



October 14, 2020

United States Senate
Washington, DC 20510

**Re: Board of Directors of the Lawyers' Committee for Civil Rights Under Law
Strongly Opposes the Nomination of Judge Amy Coney Barrett to the United States
Supreme Court**

Dear Senator:

We, the undersigned members of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), strongly oppose the nomination of Judge Amy Coney Barrett to the United States Supreme Court. Since its founding in 1963, at the request of President John F. Kennedy, the Lawyers' Committee has been devoted to the principle of equal justice for all with a particular focus on racial justice. The Lawyers' Committee protects and defends the civil rights afforded by the Constitution and the nation's civil rights laws, with a historic focus on promoting and defending the rights of Black Americans and other people of color.

In evaluating nominees to the Supreme Court, the Lawyers' Committee has always employed a rigorous standard with two distinct components: 1) exceptional competence to serve on the Court and 2) a profound respect for the importance of protecting the civil rights afforded by the Constitution and the nation's civil rights laws. While Judge Barrett is competent to serve on the Court, although perhaps not exceptionally so in light of her relatively narrow experience, her record raises serious concerns about her commitment to civil rights and equal justice under law. Our report analyzes Judge Barrett's judicial rulings, articles and speeches and finds that they evince a pattern of hostility towards individual constitutional rights including voting rights, civil rights, workers' rights, access to health care and reproductive rights among other areas of core concern to people of color and marginalized people. Furthermore, Judge Barrett's record and judicial philosophy of strict originalism raises grave concerns regarding her ability to respect judicial precedents in those areas, which will disproportionately impact communities of color and low-income people across the country.

Judge Barrett expresses in both her judicial opinions and published articles an unwillingness to protect defendants' rights. In one of her articles, Judge Barrett called the *Miranda* doctrine, which can result in the exclusion of evidence if a confession is made in the absence of a warning of the right to remain silent, an example of "the court's choice to over-enforce a constitutional norm" that goes beyond constitutional meaning and wrote that the *Miranda* warnings "inevitably exclude[] from evidence even some confessions freely given."¹

¹ *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 170 (2010).



Judge Barrett's disregard for procedural constitutional protections for people accused of committing crimes will lead to a chipping away of constitutional rights and have a detrimental effect on the criminal justice system.

In the area of civil rights for workers, Judge Barrett has repeatedly sided with the employer rather than the employee. Two of Judge Barrett's cases include a failure to appreciate an employer's obvious violation of Title VII in *EEOC v. AutoZone*,² where the company was permitted to continue racially segregating its Black and Hispanic employees into separate stores, and *Smith v. Illinois Department of Transportation*,³ holding that an African-American traffic patrol driver failed to establish that he was fired in retaliation for his complaints of racial bias by his coworkers. Additionally, Judge Barrett joined a decision that narrowly construed the Age Discrimination in Employment Act, finding that the disparate impact language only applied to current employees, not to job applicants.⁴ Judge Barrett's narrow interpretation of the protection of federal discrimination statutes has devastating consequences for workers that inevitably and disproportionately affect people of color.

Our organization is currently involved in major cases involving voting rights, race-conscious admissions policies in the higher education context, fair housing and more that are likely to be decided by the Supreme Court. We also know that there are many voting rights cases concerning the 2020 election, some of which may make their way to the Court. Based on her opinions, speeches and writings, we are concerned that she will narrowly construe the Constitution and civil rights statutes in a way that limits their scope and effectiveness, and that she will defer to state and local efforts to suppress the vote. In particular, her suggestion in her dissent in *Kanter v. Barr* that the rights to serve on juries and to vote belong "only to virtuous citizens" is cause for great concern among those who recognize that the right to vote is foundational to all civil rights.⁵

Judge Barrett has repeatedly expressed a desire to restrict reproductive rights and ultimately dismantle *Roe v. Wade*. Her public statements on the issue, judicial decisions, strict originalist approach to constitutional analysis and negative view of stare decisis all indicate that she would not recognize *Roe's* constitutional right to privacy if she were appointed to the Supreme Court. In 2018, Judge Barrett joined a dissent from an opinion denying *en banc* review of a three-judge panel ruling striking down as unconstitutional two Indiana laws – one requiring fetal remains to be either buried or cremated after an abortion, and a second banning abortions solely because of the sex or disability of a fetus.⁶ By the reasoning espoused by Judges Easterbrook and Barrett in the dissent, a state could flatly ban an abortion even if it was very

² 875 F.3d 860 (7th Cir. 2017).

³ 936 F.3d 534 (7th Cir. 2019).

⁴ *Kleber v. Carefusion Corp.*, 914 F.3d 480 (7th Cir. 2019).

⁵ *Kanter v. Barr*, 919 F.3d 437, 463 (7th Cir. 2019).

⁶ *Planned Parenthood of Ind. and Ky., Inc. v. Comm'r of Ind. State Dept. of Health*, 917 F.3d 532 (7th Cir. 2018). The state did not seek *en banc* review of the decision on the sex and disability statute as "only the U.S. Supreme Court has the power to decide whether to change the rule of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which holds that a 'State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.'" *Id.* at 534.



early in pregnancy based on a woman's subjective feelings allowing a court to intrude on her decision by examining her motivation. In 2019, Barrett again dissented from a decision to deny *en banc* review, stating that she wanted the full Seventh Circuit to hear a challenge to an Indiana law requiring young women to notify their parents before obtaining an abortion.⁷ While on the Seventh Circuit, Judge Barrett was bound by *Roe*. If she is confirmed to the Supreme Court, however, Judge Barrett's views on abortion could set reproductive and privacy rights back decades and take away critical access to reproductive healthcare.

Judge Barrett's strict originalist approach to our core civil rights issues will have devastating consequences on the scope and impact of current and future civil rights laws in ensuring equal protection under the law. Moreover, combined with her views on the doctrine of *stare decisis*, she might well consider overturning landmark rulings that have guaranteed civil rights for all in cases such as *Brown v. Board of Education*, *Griswold v. Connecticut*, *Roe v. Wade*, and *Obergefell v. Hodges*.

Finally, as we have repeatedly noted, the effort to rush through a nomination and confirmation when a presidential election is underway and only three weeks from completion, is unprecedented, unseemly and destructive of public confidence in the Court. Particularly because this hasty effort to beat the clock would have the lasting adverse impact on civil rights described above, and is contrary to the Senate's own recent precedent, the Senate should respect the strong public sentiment in favor of allowing the President and Senate elected by the people to select the next Supreme Court Justice.

For these reasons, we strongly oppose the nomination of Judge Barrett to the Supreme Court. Thank you for your consideration of our position.

Respectfully,

Thomas Sager, Co-Chair
Shira Scheindlin, Co-Chair
Eleanor Smith, Secretary
David Smith, Treasurer
Nicholas Christakos, General Counsel
Kristen Clarke, President & Executive Director

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⁷ *Planned Parenthood of Ind. and Ky., Inc. v. Box*, 949 F.3d 997 (7th Cir. 2019).



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