

Congress of the United States
Washington, DC 20515

October 2, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol Building
Washington D.C. 20515

Dear Leader McConnell,

As Democratic women of the U.S. House of Representatives we urge you not to move forward with the confirmation of a Supreme Court Justice until the inauguration of the next President.

Justice Ruth Bader Ginsburg was a feminist icon and role model who recognized our equal stature and dignity and used her voice and legal talents to build a foundation for women's equality under the law. We are determined to fight for her legacy and voice our strong dissent to moving forward with any nominee amid an election and in contradiction of Justice Ginsburg's dying wish that she not be replaced until the next President is installed. Further, we are concerned that the confirmation of President Trump's nominee Judge Amy Coney Barrett will turn back the clock on decades of progress made in access to health care, reproductive freedom, women's rights, civil rights, voter protections, and more.

A vote to confirm Judge Barrett is likely a vote to dismantle the Affordable Care Act (ACA) and its protections for individuals with preexisting conditions. A week after the election, the Supreme Court will hear oral arguments in *California v. Texas* challenging the constitutionality of the ACA. In a 2017 law review article, Judge Barrett criticized Justice Roberts' ruling in *NFIB v. Sebelius*, stating he pushed the language "beyond its plausible meaning to save the statute." Judge Barrett signaled support for the dissent, which would have invalidated the law, and stated that the dissent in another case challenging the ACA, *King v. Burwell*, had the "better of the legal argument." Judge Barrett's previous statements suggest she would join a 6-3 conservative majority in invalidating the ACA, threatening protections for preexisting conditions for 135 million Americans and stripping 20 million Americans of their health insurance coverage amid a health and economic crisis.

Invalidating the ACA would have devastating consequences for women and families. The ACA included the first prohibition on discrimination on the basis of sex in health care and ensured that women cannot be charged more for health insurance simply because they are women. Prior to the ACA, 95 percent of best-selling plans in state capitals engaged in gender rating, or charging women more than men for the same insurance. In fact, non-smoking women were often charged

more than men in the same age group who smoked. Striking down the ACA will also take away the requirement that insurance companies cover maternity and newborn care and preventative care including mammograms and cervical cancer screenings, taking us back to the days when only 12 percent of plans included comprehensive maternity coverage. Dismantling the ACA will also jeopardize access to no-copay birth control that nearly 62 million women benefited from last year. Increasing the cost of birth control even marginally has been shown to depress access, threatening women's ability to make critical health decisions.

A vote to confirm Judge Barrett is also likely a vote to end *Roe v. Wade* and restrict access to safe and legal abortion. President Trump has made clear *Roe* is a litmus test for any Justice he nominates and the two Justices he has confirmed have recently voted against the constitutional right to reproductive freedom. Judge Barrett's record shows she passes this test. While on the Seventh Circuit, Judge Barrett indicated her support of a previability abortion ban that directly contradicts Supreme Court precedent. In a separate case, Judge Barrett showed support for allowing an abortion restriction take effect even though it would force young people to tell their parents about their decision to have an abortion, regardless of their maturity to make the decision for themselves. Judge Barrett's position is in stark contrast with the 77 percent of Americans who support the legal right to abortion and do not want *Roe* overturned. Americans deserve a Supreme Court Justice who understands, to quote Justice Ginsburg, that "the decision whether or not to bear a child is central to a woman's life, to her well-being and dignity. It is a decision she must make for herself. When the government controls that decision for her, she is being treated as less than a full adult human responsible for her own choices."

Judge Barrett's record also shows she has aligned herself with anti-science beliefs about birth control, which has come before the Supreme Court in four cases in the last six years. Before joining the Seventh Circuit, Barrett signed a letter written by the Becket Fund, criticizing the birth control benefit under the ACA as a "grave infringement on religious liberty." The letter also contained language that inaccurately conflated emergency contraception and medication abortion.

A vote to confirm Judge Barrett is also a vote to undermine protections for survivors of sexual violence. At a time when people are demanding safe and dignified workplaces and schools free from sexual harassment, Judge Barrett made it easier for students held accountable for sexual assault to use Title IX as a sword and sue their schools for sex discrimination. In *Doe v. Purdue University*, Judge Barrett indicated that a school's commitment to protecting students and taking sexual misconduct seriously may constitute sex discrimination against men, turning Title IX on its head. Americans deserve a Supreme Court Justice who understands that sexual violence makes it harder for people to succeed in the workplace and pursue an education.

With women's basic rights and freedoms on the line, we implore you not to move forward with a nominee before the inauguration. As you have stated, "The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new president." Unlike in 2016, when this statement was made, we are in the middle of an election, with one million voters having already cast their votes. They deserve to have their voices heard and to have the integrity of the Supreme Court maintained.

Sincerely,



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Co-Chair
Democratic Women's Caucus



Lois Frankel
Co-Chair
Democratic Women's Caucus



Brenda L. Lawrence
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Democratic Women's Caucus



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