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October 11, 2020

VIA EMAIL

The Honorable Senator Lindsey Graham
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Senator Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C., 20510

Re: Letter Opposing the Nomination of Amy Coney Barrett to the United States Supreme Court

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the National Women's Law Center (the "Law Center"), I write in strong opposition to the nomination of Amy Coney Barrett as an Associate Justice of the United States Supreme Court. The Law Center fights for gender justice – in the courts, in public policy, and in society – working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone – especially those who face multiple forms of discrimination. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

The Law Center objects both to the illegitimate, partisan, and unsafe confirmation process that the Republican majority has put in place, and to the confirmation of a nominee who has demonstrated that she would eviscerate the fundamental liberties and core constitutional protections that women, and all Americans, rely on.

As an initial matter, President Trump announced the nomination of Judge Barrett to the seat of the late Justice Ruth Bader Ginsburg even before Justice Ginsburg was laid to rest. This nomination comes at a precarious time for our democracy. We are just weeks before Election Day, and millions have already cast their votes. The President has explicitly stated that he rushed to nominate Judge Barrett because he expects the Supreme Court to hear a dispute regarding the election results. The President has refused to state that he would accept the results of the election if he were to lose, and has repeatedly taken steps to undermine the integrity of the election – by peddling unproved and unsupported theories of voter fraud, by appointing individuals who have jeopardized the U.S. Postal Service's timely delivery of ballots, and by encouraging white supremacist groups and other supporters to engage in voter intimidation. By moving forward with a rushed hearing and floor vote, Senate Majority Leader McConnell and Chairman Graham have embraced the President's anti-democratic and partisan enterprise. This stands in stark and hypocritical contrast to Senate Majority Leader McConnell's blockade of the confirmation of Judge Merrick Garland, nominated to replace the late Justice Antonin Scalia 237 days before the November 2016 election. The public's trust in the Supreme Court as an institution is already eroding, especially among the communities most exposed to harm by the undermining of the rule of law. Justice Ginsburg, in her final moments understood that to confirm her replacement a mere weeks before the election would diminish the entire process and the Court itself. To rush through a nomination in these circumstances would devastate our already fragile democracy.

Rather than rushing through this nomination through this illegitimate process, the Senate should be taking up legislation to address the ongoing threat of COVID-19. Its ongoing failure to do so ill-serves the millions of women and families across the country who are suffering from this unprecedented public health and economic crisis. Over 200,000 lives have already been lost to COVID-19. Millions have lost their jobs in recent months, many permanently. Women, who have borne the brunt of this job loss, are now being forced out of the workforce altogether in record numbers as our nation's caregiving infrastructure has collapsed. And the pandemic has laid bare health and economic disparities that are directly connected to our country's system of white supremacy, institutionalized racism, and state-sanctioned brutality and violence against Black lives. Instead of taking up COVID relief legislation passed by the House of Representatives in May, which would provide much-needed assistance to struggling families, the Senate is instead rushing forward with this illegitimate nomination.

Indeed, despite the seriousness of the pandemic, the White House held an unsafe event in direct contradiction with CDC guidelines to announce Judge Barrett's nomination. During the packed celebratory event, most people did not wear masks, failed to socially distance themselves, and otherwise engaged in behavior that resulted in transmission of the virus. This super-spreader event exposed not only Administration officials and Senators, but also Secret Service officers, caterers, custodial staff, and journalists to this disease. Exposed individuals then put the health of their colleagues and staffers with whom they later came into contact at risk. It is important to note that many of those whose health was needlessly endangered by the reckless conduct of this Administration do not have access to the same level of health care or resources as the President (and Members of Congress). An outbreak has now gripped the White House and the Senate and to move forward with this hearing would potentially expose even more staffers, Senators, reporters, and witnesses.

While it would be inconceivable to confirm any Supreme Court nominee in this context, it is especially unconscionable to proceed with the nomination of Judge Barrett, who would pose a dire threat to the fundamental liberties and the core constitutional protections that everyday people rely on. President Trump promised to nominate only justices who would dismantle the Affordable Care Act (ACA) and overturn *Roe v. Wade*, and Judge Barrett's record clearly demonstrates that he has delivered on that promise with her nomination. Based on our careful analysis of Judge Barrett's record on key gender justice issues, she would not only eviscerate reproductive rights and dismantle health care access, but also turn back protections for survivors of sexual harassment and reverse decades of progress and equality for communities of color, LGBTQ+ people, and anyone who experiences discrimination. Her record alone is disqualifying given her decision to sign onto an advertisement espousing extreme statements about abortion, and her membership in radical groups that challenge access to birth control, advocate for radical criminalization of providers and those relying on alternative reproductive technologies, and take extreme anti-LGBTQ+ positions. This is further evident through her jurisprudence and approach to cases. The basis for the Law Center's conclusions are set forth in more detail in our report on Judge Barrett's record on gender justice.

The late Justice Ginsburg, whose seat Judge Barrett has been nominated, was a champion for gender equality and a lifelong advocate for justice and equality under the law. Replacing her with someone who has a proven record of dismantling women's hard-fought freedoms would be a disgrace to her legacy and our country. Women jurists are not fungible. While Justice Ginsburg can never be replaced, this nomination is a shameless attempt to erase her contributions to the law.

The Senate should abandon this sham confirmation process. To rush to a vote on this nomination before the inauguration is a purely partisan power grab that ignores the will of the people, erodes the legitimacy of our democratic institutions, including the Supreme Court – and places people’s lives at risk. Judge Barrett’s extreme and ideological record is further reason to reject her nomination. The rights, freedoms, and potentially the lives of women and their families depends on it.

Please do not hesitate to contact the Law Center should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Fatima Goss Graves". The signature is written in a cursive, flowing style.

Fatima Goss Graves
President and CEO, National Women’s Law Center

Cc: Senate Judiciary Committee