



COALITION ON HUMAN NEEDS

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October 12, 2020

Dear Senator:

On behalf of the Coalition on Human Needs, I write to express our strong opposition to the confirmation of Judge Amy Coney Barrett to serve as an Associate Justice of the Supreme Court of the United States.

The [Coalition on Human Needs](http://www.chn.org) is an alliance of more than 100 national organizations representing people of faith, service providers, policy experts, and labor, civil rights, and other advocates working to meet the needs of low-income and vulnerable people. As such, we are deeply concerned about the effect Judge Barrett could have on our nation's laws protecting these populations should she be confirmed. We have seen a widening of inequality made worse by the pandemic, and a surge in anti-democratic efforts nationwide intended to suppress votes, deny access to legal protections, and worsen the position of workers in attempting to secure decent wages and benefits. The nation needs justices who will not further stack the deck against people with low incomes, racial, ethnic or religious minorities, or people with disabilities. In particular, we are concerned about Judge's Barrett's previous rulings and statements in five main areas: access to health care, immigration, workers' rights, anti-discrimination, and criminal justice.

At the outset, we wish to object strongly to the priorities of the Senate leadership in rushing to seek confirmation for Judge Barrett while refusing to take action on a COVID-19 relief bill. The real urgency before the Senate is responding to the needs of millions of people who are threatened by the disease itself or its economic repercussions. The 14-day average for COVID-19 cases was up 15 percent as of October 11.¹ Nearly half of all Americans are in households that have lost income from work because of the pandemic; one in five households with children are behind in their rent; 11.6 million people in households with children were not getting enough to eat.² Asking people who are experiencing serious hardships to wait months for a response from Congress is an unconscionable abdication of responsibility, as is failing to provide adequate funding for public health measures to combat the pandemic.

Access to Health Care:

The Supreme Court is scheduled to hear oral arguments in *California v. Texas* – a lawsuit engineered to invalidate the Affordable Care Act (ACA) – on November 10, just one week after the election. Striking down this critical health care law would strip access to health care from millions of people and end the

¹ <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

² <https://www.chn.org/voices/covid-watch-oct-9/>

law's protections for the more than 130 million Americans with preexisting conditions, including more than seven million Americans who have tested positive for COVID-19. Overturning the ACA would have a devastating and disproportionate impact on low-income communities, communities of color, women, and people with disabilities. The rate of Black people who are uninsured would dramatically increase 20 percent.³ According to a study from Families USA, 5.4 million Latinos⁴ nationwide would lose coverage if the lawsuit succeeds in overturning the ACA, as would 2 million Asian Americans, Native Hawaiians, and Pacific Islanders⁵, and 300,000 Native Americans.⁶ The uninsured rate for people with disabilities would rise by up to 42 percent if the ACA is struck down.⁷ Almost three million children nationwide gained coverage thanks to the ACA. If the law is overturned, many of these children will lose their insurance.

If the Affordable Care Act were to be overturned, 14.8 million people who gained insurance due to the ACA's expansion of Medicaid would lose coverage. These are people with low incomes who are disproportionately exposed to COVID-19 infection. The loss of expanded Medicaid coverage during a pandemic, when millions of people have lost jobs and employer-based health insurance, could not be more reckless.

Nine million people who receive tax credits to help them pay for coverage will lose that help. Hundreds of millions more who are able to keep their insurance may still be negatively affected, as insurance companies return to practices of denying coverage or charging more due to a preexisting condition, canceling coverage when someone gets sick, charging women more than men, dumping no-cost coverage of preventative care like flu shots and cancer screenings, charging seniors more for prescription drugs, denying coverage for substance abuse treatment and domestic violence survivors, discriminating against people with disabilities, offering junk coverage plans, and reinstating lifetime and annual caps. Ending the ACA and throwing tens of millions of Americans off insurance in the middle of an unprecedented health crisis would have devastating, long-term impact on the health and economic security of low-income communities, communities of color, people with disabilities, and other historically underserved communities – who are disproportionately at-risk from COVID due to structural inequalities in healthcare access and quality of treatment – and our country as a whole. Note that if they had died of COVID-19 at the same actual rate as White Americans, about 20,800 Black, 10,900 Latino, 700 Indigenous, and 80 Pacific Islander Americans would still be alive.⁸

Women and older Americans would be severely harmed by the overturning of the ACA. Insurance companies could go back to the past practices of charging higher premiums for women and/or offering fewer benefits. Free breast cancer screenings and other preventive care would no longer be required. Maternity benefits could be eliminated. For older Americans, the loss of the Affordable Care Act would mean that insurers could once again charge higher rates based on age, and limits on prescription drug costs would end.

³ <https://www.cbpp.org/research/health/african-american-uninsured-rate-dropped-by-more-than-a-third-under-affordable-care>

⁴ https://drive.google.com/file/d/1HU3SB4IC8nnvArfSHH-aQ68RID_Q7hz9/view

⁵ <https://www.communitycatalyst.org/resources/2020-covid/ACA-COVID-AAPI.pdf>

⁶ <https://www.communitycatalyst.org/resources/2020-covid/ACA-COVID-AIAN.pdf>

⁷ <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2019.305056>

⁸ <https://www.apmresearchlab.org/covid/deaths-by-race>

President Trump has said he would only appoint justices who would strike down the ACA, and it is clear why he believes Judge Barrett fits the bill. Judge Barrett has been openly critical of the ACA and of both major Supreme Court rulings that upheld the law: *NFIB v. Sebelius* in 2012 and *King v. Burwell* in 2015.

Judge Barrett opposed the landmark 2012 ruling, writing in 2017, “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute. He construed the penalty imposed on those without health insurance as a tax, which permitted him to sustain the statute as a valid exercise of the taxing power; had he treated the payment as the statute did – as a penalty – he would have to invalidate the statute as lying beyond Congress’s commerce power.”⁹

Judge Barrett also expressed disagreement with the Supreme Court’s 2015 ruling in *King v. Burwell*, where the court upheld a key component of the law, ruling that tax credits under the ACA were available for states that had either a federal health care exchange or a state exchange. The dissent in the case took a narrow view and argued that the tax credit should only be available in states with a state exchange because one sentence in the law said “Exchange established by the State.” Had the dissenters prevailed in that case, the non-partisan Urban Institute estimated that more than 8 million people would have lost health coverage and premiums would have gone up by 35% in 34 states.¹⁰ In June 2015, Judge Barrett said, “I think the dissent has the better of the legal argument,” and “in terms of the analysis of the statute, seems to me I was kind of thinking the phrase ‘established by a state’ was clear.”¹¹ She also asserted: “I think Justice Scalia’s point is that purpose or intent can’t overcome clear text and here it seems like that’s what the majority opinion did.”¹²

Barrett has said she and Justice Antonin Scalia have the same judicial philosophy.¹³ Justice Scalia voted to overturn the ACA in both cases mentioned above, and he wrote the dissenting opinions in both cases.

Justice for Immigrants:

One of the ways the Trump Administration has sought to discourage immigrants from achieving legal status is its broadening of the “public charge” rule. The rule went far beyond the decades-long limited definition of what constitutes a disqualifying use of public benefits (only use of direct cash benefits or need for long-term institutional care) to include use of Medicaid or the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps). The rule established 20 factors for determining the current or future likelihood of becoming a public charge, including current income levels and whether the individual speaks English. Judge Barrett dissented from a Seventh Circuit Court ruling which struck down the Administration’s public charge rule (*Cook County V. Wolf*)¹⁴. The Seventh Circuit found that the Trump Administration had violated the Administrative Procedure Act, would prevent immigrants from receiving legal permanent resident status for using benefits for which they were legally entitled,

⁹ https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2330&context=law_faculty_scholarship at 80.

¹⁰ <https://www.urban.org/urban-wire/king-v-burwell-whats-stake>

¹¹ <https://www.wbur.org/onpoint/2015/06/25/scotus-obamacare-upheld-john-roberts-antonin-scalia>.

¹² <https://www.wbur.org/onpoint/2015/06/25/scotus-obamacare-upheld-john-roberts-antonin-scalia>.

¹³ <https://www.cnbc.com/2020/09/26/amy-coney-barrett-pays-homage-to-mentor-antonin-scalia.html>

¹⁴ 962 F.3d 208 (7th Cir. 2020)

and would heavily penalize people with disabilities in violation of the Rehabilitation Act. Judge Barrett would have upheld the rule, arguing in her dissent that the challengers had a too-narrow definition of “public charge.” She also would have applied the doctrine of “Chevron deference,” which would require courts to defer to federal agencies’ interpretation of federal law. This is one of several examples in which Judge Barrett would defer to authorities seeking to restrict access to rights or benefits to people with little political clout and low income. We strongly urge the Judiciary Committee and the full Senate to carefully assess whether Judge Barrett’s views tend to favor the wealthy and powerful. In cases affecting corporations, for example, is Judge Barrett consistent in deferring to federal agencies’ interpretations of law?

The Trump Administration’s public charge rule, now in effect due to subsequent court rulings, is expected to deny legal status to millions of people. An analyst from the Migration Policy Institute estimated¹⁵ that 69 percent of the 5.5 million people granted green cards in the past five years would have been judged negatively on at least one of the 20 factors, and therefore subject to disapproval.

The Supreme Court has ruled against the Trump Administration’s attempt to include a citizenship question on the 2020 Census, but continuing efforts by the Administration to subtract non-citizens and non-voting age people from Census totals for purposes of apportionment and redistricting are likely to return to the Supreme Court. It will be extremely important for the Senate to clarify Judge Barrett’s views about the Constitution’s clear statement that the decennial Census should count every person. Her views on this are important both because of the impact on communities of color, low-income communities and children, in political representation and fair allocation of funding, and because they may show whether her commitment to a close reading of the Constitution is applied consistently.

Judge Barrett has ruled against immigrants when they sought asylum and protection from torture. In one case, *Alvarenga-Flores v. Sessions*,¹⁶ she ruled with the majority in dismissing the case of a man who feared being returned to El Salvador because of gang threats against him. There were minor discrepancies in his testimony, which he said should be attributed to his use of English although he was not an English speaker. Because of this, Judge Barrett would not allow his humanitarian claims to be considered. She also ruled against a naturalized citizen attempting to bring his wife (a citizen of Yemen) to this country.¹⁷ His wife was denied a green card on the grounds that she had allegedly tried to smuggle her two children across the border, although the couple had provided the embassy with documentation that their children had previously died. Barrett deferred to the consulate official who ruled against the wife. While in general courts defer to consular decisions, there is an exception if the decision infringes on the constitutional rights of a U.S. citizen. Judge Barrett was uncertain that there is a constitutional right for a citizen to live with his/her spouse in this country and denied the claim.

¹⁵ <https://www.vox.com/21457360/amy-coney-barrett-immigration-record-trump-supreme-court>

¹⁶ <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D08-28/C:17-2920:J:Barrett:aut:T:fnOp:N:2209369:S:0>

¹⁷ <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D01-04/C:18-1205:J:Barrett:aut:T:fnOp:N:2273745:S:0>

Workers' Rights:

Judge Barrett's record has made clear that she is opposed to the rights of working people and unsympathetic to the needs of their families. Barrett has consistently ruled against working Americans in favor of their bosses and big corporations; by one account, she sided with corporations over people 76 percent of the time during her tenure on the 7th Circuit Court of Appeals.¹⁸

In Equal Employment Opportunity Commission v. AutoZone, Judge Barrett ruled against a Black worker whose employer had an unlawful practice of segregating employees by race. In Kleber v. CareFusion Corporation, Judge Barrett ignored the fundamental purpose of the Age Discrimination in Employment Act (ADEA) when she joined the majority ruling that stated the act only protects current employees from age discrimination due to disparate impact, but not outside job applicants.¹⁹ Judge Barrett ruled against a Black Illinois Department of Transportation worker who had alleged that his firing was racially motivated, given racist verbal harassment he experienced on the job.²⁰

Judge Barrett also denied GrubHub drivers overtime pay and forced them into arbitration against their will. She has sided against people seeking reasonable accommodations for their disabilities in the workplace and has sided with a corporation against an employee who sued after he was harassed by his supervisor for taking leave to care for his ailing grandfather.

Judge Barrett also denied consumers the ability to enforce their rights under the Fair Debt Collection Practices Act, which protects against abusive debt collection practices. Barrett found that consumers are not protected from the law, even if the debt collector fails to provide adequate notice to them about actions that are required for them to be protected.²¹

Judge Barrett's track record betrays an overwhelming tendency to side with corporations against workers – a record that causes us to be concerned that her appointment could mean the loss of crucial protections for working families. Several groundbreaking Supreme Court employment discrimination cases, including those involving the Pregnancy Discrimination Act and the Family and Medical Leave Act, were narrowly decided and could be at risk if Judge Barrett be confirmed. Workers in low-wage industries, who are overwhelmingly women and people of color due to historical and continuing inequality and lack of opportunity, could be severely harmed.

Anti-Discrimination:

In addition to her anti-worker record, Judge Barrett's positions are similarly disproportionately harmful to Black Americans, people with disabilities, and LGBTQ+ people.

¹⁸ <https://www.accountable.us/wp-content/uploads/2020/09/2020-09-28-Amy-Coney-Barrett-Sides-With-Corporations-76-of-the-Time.pdf>

¹⁹ Kleber v. CareFusion Corp., 914 F.3d 480 (7th Cir. 2019).

²⁰ <https://www.law360.com/articles/1313887/7-barrett-employment-rulings-that-lawyers-should-know>

²¹ <https://www.afj.org/wp-content/uploads/2020/10/Barrett-Consumers.pdf>

For example, she joined a decision that ruled the state of Wisconsin did not discriminate based on disability by requiring children with learning disabilities to apply for placement in other school districts separately from all other children and allowing their exclusion from those districts on the basis of their service needs.²² The decision observed that the ADA and Section 504 prohibited discrimination based on stereotypes, but that treatment of people with disabilities based on the “actual attributes” of their disabilities was not discriminatory. This view is inconsistent with Congress’s intent in enacting these laws and would allow practices that clearly discriminate against people with disabilities.

In addition, as noted above, Judge Barrett dissented from an opinion concluding that the new Department of Homeland Security “public charge” rule discriminates against people with disabilities. The Seventh Circuit concluded that the rule, which makes it difficult for immigrants with disabilities to come to this country or become permanent residents by significantly increasing the chances that they will be considered likely to become a “public charge” due to their disability, violates Section 504 of the Rehabilitation Act. Judge Barrett dissented, however, opining that the rule’s treatment of people with disabilities was a reasonable interpretation of the public charge law.²³

A few months after the Supreme Court’s June 2015 decision in *Obergefell v. Hodges*, which guarantees the constitutional right to marriage equality, she signed on to a letter opposing same-sex marriage. This could leave this vital Supreme Court decisions vulnerable to overturning during her tenure.

In 2016, Judge Barrett opined that the sex discrimination provisions of Title IX should not extend to transgender people. When discussing a Supreme Court case about whether a transgender student should be permitted to use the restroom that correlated with his gender identity, Judge Barrett opined that the Title IX did not require it.²⁴ She said that if policymakers want to add gender identity to Title IX, they should amend the statute. Her position is in contradiction to the Supreme Court’s decision in a similar case involving Title VII, where the Court ruled that the prohibition of employment discrimination on the basis of “sex” should be read to include gender identity and sexual orientation.

Judge Barrett spoke in 2015 and 2016 to the far-right legal organization Alliance Defending Freedom (“ADF”), a group that has been designated as a “hate group” by the Southern Poverty Law Center, and as “arguably the most extreme anti-LGBT legal organization in the United States” by Lambda Legal. ADF has defended state-sanctioned sterilization of transgender people, and they have expressed support for the recriminalization of sexual acts between consenting LGBTQ adults.

Criminal Justice:

Judge Barrett has repeatedly ruled in favor of law enforcement authorities and against those accused of crimes. For example, in *United States v. Uriarte*,²⁵ she dissented when the Seventh Circuit ruled in favor

²² <https://www.courthousenews.com/wp-content/uploads/2019/01/Seventh.Disabled.pdf>

²³ <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2020/D06-10/C:19-3169:J:Barrett:dis:T:fnOp:N:2529215:S:0>

²⁴ <https://www.youtube.com/watch?v=7yjTEdZ81II> at 41:40.

²⁵ <https://casetext.com/case/united-states-v-uriarte-7>

of a man seeking a reduced prison sentence based on the enactment of the First Step Act. Before the passage of the First Step Act, Hector Uriarte had been sentenced to 50 years for drug and firearms offenses; that sentence had been vacated, and under the new law, his sentence was reduced to 20 years. Barrett sided with the Trump Administration in claiming that the First Step Act did not apply to Mr. Uriarte.

In *McCottrell v. White*,²⁶ Barrett dissented from a Seventh Circuit decision reversing a District Court ruling that prison guards firing buckshot from shotguns at a prison dining hall ceiling as a “warning” were acting reasonably. Two inmates were significantly injured. The Seventh Circuit majority disagreed, saying the shots could be characterized as an “intentional application of force,” “malicious” or “sadistic” and that it was not necessary to show that the guards intended to hit someone in order for the District court to hear the inmates’ Eighth Amendment claims. Judge Barrett disagreed, denying the inmates the opportunity to be heard.

In a case involving right to counsel,²⁷ Judge Barrett dissented when the Seventh Circuit ruled that a state trial judge denied right to counsel by ordering a lawyer not to speak while his client was being questioned by the judge in a pretrial hearing.

In the area of gun rights, Judge Barrett dissented against an opinion in the Seventh Circuit that barring felons from possessing a firearm did not violate the Second Amendment. In *Kanter v. Barr*, she asserted that non-violent felons should not be denied firearms, and accused those in the majority of treating the Second Amendment as a “second-class right.” At the same time, she concluded that other rights such as voting or serving on juries **could** be denied to felons, writing “...history does show that felons could be disqualified from exercising certain rights – like the rights to vote and serve on juries – because these rights belonged only to virtuous citizens.”²⁸

These opinions again raise questions of whether Judge Barrett’s interpretations are solely based on her reading of the Constitution or whether they are made to fit underlying assumptions, such as the primacy of the Second Amendment over other constitutional rights, or the inclination to side with authority over individuals with little power or wealth. We strongly urge the Senate to look hard at whether Judge Barrett applies the same standards in her many rulings in favor of corporations as she does in her opinions or writings concerning immigrants, people of modest means in danger of losing health insurance, or criminal justice defendants. It is certainly clear from this partial look at her record that if her views held sway, people with low incomes, people of color, immigrants, people with disabilities,

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https://scholar.google.com/scholar_case?case=9099544497874688820&q=mccottrell+v.+white&hl=en&as_sdt=2000006&as_vis=1

²⁷ <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D05-29/C:17-1727:J:Hamilton:aut:T:fnOp:N:2162392:S:0>

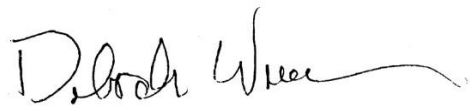
²⁸ <https://www.marylandshallissue.org/jmain/documents?task=download.send&id=222&catid=4&m=0> (includes dissent)

people involved with the criminal justice system, and women would be at an even greater disadvantage than they are now.

Among the extremely consequential decisions likely or certain to face the Supreme Court, in addition to the Affordable Care Act, concern the November 3 elections and the 2020 Census. A great deal is at stake: access to health care during the pandemic and beyond, and the very functioning of our challenged democracy. The nation demands a very careful examination of any nominee's approach. For the Senate to rush through this confirmation process is another abdication of its responsibility, with consequences lasting decades into the future.

The Coalition on Human Needs opposes the confirmation of Judge Amy Coney Barrett because her views will increase the likelihood of decisions that will increase inequality, ill health, and material hardship among those with the least ability to fight back, and because the Senate's rushed process is unlikely to allow proper consideration of Judge Barrett's views.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long, sweeping horizontal line extending to the right.

Deborah Weinstein,
Executive Director