October 9, 2020

The Honorable Lindsey Graham Chairman, Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Dianne Feinstein Ranking Member, Senate Committee on the Judiciary 152 Dirksen Senate Office Building Washington, D.C. 20510

RE: 56 Reproductive Justice Groups and Others Oppose Confirmation of Amy Coney Barrett Due to Lengthy Track Record of Supporting Racist Abortion Bans, Undermining Abortion Access, Opposing the ACA, Hostility Toward LGBTQ Communities, and Attacking Immigrant Rights

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate: We are 56 organizations writing to express our strong opposition to the confirmation of Amy Coney Barrett to the Supreme Court of the United States.

We are organizations based in 17 different states across the country, as well as national organizations. We are made up of reproductive justice organizations and organizations who support reproductive justice, including reproductive rights and reproductive health.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives, with dignity and self-determination. Every individual should have the right to make their own reproductive decisions, without facing impossible obstacles. We should be able to make decisions about our health care based on our own living conditions and circumstances. This also means that we should be able to plan whether or when to start or add to our families without outside interference, no matter where we seek care and without discrimination.

Given our commitment to reproductive justice, for those most marginalized in our society, we are deeply troubled by Judge Barrett's nomination. Her record shows a legal career built on opposition to issues that are fundamental to our ability to thrive and support for laws and policies that disproportionately harm people of color, who due to historic inequities that are maintained by racist systems, need access to healthcare, which includes reproductive healthcare.

Moreover, as organizations that work on a number of issues within the reproductive justice framework, including abortion access, and access to respectful, safe, and supportive care during pregnancy, labor and delivery, LGBTQ rights, access to healthcare, and immigrant rights, we are alarmed by Judge Barrett's record of eroding these rights. Judge Barrett dedicated her legal

career to attacking the values and priorities for which our organizations fight for with our communities.

It is highly inappropriate and cruel to push forth a judicial nominee with an abysmal, anti-healthcare record during a global pandemic and public health crisis that is disproportionately affecting communities of color. Our communities need COVID-19 relief now, not a haphazard scramble to confirm a Supreme Court justice.

In light of Judge Barrett's record, we firmly believe she absolutely lacks the qualifications to serve with the fairness and impartiality required of a Supreme Court justice. As we will demonstrate below, she lacks the moral fiber and aptitude required to serve on the highest court.

I. Judge Barrett Will Undermine Our Access to Healthcare

1. <u>Judge Barrett's Work Promotes Racist and Ableist Stereotypes by Promoting Sex-</u>Selective, Race-Selective, and Disability-Selective Abortion Bans

It is horrific that the Senate is looking to confirm a judge who promotes racist and ableist stereotypes of Asian American, Black, and Latina women and people with disabilities.

In *Planned Parenthood of Ind. & Ky., v. Comm'r of the Ind. State Dept' of Health*, Judge Barrett joined in on a dissent that veers off course with the case at hand to discuss the dissenting judges' political and personal beliefs.¹ The dissent makes several false assumptions to advance its political tirade. For example, the dissent states that sex-selective, race, and disability abortion bans (known as reason bans) are akin to having "designer babies" or "eugenics." That is a blatant lie based on racism, sexism, and ableism, and is frequently used to limit access to abortion care.

Sex-selective abortion bans are deeply worrisome because they encourage racial profiling of the Asian American community based on deeply false stereotypes² that Asian American women prefer sons. In reality, for Asian Americans, the ratio of males to females at birth is standard when compared to the ratio of all births in the U.S. In fact, foreign-born Chinese, Indian, and Korean Americans have more girls overall than white Americans.³ What is more, they are using deeply racist stereotypes of Asian Americans in order to limit access to abortion care for all.⁴

¹ Planned Parenthood of Ind. & Ky., Inc. v. Comm'r of the Ind. State Dep't of Health, 917 F.3d 532, 536 (7th. Cir., June 25, 2018, dissenting).

² Brian Fraga, *Arkansas Bans Sex-Selective Abortions*, NATIONAL CATHOLIC REGISTER, (Apr. 12, 2017), https://www.ncregister.com/news/arkansas-bans-sex-selective-abortions; *see also* Christine Hauser, *Arkansas Bans 'Sex-Selection Abortion*, (Mar. 20, 2017),

https://www.nytimes.com/2017/03/30/us/arkansas-abortion-law.html

BRIAN CITRO ET. AL., Replacing Myths with Facts: Sex Selective Abortion Laws in the United States, (June 2014),

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1004&context=ihrc

⁴ Natalie Allison, *Abortion Bill Takes Aim at U.S. Supreme Court*, (Mar. 3, 2020, 4:36 PM),

https://www.columbiadailyherald.com/news/20200303/abortion-bill-takes-aim-at-us-supreme-court

Furthermore, race bans are based on the absurd premise that pregnant people of color, particularly Black and Latinx pregnant people,⁵ are being coerced into choosing to have abortions on the basis of the race of the fetus and perpetuate the racist and oppressive notion that people of color cannot be trusted to make their own reproductive decisions.

Lastly, bans based on fetal diagnosis do not - as they claim - address discrimination or the needs of people with disabilities. These bills are being promoted by anti-abortion groups attempting to co-opt the mantle of disability rights. People with disabilities already face significant financial, physical, social, and communication barriers to accessing quality and respectful reproductive health care and information, due to stigma and discrimination based on both sex and disability. Laws that restrict access to reproductive health services, including abortion, disproportionately affect women, transgender men, and non-binary people with disabilities by compounding these barriers.

In light of racist, xenophobic, and ableist assumptions behind sex-selective, disability, and race abortion bans, it is concerning that Judge Barrett promotes these reason bans. It is very common practice for judges to write their own dissents or concurrences if they agree or disagree with some aspects of the opinion and seek to clarify their own reasoning and decision. Judge Barrett did not do so, therefore lending her complete support behind it.

Judge Barrett's dissent, which accomplishes nothing but to pontificate on the political aspects of the case at hand, is concerning for two main reasons. One, it demonstrates that Judge Barrett uses the judicial bench as a bully pulpit for her political and personal beliefs. Two, it demonstrates that she lets her personal beliefs bias her judicial decision making.

2. Judge Barrett Built Her Legal Career On Undermining Abortion Access

Her support of reason bans is just one personal belief Judge Barrett uses to undermine access to abortion care. In 2006, Judge Barrett signed onto a letter supporting attempts to end the "barbaric legacy of *Roe v. Wade . . .*" This is a very extreme statement and clearly demonstrates Judge Barrett wants to end abortion care. Also, during a speech, she stated that life begins at conception and that *Roe* essentially allows abortion care on demand, a gross mischaracterization of abortion care. 8

And her beliefs have colored her judicial opinions on this issue. In just three years, Judge Barrett already ruled on two abortion-related cases, both times favoring restrictions on access to

3

⁵ Box v. Planned Parenthood of Indiana and Kentucky, 139 S. Ct. 1780, 1782 (Thomas, dissenting)

⁶ Susan Mizner & Alexa Kolbi Molinas, *Offensive hypocrisy of banning abortion for a Down syndrome diagnosis*, THE HILL (DEC. 24, 2019, 10:30 AM EST), https://thehill.com/opinion/healthcare/475807-offensive-hypocrisy-of-banning-abortion-for-a-down-syndrome-diagnosis; s.e. smith, *Disabled people are tired of being a talking point in the abortion debate*, Vox (May 29, 2019, 4:10 EDT),

https://www.vox.com/first-person/2019/5/29/18644320/abortion-ban-2019-selective-abortion-ban-disability

⁷ Revealed: Amy Coney Barrett supported group that said life begins at fertilization, https://www.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supported-group-fertilization

⁸ Christian Myers, *Law Professor Reflects on Landmark Case*, (Jan. 21, 2013), https://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/

abortion. ⁹ This is in line with personal comments she has made about abortion, demonstrating that her personal bias will cloud her judgment-making.

As a judge, she dissented to upholding the preliminary injunction preventing Indiana's judicial bypass restrictions from going into effect. While other Seventh Circuit judges refused to hear the case again, Judge Barrett dissented and would have heard the case again, thereby putting up for question the issue whether Indiana's law should be enjoined while the merits were being litigated. Her eagerness to hear the case again demonstrates that she favors placing extra unnecessary hurdles in accessing abortion care.

Because of systemic racism, communities of color face less access to care and experience vast health disparities, including the rate of unintended pregnancy. As such, pregnant people of color also have a greater need for abortion care.¹¹ Restrictions on abortion care directly target and harm people of color, who already face barriers to accessing reproductive health care, such as lower incomes, lack of language access and culturally competent care, lost wages for time off to obtain such care, and lack of childcare. Women of color, historically and presently, have faced reproductive oppression through policies, laws, and structures that have limited their ability to make their own reproductive decisions.

Given this historical and ongoing oppression, it is critical to our communities that our courts uphold our most basic and fundamental rights. As advocates for reproductive justice, we are deeply troubled by Judge Barrett's judicial work to undermine abortion access.

3. Judge Barrett Is Determined to Bar Access to Other Forms of Healthcare

Judge Barrett is also hostile to greater access to other forms of healthcare. We are in the middle of a pandemic that has taken over 200,000 lives. Health coverage and care is critical to every family, now more than ever. It is unconscionable to move forward with the confirmation of a judicial nominee who is opposed to access to healthcare, especially during the global pandemic and public health crisis we are currently experiencing.

Judge Barrett demonstrates, if given a chance, she will strike down the Patient Protection and Affordable Care Act ("ACA") because of her personal beliefs. She criticized Chief Justice John Roberts for his decision to uphold Congress's authority to enact large portions of the ACA, stating, "pushed the Affordable Care Act beyond its plausible meaning to save the statute." She also criticized *King v. Burwell*, where the Court affirmed tax credits under the ACA for millions of families. ¹³

⁹ ALLIANCE FOR JUSTICE, *Nomination of Amy Coney Barrett, Supreme Court of the United States*, https://www.afj.org/wp-content/uploads/2020/09/Barrett-Report-9.28.20.pdf

¹⁰ Planned Parenthood of Indiana and Kentucky, Inc. v. Box, 949 F.3d 997, (Oct. 30, 2019) (Kanne, dissenting), https://www.courthousenews.com/wp-content/uploads/2019/11/Abortion.pdf

¹¹ SUSAN A. COHEN, ABORTION AND WOMEN OF COLOR: THE BIGGER PICTURE, (Aug. 6, 2008), https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture

¹² Amy Coney Barrett, *Countering the Majoritarian Difficulty*, 32 Const. Comment. 61 (2017) (book review) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2330&context=law_faculty_scholarship_13_Id.

The Affordable Care Act has greatly improved health insurance coverage for communities of color. Between 2010 to 2018, the rate of uninsured people decreased from 32.6 to 19 percent for Hispanic communities, 19.9 to 11.5 percent for Black communities, 13.1 to 6.8 percent for Asian communities, and 17.9 to 9.3 percent for Native Hawaiians and Pacific Islander communities. 14

As the data demonstrates, limited healthcare access directly harms communities of color. Judge Barrett's opposition to healthcare access is particularly concerning at this time, given that we are currently faced with a global pandemic and public health crisis. Due to racism resulting in health disparities, Black communities are currently facing a significantly greater incidence of COVID-19 hospitalizations. Based on current data, 1 in 3 people who become sick enough with COVID-19 to be hospitalized are Black, while Black Americans make up 13 percent of the total United States population. In fact, it has been shown Black, Latinx, and AAPI communities have been sustaining disproportionate levels of COVID-19.

4. Judge Barrett Will Let Her Bias Limit Access to Reproductive Healthcare

Additionally, Judge Barrett recently signed on to a letter opposing the ACA's mandate that employer-sponsored insurance plans cover contraception. The letter referred to emergency contraception as the "embryo-destroying" pill.¹⁷ This is a very inaccurate description of emergency contraception, and it is false, needlessly alarming rhetoric that is designed to scare people from using contraception.

For Black and Latinx communities, the need for insurance coverage for contraception is crucial. Unethical and amoral practices to prevent pregnancy have existed throughout history to now, in the form of contraceptive coercion for youth and people with low-incomes and abstinence-only programs. We recently observed this in U.S. Immigrations and Customs Enforcement ("ICE") detention centers, where Black and Brown women experienced hysterectomies without consent. Insurance coverage for contraception is a way for Black and Latina women to exercise control over their own bodies. For Asian American Pacific Islander ("AAPI") women, who already use less effective contraceptive methods, ¹⁸ insurance coverage of contraceptive methods is critical to ensuring access to effective contraception.

What's more, Judge Barrett did not say if confronted with a case on this matter, that she would recuse herself and gave conflicting answers during her last confirmation hearing for the Seventh

¹⁴ Samantha Artiga, Kendal Orgera & Anthony Damico, Changes in Health Coverage by Race and Ethnicity since the ACA, 2010-2018, Kaiser Family Foundation (Mar. 05, 2020), https://www.kff.org/racial-equity-and-health-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-the-aca-2010-2018/

¹⁵ Allison Aubrey, CDC Hospital Data Point to Racial Disparity in COVID-19 Cases, NPR (Apr. 8, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/04/08/830030932/cdc-hospital-data-point-to-racial-disparity-in-covid-19-cases; *Also see*, Age Adjusted COVID-19-associated Hospitalization Rates by Race and Ethnicity, https://www.cdc.gov/coronavirus/2019-ncov/covid-data/images/July-28 Race Ethnicity COVIDNet.jpg

¹⁷ Alliance for Justice, https://www.afj.org/wp-content/uploads/2020/01/Barrett-Becket-Fund-Letter.pdf

¹⁸ Jo Jones, et. al. Current Contraceptive Use in the United States, 2006–2010, and Changes in Patterns of Use Since 1995, https://www.cdc.gov/nchs/data/nhsr/nhsr060.pdf

Circuit.¹⁹ If confronted with this case, Judge Barrett will use her bias to make decisions that best fit her personal beliefs, despite facts presented to her. Her judicial opinions will harm our communities' ability to make decisions about our own bodies and families.

Her bias is especially alarming and galling as we are in the middle of a global pandemic and as millions lost their employer sponsored health coverage with the loss of their jobs. Particularly appalling is the fact that the Supreme Court is set to hear a case that would determine the survival of the ACA as we know it in November. And given her work thus far, Judge Barrett demonstrates she will use her bias to help dismantle the ACA. Confirming a judicial nominee who is opposed to healthcare access during the public health crisis we are currently in will harm communities of color even further.

II. <u>Judge Barrett's Personal Hostility Toward LGBTQ People Will Undermine Her Ability to be Impartial</u>

Based on her work as a judge thus far, Judge Barrett demonstrated that her personal beliefs against the LGBTQ community will cloud her judicial decision-making.

She is a strong ally of Alliance Defending Freedom, an anti-reproductive freedom and anti-LGBTQ hate group. ²⁰ She also signed onto a letter stating that a marriage is between a man and a woman. ²¹ She is also anti-trans, consistently calling transgender women as "physiological males" in a speech given in her official capacity as a law professor. ²²

As organizations advocating for reproductive justice, we advocate for freedom to define and make decisions about one's sexuality and gender without resulting restrictions on basic civil rights and liberties. Judge Barrett's dehumanizing statements and support for anti-LGBTQ rights is very concerning and appalling especially because Judge Barrett has not demonstrated she will leave her bias outside the courtroom and rather, demonstrated through her work as a judge that she will lean into her bias to assist her judicial decision-making. In fact, her actions demonstrate that she will use the power of the Court to take away the hard-earned rights of the LGBTQ community. We do not support her nomination.

III. <u>Judge Barrett Seeks to Separate Families and is Staunchly Against Immigrant Rights</u>

Judge Barrett consistently ruled to separate immigrant families.²³ She also dissented in favor of upholding the Trump administration's proposed public charge rule. Under the proposed new rule,

¹⁹ Hearing on Nominations Before the Senate Committee on the Judiciary, 115th Congress (2017) (statements of Senator Chuck Grassley and Amy Coney Barrett); (statements of Senator Mazie Hirono and Amy Coney Barrett).

²⁰ ALLIANCE FOR JUSTICE, Nomination of Amy Coney Barrett, Supreme Court of the United States, https://www.afi.org/wp-content/uploads/2020/09/Barrett-Report-9,28,20.pdf

²¹ Letter to Synod Fathers from Catholic Women (Oct. 1, 2015) https://eppc.org/synodletter/

²² Lucas Acosta, *Amy Coney Barrett is an Absolute Threat to LGBTQ Rights*, (Sep. 22, 2020), https://www.hrc.org/news/amy-coney-barrett-is-an-absolute-threat-to-lgbtq-rights

²³ Alvarenga-Flores v. Sessions, 901 F.3d 922 (7th Cir. Aug. 28, 2018); Ramos v. Barr, (7th. Cir. June 5, 2019).

certain immigrants could be considered "public charge" and denied visas if they are using any one of a variety of non-cash public benefits, such as Medicaid and Supplemental Nutrition Assistance Program ("SNAP"). This is a broader change from the previous public charge rule and targets more people in need of assistance.

Many in our communities use these programs to stay healthy and safe in their homes. Almost a million AAPI children live in immigrant families who are enrolled in Medicaid.²⁴ Almost 7.3 million adults and 12.2 million Latinx children are enrolled in Medicaid, while 15 million Black people are enrolled in it.²⁵

In the light of the proposed rule, confusing litigation, and fear, a large number of immigrant families decided to forego receiving assistance to buy food and get healthcare. Furthermore, because the public charge test also applies to those seeking entry into the U.S. and examines the "totality of circumstances" of one seeking entry, such as their income, education level, and current health status, immigration officials have broad discretion in who they determine are able to receive status. In effectively implementing a "wealth test," the public charge rule discriminates against immigrants of color and prevents families from reuniting across oceans. At the same time, our communities are experiencing an unprecedented rate of unemployment in light of COVID-19, leaving us more vulnerable and in need of assistance.²⁷

Our communities are made up of immigrants. Deportations and other discriminatory immigration policies rip apart our families and communities. Judge Barrett's actions here are deeply hurtful to us, and if confirmed, she will continue to advocate for decisions that separate our families and communities. We refuse to let this happen.

IV. Judge Barrett Will Categorically Weaken Employee Rights

Judge Barrett weakened employee protections during her time on the bench. Judge Barrett sided against a Black worker whose employer established a "separate-but-equal" policy of segregating their employees by race.²⁸ She also ruled to gut protections for older workers by twisting the

²⁴ Public Charge Proposal is an Attack on AAPI Families, https://asianhealthservices.org/wp-content/uploads/2018/10/September-2018 Public-Charge-Factsheet V8.1.pdf

content/uploads/2018/10/September-2018 Public-Charge-Factsheet V8.1.pdf

25 Republican Plans to Cut Taxes Now, Cut Programs Later Would Leave Most Latinos Worse Off,
https://www.cbpp.org/research/federal-budget/republican-plans-to-cut-taxes-now-cut-programs-later-would-leave-most-2; African Americans Have Much to Lose Under House GOP Health Plan,
https://www.cbpp.org/blog/african-americans-have-much-to-lose-under-house-gop-health-plan

²⁶ Hamutal Bernstein, et. al., *Amid Confusion Over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, (May 18, 2020), https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019

²⁷ Rakesh Kochhar, *Unemployment rate is higher than officially recorded, more so for women and certain other groups*, (June 30, 2020),

https://www.pewresearch.org/fact-tank/2020/06/30/unemployment-rate-is-higher-than-officially-recorded-more-so-for-women-and-certain-other-groups/

²⁸ ALLIANCE FOR JUSTICE, *Nomination of Amy Coney Barrett, Supreme Court of the United States*, https://www.afj.org/wp-content/uploads/2020/09/Barrett-Report-9.28.20.pdf

wording of the Age Discrimination in Employment Act ("ADEA"), a federal law that was passed to prevent precisely the discrimination the plaintiff in this case experienced.²⁹

Women of color are especially vulnerable in workplaces. Women in all racial and ethnic groups are more likely than white, non-Hispanic men to live in poverty. ³⁰ The effect is worse for women of color, who make up 22 percent of the workforce. ³¹ Furthermore, women of color face disproportionate levels of workplace harassment as a result of gender as well as sexualized stereotypes based on our race. ³²

* * *

For people of color, threats to reproductive rights and health, broader healthcare access, LGBTQ rights, and workers' rights are threats to our bodily autonomy and undermine our ability to make decisions about our own lives and families. People of color, people with disabilities, and immigrants rely on the protections enforced by courts, yet Judge Barrett has repeatedly demonstrated a career-long commitment to rolling back the rights that determine our health, freedom, and well-being. As a justice of the highest court in our land, Judge Barrett will have the power to decide many cases involving critical legal protections for groups and civil rights she has long worked against. We cannot support a nominee who will disregard the daily realities and needs of communities of color. For the foregoing reasons, we strongly urge you to oppose the confirmation of Judge Barrett to the Supreme Court of the United States.

Sincerely,

National Asian Pacific American Women's Forum (NAPAWF)
In Our Own Voice: National Black Women's Reproductive Justice Agenda 9to5
AIDS Foundation Chicago
American Association of University Women (AAUW)
Basic Necessities
Black Women for Wellness

Black Women's Health Imperative (BWHI)
Bold Futures

California Latinas for Reproductive Justice Carolina Abortion Fund

Carolina Jews for Justice

Charlotte Reproductive Action Network

²⁹ *Id*.

³⁰ Kayla Patrick, *National Snapshot: Poverty Among Women & Families*, https://nwlc.org/wp-content/uploads/2017/09/Poverty-Snapshot-Factsheet-2017.pdf

³¹ Policy Briefings by National Women of Color Organizations, FactSheet, (Oct. 2017), https://intersectionsofourlives.org/wp-content/uploads/2019/03/Women-of-Color-and-Economic-Policy.pdf

³² Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women, https://nwlc.org/resources/out-of-the-shadows-an-analysis-of-sexual-harassment-charges-filed-by-working-women/; https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/existeayuda/tools/pdf/factsheet_eng.pdf; Latinos and Sexual Assault, Maria L. Ontiveros, Three Perspectives on Workplace Harassment of Women of Color, (Jan. 1993), https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1600&context=ggulrev

Chicago Abortion Fund

Civil Liberties and Public Policy

Coalition for Health Care of NC

Cobalt Advocates

Columbia-NOW

Desiree Alliance

EverThrive Illinois

Forward Together

Georgia NOW

Healthy and Free Tennessee

Hilton Head for Peace

Hope Clinic for Women

Illinois Caucus for Adolescent Health

Ipas

Legal Voice

Louisiana NOW

Minnesota NOW

Monroe County NOW

N.O.W. Shreveport-Bossier Chapter

NARAL Pro-Choice America

National Advocates for Pregnant Women (NAPW)

National Organization for Women

New Voices for Reproductive Justice

New York City Alliance Against Sexual Assault

North Carolina AIDS Action Network

North Carolina Women United

NYC Alliance Against Sexual Assault

Oklahoma Call for Reproductive Justice

Our Justice

Pennsylvania NOW

Population Institute

Progressive Social Network of Baton Rouge

Religious Coalition for Reproductive Choice

Reproaction

SISTERLOVE, INC.

SisterReach

SisterSong Women of Color Reproductive Justice Collective

Tewa Women United

URGE: Unite for Reproductive & Gender Equity

Washington Section of the American College of Obstetricians and Gynecologists

We Testify

Women's Law Project

YWCA Binghamton/Broome County