

*Alaska Wilderness League · Bold Alliance · Center for Biological Diversity · Clean Water Action · Climate Hawks Vote · Delaware Riverkeeper Network · Earthjustice · Endangered Species Coalition · Environmental Advocates NY · Friends of the Earth Action · GreenLatinos · John Muir Project of Earth Island Institute · League of Conservation Voters · Oil Change International · Population Connection Action Fund · Sierra Club · Western Watersheds Project · The Wilderness Society*

October 15, 2020

The Honorable Lindsay Graham, Chairman  
Senate Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Diane Feinstein, Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**RE: Environmental Groups Oppose the Supreme Court Nomination of Judge Amy Coney Barrett**

Dear Chairman Graham and Ranking Member Feinstein:

The undersigned environmental groups write today on behalf of our millions of members and supporters to express our opposition to the Senate's decision to move forward with the consideration of Judge Amy Coney Barrett to a lifetime seat on the United States Supreme Court, and our serious concerns about the impact of her potential confirmation on environmental issues.

In the midst of a grossly mismanaged pandemic that has taken over 200,000 lives, this Administration and Senate majority have chosen to put lives and livelihoods at further risk by refusing for months to consider legislation providing necessary relief and support. It is unacceptable that the Senate would further delay relief in order to rush through a Supreme Court nomination. The recent outbreak on Capitol Hill and the White House further demonstrates the urgent need to address this pandemic, and the acute health threat posed to Senators, their staff, and employees of the U.S. Capitol by proceeding with this flawed nomination process.

Given partisan efforts to undermine the credibility of our election process, rushing this confirmation prior to Election Day raises serious concerns about the intention to use the Court to illegitimately determine the election's outcome. This rushed timeline also calls into question the ability of the Senate to appropriately fulfill its Constitutional "advice and consent" role including time to gather and review the nominee's entire record and hear from constituents, and the ability of the FBI to properly vet the nominee's background. For the sake of the integrity of our democracy the nomination process should be delayed to at least allow the Senate to properly fulfill its Constitutional duty.

In addition to our objections to the manner in which this nomination is being considered, we have serious concerns about Judge Barrett's record and how she would rule on critical environmental issues if confirmed to the Court. In her limited judicial and longer academic record, Judge Barrett has demonstrated legal views that would pose major challenges to progress on the critical environmental issues facing this country.

Judge Barrett clerked for Justice Scalia, and her limited judicial record shows that she, like him, would interpret Article III of the Constitution in novel ways that seriously restrict the public's right to access the courts. If Judge Barrett's view of Article III becomes the replacement for Justice Ginsburg's, this could be a tragedy for environmental law. Justice Ginsburg was frequently on the opposite side of Justice Scalia in cases addressing the public's right to access the courts. See *Friends of the Earth v Laidlaw* and *Summers v. Earth Island Institute*. But Senator McConnell blocked President Obama's nomination of Judge Garland to replace Justice Scalia, thereby blocking a judge who would have brought a more impartial view of access to the courts. Now the Republicans seek to rush a replacement for Justice Ginsburg who would tilt the Court further against the public's right to access the federal courts.

Judge Barrett has also, in her academic writings, questioned the force of *stare decisis*, suggesting that a Justice should "enforce her best understanding of the Constitution" when faced with "precedent she thinks clearly in conflict with it."<sup>1</sup> That view requires close scrutiny of Judge Barrett's constitutional views—scrutiny that a rushed hearing cannot provide. A willingness to disregard the Court's precedent could put decades of landmark rulings at risk of reversal, including *Chevron v. Natural Resources Defense Council* and *Friends of the Earth v. Laidlaw*.

Climate change is one of the most pressing issues facing our nation, and requires both immediate and extensive action. A supermajority of conservative justices on the Supreme Court raises questions about the future of landmark rulings like *Massachusetts v. Environmental Protection Agency*, as well as the role the Court could play in blocking the elected branches' efforts to address the existential threat of climate change. Judge Barrett's writings on agency actions mirror the same hostility we have seen from other conservatives on the Court, who could severely restrict the ability of agencies to implement climate regulations.<sup>2</sup>

In an increasingly politicized judicial environment, it is critical that those nominated to the Supreme Court can be trusted to uphold the independence and impartiality of the Court. However, the Senate's rushed confirmation process, on the heels of its refusal to provide Judge Garland with a hearing, together with guarantees made about how this Administration's judicial nominees will rule in particular cases, threatens public faith in the Supreme Court's capacity to serve as non-partisan, fair, and impartial arbiter of law.

The stakes for this vacancy could not be higher. Supreme Court Justices define what the law means and who has access to justice for generations to come. We urge you to immediately halt this flawed nomination process, return to the urgent matters facing our nation that the Senate has ignored, and give the people an opportunity to weigh in on this consequential decision.

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<sup>1</sup> "Does the Court act lawlessly – or at least questionably – when it overrules precedent? 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 clearly in conflict with it."

<http://texaslawreview.org/wp-content/uploads/2015/08/Barrett.pdf>.

<sup>2</sup> <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4618&context=clr>.

Sincerely,

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