

Disastrous and Dangerous: Judge Barrett Would Wreak Havoc on the Lives of Women of Color

OCTOBER 2020

On September 26, 2020, President Donald Trump nominated Judge Amy Coney Barrett (United States Court of Appeals for the 7th Circuit), to a seat on the U.S. Supreme Court. Judge Barrett's nomination comes in the midst of early voting when millions of ballots have already been cast in the race to determine the next president. Her elevation to the country's highest court would be disastrous for all of us in regards to our civil and human rights, but is especially dangerous for women of color who live at the intersection of multiple oppressions. In the midst of a racial reckoning, a pandemic and an economic crisis, all of which have disproportionately impacted women of color, the Senate's confirmation of Judge Barrett could reverse our hard-fought progress toward racial justice.

The Threat to our Health Care and the Affordable Care Act

○ If Judge Barrett is confirmed, the Court would be poised to overturn the

Affordable Care Act (ACA). Judge Barrett has repeatedly signaled that she would support lawsuits to overturn the ACA. She sharply criticized both major Supreme Court rulings that upheld the ACA (NFIB v. Sebelius (2012) and King v. Burwell (2015)).¹ If confirmed, Judge Barrett seems likely to vote to overturn the ACA in *California v. Texas*, the case that is scheduled to be heard just days after her confirmation.

○ If the ACA is overturned:

- **Women of color will be hit hardest by the loss of access to health coverage** during the COVID-19 public health crisis. Prior to the ACA, 23 million women were uninsured in 2011. For that year, women of color made up 37 percent of the U.S. female population, yet they were 56 percent of uninsured women.² Since the ACA, the uninsured rates among Black women, Asian American and Pacific Islander (AAPI) women, and Latinas have declined significantly, and have declined for all women by nearly half.³ Repeal of the ACA would be dire and health disparities would worsen for women of color, at a time when over 200,000 people have died in the U.S due to COVID-19, and while thousands are experiencing severe symptoms — a disproportionate number of whom are people of color.⁴

- **Protections for nearly 68 million women and girls with pre-existing conditions would be eliminated.**⁵ Before the ACA, health insurance companies could use a health problem you had prior to seeking coverage — known as "pre-existing conditions" — to charge higher premiums or deny coverage altogether. Women of color face higher rates of many chronic illnesses and are more likely to contract COVID-19 because of the role that systemic racism plays in health disparities among people of color.⁶ Eliminating the ACA's protections for people with pre-existing conditions, would make it more difficult to obtain and afford future health coverage for the more than 7 million who have had COVID-19 and for women of color with chronic conditions.⁷
- **Access to maternity care for pregnant people would be threatened.** Prior to the ACA, few individual market plans covered maternity care.⁸ Today, maternity care is one of the ACA's ten essential health benefits that must be included in all new individual and small group health plans, expanding coverage to millions. At a time when Black and Native women are 2-3 times more likely to die than white women during pregnancy, at birth, or postpartum; maternity coverage is paramount.⁹ Moreover, research finds that Medicaid expansion — which is also at stake — has played an important role in reducing the significant and persistent racial disparities in maternal and infant health.¹⁰
- **Preventive services would be out of reach for many women.** The ACA requires health plans to cover preventive services, including a full range of contraceptive methods, at no cost-sharing. This coverage has made women's preventive services affordable and accessible for millions more women. Prior to the ACA, one in five women reported cost as a reason for delaying or going without needed health care – a barrier that disparately impacted women of color with low-incomes and without insurance.¹¹ By covering preventive services with no cost-sharing, approximately 62 million women now have access to services that help them get and stay healthy throughout their lives.¹² And as of 2015, at least 17 million Latina women and 15 million Black women gained access to guaranteed no-cost birth control. All of these gains are at stake if Judge Barrett is appointed.¹³

○ **A Court with Judge Barrett would be more likely to leave a rule intact that allows discrimination in health care.** In June 2020, the Trump administration finalized a rule that would eliminate the non-discrimination provisions of the ACA, known as Section 1557. These provisions protect people who are seeking health care from being discriminated against on the basis of sex stereotyping and gender identity. The Trump administration rule would allow discrimination based on someone's reproductive health history or decision to have an abortion. It would also

reduce access to language assistance services for individuals with limited English proficiency (LEP).¹⁴ At its core the rule promotes misogyny, racism, homophobia, transphobia, and ableism in health care. It directly imperils women and people of color that live at the intersection of multiple identities and harms communities of color that already struggle with entrenched health inequities that existed well before the COVID-19 pandemic. There are several lawsuits in lower courts challenging this rule.¹⁵ If one of these cases goes before the Court, there is a real threat that the Trump administration's final rule remains intact.

- **If Judge Barrett is confirmed millions of immigrant families would live in fear of seeking health care.** In 2018 the Trump administration released a rule that would make far-reaching changes to determining which immigrants may be admitted as lawful permanent residents.¹⁶ The new rule expands an archaic racist practice called the "public charge" which has been used to penalize immigrants for seeking needed government assistance. The rule punishes immigrants who use Medicaid and the Supplemental Nutrition Assistance Program (SNAP). Misinformation and confusion about the rule has caused non-citizens who are not actually subject to the public charge determinations to forgo Medicaid and care because of fear of deportation. Research shows that this "chilling effect", was associated with approximately 260,000 children losing Medicaid coverage.¹⁷ In Judge Barrett's most pivotal immigration ruling, she issued a 40-page dissent siding with the Trump administration and against her 7th Circuit colleagues in *Cook County v. Wolf*. Her colleagues ruled in favor of immigrants to temporarily prevent the Trump administration from implementing the rule.¹⁸ The public charge rule has devastating effects on immigrant families, particularly as conditions put them at higher risk for exposure to COVID-19.¹⁹ The merits of the rule will continue to be challenged and may be before the Court.

Restricting and Eliminating Abortion Access and Reproductive Rights

- **If Judge Barrett is confirmed, the Court would be poised to overturn *Roe v. Wade*.** Numerous abortion cases are already on their way to the Supreme Court.²⁰ And, the constitutional right to abortion is hanging by a thread, as the conservative bloc of Justices has steadily chipped away at *Roe*, including just recently in this summer's *June Medical Services* decision.²¹ Not being able to access abortion care further increases the economic disparities that women of color face. Women who are denied an abortion are more likely to fall into poverty than women who are able to obtain the care they need.²² Additionally, the injustice of not being able to have control over one's own reproductive life and choices has detrimental effects on women's well-being and on our ability to participate fully in society.

- **Trump promised he'd nominate anti-abortion judges to the Supreme Court in order to overturn *Roe v. Wade*, and Judge Barrett's decisions and actions demonstrate that she passes that litmus test.** In the three years she has been on the 7th Circuit, her voting record and the opinions she joined demonstrate that Judge Barrett supports restrictions that directly contradict Supreme Court precedent.²³ She has signaled hostility to *Roe*, including by signing on to an ad calling *Roe* “barbaric” and a “raw exercise of judicial power.”²⁴ The anti-choice organization that published the ad has taken the extremist view that life begins at fertilization and calls for criminalizing doctors who discard frozen embryos, something that is a routine part of IVF procedures.²⁵
- **If another Trump justice is named to the Supreme Court, state abortion restrictions will likely remain in place for generations to come.** In 2019 alone, more than 375 abortion restrictions were introduced in states across the country, and 15 states introduced or enacted extremely restrictive laws that would ban abortion after six weeks — before most people even know they are pregnant.²⁶ Women of color are more likely to live in states with the most restrictive abortion laws.²⁷ And these laws intersect with systemic racism and economic inequality to push abortion care almost entirely out of reach for people of color, low-income people, and young people. For example, coverage bans – abortion restrictions that prohibit coverage for abortion in public or private health insurance, or make it more difficult to obtain – disproportionately affect women of color.²⁸ This means that women of color are too often unable to afford abortion care and may be forced to decide between paying for things like rent or groceries and paying for an abortion. If Judge Barrett is confirmed, state legislatures will be even more emboldened to pass restrictive abortion laws, knowing that the Supreme Court will sanction efforts to roll back access.

Dismantling Workers Rights

- **A Court with Judge Barrett will likely dismantle protections against workplace discrimination.** While on the 7th Circuit, Judge Barrett refused to reconsider a ruling²⁹ on Title VII that amounted to a “separate but equal” standard. In *EEOC v. AutoZone*, the 7th Circuit allowed a retail chain to transfer a Black employee out of a “predominantly Hispanic” store, openly denying the employee employment opportunity at his preferred store location because he fell outside of the store’s designated “racial group.”³⁰ This decision flies in the face of the Court’s decision to strike down “separate but equal” almost 70 years ago in *Brown v. Board of Education*.³¹ If this kind of jurisprudence dominates the Supreme Court, nondiscrimination protections for workers of color, immigrant workers, women, and LGBTQ workers will be in jeopardy.

○ With Judge Barrett, the already conservative Court is likely to ignore workers' rights and deny millions basic dignity and safety in their jobs. While on the 7th Circuit, Judge Barrett denied five years of hard-earned retirement benefits to a city employee who was wrongly classified as an independent contractor by his employer.³² Indeed, Judge Barrett's record signals that she would likely deny even the most basic labor protections to workers in the "gig economy" — who are disproportionately women of color³³ — by making it easier for employers to classify them as independent contractors.³⁴ Given the stark inequalities that women of color face in terms of wage gaps³⁵ and wealth,³⁶ it is critical that the Court respect these workers as plaintiffs when they face injustice and unfairness at work. Judge Barrett's record shows an inability to objectively rule on such cases.

The Erosion of our Voting Rights

○ A Court with Judge Barrett would likely uphold laws that suppress the votes of women, people of color, people with disabilities and working people. The Court already gutted the Voting Rights Act in 2013,³⁷ making it easier for states to enact laws that make it harder to vote. Since that decision, the states most likely to pass new voting restrictions have been those with the highest Black turnout in 2008, the highest Hispanic population growth, and the worst history of racially discriminatory voting laws.³⁸ Because the COVID-19 pandemic has disproportionately harmed Black and Brown people, these communities will be at the greatest risk of being disenfranchised by their states' failure to provide safe and secure voting options.³⁹ Already, the Supreme Court has agreed to take up cases affecting the outcome of the 2020 election⁴⁰ — an election that is critical to the rights and safety of communities of color.

Based on Judge Barrett's well documented record, her confirmation to the Court would strip away protections and rights of women of color and all women and girls. This would have long lasting repercussions for generations to come. The Senate must reject her for a lifetime appointment on our highest court.

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