

October 23, 2020

Dear Senator,

On behalf of the undersigned organizations, we write to you today to express the importance of the U.S. Supreme Court to lesbian, gay, bisexual, transgender, and queer (LGBTQ) people and people living with HIV, and urge you to vote against confirming Judge Amy Coney Barrett as a justice of the Court. Judge Barrett's approach to issues like privacy, equal protection, and religious liberty will shape the Court in ways that may cause lasting harm to LGBTQ people and other vulnerable groups.

Judge Barrett will replace Justice Ruth Bader Ginsburg if confirmed. During Justice Ginsburg's tenure on the Supreme Court, she consistently authored or joined opinions in cases that safeguarded the liberty and equality of LGBTQ people, including *Lawrence v. Texas*, which struck down laws criminalizing same-sex sexual relationships; *Christian Legal Society v. Martinez*, which held that public universities may enforce neutral, generally applicable policies prohibiting discrimination based on sexual orientation; *United States v. Windsor*, which guaranteed equal treatment of the marriages of same-sex couples by the federal government; *Obergefell v. Hodges*, which ensured the right of same-sex couples to marry nationwide; and most recently, *Bostock v. Clayton County*, which found that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation and gender identity. While these opinions have transformed the place of LGBTQ people in this country, we have not yet achieved full legal equality. Many unresolved issues affecting LGBTQ people are still being litigated in the federal courts and, unfortunately, we still face a concerted effort not only to roll back existing protections, but to enact laws and policies that actively target LGBTQ people and seek to make it impossible for them to participate safely or openly in the shared life of this country.

The Supreme Court has long recognized and protected the right to religious belief and free exercise as core American values. However, it has also been very clear that these values must not be exercised, "in utter disregard of the clear constitutional rights of other citizens."¹ It is essential that the nominee respect this standard. The Court will take up this issue next month in *Fulton v. City of Philadelphia*. The issue presented by the case--whether a federally funded religiously affiliated child welfare agency must comply with generally applicable nondiscrimination laws when performing a governmental function--could undermine the enforcement of nondiscrimination protections in wide spectrum of areas, including veteran's services, public accommodations, public benefits, family law, asylum, and housing. Even whether same-sex spouses must be treated equally is at stake, including pending cases regarding the equal application of citizenship rules to children born abroad to same-sex couples. Were the Court to permit these inequalities to stand, Justice Ginsburg's fear of a kind of "skim milk" equality may well be realized.

Similarly, despite *Bostock*'s clear holding that a prohibition on sex discrimination necessarily protects LGBTQ people, the current administration is disregarding and actively seeking to undermine that landmark ruling. Less than a week after the Court's decision in *Bostock*, the Department of Health and Human Services published a final rule purporting to eliminate health

¹ *Newman v. Piggie Park Enterprises, Inc.*, 256 F. Supp. 941, 945 (D.S.C. 1966).

care protections for LGBTQ people under the Affordable Care Act, which is already the subject of federal litigation. And of course, the ACA itself has been challenged, in a case that is already before the Court and will be heard one week after the election.

There are many other federal policies targeting LGBTQ people that are likely to be challenged in the federal courts in cases that may ultimately reach the high Court. The Department of Housing and Urban Development has proposed a rule that would empower federally funded emergency shelters to exclude transgender people. The Department of Education has stated that federal law does not prohibit discrimination against transgender students and has even taken the extraordinary step of seeking to withdraw federal funding from schools that protect those students in their athletic programs. And there already are multiple federal lawsuits challenging President Trump's decision to ban transgender people from military service.

In addition to these examples, LGBTQ people have an enormous stake in the same core issues that affect so many other Americans— from voting rights and immigration to policing and reproductive justice. These issues affect LGBTQ communities, which include people of color, immigrants and refugees, elders, youth, parents, incarcerated persons, people with disabilities, and many people living in poverty. Justice Ginsburg championed a broad and robust application of our nation's civil rights statutes and our Constitution's guarantee of equal protection of the laws. She was a champion of racial justice, reproductive rights, voting rights, and immigrant justice. These issues will continue to come before the court, as will questions of executive power and privilege, corporate personhood and political activity, and access to the ballot and public life.

With all that is at stake for LGBTQ people, we urge you to take seriously your responsibility to ensure that the Supreme Court remains a forum that is genuinely open to all, committed to the principles of equality and justice for all, and a bulwark against tyranny, the scapegoating of vulnerable groups, and the abuse of public power. As Judge Barrett has acknowledged, she embraces a conservative judicial philosophy that aligns her with former Justice Scalia, one of the most conservative justices ever to sit on our nation's high court, and one who consistently voted against LGBTQ people in every LGBTQ rights case decided by the Court during his tenure. Her presence on the Court would change the current balance of the Court dramatically, in ways that are highly likely to cause lasting harm to LGBTQ people and other vulnerable groups. We urge you to oppose Judge Barrett and vote no on her confirmation.

Thank you for your consideration. If you have any questions or need more information, please contact Sarah Warbelow at sarah.warbelow@hrc.org.

Sincerely,

Adair Co GLBT Resource Center
African American Office of Gay Concerns
African Human Rights Coalition (AHRC)
APLA Health
Aqua Foundation for Women
AsylumConnect

Autistic Women and Nonbinary Network
B. Riley Sober House
Bayard Rustin Center for Social Justice
Bet Mishpachah
Bi Women Quarterly
Big Apple Performing Arts, Inc/New York City Gay Men's Chorus
BiLaw
Billy DeFrank LGBTQ+ Community Center
BiPOL San Francisco
Black Trans Women Inc
Blue Ridge Pride Center
Boston Gay Men's Chorus
Bradbury-Sullivan LGBT Community Center
Brooklyn Community Pride Center
California Democratic Party LGBT Caucus
Campaign for Southern Equality
Campus Pride
Cascade AIDS Project
Center for Psychological Growth
Center on Halsted
CenterLink: The Community of LGBT Centers
Colors+
Compass LGBTQ Community Center
Deaf Queer Resource Center
Disciples LGBTQ+ Alliance - AllianceQ
Dolphin Democrats
Drag Story Hour Arizona
End Hep C SF
Equality California
Equality Maine
Equality Michigan
Equality New York
Equality North Carolina
Equality Ohio
Equality Prince William
Equality Texas
Equality Utah
Equitas Health Institute
Family Equality
First United Methodist Church
Florida LGBTQ+ Democratic Caucus
Florida NOW (National Organization for Women)
Florida Trans Proud Inc
Fluid Array Foundation
Foothills United Methodist Church
FORGE, Inc.

Four Corners Rainbow Youth Center
Fund for Community Reparations for Autistic People of Color's Interdependence, Survival, & Empowerment
GAPIMNY—Empowering Queer & Trans Asian Pacific Islanders
Garden State Equality
Gay City: Seattle's LGBTQ Center
Gay Freedom Band of Los Angeles (GFBLA)
Georgia Equality
Get Out And Trek (GOAT)
Get The Vote Out
GLAAD
GLBT Historical Society
GLBTQ Legal Advocates & Defenders
GLMA: Health Professionals Advancing LGBTQ Equality
GLSEN
Harvey Milk Festival
Harvey Milk Foundation
Hearts on a Wire
HER
Hetrick-Martin Institute: New Jersey
Hope and Help Center of Central Florida Inc
Houston GLBT Political Caucus
Hudson Pride Center
Human Rights Campaign
Identity, Inc.
Institute for LGBT Health and Wellbeing, Inc.
JustUs Health
Keshet
LABTF
Lambda Legal
Latino LinQ
Lesbians of Color Symposium Collective, Inc.
Lesbians Who Tech & Allies
Leslie-Lohman Museum of Art
LGBT Community Center of Greater Cleveland
LGBTQ Allyship
LGBTQ Center of Bay County
LGBTQ Center Orange County
LGBTQ Community Center of the Desert
LGBTQ Northwest Indiana Inc.
LGBTQ+ Allies Lake County
LGBTQ+ Collaborative
LGBTQ+ Lorain County
Liberty City Democrats
Long Beach LGBT Chamber of Commerce
Los Angeles Bi Task Force

Los Angeles LGBT Center
Marsha's Plate Podcast
MassEquality
Mazzoni Center
Media for the Public Good, Inc. / OutCasting Media
Meroe & Wellness, LLC
Methodist Federation for Social Action
Nashville Pride
National Black Justice Coalition
National Coalition for LGBT Health
National Equality Action Team (NEAT)
National LGBT Chamber of Commerce (NGLCC)
National LGBTQ Task Force Action Fund
National Queer Asian Pacific Islander Alliance (NQAPIA)
National Queer Theater
New York City AIDS Memorial
North Shore Alliance of LGBTQ Youth
Oasis Legal Services
Oklahomans for Equality
One Colorado
one•n•ten
Openhouse
oSTEM
Our Family Coalition
Out & Equal
Out Boulder County
OUT Georgia Business Alliance
Out in the Open
OutCenter of Southwest Michigan
OutNebraska
OUTspoken Leaders Illinois
Palm Beach County Human Rights Council
Partnership Project
Peer Support Space, Inc.
Philadelphia Family Pride
Phoenix Pride
Point Foundation
Pride at Work
Pride Center of the Capital Region
Pride Community Services Organization
Project MORE
Proud Haven Inc
QLatinx
Queen City Performing Arts/Cincinnati Men's Chorus
Queer Connect, Inc.
Queer Kid Stuff

Rainbow Elder Care of Greater Dayton
Reading Pride Celebration
Rebellious PR & Consulting
Reconciling Ministries Network
Reconciling Ministries Network - Reconciling United Methodist
Reconciling Ministries of UUMC
Sacramento LGBT Community Center
Safeguarding American Values for Everyone (SAVE)
SAGE -- Advocacy and Services for LGBT Elders
SAGE Metro Detroit
San Diego Pride
Seattle Aces & Aros
SF LGBT Center
Side by Side VA, Inc.
Silver State Equality-Nevada
Southern Arizona Gender Alliance
StartOut
StephenMeadArt, The Chroma Museum
Still Bisexual
Stonewall National Museum & Archvies
Talent Plan
TBuddy
TeachingCulturalCompassion.com
Tennessee Equality Project
The Affirmative Couch, LLC
The Box Gallery
The Great Griffon
The LGBTQ+ Community Center of Southern Nevada
The Montrose Center
The OUT Foundation
The Source LGBT+ Center
The Spahr Center
Trans In Color
TransFamily Support Services
Transgender Assistance Program Virginia
Transgender Law Center
Transgender Legal Defense and Education Fund
Transgender Training Institute
TurnOut
Virtual Arizona Pride
Visual Artists
Watermark
Waves Ahead Corp Puerto Rico
Whitman-Walker Institute
William Way LGBT Community Center
Woodhull Freedom Foundation

Young Democrats of Georgia LGBTQ+ Caucus
Youth Pride, Inc.