



October 8, 2020

Senator Lindsey Graham
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Senator Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of the more than 170,000 bipartisan members and supporters of the American Association of University Women (AAUW), I urge you to oppose the confirmation of Judge Amy Coney Barrett to the United States Supreme Court. If confirmed to this lifetime appointment, Judge Barrett will have a say in the health, education, and economic security of women and girls for decades to come. After careful review of Judge Barrett's available record, including her record on the U.S. Court of Appeals for the Seventh Circuit, as well as her known speeches and writings over her legal career, I am concerned that she will do grave harm by undermining positions central to AAUW's mission. Specifically, upending employment and labor rights, curtailing reproductive rights and access to healthcare, and imperiling the safety of students in educational settings.

AAUW believes that, as with all nominations, a full and fair vetting process is vital to determine the nominee's qualifications and temperament. AAUW is looking for an independent, fair-minded jurist who will uphold the protections that are critical to the equity of women and girls. We support Supreme Court justices who are committed to upholding our hard-fought constitutional and fundamental rights that ensure equality for women in all the spheres of their lives. While we continue to urge Senators to inquire about Judge Barrett's record during her confirmation hearing, what we already know makes her hostility to AAUW's policy priorities clear.

AAUW opposes Judge Barrett's confirmation to the Supreme Court for the following reasons:

Judge Barrett has consistently failed to ensure that workers who have faced discrimination are protected.

Judge Barrett has routinely showed little support for workers' rights, including workers of color and older workers. [AAUW advocates](#) for "pay equity and fairness in compensation and benefits [and] equitable access and advancement in employment, free from systemic barriers and biases, including vigorous enforcement of employment discrimination statutes," positions to which Judge Barrett has not demonstrated a commitment.

The first opinion Judge Barrett joined as a Seventh Circuit judge was [United States Equal Employment Opportunity Commission v. AutoZone, Inc.](#), which involved a Black AutoZone sales manager who had been transferred to work at a new location by his employer — allegedly because AutoZone wanted to make his prior location a "predominantly Hispanic" store. The EEOC filed a lawsuit on his behalf, but a Seventh Circuit panel upheld the employer's ability to transfer employees based on their race as long as the transfer did not otherwise "adversely affect [their] employment opportunities or status." The EEOC asked the whole Seventh

Circuit to [rehear the case](#), but a majority including Judge Barrett, refused to do so. The dissent claimed the majority opinion endorsed a “separate but equal” argument.

In [Kleber v. CareFusion Corporation](#), Judge Barrett ruled against a 58-year-old man who was passed over for a job in favor of a younger applicant with less experience because of a company policy requiring applicants to have less than seven years of experience. Judge Barrett and the majority held that the “disparate impact” provision of the Age Discrimination in Employment Act only applies to current employees, and not job applicants. The dissent suggested that adhering to the Supreme Court would actually guide the court “toward a more sensible and less arbitrary reading” than the majority took.

Finally, in [Wallace v. Grubhub](#), Judge Barrett ruled against drivers who claimed that Grubhub failed to pay them overtime they were entitled to receive. Despite federal law that exempts transportation workers engaged in “interstate commerce” from mandatory arbitration agreements, Barrett held the drivers were required to arbitrate their claims. As the [attorney](#) representing the drivers noted, “Certainly when Congress enacted the [Federal Arbitration Act], it never foresaw that it would be used to stop drivers for a major national delivery company from challenging their employer’s systematic violation of wage laws.”

The U.S. Supreme Court is already slated to hear a case involving the scope and permissibility of [arbitration agreements](#) this term and it is undeniable that the next justice will hear many additional challenges to the rights of workers in the years, and decades, to come. As an organization that has been at the forefront of enacting protections for workers and supporting their rights in court, AAUW is deeply concerned that Judge Barrett would seek to diminish these rights, rather than expand them.

Judge Barrett has criticized the Affordable Care Act (ACA), making clear that she is not committed to protecting access to healthcare for women and those with preexisting conditions. [AAUW supports](#) “Universal access to quality, affordable health care and comprehensive family planning services, including expansion of patients’ rights.” The ACA has made a [significant impact](#) on women’s health; coverage of women’s reproductive health services and preventive care is required and fewer women of reproductive age are uninsured. Additionally, the millions of women and girls with preexisting conditions do not have to fear that they will be [denied health insurance](#), as they had in the past. Judge Barrett has expressed her opposition to upholding the ACA.

Judge Barrett criticized Chief Justice Roberts for his decision in *NFIB v. Sebelius*, which upheld Congress’s authority to enact large portions of the ACA. She [wrote](#), “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 had to invalidate the statute as lying beyond Congress’s commerce power.” Similarly in *King v. Burwell* – which upheld the section of the ACA allowing the government to continue to provide tax subsidies for low- and middle-income people who buy insurance nationwide, even in states that did not create an official insurance exchange of their own – Judge Barrett disagreed with the majority, [stating](#) that the dissent had “the better of the legal argument.” Moreover, Judge Barrett has shown a lack of support for contraceptive healthcare coverage. In particular, she [argued](#) that employers can cite religious beliefs to obstruct their employees’ access to contraceptive coverage.

Given the legal challenges to the ACA in the lower courts and scheduled oral arguments before the U.S. Supreme Court in [California v. Texas](#), the fate of the ACA remains uncertain and Judge Barrett’s position matters to its future. The intersection of attacks on the ACA and the COVID-19 crisis pose serious concerns for the availability of healthcare coverage for the hundreds of thousands of Americans who have been affected by COVID-19 and are now considered to have a pre-existing condition.

Judge Barrett has demonstrated hostility to reproductive freedom and support for a path toward overturning important legal precedent. “To guarantee equality, individual rights, and social justice for a diverse and inclusive society, [AAUW advocates](#) self-determination of one’s reproductive health decisions.” We take President Donald Trump at his word when he [promised](#) to nominate someone to the high court who would overturn *Roe v. Wade*. Judge Barrett has shown her enmity to women’s reproductive freedom and we should expect, based on her record, that she would be willing to severely weaken or overturn women’s rights to access critical healthcare, including abortion.

In [Planned Parenthood of Kentucky and Indiana, Inc. v. Commissioner of the Indiana State Dept. of Health](#), Judge Barrett joined a dissenting opinion in opposition to the Circuit Court panel striking down Indiana’s Sex Selective and Disability Abortion Ban. The law at issue prohibited abortions at any time, including prior to viability if the abortion was sought solely based on the sex, race, color, national origin, or ancestry of the fetus; or because the fetus had been diagnosed with Down Syndrome or “any other disability.” The law also changed the manner in which abortion providers had to dispose of fetal remains. Though there is clear Supreme Court precedent that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability,” the dissent strongly suggested that Indiana’s law and similar types of abortion bans were constitutional. Judge Barrett also joined the dissent in [Planned Parenthood of Indiana and Kentucky v. Box](#), arguing for the constitutionality of a different problematic Indiana law; it required that parents be notified before an abortion for anyone under the age of eighteen and prevented medical providers from informing teenage patients of abortion options in other states.

In addition to her troubling judicial record regarding reproductive health, Judge Barrett’s actions and writings further evince her disregard for the established precedent in *Roe v. Wade* and its progeny. Judge Barrett [suggested](#) that the importance of stare decisis is diminished in controversial areas of the law, saying, “To be sure, overruling precedent is disruptive. But some instability in constitutional law is the inevitable byproduct of pluralism. Were there greater agreement about the nature of the Constitution—for example, whether it is originalist or evolving—we might expect to see greater (although of course still imperfect) stability. In the world we live in, however, that level of stability is more than we have experienced or should expect in particularly divisive areas of constitutional law.” Judge Barrett dismissed the notion that overruling precedent has a negative impact on the Supreme Court’s overall legitimacy, and instead endorsed the idea that a justice’s own view of the Constitution should prevail even if there is precedent holding the opposite. From 2010-16, Judge Barrett was a member of Notre Dame’s [University Faculty for Life](#), which was founded “to promote research, dialogue and publication by faculty who respect the value of human life from conception to natural death.”

It is clear that Judge Barrett, if given a lifetime appointment to the U.S. Supreme Court, would use that position to overturn established law. This could have devastating impacts on women’s access to healthcare, and potentially many other foundational rights.

Judge Barrett’s rulings and opinions raise questions about educational institutions and their ability to protect students from sexual assault. [AAUW advocates](#) for the “vigorous enforcement of Title IX and all civil rights laws pertaining to education.” These critical laws help to ensure that all students can access an education free from barriers and bias. Judge Barrett’s record indicates a greater concern for those who hinder the ability of others to learn, rather than for those who have been marginalized and denied equitable access to education.

In 2019, Judge Barrett wrote the decision in [Doe v. Purdue University](#) in favor of a male student who sued Purdue University after the school found him guilty of sexual assault and suspended him. Her ruling held that the male student was allowed to argue both that Purdue’s judicial system was constitutionally unfair and that the university violated Title IX if it was biased against him based on his sex. “It is plausible,” Judge Barrett

wrote, that university officials “chose to believe Jane because she is a woman and to disbelieve John because he is a man.” In many previous decisions, courts upheld accused students’ due process claims but rejected their Title IX arguments on the grounds that the students had failed a complicated series of legal tests first established in 1994. Judge Barrett’s opinion offered a [different approach](#) which will make it easier for accused students to bring civil litigation against universities to a jury trial.

Conclusion

The Supreme Court plays a critical role in our nation’s system of checks and balances. It is the final arbiter when it comes to many of the most important legal challenges our country faces. Now more than ever we need a Supreme Court justice who will be an independent voice and will understand that the law has real impact on real people.

What we know so far about Judge Amy Coney Barrett makes it clear that she is the wrong choice for women and girls. I urge you to oppose the confirmation of Judge Barrett to the United States Supreme Court. Please do not hesitate to contact me at 202/728-7617 or Leticia Bustillos, Federal Policy Manager, at 202/785-7724, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Nielson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kate Nielson
Director of Public Policy and Legal Advocacy