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**A Better Balance & 95 Organizations That Support the Rights of Working Families  
OPPOSE Judge Amy Coney Barrett’s Supreme Court Confirmation**

Dear Senator:

On behalf of A Better Balance and the undersigned organizations, we write to express our strong opposition to the confirmation of Judge Amy Coney Barrett to serve on the Supreme Court of the United States. The rushed confirmation process currently underway is a disgrace. It undermines the significance of the Supreme Court as an institution and disrespects Justice Ginsburg’s legacy.

We firmly believe that all people should be able to care for themselves and their loved ones without sacrificing their economic security. This country is facing a public health emergency of unprecedented proportions, which is exacerbating existing structural inequalities that force too many people—especially people of color—to choose between their jobs and their own health or the health of their loved ones. And yet, rather than working to provide urgently-needed relief measures, the Senate is attempting to rush through the confirmation of a new Supreme Court Justice who would further harm this country’s workers and families. If confirmed, Judge Barrett will be positioned to roll back crucial workplace protections that allow workers to take leave to care for their families and to stay healthy on the job; to strip healthcare away from millions of Americans and allow renewed discrimination in health insurance coverage based on preexisting conditions, and to decimate people’s ability to make decisions about how they form families. Her confirmation would cement a radically conservative majority on the Supreme Court, making it into a Court inordinately friendly to those already in power and enormously hostile to the needs of those who have been historically marginalized in this country.

Judge Barrett’s record has made clear that she is opposed to the rights of working people and unsympathetic to the needs of their families. She has frequently been hostile to anti-discrimination plaintiffs,<sup>i</sup> and she wrote the opinions in cases denying workers overtime pay and a case forcing gig workers into arbitration against their will.<sup>ii</sup> She has sided against people seeking reasonable accommodations for their disabilities in the workplace and has sided with a corporation against an employee who sued after he was harassed by his supervisor for taking leave to care for his ailing grandfather.<sup>iii</sup> She has also signaled her support for expanding religious exemptions; in the context of civil rights laws, and more expansive religious exemptions could leave countless workers vulnerable to discrimination without recourse.<sup>iv</sup> This



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record demonstrates a hostility to legal protections for workers, and a jurisprudence that will make it more difficult for workers in low-wage industries, who are overwhelmingly people of color due to historical and continuing inequality and lack of opportunity, to care for themselves and their families.

Several groundbreaking Supreme Court employment discrimination cases were narrowly decided and could be at great risk should Judge Barrett be confirmed. For instance, in *Young v. UPS*, the Supreme Court held that, under the Pregnancy Discrimination Act, pregnant workers cannot be treated less favorably than similarly-situated non-pregnant workers, and that employers may not place a “significant burden,” on pregnant employees.<sup>v</sup> While the case was decided 6-3, Justice Alito’s concurrence makes clear that he sees no problem with an employer failing to provide reasonable accommodations to pregnant workers if they do not accommodate off-the-job injuries even when they do provide accommodations for workers with on-the-job injuries or disabilities, and potentially other groups.<sup>vi</sup> Only four of the Justices who voted in the *Young* majority remain on the Court, leaving the decision vulnerable. With Judge Barrett on the Court, *Young* is at risk of being rolled back, such that employers may be free to provide employees injured on-the-job with reasonable accommodations while ignoring the needs of similarly-situated pregnant workers. Such a ruling would make needed pregnancy-related accommodations harder for workers to obtain, which would put pregnant workers’ health, and the health of their pregnancies, at enormous risk, and would have a disproportionate impact on low-income pregnant workers and pregnant people of color.<sup>vii</sup>

Similarly, *Nevada v. Hibbs*, in which the Supreme Court upheld the Family and Medical Leave Act’s constitutionality based on a long history of gender-based inequality in the provision of parental leave, was narrowly decided in a close 5-4 decision—and only one of the Justices in the majority remains on the Court today.<sup>viii</sup> The Family and Medical Leave Act is an imperfect,<sup>ix</sup> but absolutely crucial law that provides approximately 20 million Americans each year with the ability to take time off from work to care for themselves and their families without risking their job.<sup>x</sup> For many, particularly low-wage workers and workers of color who are less likely to have access to employer-provided paid leave policies, unpaid leave under the Family and Medical Leave Act is the only leave to which they have any legal entitlement.<sup>xi</sup> If confirmed, Judge Barrett could be the deciding vote in future challenges to the law. Judge Barrett’s track record betrays an overwhelming tendency to side with corporations against employees—a track record



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that gives us serious reason to be concerned about what her appointment to the Court would mean for these and other crucial protections for working families.<sup>xii</sup>

Judge Barrett’s jurisprudence is fundamentally at odds with the needs of those who seek to balance their caregiving responsibilities, their own physical and mental wellbeing, and their need for economic security for themselves and their loved ones. And that is so many of us—millions provide family care, many more expect to at some point, and virtually all of us have relied upon loved ones for care or will at some point.<sup>xiii</sup> We are inextricably connected to those we love and care for, and a jurisprudence that fails to recognize that basic fact is fundamentally cruel and has no place on our country’s highest court.

At a time when more than 200,000 people in the U.S. —disproportionately people of color— have died from COVID-19, with thousands more hospitalized and millions out of work, healthcare access is critical.<sup>xiv</sup> With the passage of the Affordable Care Act in 2010, millions of people who were previously uninsured gained access to health insurance coverage for themselves and their families.<sup>xv</sup> If Judge Barrett is confirmed, she will likely be the deciding vote to strip that urgently needed coverage from millions of people—especially low-income women and women of color, and their families, who were a disproportionate number of those previously uninsured who gained coverage as a result of the Affordable Care Act<sup>xvi</sup>—just days after she is seated.

The Court is set to hear oral arguments in *California v. Texas*, a lawsuit engineered to strike down the Affordable Care Act, on November 10th. Judge Barrett has made her opposition to the groundbreaking law abundantly clear, praising a dissent in *NFIB v. Sebelius*, a landmark 2012 Supreme Court decision upholding the law, and signing her name to a letter calling the law’s contraceptive coverage mandate “unacceptable.”<sup>xvii</sup> President Trump has repeatedly pledged to appoint Justices hostile to the Affordable Care Act, and his nomination of Judge Barrett is his attempt to fulfill that promise—we must not allow that to happen.<sup>xviii</sup>

If Judge Barrett is allowed to cast the deciding vote in *California v. Texas*, gutting the Affordable Care Act, there will be devastating consequences for women and families. Without the Affordable Care Act, millions of Americans—and people of color, who are disproportionately at-risk from COVID due to structural inequalities in healthcare access and quality of treatment<sup>xix</sup>— could lose the health insurance they, and their families, rely on in the midst of a global pandemic.



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What is more, without the Affordable Care Act’s requirement that all small group and individual health plans provide coverage for maternity care and newborn care—including prenatal care visits, gestational diabetes screening, infection screening, and breastfeeding supplies, support, and counseling—insurance companies would no longer be required to cover maternity and childbirth services in full; insurance companies will once again be free to deny coverage or charge more because someone has a preexisting condition, including pregnancy; and it could be the end of 100% coverage for preventive services including annual well-woman exams, screening and treatment for sexually transmitted infections, contraception and contraceptive counseling, breast cancer screening, and counseling for domestic partner and intimate partner violence.<sup>xx</sup> These requirements created a healthcare system that has been more supportive of women, pregnant people, and families; rolling back these crucial protections will exacerbate existing race-, income-, and ability-related inequalities in maternal and infant health.

Judge Barrett has also made clear that she does not respect the diverse ways in which people form families, and if confirmed, her tenure on the Court could devastate the right of those in this country to make their own decisions about how, and with whom, to form a family. Judge Barrett signed her name to a letter arguing that life begins at fertilization, and has supported an organization that—consistent with that belief—is opposed to both abortion and in-vitro fertilization (IVF) and has left the possibility of criminalizing those who pursue either on the table. Access to abortion is crucial for working people and parents—most abortions in this country are obtained by women who already have children.<sup>xxi</sup> Abortion provides pregnant people with crucial control over their own lives and bodies, and facilitates their ability to care for their themselves and their families. And access to IVF has helped thousands of people in the U.S. become parents, and it is of particular import to LGBTQ+ people—21% of LGBTQ+ people who are planning to have children plan to use IVF to do so.<sup>xxii</sup> Moreover, in 2015 Judge Barrett signed a letter opposing same-sex marriage and has allied herself with the Alliance Defending Freedom, an anti-LGBTQ+ hate group.<sup>xxiii</sup> Her academic writing suggests that she has inadequate respect for precedent, which could leave even recent, vital Supreme Court decisions like *Obergefell v. Hodges*, which guarantees the constitutional right to marriage equality, vulnerable to overturning during her tenure.<sup>xxiv</sup> Judge Barrett’s positions are contrary to long-standing precedent and hostile to countless women, LGBTQ+ people, and their loved ones.



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Finally, given the clear bias of Judge Barrett against the rights of women and all those without access to power in this country, her nomination is an insult to the legacy of Justice Ruth Bader Ginsburg, who spent her career using the law to break down gender barriers, consistently fighting to make the promise of equal rights under our Constitution a reality. Judge Barrett’s record indicates she will destroy Justice Ginsburg’s work protecting justice for all, particularly the nation’s most vulnerable. Being a successful woman and mother does not make Judge Barrett an appropriate successor to Justice Ginsburg.

Judge Barrett has proven herself to be hostile towards the needs of working people, families, and caregivers, particularly low-income people, people of color, LGBTQ+ people. Now is not the time for the Senate to be prioritizing the rushed confirmation of a new Supreme Court Justice who will inevitably make the work of caregiving in this country more challenging and economically tenuous, deprive millions of healthcare, and rob people of their ability to form families. Especially at this unprecedented moment, during a global pandemic that continues to wreak havoc on the health of this nation, in the midst of an ongoing presidential election, the Senate must allow the people to make themselves heard. We urge the Senate to oppose Judge Barrett’s confirmation, and to allow the next President of the United States to fill the vacancy left by the late Justice Ginsburg.

Sincerely,

A Better Balance  
9to5  
AAUW Indianapolis  
American Association of University Women  
(AAUW)  
American Federation of Teachers  
Brooklyn Defender Services  
California Employment Lawyers Association  
Caring Across Generations  
Center for Advancement of Public Policy  
Center for Law and Social Policy (CLASP)  
Center for Reconciliation

Chinese-American Planning Council (CPC)  
Citizen Action of New York  
Coalition of Labor Union Women  
Connecticut Women's Education and Legal Fund  
(CWEALF)  
Economic Policy Institute  
EMC Communications  
Equal Pay Today  
Equal Rights Advocates  
Equality North Carolina  
Family Forward Oregon



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Family Values @ Work  
Fiscal Policy Institute  
Gender Equality Law Center  
Gender Justice  
Healthy and Free Tennessee  
Hope and Change for Haiti  
Interfaith Workers Justice  
IWJC Indianapolis  
Japanese American Citizens League  
Kentucky Equal Justice Center  
KWH Law Center for Social Justice and Change  
LatinoJustice PRLDEF  
Legal Aid at Work  
Legal Aid Society  
Legal Momentum, The Women's Legal Defense  
and Education Fund  
Legal Voice  
Levy Ratner, P.C.  
Maine Women's Lobby  
Make the Road NY  
MomsRising  
National Advocates for Pregnant Women  
National Asian Pacific American Women's  
Forum (NAPAWF)  
National Association of Social Workers  
National Birth Equity Collaborative  
National Center for Law and Economic Justice  
National Center for Transgender Equality  
National Coalition Against Domestic Violence  
National Consumers League  
National Council of Jewish Women  
National Council of Jewish Women Atlanta  
Section  
National Domestic Workers Alliance  
National Employment Law Project  
National Organization for Women  
National Partnership for Women & Families  
National Women's Law Center  
NC National Organization for Women (NC  
NOW)  
New Jersey Citizen Action  
New Jersey Time to Care Coalition  
North Carolina Justice Center  
Ohio CLUW  
Paid Leave for All  
ParentsTogether Action  
People's Action  
People's Parity Project  
Poder Latinx  
Pride at Work  
Promundo-US  
Public Advocacy for Kids (PAK)  
RepresentUs New Mexico  
ReproJobs  
RI Religious Coalition for Reproductive  
Freedom  
Service Employees International Union (SEIU)  
Silver in the City  
SisterReach  
Southwest Women's Law Center  
TASH: Equity, Opportunity, and Inclusion for  
People with Disabilities  
Tax March  
The Ohio Women's Public Policy Network  
The Tara Hansen Foundation  
The Womxn Project  
TIME'S UP Now  
Unite Here Local 23



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United Food and Commercial Workers Local  
227

United State of Women

We All Rise

Women and Girls Foundation

Women and Infants Hospital

Women Employed

Women Lawyers On Guard Action Network, Inc.

Women of Reform Judaism

Women's Fund of Rhode Island

Women's Health and Education Fund of Rhode  
Island

Women's Law Project

Women's Rights and Empowerment Network

Women4Change

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<sup>i</sup> See, e.g., *Graham, Jr. v. Arctic Zone Iceplex, LLC*, 930 F.3d 926 (7th Cir. 2019); *Lee v. Northeast Illinois Regional Commuter Railroad Corporation*, 912 F.3d 1049 (7th Cir. 2019); *Kleber v. CareFusion Corporation*, 914 F.3d 480 (7th Cir. 2019); *Hamer v. Neighborhood Housing Services of Chicago*, 897 F.3d 835 (7th Cir. 2018).

<sup>ii</sup> *Burlaka v. Contract Transport Services LLC*, 971 F.3d 718 (7th Cir. 2020); *Wallace v. GrubHub Holdings Inc.*, 970 F.3d 798 (7th Cir. 2020).

<sup>iii</sup> *Pierrri v. Medline Industries*, 970 F.3d 803 (7th Cir. 2020).

<sup>iv</sup> See, e.g., *Americans United for Separation of Church and State, Amy Coney Barrett - A Threat to Religious Freedom and the Constitution*, <https://www.au.org/threatorrf> (last visited Oct. 6, 2020).

<sup>v</sup> 575 U.S. 206 (2015).

<sup>vi</sup> *Id.* at 1356 (Alito, J., concurring).

<sup>vii</sup> See, e.g., A Better Balance, *Fact Sheet: Ensuring Safe and Healthy Pregnancies in the Workplace* (Mar. 27, 2017), <https://www.abetterbalance.org/resources/fact-sheet-safe-healthy-pregnancies-in-the-workplace/>.

<sup>viii</sup> 538 U.S. 721 (2003).

<sup>ix</sup> See, e.g., A Better Balance, *27 Years After the FMLA, It's Time for Paid Leave for All* (Feb. 5, 2020), <https://www.abetterbalance.org/27-years-after-the-fmla-its-time-for-paid-leave-for-all/>; A Better Balance, *FMLA 25: States Are Expanding the Meaning of Family Leave* (July 12, 2018), <https://www.abetterbalance.org/fmla-25-states-are-expanding-the-meaning-of-family/>.

<sup>x</sup> See A Better Balance, *27 Years After the FMLA, It's Time for Paid Leave for All*, *supra* note 8.

<sup>xi</sup> See, e.g., Ann. P. Bartel et al., *Racial and Ethnic Disparities in Access to and Use of Paid Family and Medical Leave: Evidence from Four Nationally Representative Datasets*, U.S. Bureau of Labor Statistics Monthly Labor Review (Jan. 2019), <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

<sup>xii</sup> See Accountable, Report: Coney Barrett Sided with Corporations Over People 76% of the Time (Sept. 29, 2020), <https://www.accountable.us/news/report-coney-barrett-sided-with-corporations-over-people-76-of-the-time/>.

<sup>xiii</sup> See, e.g., Renee Stepler, *5 Facts About Family Caregivers*, Pew Res. Ctr. (Nov. 18, 2015), <https://www.pewresearch.org/fact-tank/2015/11/18/5-facts-about-family-caregivers/>; Family Caregiver Alliance, *Caregiver Statistics: Demographics* (Apr. 17, 2019), <https://www.caregiver.org/caregiver-statistics-demographics>.

<sup>xiv</sup> See CDC Covid Data Tracker, [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesinlast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days); Kim Parker, Rachel Minkin, & Jesse Bennett, *Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest*, Pew Res. Ctr. (Sept. 24, 2020), <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

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<sup>xv</sup> A Better Balance, *Federal Watch: Four Ways Repealing the Affordable Care Act Will Have Devastating Consequences for Women* [hereinafter *Federal Watch*] (July 18, 2017), <https://www.abetterbalance.org/federal-watch-four-ways-repealing-the-affordable-care-act-will-have-devastating-consequences-for-women/>.

<sup>xvi</sup> *Id.*

<sup>xvii</sup> Amy Coney Barrett, Countering the Majoritarian Difficulty (June 2014) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2795646](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795646); “Unacceptable” Letter (Feb. 27, 2012), <https://www.afj.org/wp-content/uploads/2020/01/Barrett-Becket-Fund-Letter.pdf>.

<sup>xviii</sup> See, e.g., Elizabeth Dias & Adam Liptak, *To Conservatives, Barrett Has ‘Perfect Combination’ of Attitudes for Supreme Court*, N.Y. Times (Sept. 28, 2020), <https://www.nytimes.com/2020/09/20/us/politics/supreme-court-barrett.html>.

<sup>xix</sup> See, e.g., CDC, *Health Equity Considerations and Racial and Ethnic Minority Groups* (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

<sup>xx</sup> A Better Balance, *Federal Watch*, *supra* note 14.

<sup>xxi</sup> Guttmacher Institute, *United States Abortion Demographics*, <https://www.guttmacher.org/united-states/abortion/demographics> (last visited Oct. 5, 2020).

<sup>xxii</sup> Family Equality, *LGBTQ Family Building Survey* (2019), <https://www.familyequality.org/resources/lgbtq-family-building-survey/>.

<sup>xxiii</sup> See Lambda Legal, *Rushed Nomination of Amy Coney Barrett to Supreme Court Imperils U.S. Democracy* (Sept. 25, 2020), [https://www.lambdalegal.org/news/us\\_20200925\\_amy-coney-barrett-trump-scotus-pick](https://www.lambdalegal.org/news/us_20200925_amy-coney-barrett-trump-scotus-pick).

<sup>xxiv</sup> Amy Coney Barrett, *Precedent & Jurisprudential Disagreement*, 91 Tx. L. Rev. 1711 (2013).