



OAESV Response to Confirmation of Amy Coney Barrett to the United States Supreme Court

In the past several years, the federal government has engaged with the topic of sexual violence across legislation, executive orders, agency rulemaking, and judicial nominations. Regulations governing K-12 and campus sexual assault responses have changed twice since 2010, with each revision making major departures from prior law. Passage of the Affordable Care Act expanded treatment options for many survivors, while immigration protections for survivors have been significantly reduced. For advocates, preventionists, Title IX officers, attorneys, administrators, victim service providers, and schools this has meant near-constant compliance review and best practice adjustments. For survivors, it has meant fear, further isolation, confusion, or much more severe consequences.

For survivors of sexual violence, the Supreme Court confirmation process is especially difficult. Rape crisis programs across the country received spikes in phone calls and service requests while coverage of Justice Kavanaugh's extensive hearings dominated news cycles. For the advocates who responded to those calls in 2018, the process for Justice Amy Coney Barrett felt all too swift by comparison. There was little time to examine positions and fully understand where the former professor and relatively new appellate jurist stood on issues of immigration, healthcare, and education access for survivors, among other issues. There was precious little explanation of her lack of trial and appellate experience, something critical for an appointment impacting the lives of all involved in criminal and civil systems. OAESV and our partners have reviewed her positions on these issues, and we are gravely concerned for individual survivors, crime victim's rights and protections, and nationwide efforts to end sexual violence.

As Ohio's statewide coalition, we are firmly against Justice Coney Barrett's positions on numerous issues impacting survivors. For instance, Justice Coney Barrett has indicated a desire to overturn portions of the Affordable Care Act¹, which would remove access to a range of healthcare options imperative for many survivors. We know that access to both immediate and long-term care, as well as counseling and other types of therapy is critical for survivors. Advocates across the country have spent decades improving services for survivors, and the abrupt loss of insurance coverage options to cover care would be disastrous.

Further, OAESV stands in full opposition to Justice Coney Barrett's position on Title IX. After advocating for Ohio survivors, developing policies with our state government, and building programming with campuses, we spent the better part of two years preparing for and opposing the Title IX rule ultimately codified in 2020. While serving in the 7th Circuit, Justice Barrett ruled in line with the very parts of the new rules OAESV most strongly opposed. Specifically, in *Doe v. Purdue*², Justice Barrett stated that the preponderance of the evidence standard of proof was too low for campus cases – though this standard is commonly applied in civil litigation. Further, she opined that schools can discriminate against males

¹ See, e.g., Beth Barnhill, *Survivors of sexual violence deserve a better Supreme Court justice than Amy Coney Barrett*, Des Moines Register (October 11, 2020), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2020/10/11/amy-coney-barrett-concerning-nominee-sexual-violence-survivors/5926533002/>;

² *Doe v. Purdue*, No. 17-3565 (7th Cir. 2019), available at <https://law.justia.com/cases/federal/appellate-courts/ca7/17-3565/17-3565-2019-06-28.html>.

merely by adhering to Department of Education guidance to address sexual violence. This ruling conveys the dangerous misconception that false allegations are the norm, and that students accused of sexual violence are the ones receiving discriminatory treatment.³

Doe v. Purdue shows either a failure to grasp or a willful refusal to acknowledge the dynamics of sexual violence, and relies on the fallacy that sexual violence is a gender binary issue. We know no one gender alone commits or experiences sexual violence, but that persons of all genders are impacted. As we can infer this reasoning will be replicated by Justice Coney Barrett at the Supreme Court level, we know we have to fight just as hard to insure fairness for persons regardless of (1) gender and (2) status as a survivor.

OAESV works to end oppression in all forms, and as such is gravely concerned by Justice Coney Barrett's previous commitments, engagements, and positions. Justice Coney Barrett has served as member of the board of trustees of a faith-based school with policies allowing anti-LGBTQI discrimination.⁴ She spoke agreement with dissenters in *Obergefell v. Hodges*. She has misgendered as a practice, and stated that Title IX does not apply to transgender students.⁵ In her prior scholarship and decisions on workplace harassment, she stated that the use of racially stereotyping language does not in itself create a hostile work environment.⁶ Her body of work contains the conclusion that separate can be equal.⁷

These are stunning and frightening positions. Justice must be accessible and equitable regardless of race, gender, or religious beliefs.

The Senate just appointed Justice Coney Barrett for a lifetime appointment to our nation's highest court. OAESV will continue to stand with survivors in the wake of this news, providing testimony, engaging in legislative advocacy, serving as amicus curiae, and providing individual representation. We will continue to push for progress so that survivors have fair access to healthcare, education, employment, and the pursuit of healing, recovery, and justice. We will continue to fight to end sexual violence.

In solidarity.

³ National Women's Law Center, *Amy Coney Barrett Threatens a Lifetime of Harm to Sexual Assault Survivors* (October 13, 2020), <https://nwlc.org/blog/amy-coney-barrett-threatens-a-lifetime-of-harm-to-sexual-assault-survivors/>

⁴ Michelle R. Smith and Michael Bieseckler, *Barrett was Trustee at a Private School with Anti-Gay Policies*, Associated Press (October 21, 2020), <https://apnews.com/article/south-bend-only-on-ap-amy-coney-barrett-minnesota-virginia-a8bbabea9ee4d2fb13c6079c09f2f075>.

⁵ <https://www.hrc.org/press-releases/the-human-rights-campaign-amy-coney-barretts-confirmation-is-a-sham-threatens-lgbtq-equality>

⁶ http://www.stlamerican.com/news/local_news/amy-coney-barrett-has-been-stunningly-hostile-to-civil-rights/article_0de99160-0c28-11eb-8b4d-63d6909f8ec4.html

⁷ Id.