



## Amy Coney Barrett

President Trump nominated Amy Coney Barrett to serve on the U.S. Supreme Court on September 26, 2020. Barrett is extremely hostile to reproductive freedom.

### Career<sup>1</sup>

- Bachelor of Arts, Rhodes College, 1994
- Juris Doctor, Notre Dame Law School, 1997
- Clerk, Judge Lawrence Silberman, U.S. Court of Appeals for the D.C. Circuit, 1997-1998
- Clerk, Associate Justice Antonin Scalia, U.S. Supreme Court, 1998-1999
- Associate, Miller, Cassidy, Larroca & Lewin (now Baker Botts), 1999-2000
- Associate, Baker Botts, 2000-2001
- Adjunct Faculty Member, George Washington University Law School, 2001
- John M. Olin Fellow in Law, Adjunct Faculty, George Washington University Law School, 2001-2002
- Visiting Associate Professor of Law, University of Virginia School of Law, 2007
- Professor of Law, Notre Dame Law School, 2002-2017
- Adjunct Professor of Law, Notre Dame Law School, 2017-present
- Judge, U.S. Court of Appeals for the Seventh Circuit, 2017-present

### Record on Reproductive Freedom

#### Court Cases

- Shortly after her confirmation, Barrett joined the dissent when the Seventh Circuit denied a request to rehear en banc a challenge to an Indiana law that requires burdensome procedures for the disposal of fetal remains after an abortion or miscarriage.<sup>2</sup> The state requested the rehearing after a panel of the Seventh Circuit found that the law was unconstitutional given that there was “no rational relationship” between any state interest and the law as written.<sup>3</sup> The dissent, which Barrett joined, suggested that because animal welfare laws have been upheld on the grounds that human welfare is benefited by the humane treatment of animals, the

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<sup>1</sup> Amy Coney Barrett, *Questionnaire for Nominee to the Supreme Court*, United States Senate Committee on the Judiciary (Sept. 28, 2020).

<sup>2</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 917 F.3d 532 (7th Cir. 2018) (Eastbrook, J. dissenting).

<sup>3</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 888 F.3d 300, 309 (7th Cir. 2018).

disposal of fetal remains should be similarly regulated in the interest of human welfare.<sup>4</sup> The dissent also questioned whether the disposal statute places a “substantial obstacle in the path of a woman seeking an abortion” given that the “disposal statute does not operate until after the abortion is complete.”<sup>5</sup> The dissenters, including Barrett, willfully ignored the very real burdens, including privacy concerns, that the Indiana law places on women and providers.<sup>6</sup>

Moreover, the state did not ask the court to rehear another part of its decision that struck down an abortion ban based on racist and anti-immigrant stereotypes that also attempted to ban abortion based on fetal diagnosis. But the dissenters went out of their way to address it anyway, calling the ban “the eugenics statute” and implying that the majority’s decision allows women to “us[e] abortion to promote eugenic goals.”<sup>7</sup> When the Supreme Court later considered this case, staunchly anti-reproductive freedom Justice Clarence Thomas wrote a 20-page concurrence that largely echoed the dissent joined by Barrett, including the focus on alleged eugenics.<sup>8</sup> One professor of obstetrics and gynecology called Thomas’s concurrence “as inaccurate as it is dangerous.”<sup>9</sup> Notably, the dissent joined by Barrett purported to address issues of racism, gender inequality, and ableism, despite the fact that Barrett’s judicial record demonstrates extreme hostility to the rights of people of color, women, and people with disabilities.

- Barrett joined the dissent when the Seventh Circuit denied a request for an en banc rehearing of a case challenging an Indiana law that would have further limited young people’s access to abortion care.<sup>10</sup> In the underlying case, an abortion provider successfully obtained a preliminary injunction to halt the implementation of an amendment to Indiana law that would have placed burdensome restrictions on access to abortion care for young people. The dissent joined by Barrett called into question the ability to challenge abortion restrictions before they are fully implemented and would have granted the en banc rehearing due to “the existing unsettled status of pre-enforcement challenges in the abortion context.”<sup>11</sup> The dissent called the ability of federal courts to prevent state laws from going into effect while they are being litigated (which is critical to preserving abortion access while cases

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<sup>4</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 917 F.3d at 537.

<sup>5</sup> *Ibid.* at 538.

<sup>6</sup> Rebecca Grant, *The Latest Anti-Abortion Trend? Mandatory Funerals for Fetuses*, *THE NATION* (Oct. 11, 2016), <https://www.thenation.com/article/the-latest-anti-abortion-trend-mandatory-funerals-for-fetuses/>.

<sup>7</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 888 F.3d at 536.

<sup>8</sup> *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S.Ct. 1780, 1782 (2019) (Thomas, J. concurring).

<sup>9</sup> Alexandra Minna Stern, *Clarence Thomas’ Linking Abortion to Eugenics is as Inaccurate as it is Dangerous*, *NEWSWEEK* (May 31, 2019),

<https://www.newsweek.com/clarence-thomas-abortion-eugenics-dangerous-opinion-1440717>.

<sup>10</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Box*, 949 F.3d 997 (7th Cir. 2019)

<sup>11</sup> *Id.* at 999.

challenging abortion bans and restrictions move through the courts) “a judicial act of extraordinary gravity in our federal structure.”<sup>12</sup>

- Barrett joined an opinion upholding the dismissal of a challenge to Chicago’s bubble zone ordinance, a measure intended to protect access to abortion clinics.<sup>13</sup> The measure designates a 50-foot radius around clinic entrances in which protestors are prohibited from coming within eight feet of another person in an effort to counsel them or distribute written materials. In 2000, the Supreme Court upheld a nearly identical bubble zone requirement in *Hill v. Colorado*.<sup>14</sup> After their challenge was dismissed by the district court on the grounds that *Hill* was controlling precedent, activists opposed to reproductive freedom appealed to the Seventh Circuit, arguing that the Supreme Court’s more recent decisions in *McCullen v. Coakley* and *Reed v. Town of Gilbert* were inconsistent with *Hill*. As a result, the anti-reproductive freedom activists argued that the Seventh Circuit should strike down the Chicago bubble zone ordinance. The Seventh Circuit, including Barrett, upheld the district court’s dismissal of the challenge on the basis that *Hill* is controlling precedent. However, the opinion went out of its way to agree with the anti-reproductive freedom groups, stating that *McCullen* and *Reed* have “eroded *Hill*’s foundation.”<sup>15</sup> The opinion essentially invited the Supreme Court to overturn *Hill*, stating: “Only the Supreme Court can bring harmony to these precedents.”<sup>16</sup> The Supreme Court declined to take up this case.<sup>17</sup>

## **Notable Information**

### **Attacks on *Roe v. Wade* and Abortion Access**

- Barrett signed onto an ad sponsored by the anti-choice group Notre Dame University Faculty for Life and the Notre Dame Fund to Protect Human Life. Published around the fortieth anniversary of the Supreme Court’s landmark decision in *Roe v. Wade*, the ad called for “the unborn to be protected in law” and expressed “full support” for the “commitment to the right to life.”<sup>18</sup> Barrett only disclosed this ad to the Senate Judiciary Committee a mere three days before her confirmation hearings.

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<sup>12</sup> *Id.*

<sup>13</sup> *Price v. City of Chicago*, 915 F. 3d 1107 (7th Cir. 2019).

<sup>14</sup> *Hill v. Colorado*, 530 U.S. 703 (2000).

<sup>15</sup> *Price v. City of Chicago*, 915 F. 3d at 1111.

<sup>16</sup> *Ibid.* at 1107.

<sup>17</sup> *Price v. City of Chicago*, 915 F. 3d 1107 (7th Cir. 2019), cert. denied, 2020 WL 3578739 (U.S. July 2, 2020).

<sup>18</sup> Amy Coney Barrett Senate Questionnaire Supplement, United States Senate Committee on the Judiciary (Oct. 9, 2020), <https://www.judiciary.senate.gov/imo/media/doc/Amy%20Coney%20Barrett%20Senate%20Questionnaire%20Supplement.pdf>.

- Barrett signed onto an ad that stated: “We, the following citizens of Michiana, oppose abortion on demand and defend the right to life from fertilization to natural death.”<sup>19</sup> The ad referred to *Roe v. Wade* as “barbaric” and a “raw exercise of judicial power.”<sup>20</sup> The full page ad was sponsored by the extreme anti-reproductive freedom group St. Joseph County Right to Life, which opposes abortion and in vitro fertilization (IVF).<sup>21</sup> In an interview, the executive director of St. Joseph County Right to Life stated that while they do not support the criminalization of women seeking abortion care or IVF “at this point,” they do “[s]upport the criminalization of the doctors who perform abortions” and “would be supportive of criminalizing the discarding of frozen embryos or selective reduction through the IVF process.”<sup>22</sup> Barrett failed to disclose the ad or any affiliation with St. Joseph County Right to Life on her questionnaire submitted to the Senate Judiciary Committee following her nomination.<sup>23</sup>
- Barrett has stated that life begins at conception.<sup>24</sup>
- During a presentation on *Roe v. Wade*, Barrett described *Roe* as “a dramatic shift.”<sup>25</sup> She reportedly stated that “the framework of *Roe* essentially permitted abortion on demand and *Roe* recognizes no state interest in the life of a fetus.”<sup>26</sup> In her notes about the presentation, Barrett describes a particular abortion procedure as “laden with the power to devalue human life” and uses inflammatory language such as suggesting that the procedure has a “[d]isturbing similarity to infanticide.”<sup>27</sup> Her notes also falsely characterize the Affordable Care Act’s birth control benefit (described by Barrett as “the Obamacare mandate”) as requiring “private parties to fund abortions.”<sup>28</sup>

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<sup>19</sup> Stephanie Kirchgaessner, Revealed: Amy Coney Barrett supported group that said life begins at fertilization, *The Guardian* (Oct. 1, 2020),

<https://amp.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supported-group-fertilization>  
<sup>20</sup> Stephanie Kirchgaessner, Amy Coney Barrett signed newspaper ad that called *Roe v Wade* 'barbaric', *The Guardian* (Oct. 1, 2020),

<https://www.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supreme-court-roe-v-wade>

<sup>21</sup> Stephanie Kirchgaessner, Revealed: Amy Coney Barrett supported group that said life begins at fertilization, *The Guardian* (Oct. 1, 2020),

<https://amp.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supported-group-fertilization>

<sup>22</sup> Stephanie Kirchgaessner, Revealed: Amy Coney Barrett supported group that said life begins at fertilization, *The Guardian* (Oct. 1, 2020),

<https://amp.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supported-group-fertilization>

<sup>23</sup> Stephanie Kirchgaessner, Amy Coney Barrett signed newspaper ad that called *Roe v Wade* 'barbaric', *The Guardian* (Oct. 1, 2020),

<https://www.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supreme-court-roe-v-wade>

<sup>24</sup> John Nagy, *Students, faculty mark 40 years of Roe*, *NOTRE DAME MAGAZINE* (Jan. 25, 2013) .

<sup>25</sup> Christian Myers, *Law professor reflects on landmark case*, *THE OBSERVER* (Jan. 21, 2013)

<http://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/>.

<sup>26</sup> *Id.*

<sup>27</sup> Attachments to Amy Coney Barrett, Questionnaire for Nominee to the Supreme Court, United States Senate Committee on the Judiciary (Sept. 28, 2020).

<sup>28</sup> Attachments to Amy Coney Barrett, Questionnaire for Nominee to the Supreme Court, United States Senate Committee on the Judiciary (Sept. 28, 2020).

- In a speech about “what the legal landscape would look like if Roe were overruled,” Barrett stated: “The day after Roe fell, of course, abortion would be neither legal nor illegal throughout the United States. Instead, the states and Congress would be free to ban, protect or regulate abortion as they saw fit.”<sup>29</sup>
- Barrett joined top anti-reproductive freedom activists from organizations including Susan B. Anthony List, March for Life, Family Research Council, Heartbeat International, and Priests for Life in signing a letter that asserts “life from conception” and that “marriage and family [are] founded on the indissoluble commitment of a man and a woman.”<sup>30</sup> The latter point demonstrating Barrett’s hostility toward LGBTQ rights.
- In a November 2016 speech, Barrett predicted that whoever was elected during the 2016 presidential election would bring a “sea change” and “very marked shift” to the Supreme Court.<sup>31</sup> In the same speech, she listed abortion as a topic where “the who decides issue would be big” for a new court.<sup>32</sup> Barrett explained that “Roe v. Wade actually isn’t the law, it was superceded by Casey v. Planned Parenthood.”<sup>33</sup> Barrett said that while she was not sure whether “the right to abortion would change,” “the restrictions would change” and “how much freedom the Court is willing to let states have in regulating abortion” would increase with the addition of more conservative Supreme Court justices.<sup>34</sup> For example, Barrett suggested that states could ban abortion later in pregnancy or impose additional targeted regulations on abortion providers (referred to as TRAP laws).<sup>35</sup>
- In response to a written question from Senator Mazie Hirono (D-HI) after her Seventh Circuit confirmation hearing, Barrett refused to answer whether a litmus test – such as selecting a judicial nominee based on her opposition to Roe – was appropriate.<sup>36</sup>

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<sup>29</sup> Emily Czachor, *Amy Coney Barrett on Abortion, Roe v. Wade and Judicial Precedent in Her Own Words*, Newsweek (Sept. 23, 2020), <https://www.newsweek.com/amy-coney-barrett-abortion-roe-v-wade-judicial-precedent-her-own-words-1533707>.

<sup>30</sup> *Letter to Synod Fathers from Catholic Women* (Oct. 1, 2015) <https://eppc.org/synodletter/>.

<sup>31</sup> Hesburgh Lecture 2016: Professor Amy Barrett at the JU Public Policy Institute, Jacksonville University (Nov. 3, 2016; posted Dec. 5, 2016), <https://www.youtube.com/watch?v=7yjTEdZ81II&t=21s>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Nomination of Amy Coney Barrett to the Seventh Circuit Court of Appeals, Questions for the Record from Senator Hirono, 115th Congress (2017)*, <https://www.judiciary.senate.gov/imo/media/doc/Barrett%20Responses%20to%20Hirono%20QFRs.pdf>.

- Barrett has given different and conflicting opinions about the critical question of when judges with strong personal views on issues before them must recuse themselves, raising serious concerns about whether she would be able to recognize her own personal biases when judging cases.
  - First, an article she co-wrote on the subject of recusal explicitly states that judges who hold strong personal views about the death penalty should recuse themselves rather than sentence an individual to death or enforce a jury recommendation of death.<sup>37</sup> The article also states that abortion is “always immoral,” but makes no similar recommendation of recusal for judges opposed to the right to abortion in abortion-related cases.<sup>38</sup>
  - Then, during her Seventh Circuit confirmation hearing, Barrett gave conflicting responses to senators who raised questions about her writings. In response to a question from then-Chairman Chuck Grassley (R-IA), Barrett first said that she would look to the federal recusal statute to determine when to recuse herself but later said she could not think of a case in which she would feel obliged to recuse based on her personal views.<sup>39</sup> Upon further questioning from Sen. Mazie Hirono (D-HI), Barrett backtracked, stating that no nominee could say unequivocally that he or she would never need to recuse themselves because that would “violate the judge’s ethical obligation to always be alert to that possibility.”<sup>40</sup> Barrett eventually circled back to her article’s conclusion and admitted she would recuse herself rather than enter an order of execution if she were a trial-court judge.<sup>41</sup> Her conflicting responses and writings raise serious concerns as to whether she would recognize her own anti-reproductive freedom bias when adjudicating issues pertaining to legal abortion.

### **Attacks on Contraception**

- Barrett signed a public “statement of protest” with other activists hostile to reproductive freedom that called the Affordable Care Act’s contraceptive-coverage policy an “assault on religious liberty” and rejected the Obama administration’s accommodation for religious-affiliated employers.<sup>42</sup> The statement accused the Obama administration of “compelling religious people and institutions who are

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<sup>37</sup> John H. Garvey and Amy Coney Barrett, *Catholic Judges in Capital Cases*, Legal Studies Research Paper Series, Boston College Law School.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Hearing on Nominations Before the Senate Committee on the Judiciary*, 115th Congress (2017) (statements of Senator Chuck Grassley and Amy Coney Barrett).

<sup>40</sup> *Hearing on Nominations Before the Senate Committee on the Judiciary*, 115th Congress (2017) (statements of Senator Mazie Hirono and Amy Coney Barrett).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Cardinal Dolan Joins Protest Over ‘Unacceptable’ Attack on Religious Liberty*, NATIONAL CATHOLIC REGISTER (Feb. 27, 2012)

<http://www.ncregister.com/daily-news/archbishops-kurtz-and-chaput-sign-petition-for-religious-liberty/>.

employers to purchase a health-insurance contract that provides abortion-inducing drugs, contraception and sterilization.”<sup>43</sup> The letter also referred to emergency contraception as “the embryo-destroying ‘five-day-after pill.’”<sup>44</sup> In a response to a written question after her Seventh Circuit confirmation hearing, Barrett did not answer whether she would recuse herself from litigation on this matter despite having taken a public position.<sup>45</sup>

### **Attacks on the Affordable Care Act**

- Barrett has been critical of the Affordable Care Act, which helped millions of Americans get critical health insurance coverage. Of the Supreme Court’s decision in *NFIB v. Sebelius*, Barrett wrote, “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.”<sup>46</sup> Barrett also criticized the majority opinion in *King v. Burwell*, where the Supreme Court upheld a critical provision of the Affordable Care Act that makes health care coverage more affordable.<sup>47</sup> Barrett implied that the majority’s approach was an “illegitimate” effort to “distort” the Affordable Care Act “to achieve what it deems a preferable result.”<sup>48</sup>

### **Hostility Toward Precedent**

- Barrett wrote an article on precedent in which she explicitly omitted *Roe v. Wade* from a list of “superprecedents,” cases that, by Barrett’s definition, “no justice would overrule, even if she disagrees with the interpretive premises from which the precedent proceeds.”<sup>49</sup> In the same article, she wrote that, “public response to controversial cases like *Roe* reflects public rejection of the proposition that stare decisis can declare a permanent victor in a divisive constitutional struggle rather than desire that a precedent remain forever unchanging.”<sup>50</sup>
  - In a concerning summation of her view of precedent, Barrett wrote, “I tend to agree with those who say that a justice’s duty is to the Constitution and that it is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks is clearly in conflict with it.”<sup>51</sup>

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Nomination of Amy Coney Barrett to the Seventh Circuit Court of Appeals, Questions for the Record from Senator Feinstein*, 115th Congress (2017), <https://www.judiciary.senate.gov/imo/media/doc/Barrett%20Responses%20to%20Feinstein%20QFRs.pdf>.

<sup>46</sup> Amy Coney Barrett, *Countering the Majoritarian Difficulty*, 32 *Cont. Comment.* 61, 80 (2017).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 *TEX. L. REV.* 1721, 1728 (2013).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

Clearly, Barrett’s understanding of the Constitution does not include a right to abortion.

- In an article in which she argues that *stare decisis* should be more flexible, Barrett cites *Planned Parenthood v. Casey* multiple times as an example of a decision where the court failed to overturn an “erroneous decision” (i.e. *Roe*). From both her choice of language and repeated references to *Casey*, one can reasonably infer that she believes *Roe* was incorrectly decided.<sup>52</sup>
- Barrett is dismissive of the reliance interests stemming from *Roe* and *Casey*, which is a key factor to consider when a judge hears cases about the Constitutional right to abortion. In response to questions about a speech she gave regarding *Roe v. Wade*, Barrett stated: “Never having studied the existing protections for abortion outside of the Supreme Court precedents, I am not equipped to offer an opinion on the practical effects of overturning *Roe*, beyond recognizing the reliance interests identified by the Supreme Court in *Planned Parenthood v. Casey*.”<sup>53</sup> When asked about these reliance interests during her Seventh Circuit confirmation hearing, Barrett refused to answer whether she believes women have a “reliance interest” on *Roe*. Notably, the reliance interests in *Roe* have broader implications beyond abortion rights, including for LGBTQ rights.

### **Anti-Choice Support and Affiliations**

- Sen. Josh Hawley (R-MO) has publicly stated that he will only support a nominee who believes *Roe v. Wade* is incorrectly decided.<sup>54</sup> Hawley stated that Barrett “clearly meets that threshold that I’ve talked about.”<sup>55</sup>
- Barrett is included on President Trump’s list of potential Supreme Court nominees; Trump threatened repeatedly to use such appointments as opportunities to nominate individuals who will overturn *Roe v. Wade*. Presumably, those on this list, including Barrett, passed this unprecedented litmus test. In addition, Marjorie Dannenfelser, the president of the anti-reproductive freedom advocacy group the Susan B. Anthony List stated the following about Trump’s list: “The list, I was very much a part of, so I feel like I own it, in some ways, so I’m very confident that no matter who he chooses will continue in exactly the direction we are.”<sup>56</sup> Specifically

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<sup>52</sup> Amy Coney Barrett, *Stare Decisis and Due Process*, UNIVERSITY OF COLORADO LAW REVIEW, Summer 2003.

<sup>53</sup> Emily Czachor, *Amy Coney Barrett on Abortion, Roe v. Wade and Judicial Precedent in Her Own Words*, Newsweek (Sept. 23, 2020), <https://www.newsweek.com/amy-coney-barrett-abortion-roe-v-wade-judicial-precedent-her-own-words-1533707>.

<sup>54</sup>[https://www.washingtonpost.com/politics/courts\\_law/trump-supreme-court-barrett-lagoa-ginsburg/2020/09/21/5e8208c2-fc16-11ea-b555-4d71a9254f4b\\_story.html](https://www.washingtonpost.com/politics/courts_law/trump-supreme-court-barrett-lagoa-ginsburg/2020/09/21/5e8208c2-fc16-11ea-b555-4d71a9254f4b_story.html)

<sup>55</sup> *Id.*

<sup>56</sup> <https://www.nytimes.com/2020/09/23/podcasts/the-daily/supreme-court-trump-roe-v-wade.html>



about Barrett's place on the list Dannenfels said: "She's my favorite, she's our favorite, she's the movement's favorite, because the movement knows her."

- Groups that are extremely hostile to reproductive freedom have repeatedly praised Barrett's inclusion on Trump's short list:
  - Concerned Women for America President Penny Nance said, "[Trump's] selections have been spot on at every level, and we are so thankful to him for delivering for the American people in such a crucial area... The thousands of women I represent applaud President Trump on this announcement and will continue to support him in the selection of constitutional judges who respect their limited roles as jurists and not legislators."<sup>57</sup>
  - Susan B. Anthony List President Marjorie Dannenfels said, "These five judges are exceptionally qualified and any one of them would make an outstanding Supreme Court justice. President Trump set a high standard with Justice Neil Gorsuch and continues to impress with his excellent list of nominees for future vacancies. President Trump continues to nominate only judges who are loyal to the Constitution, not to an activist pro-abortion agenda."<sup>58</sup>
  - In a press release, anti-reproductive freedom group The Eagle Forum stated it was "thrilled that President Trump is considering a woman like Amy Coney Barrett to be his next nominee for the United States Supreme Court." The release continued: "As a former clerk for the late Justice Antonin Scalia and a fundamental Constitutionalist, Judge Coney Barrett will ensure that our nation's freedoms will be upheld. She understands the importance of family and holds life sacred. She would join three progressive female Supreme Court Justices, making her mark as the only female Constitutionalist."<sup>59</sup>
  - Terry Schilling, the executive director of the anti-reproductive freedom group The Principles Project, stated: "She's battle tested. We know where she stands on a lot of the key issues that the grassroots care about it."<sup>60</sup>
  - Charles Camosy, a board member of Democrats for Life, said Amy Coney Barrett would be a better nominee than Brett Kavanaugh, saying there is "no question about her pro-life credentials." "I think Amy Coney Barrett would have been a much better choice. And not just in hindsight. From the death penalty to abortion, there is no question about her pro-life credentials."<sup>61</sup>

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<sup>57</sup> *President Trump Delivering on Judges*, CONCERNED WOMEN FOR AMERICA (Nov. 17, 2017), <http://campaign.r20.constantcontact.com/render?m=1110014335848&ca=afb1a047-10d2-4bf2-839b-ec07440290a1>.

<sup>58</sup> *SBA List Praises President Trump's Expanded Supreme Court List*, SUSAN B. ANTHONY LIST (Nov. 17, 2017), <https://www.sba-list.org/newsroom/press-releases/sba-list-praises-president-trumps-expanded-supreme-court-list>.

<sup>59</sup> Eagle Forum, Press Release, July 6, 2018 via Lexis Advance.

<sup>60</sup> <https://www.indystar.com/story/news/politics/2018/07/08/amy-coney-barrett-favorite-social-conservatives-supreme-court-trump-nominee/763191002/>

<sup>61</sup> [https://www.huffpost.com/entry/abortion-foes-christine-blasey-ford-hearing\\_n\\_5ba2b4dce4b069d5f9cf9523](https://www.huffpost.com/entry/abortion-foes-christine-blasey-ford-hearing_n_5ba2b4dce4b069d5f9cf9523)

- Barrett was a member of Notre Dame’s University Faculty for Life Chapter,<sup>62</sup> a group whose stated purpose is to “promote research, dialogue and publication by faculty who respect the value of human life from conception to natural death.”<sup>63</sup> Barrett was also a regular speaker at events hosted by anti-reproductive freedom groups on campus, something that she initially failed to fully disclose in the documents submitted to the Senate Judiciary Committee prior to her confirmation hearings.<sup>64</sup>
- Barrett has been active in the conservative, anti-reproductive freedom Federalist Society.<sup>65</sup> The Federalist Society is led by Leonard Leo, the anti-reproductive freedom activist who is heavily involved in selecting Trump’s Supreme Court and lower court nominees. Leo has been outspoken in his views that are extremely hostile to reproductive freedom, calling abortion “an act of force” and “a threat to human life,”<sup>66</sup> and serves as co-chairman of Students for Life,<sup>67</sup> a group whose mission is to “abolish abortion.”<sup>68</sup>
- During her Seventh Circuit confirmation hearing, Barrett admitted to accepting an honorarium from the Alliance Defending Freedom (ADF).<sup>69</sup> ADF has been designated as an anti-LGBTQ hate group by the Southern Poverty Law Center.<sup>70</sup> Barrett challenged ADF’s classification as a hate group as “a matter of public controversy.”<sup>71</sup> ADF’s purpose is to advocate “for religious liberty, the sanctity of human life, freedom of

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<sup>62</sup> *Questionnaire for Judicial Nominees : Amy Coney Barrett*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY (2017).

<sup>63</sup> *About UFL*, UNIVERSITY FACULTY FOR LIFE, <https://ufl.nd.edu/about-ufl/> (last visited July 2, 2018).

<sup>64</sup> *Amy Coney Barrett Senate Questionnaire Supplement*, United States Senate Committee on the Judiciary (Oct. 9, 2020), <https://www.judiciary.senate.gov/imo/media/doc/Amy%20Coney%20Barrett%20Senate%20Questionnaire%20Supplement.pdf>; Andrew Kaczynski & Em Steck, *Amy Coney Barrett initially failed to disclose talks on Roe v. Wade hosted by anti-abortion groups on Senate paperwork*, CNN (Oct. 10, 2020), <https://edition.cnn.com/2020/10/09/politics/kfile-amy-coney-barrett-roe-v-wade-talks/index.html>.

<sup>65</sup> *Hon. Amy Coney Barrett*, THE FEDERALIST SOCIETY, <https://fedsoc.org/contributors/amy-barrett-1> (last visited July 2, 2018).

<sup>66</sup> Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>.

<sup>67</sup> *Board of Directors*, STUDENTS FOR LIFE, <http://studentsforlife.org/supporters/board-of-directors-1> (last visited July 5, 2018).

<sup>68</sup> *Mission Statement*, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 5, 2018).

<sup>69</sup> *Alliance Defending Freedom*, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> (last visited July 2, 2018).

<sup>70</sup> *Alliance Defending Freedom*, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> (last visited Sept. 10, 2020).

<sup>71</sup> *Nomination of Amy Coney Barrett to the Seventh Circuit Court of Appeals, Questions for the Record from Senator Feinstein*, 115th Congress (2017), <https://www.judiciary.senate.gov/imo/media/doc/Barrett%20Responses%20to%20Feinstein%20QFRs.pdf>.

speech, and marriage and family” and their work includes funding cases and training attorneys about “religious freedom,” the “sanctity of human life,” and “marriage and family.”<sup>72</sup> Barrett’s involvement with ADF has also included speaking to law students in the ADF-sponsored Blackstone Legal Fellowship program,<sup>73</sup> a “leadership training program” designed to train future lawyers to pursue ADF’s ideological goals, which include banning abortion.<sup>74</sup>

### **Record on Allied Issues**

- From 2015 to 2017, Barrett was on the Board of Trustees of a group of independent schools that expresses extreme hostility to LGBTQ people as a part of their “culture.”<sup>75</sup> The schools’ websites state: “We understand marriage to be a legal and committed relationship between a man and a woman and believe that the only proper place for sexual activity is within these bounds of conjugal love.”<sup>76</sup> The websites further state that while “some students may also experience same-sex attraction,” the schools “believe that it is unwise, however, for teens to prematurely interpret any particular emotional experience as identity-defining.”<sup>77</sup> The schools allege that identifying as LGBTQ as a young person “can lead to students being labeled based solely upon sexuality, generate distraction, create confusion, and prevent students from experiencing true freedom within the culture of the school.”<sup>78</sup> The schools “ask students not to openly discuss matters of personal sexuality.”<sup>79</sup>
- Barrett has denounced the *Miranda* doctrine, which requires law enforcement to inform those in custody of their rights under U.S. law. While *Miranda* is well-accepted from nearly every place on the political spectrum, Barrett has criticized it, saying that it “inevitably excludes from evidence even some confessions freely given, is an example” of “the court’s choice to over enforce a constitutional norm by developing prophylactic doctrines that go beyond constitutional meaning.”<sup>80</sup>

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<sup>72</sup> Who We Are, Alliance Defending Freedom, <https://www.adflegal.org/about-us> (last visited Sept. 10, 2020).

<sup>73</sup> Amy Coney Barrett, Questionnaire for Nominee to the Supreme Court, United States Senate Committee on the Judiciary (Sept. 28, 2020); Legal Training, Alliance Defending Freedom, <https://www.adflegal.org/training/blackstone> (last visited Sept. 10, 2020).

<sup>74</sup> Abortion Harms Women and Destroys Life, Alliance Defending Freedom, <https://www.adflegal.org/issues/sanctity-of-life/abortions> (last visited Sept. 10, 2020).

<sup>75</sup> Attachments to Amy Coney Barrett, Questionnaire for Nominee to the Supreme Court, United States Senate Committee on the Judiciary (Sept. 28, 2020); Trinity School at Greenlawn, <https://trinitygreenlawn.org/culture/culture-of-learning/> (last visited Oct. 2, 2020).

<sup>76</sup> Trinity School at Greenlawn, <https://trinitygreenlawn.org/culture/culture-of-learning/> (last visited Oct. 2, 2020).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 170 (2010).

- Barrett has a troubling record on issues of racial discrimination in employment. While on the Seventh Circuit, Barrett sided with an employer that had a practice of segregating employees by race.<sup>81</sup> As the dissenting opinion pointed out, Barrett’s position essentially permitted a “separate-but-equal arrangement.”<sup>82</sup>
- Barrett has a troubling record of siding against immigrants in legal proceedings. While on the Seventh Circuit, Barrett upheld a Board of Immigration Appeals’ decision to deport a man seeking asylum back to El Salvador even though he and his family feared targeted gang violence, including torture, and had received threats from gang members.<sup>83</sup> The Board of Immigration Appeals’ initial decision was based on only “trivial” inconsistencies.<sup>84</sup> Barrett also was the deciding vote in a case permitting the deportation of a person who had been a lawful permanent resident for thirty years, since he was just ten years old.<sup>85</sup> Barrett upheld the denial of a Yemeni woman’s visa application, despite the fact that the consular officer’s reasons for denying the application lacked evidentiary support and appeared to be based on “stereotypical assumption[s].”<sup>86</sup> In a dissenting opinion, Barrett also argued in favor of upholding the Trump administration’s harmful “public charge” rule.<sup>87</sup>
- Barrett wrote a dissent in a Second Amendment case in which the majority, made up of two Reagan-appointed judges, found that federal and state statutes prohibiting firearm possession by people with felony convictions are constitutional.<sup>88</sup> In her dissent, Barrett argued that the prohibition was not rooted in history and should not apply broadly to all people with felony convictions, just those the state can prove are a threat to public safety.<sup>89</sup> Barrett said the Second Amendment should not be treated as a “second-class” right, a description used in various Second Amendment cases by other Trump judges.<sup>90</sup>
- In *Doe v. Purdue University*, Barrett wrote the majority opinion that allows male students who are disciplined for sexual assault or other forms of sexual harassment to bring

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<sup>81</sup> *EEOC v. Autozone*, 875 F.3d 860 (7th Cir. 2017).

<sup>82</sup> *Id.*

<sup>83</sup> *Alvarenga-Flores v. Sessions*, 901 F.3d 922, 923 (7th Cir. 2018).

<sup>84</sup> *Alvarenga-Flores v. Sessions*, 901 F.3d 922, 927 (7th Cir. 2018) (Durkin, J. dissenting).

<sup>85</sup> *Ramos v. Barr*, No. 19-1728 (7th Cir. 2019),

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D06-05/C:19-1728:J:Pe rCuriam:aut:T:npDp:N:2351117:S:0>.

<sup>86</sup> *Yafai v. Pompeo*, No. 18-1205 (7th Cir. 2019),

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D05-23/C:18-1205:J:Pe rCuriam:aut:T:opDr:N:2345384:S:3>.

<sup>87</sup> *Cook County v. Wolf*, No. 19-3169 (7th Cir. 2020),

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2020/D06-10/C:19-3169:J:W ood:aut:T:fnOp:N:2529215:S:0>

<sup>88</sup> *Kanter v. Barr*, No. 18-1478, 2019 WL 1219564, at \*1 (7th Cir. Mar. 15, 2019) (Barrett, J., dissenting).

<sup>89</sup> *Ibid.* at \*13.

<sup>90</sup> *Ibid.* at \*25.

sex discrimination lawsuits against their colleges and universities.<sup>91</sup> Barrett suggested that the Department of Education's Obama-era Title IX guidance, which set out schools' obligations to take sexual harassment seriously, supported a conclusion that a male student disciplined for sexual harassment was discriminated against on the basis of his sex.<sup>92</sup> Barrett also suggested that this guidance established a standard of evidence that was too "lenient" toward sexual assault survivors.<sup>93</sup>

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<sup>91</sup> *Doe v. Purdue University*, 928 F.3d 652 (7th Cir. 2019).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*