

Oct. 23, 2020

Dear Senator:

We urge you not to confirm Judge Amy Coney Barrett to the United States Supreme Court following the death of Justice Ruth Bader Ginsburg. We are deeply troubled about the impact that this nomination would have on people with disabilities. The hearings that occurred last week did nothing to allay our concerns; Judge Barrett refused to answer any questions concerning her views on the Affordable Care Act and other topics of concern to people with disabilities.

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 deeply 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.

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.

With more than 220,000 Americans dead from COVID-19, unemployment soaring, and families struggling, the Senate should turn its attention first to a COVID-19 relief package first rather than scrambling to confirm a troubling nominee to the Supreme Court without adequate scrutiny. The Senate should not act on any nomination to the Supreme Court until Congress has passed and the President has signed a COVID-19 relief bill.

If the Senate does proceed with a confirmation vote on Monday, we urge you to reject the nomination of Judge Barrett to replace Justice Ruth Bader Ginsburg.

Sincerely,

ADAPT of Arizona

American Association of People with Disabilities

Association of University Centers on Disabilities

Autistic Self Advocacy Network

Autistic Women and Nonbinary Network

Bazelon Center for Mental Health Law

Bloom’s Connect

Center for HIV Law and Policy

Center for Independent Living of Central Pennsylvania

Center for Public Representation

Civil Rights Education and Enforcement Center

Connecticut Legal Rights Project

Connecticut Statewide Independent Living Council
Direct Advocacy and Resource Center (Arizona)
Disabilities Network of Eastern Connecticut, Inc.
Disabilities Resource Center (Iowa)
Disability Rights Education and Defense Fund
Fund for Community Reparations for Autistic People of Color's Interdependence, Survival, & Empowerment
The Independence Center (Colorado)
Independence Northwest: Center for Independent Living of Northwest CT, Inc.
Justice in Aging
National Association of County Behavioral Health and Developmental Disability Directors
National Association of Rights Protection and Advocacy
National Association for Rural Mental Health
National Center for Learning Disabilities
National Council on Independent Living
New York Association of Psychiatric Rehabilitation Services
Northern Nevada Center for Independent Living
Not Dead Yet
Progress Center for Independent Living (Illinois)
TASH
Tri-Lakes Center for Independent Living, Inc. (New York)
United Spinal Association
World Institute on Disability