

Oct. 5, 2020

Hon. Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Bldg.
Washington, DC 20510

Hon. Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Bldg.
Washington, DC 20510

Hon. Lindsay Graham
Chair, Senate Judiciary Committee
290 Russell Senate Office Bldg.
Washington, DC 20510

Hon. Dianne Feinstein
Ranking Member, Senate Judiciary Committee
331 Hart Senate Office Bldg.
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chair Graham, and Ranking Member Feinstein,

We write to express our opposition to the nomination of Judge Amy Coney Barrett to replace Justice Ruth Bader Ginsburg. We are deeply troubled about the impact that this nomination would have on people with disabilities. We also have significant concerns about the extraordinarily accelerated nomination process that is planned.

Our organizations are made up of, represent, and advocate for millions of Americans with disabilities of all ages. Justice Ginsburg authored and joined decisions of tremendous importance for the rights of people with disabilities, including the [Olmstead v. L.C.](#) decision affirming that the unnecessary segregation of people with disabilities is discrimination actionable under the Americans with Disabilities Act (ADA), and that public entities must administer services to people with disabilities in the most integrated setting appropriate. It is imperative for the disability community that Justice Ginsburg's replacement be someone who understands and respects the rights of people with disabilities. Judge Barrett's record demonstrates a hostility to rights that are critically important to people with disabilities.

We are gravely concerned about Judge Barrett's [view](#) that the Affordable Care Act (ACA) is unconstitutional. The ACA has provided health care to millions of Americans who otherwise would be uninsured. It is now a critical component of this country's health care system, and provides particularly crucial protections for people with disabilities. The ACA has enabled millions of people with disabilities to obtain health care coverage and coverage of needed disability-related services including long-term care services. Its protections for individuals with pre-existing conditions, expansion of Medicaid, requirements for coverage of mental health services as well as habilitation services for people with intellectual and developmental disabilities, expansion of home and community-based service options, protections against disability discrimination, and expansion of the reach of mental health parity, have been essential to the health, independence, and self-sufficiency of Americans with disabilities of all ages.

Invalidating the ACA would leave millions of people with disabilities without the services they need to survive and thrive, during an historic and life-threatening pandemic. The Supreme Court has already considered and narrowly rejected multiple challenges to the ACA. It is scheduled to hear another case challenging the law on November 10, 2020. If Judge Barrett were

confirmed in accordance with the planned confirmation schedule, she would participate in this argument. In light of her view about the ACA’s constitutionality, and her [view](#) that the doctrine of stare decisis—adherence to the Court’s precedent—should give way when a Justice disagrees with the precedent’s interpretation of the Constitution, we have grave concerns about what Judge Barrett’s confirmation would mean for the ACA and for the lives of people with disabilities.

We are similarly concerned about Judge Barrett’s [dissent](#) from an opinion concluding that the new Department of Homeland Security “public charge” rule discriminates against people with disabilities. As the Seventh Circuit concluded, this 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. That court [held](#) that the new rule “inescapab[ly] . . . penalizes disabled persons in contravention of the Rehabilitation Act. . . . [The rule] disproportionately burdens disabled people and in many instances makes it all but inevitable that a person’s disability will be the but-for cause of her being deemed likely to become a public charge,” inadmissible to the United States and ineligible to become a lawful resident. Yet Judge Barrett dissented, opining that the rule’s treatment of people with disabilities was a reasonable interpretation of the public charge law.

Judge Barrett’s record in other disability rights cases also raises significant concern. For example, she [joined a decision](#) that 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. 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 of the law is inconsistent with Congress’s intent in enacting these laws, and would immunize many egregious practices that clearly discriminate.

We also have grave concerns about the unprecedented acceleration of the confirmation process for Judge Barrett. Americans, including disabled Americans, deserve a process that will afford meaningful scrutiny of the nominee and what her views would mean for fundamental aspects of their lives. Scheduling Judge Barrett’s confirmation hearing a mere two weeks following the nomination, with a vote planned shortly after that, makes a mockery of the serious consideration and scrutiny that must be given to the record and views of a nominee for a lifetime appointment to the Supreme Court, which decides issues of enormous magnitude for the lives of all Americans, including those with disabilities.

Ordinarily, Senators and the public are afforded significant time before a hearing to review a nominee’s record in advance of hearings, with an average of 50 days between a nomination and a hearing for Supreme Court nominees during the last 30 years. Senators also submit written questions for the nominee and have time to review a nominee’s responses to written questions before a committee vote. By contrast, the planned confirmation process would afford almost no time for scrutiny of the nominee’s record in advance of hearings, and even less time for consideration following the hearings.

Moreover, with over 200,000 Americans now dead from COVID-19, unemployment soaring, and millions of individuals and families struggling to meet their basic needs, it is unconscionable for the Senate to let the confirmation process create further delay in passing a fourth COVID-19 relief bill. People with disabilities are at particular risk of contracting and dying from COVID-19. Those living in congregate care settings account for more than 40% of the nation's deaths due to COVID-19. It is urgent that the Senate address this dire situation. The Senate must not place filling the vacancy left by Justice Ginsburg's death ahead of passing desperately needed relief legislation. Filling such a vacancy cannot be considered a higher priority than passing a relief bill that will save lives and livelihoods during a global pandemic. Further, it is not urgent that the vacancy be filled within a month; only four years ago, the Supreme Court operated with eight Justices for more than a year before the Senate confirmed a nominee to fill the vacancy.

In sum, we urge you to reject the nomination of Judge Barrett to replace Justice Ruth Bader Ginsburg. Moreover, Congress should not act on any nomination to the Supreme Court until it has passed and the President has signed a COVID-19 relief bill.

Sincerely,

National Organizations

American Association of People with Disabilities

Association of University Centers on Disabilities

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Center for HIV Law and Policy

Center for Public Representation

Civil Rights Education and Enforcement Center

Disability Rights Education and Defense Fund

Justice in Aging

National Association of Rights Protection and Advocacy

National Coalition for Mental Health Recovery

National Council on Independent Living
National Health Law Program
Partnership for Inclusive Disaster Strategies
TASH
United Spinal Association

State and Local Organizations

Ability360 (AZ)
Access Living (IL)
Access to Independence, Inc. (WI)
Accessible Resources for Independence (MD)
Atlantis Community, Inc. (CO)
Boston Center for Independent Living
Center for Independent Living of Central PA
Community Access Center (CA)
Community Resources for Independent Living (CA)
Connecticut Legal Rights Project
Consumer Directed Personal Assistance Association of New York State
DAWN Center for Independent Living (NJ)
Disabilities Resource Center of Siouxland
Disability Resource Center (IL)
Disability Rights California
Disability Rights Maine

Disability Rights New York

Disability Rights North Carolina

Disability Rights Oregon

Disability Rights Vermont

Disability Rights Washington

Finger Lakes Independence Center, Inc. (NY)

Independent Living Center of Southern California

Keep the Promise Coalition (CT)

Lane Independent Living Alliance (OR)

Lehigh Valley Center for Independent Living (PA)

Liberty Resources, Inc.

LIFTT - Living Independently for Today & Tomorrow (MT)

Midstate Independent Living Choices, Inc. (WI)

Montana Association of Centers for Independent Living

Montana Independent Living Project

New York Association for Psychiatric Rehabilitation Services

New Vistas (NM)

Northern Nevada Center for Independent Living

Options for Independent Living (WI)

Placer Independent Resource Services (CA)