347 (2003) (Scalia, J., concurring in part and dissenting in part); Transcript of Oral Arguments at 67, *Fisher v. Univ. of Tex. at Austin* (No. 14-981).

³⁵ 576 U. S. 644 (2015).

³⁶ "Justice Scalia and the Future of the Court," Hesburgh Lecture, co-sponsored by the Jacksonville Notre Dame Club and Jacksonville University Public Policy Institute, Jacksonville, Florida, November 3, 2016.

<https://www.youtube.com/watch?v=7yjTEdZ81II>. In addition to her belief that *Obergefell* was wrongly decided, just months after the Supreme Court's 2015 ruling Barrett signed onto a letter stating: "We give witness that the Church's teachings...on the meaning of human sexuality, the significance of sexual difference and the complementarity of men and woman... and on marriage and family founded on the indissoluble commitment of a man and a woman – provide a sure guide to the Christian life." Letter to Synod Fathers from Catholic Women, Ethics and Public Policy Center (October 1, 2015),

<https://eppc.org/synodletter/>. The letter also lists as a guiding principle the value of human life from conception to natural death and notes women's "preferential attention" for the family.

³⁷ *Davis v. Ermold*, 592 U. S. ____ (2020), (Thomas, J., respecting denial of certiorari).

https://www.supremecourt.gov/orders/courtorders/100520zor_3204.pdf at 55.

funded organization to discriminate against same-sex couples by refusing to support them as foster parents simply because of their sexual orientation.³⁸ Judge Barrett would likely slow the progress, and possibly lead a retreat, in the recognition that the rights and privileges afforded Americans should not be denied simply because of their sexual orientation and sexual identity.

Judge Barrett poses a particular threat to the trans community. She has said that Title IX protections do not apply to transgender Americans, and that it is a “strain on the text” to reach that interpretation. This reading directly contradicts the Court’s recent holding in *Bostock v. Clayton County*—authored by Justice Gorsuch—that substantially similar language in Title VII prohibits discrimination on the basis of sexual orientation or gender identity.³⁹

Finally, Judge Barrett has extremely troubling ties to the Alliance Defending Freedom (ADF). The Southern Poverty Law Center classifies ADF as a hate group, noting that ADF has supported the recriminalization of homosexuality and has claimed that a “‘homosexual agenda’ will destroy Christianity and society.”⁴⁰ Since 2011, Judge Barrett has spoken five times⁴¹ at ADF’s controversial and secretive Blackstone Legal Fellowship Program, which seeks to indoctrinate law students and young lawyers with extremist ideology.⁴² ADF’s tax filing says its goal is to “train a new generation of lawyers who will rise to positions of influence and leadership as legal scholars, litigators, judges—perhaps even Supreme Court Justices—who will work to ensure that justice is carried out in America’s courtrooms.”⁴³ Given the hatred and bigotry espoused by this organization, it is alarming that the leader of ADF attended the White House event announcing Donald Trump’s nomination of Judge Barrett to the Supreme Court.⁴⁴

IX. IMPOSED BARRIERS TO ACCESS TO JUSTICE

The nation’s civil rights laws are only as good as our ability to enforce them. But Judge Barrett’s judicial opinions have erected higher barriers to gain admission to the federal courts of this nation. Roundly condemned by her judicial colleagues, including Republican-appointed judges, Judge Barrett’s opinions have been faulted for rejecting longstanding precedent and dramatically raising the bar for victims of civil rights violations to vindicate the rights which Congress bestowed upon them.

Judge Barrett [ruled](#) for example, that the courthouse was closed to a proven victim of unlawful credit practices.⁴⁵ Judge Barrett’s extraordinary views led her colleagues—including an appointee of President George H.W. Bush—

³⁸SUPREME COURT OF THE UNITED STATES, OCTOBER TERM 2020, Argument Calendar for the Session Beginning November 2,

https://www.supremecourt.gov/oral_arguments/calendars/MonthlyArgumentCalNovember2020.html.

³⁹ “Justice Scalia and the Future of the Court.” <https://www.youtube.com/watch?v=7yjTEdZ811I>.

⁴⁰ Southern Poverty Law Center, *Alliance Defending Freedom*, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

⁴¹ *Senate Judiciary Committee Questionnaire for Nominee to the Supreme Court*, 116th Cong. 14-27 (2020)

[https://www.judiciary.senate.gov/imo/media/doc/Amy%20Coney%20Barrett%20Senate%20Questionnaire%20\(Public\)%20\(002\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Amy%20Coney%20Barrett%20Senate%20Questionnaire%20(Public)%20(002).pdf).

⁴² Sofia Resnick & Sharona Coutts, *Not the ‘Illuminati,’ How Fundamentalist Christians Are Infiltrating State and Federal Government*, REWIRE NEWS, May 13, 2014, <https://rewire.news/article/2014/05/13/illuminati-fundamentalist-christians-infiltrating-state-federal-government/>.

⁴³ *Id.*

⁴⁴ Emily Holden, *Leader of Non-Profit Labeled ‘Hate Group’ Attended White House Amy Coney Barrett Event*, THE GUARDIAN, Oct. 5, 2020, <https://www.theguardian.com/us-news/2020/oct/05/michael-farris-amy-coney-barrett-adf>.

⁴⁵ *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329 (7th Cir. 2019).

to characterize her opinion as “troublesome,” and explain that it will “make it much more difficult for consumers to enforce the protections against abusive debt collection practices.”⁴⁶

In other cases, Judge Barrett’s rulings have erected new barriers to obtaining justice in federal court. In [Chronis v. United States](#), Anna Chronis sought to recover the expenses she was unjustly forced to incur after she suffered pain and bruising from a pap smear.⁴⁷ Notwithstanding that Ms. Chronis brought her case without a lawyer, Judge Barrett applied the stringent procedural requirements reserved for cases with lawyers, penalizing victims who lack the funds to retain counsel. The ruling led Judge Barrett’s colleague—an appointee of President George H.W. Bush—to fault her for creating a new legal standard and raising “the requirements for plaintiffs making a claim” against the United States.”⁴⁸

In yet other [rulings](#) that deprived victims of unlawful conduct access to the courts, Judge Barrett interpreted a state law to deny access to federal court on grounds neither party even raised.⁴⁹ As Judge Ripple, a Republican appointee, admonished, Judge Barrett’s opinion went against “established practice” and “well-settled case law across the Nation.”⁵⁰ Similarly, in [Wallace v. Grubhub Holdings](#), a case where drivers alleged that Grubhub failed to pay them overtime wages, Judge Barrett enforced an arbitration agreement by interpreting narrowly an exception to the Federal Arbitration Act to force the drivers into secret, private arbitration instead of allowing them to proceed in the courts.⁵¹ Together, these rulings show Judge Barrett is prone to reaching strained interpretations of the law which have the effect of greatly limiting access to the federal courts of this country, which have historically provided the last opportunity to achieve justice.

X. THREATS TO CRIMINAL JUSTICE

The protections enshrined in the Bill of Rights that protect those of us who are suspected of or even charged with criminal conduct—from the presumption of innocence to other procedures that ensure fairness in our criminal justice system—would be severely jeopardized by the confirmation of Judge Barrett as a Justice of the United States Supreme Court.

Over the last several years, Americans have witnessed the devastating effects of police violence on those who are arrested. But Judge Barrett believes that police officers should not always be held responsible when a suspect dies during arrest.⁵² Despite the public’s increasing understanding that police must be accountable for the safety of those in their custody, Judge Barrett’s approach would shield police from accountability, endangering the lives of those who are arrested.

Judge Barrett has also expressed skepticism for one of the most sacrosanct rights enshrined in the Constitution: the protection against self-incrimination. The rights guaranteed by the *Miranda v. Arizona* decision, a pillar of our legal system for nearly 50 years, could be eroded, if not eliminated, if Judge Barrett’s views were to prevail in the Supreme Court.⁵³ Notwithstanding that these rights to be informed of fundamental constitutional protections at the time of arrest are widely known and accepted, Judge Barrett believes these rights “go beyond constitutional

⁴⁶ *Id.* at 340 (Wood, J., dissenting from denial of rehearing).

⁴⁷ *Chronis v. United States*, 932 F.3d 544 (7th Cir. 2019).

⁴⁸ *Id.* at 550, 555 (Rovner, J., dissenting).

⁴⁹ *Webb v. Fin. Indus. Regulatory Auth., Inc.*, 889 F.3d 853 (7th Cir. 2018).

⁵⁰ *See id.* at 864 (Ripple, J., dissenting in part).

⁵¹ *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020).

⁵² *Day v. Wooten*, 947 F.3d 453 (7th Cir. 2020).

⁵³ 384 U.S. 436 (1966).

meaning” and therefore should no longer be guaranteed.⁵⁴ Extinguishing these rights would deprive those of us who are uninformed of the law of our protection from incriminating ourselves before we can consult a lawyer.

Judge Barrett has ruled to curb the rights of suspects on trial. The Supreme Court has made clear that when a criminal defendant is on trial, the prosecution must give the defendant all the evidence it finds that would help the defendant’s case.⁵⁵ This rule, rooted in the Constitution, helps prevent criminal suspects from being falsely convicted by ensuring that defendants have the necessary tools to prove their innocence. However, Judge Barrett has found that when a state court rejects this constitutional challenge, federal courts should not second-guess that decision—even when she agrees that a defendant’s constitutional right was violated.⁵⁶

Another fundamental right—the right to an attorney—could also be undermined if Judge Barrett is confirmed. Although a suspect’s right to be represented by a lawyer is explicitly stated in the Bill of Rights, Judge Barrett believes that a judge can order a suspect’s lawyer not to speak without violating the suspect’s right to representation.⁵⁷ She also believes that a court-appointed lawyer can stop doing legal work for a criminal suspect that he represents—even when it directly damages the suspect’s legal defense—without violating the client’s right to representation.⁵⁸ The right to an attorney means more than the right to have an attorney present in a courtroom. This constitutional right should not and must not be subject to the whims of a court-appointed lawyer or a judge.

If Judge Barrett is confirmed to the Supreme Court, she may push for higher prison sentences for those convicted of crimes.⁵⁹ African Americans are incarcerated at a rate of at least five times the rate of whites across the country in state prisons,⁶⁰ and on average, federal prison sentences are nearly 20% longer for African-American men than for white men.⁶¹ In addition to contributing to over incarceration, a push for higher prison sentences will disproportionately impact people of color.

Finally, Judge Barrett has also shown a disregard for the physical safety of incarcerated persons, expressing her belief that it is their own responsibility to ensure that prisons do not violate their constitutional rights. For example, Judge Barrett voted that a prison should not be held responsible when a prisoner who suffered from Parkinson’s disease repeatedly received his Parkinson’s medication refills several days after he ran out of pills.⁶² Similarly, in a case against two prison guards who had fired shotguns into a crowded dining hall, injuring several incarcerated persons, Judge Barrett emphasized that because the prisoners could not prove that the prison guards were *deliberately* firing at the prisoners, the prisoners should have lost the case.⁶³ Requiring those incarcerated to be responsible for defending themselves against prison abuses, rather than requiring prisons to care for the health and safety of inmates, forces the least powerful to fight constantly for their constitutional right not to be mistreated.

⁵⁴ Amy C. Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 170 (2010).

⁵⁵ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁵⁶ *Sims v. Hyatte*, 914 F.3d 1078 (7th Cir. 2019).

⁵⁷ *Schmidt v. Foster*, 891 F.3d 302 (7th Cir.), *reh’g en banc granted, opinion vacated*, 732 F. App’x 470 (7th Cir. 2018), *and on reh’g en banc*, 911 F.3d 469 (7th Cir. 2018).

⁵⁸ *Reynolds v. Hepp*, 902 F.3d 699 (7th Cir. 2018).

⁵⁹ *United States v. Uriarte*, No. 19-2092, 2020 WL 5525119 (7th Cir. Sept. 15, 2020).

⁶⁰ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁶¹ Demographic Differences In Sentencing: An Update To The 2012 Booker Report, 30 Fed. Sent. R. 212, 2018 WL 3371283 (Vera Inst. Just.).

⁶² *Hildreth v. Butler*, 971 F.3d 645 (7th Cir. 2020).

⁶³ *McCottrell v. White*, 933 F.3d 651 (7th Cir. 2019).

XI. DENIAL OF RIGHTS TO IMMIGRANTS

Judge Barrett’s opinions treat harshly those who immigrate to, or seek refuge in, this country. For example, Judge Barrett [would have upheld](#) the Trump Administration’s “public charge” rule, which permits officials to deny immigrants a green card if they received any form of federal, state, or tribal benefits—including housing benefits, Medicaid, or food stamps—for more than 12 months in a 36-month period.⁶⁴ As Judge Barrett’s colleagues underscore in the majority opinion, this rule penalizes, and essentially prevents, immigrants from accessing “core needs such as healthcare, housing, and nutrition” that Congress and state governments have made available to them.⁶⁵ The majority opinion—joined by a Republican-appointed judge—further emphasized the stakes of this rule, noting that the Administration’s interpretation “has no natural limitation,” and would leave open the possibility of “a zero-tolerance rule under which the receipt of even a single benefit on one occasion would result in denial of” permanent resident status.⁶⁶

In [another case](#), Judge Barrett went beyond precedent to deny an American citizen any recourse against the government’s decision to deny his wife a visa.⁶⁷ In that case, a consular official denied a visa to Zahoor Ahmed, the spouse of an American citizen, on the grounds that she allegedly had attempted to smuggle two children into the United States, even after Ahmed told the consular official that those were her children, who had died.⁶⁸ Judge Barrett’s colleagues—including Republican-appointed judges—faulted Judge Barrett for aggressively restricting review of even arbitrary exercises of authority,⁶⁹ and called her opinion “a dangerous abdication of judicial responsibility.”⁷⁰ In yet another immigration case, Judge Barrett relied on “trivial” discrepancies to [deny](#) relief to an asylum applicant facing deportation.⁷¹

XII. WOULD DENY ACCESS TO AFFORDABLE HEALTHCARE

Judge Barrett would likely provide the vote needed for a majority to strike down the Affordable Care Act (ACA), as she has made no secret of her criticism of the ACA. After the Court held that Congress had the authority to enact the ACA’s central provisions, she criticized Chief Justice John Roberts as having “pushed the Affordable Care Act beyond its plausible meaning to save the statute.”⁷² Confirming her hostility to the Affordable Care Act, when the Court later interpreted the statute to preserve tax credits used by millions of Americans to purchase health insurance, she again said she would have sided with the dissenters—who, she [explained](#), had “the better of the legal argument.” In both instances, Judge Barrett would have ignored the law’s broader structure and clear purpose to reach outcomes stripping healthcare from tens of millions of people.

The President’s rush to confirm Judge Barrett could permit her to vote in *California v. Texas*, which is scheduled to be heard on November 10, just a week after the election. There, the Trump administration has once again asked the Supreme Court to strike down the ACA. Judge Barrett’s confirmation in time for her to participate in this case would likely be the deciding vote to strike down the Affordable Care Act while this country is in the midst of the worst public health crisis in a century. Aside from whether Judge Barrett should join the Supreme Court at all,

⁶⁴ *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208, 234 (7th Cir. 2020) (Barrett, J., dissenting).

⁶⁵ *Id.* at 232.

⁶⁶ *Id.* at 229.

⁶⁷ *Yafai v. Pompeo*, 912 F.3d 1018 (7th Cir. 2019).

⁶⁸ *Id.* at 1019-20.

⁶⁹ *Id.* at 1023 (Ripple, J., dissenting).

⁷⁰ *Yafai v. Pompeo*, 924 F.3d 969, 975 (7th Cir. 2019) (Wood, J., dissenting from the denial of rehearing en banc).

⁷¹ *Alvarenga-Flores v. Sessions*, 901 F.3d 922, 927 (7th Cir. 2018) (Durkin, J., dissenting).

⁷² *Countering the Majoritarian Difficulty*, 32 CONST. COMMENT. 61, 80 (2017) (book review).

therefore, this Committee should consider the consequences of rushing her confirmation for the survival of the Affordable Care Act and the availability of healthcare to millions of Americans.

XIII. HOSTILE TO REPRODUCTIVE RIGHTS

Judge Barrett has made no secret of her interest in overturning *Roe v. Wade* and revealed repeatedly her intention to limit the availability of reproductive health services for those who need it most. In an advertisement Judge Barrett joined, which she originally concealed from the Judiciary Committee, she urged the reversal of *Roe v. Wade*, leaving no doubt about her vote on this issue of profound interest to women throughout the country.

Her judicial rulings reflect a similar hostility to the ability of women to exercise control over their bodies. In [*Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner of Indiana State Department of Health*](#),⁷³ Judge Barrett joined a dissent which would have found that a state can stop a woman from obtaining an abortion if she seeks that abortion for reasons not approved by the state, such as because the child would be born with life-threatening disabilities. Similarly, in [*Planned Parenthood of Indiana and Kentucky, Inc. v. Box*](#),⁷⁴ Judge Barrett was critical of a lower court ruling striking down a law that would have required mature minors who received judicial permission to obtain an abortion without their parents' consent to nonetheless notify their parents before the abortion could proceed. But as the lower court noted, even when a court finds that a minor is mature enough to decide for herself whether to seek an abortion, requiring notice to her parents would inevitably give parents a "practical veto" over her informed choice, a veto which can be accompanied by "the threat of domestic abuse, intimidation, coercion, and actual physical obstruction." With Judge Barrett's jurisprudence, there would be little left to the choice women may exercise over their bodies.

These encroachments on a woman's right to choose would have an especially harsh impact on women of color, who are more likely to experience unintended pregnancies, experience pregnancy-related health complications, and become gravely ill or die in childbirth.⁷⁵ As such, access to reproductive health services is critical to ensuring that women of color have the agency and autonomy to make their own decisions about the direction their lives take and planning for a family. If confirmed, Judge Barrett's opposition to women's reproductive rights portends a world in which it is state legislatures, and not women, which would control women's reproductive futures.

XIV. RULED AGAINST GUN SAFETY

Judge 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 lone 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.

⁷³ 917 F.3d 532 (7th Cir. 2018).

⁷⁴ 949 F.3d 997 (7th Cir. 2019).

⁷⁵ In Our Own Voice: National Black Women's Reproductive Justice Agenda, *In Our Own Voice: The State of Black Women & Reproductive Justice Policy Report* at 21 (2017).

The Honorable Lindsey Graham
The Honorable Dianne Feinstein
October 9, 2020
Page 15

XV. CONCLUSION

We are at a pivotal moment for our democracy. Donald Trump's nomination of Amy Coney Barrett to the Supreme Court during the middle of an election is a corrupt abuse of power which threatens the very legitimacy of the Supreme Court. The Senate should exercise its powers under the Constitution and withhold its consideration of the nomination until the inauguration of the president chosen by the American people. The Senate's move to confirm Amy Coney Barrett at this critical juncture would irreparably harm the integrity and reputation of the Senate and leave an indelible stain on the Senate for all of history.

The next Supreme Court Justice will play an outsized role in determining whether African Americans move forward in our journey toward achieving full equality, whether we simply tread water for the next decades, or whether we slide backward toward our former status as second-class citizens. We believe that Amy Coney Barrett's extremist judicial philosophy and hostile civil rights record pose a severe threat to our decades-long progress in pursuing equal justice. We believe there is no more important vote for any Senator in his or her entire career, and we urge each and every Senator to vote no on this nomination.

Thank you for considering the NAACP's strong opposition to the nomination of Amy Coney Barrett. Should you have any questions or comments, please contact Hilary Shelton, Director of the Washington Bureau and Senior Vice President for Policy and Advocacy at (202) 463-2940.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D: Johnson", with a stylized flourish at the end.

Derrick Johnson
President and CEO

cc: Members of the Senate Judiciary Committee