



National Alliance to
End Sexual Violence

NAESV Raises Serious Concerns About the Confirmation of Supreme Court Nominee Amy Coney Barrett

October 2, 2020

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1500 local sexual assault programs working every day in their communities to support victims and to end sexual violence. NAESV has very serious concerns about the nomination of Judge Amy Coney Barrett to the United States Supreme Court because she holds extreme positions on areas of the law on which victims of sexual assault depend, and we cannot afford the drastic upending of these support systems. Specifically, NAESV raises concerns based on three long-held policy positions on which we have major disagreements with Judge Barrett: The Affordable Care Act (ACA)ⁱ; Title IXⁱⁱ; and victims' access to the full range of reproductive healthcareⁱⁱⁱ.

ACA:

First, NAESV disagrees with Judge Barrett on the importance of the ACA to protect victims' access to healthcare. Victims of sexual violence benefit greatly from the progress made to ensure access to health care and health insurance, as well as protection from discrimination based on pre-existing conditions codified through the ACA. Victims need access to a range of healthcare services in both the immediate aftermath of sexual violence and over the span of their lives. These services include physical and mental health care to heal from sexual violence and mitigate the many consequences of resulting trauma. From the forensic rape exam to ongoing visits with a primary care physician or counselor—health care is of critical importance to victims of sexual violence. It enables them to cope with the myriad effects of trauma and to thrive in their lives and in their families, workplaces, schools, and larger communities.

The short- and long-term effects of sexual violence can undermine a person's physical and mental health. Based on an analysis of studies from 1980-2008, victims of sexual violence have a significantly higher prevalence of anxiety, depression, eating disorders, post-traumatic stress disorder, and suicide attempts.^{iv} According to the 2005 Behavioral Risk Factor Surveillance System, victims of sexual violence are more likely to suffer from asthma and joint conditions.^v Studies have also found an increased risk of cervical cancer and sexually transmitted diseases.^{vi} Among both women and men, previous non-consensual sex was associated with health conditions such as high cholesterol, stroke and heart disease while sexually victimized women were more likely to report having had a heart attack or heart disease than non-victims.^{vii} A study of Kansas adults found a significantly higher prevalence of health risk behaviors (heavy drinking, binge drinking and current smoking) among women who had experienced sexual assault.^{viii}

Yet Judge Barrett has criticized the Supreme Court's decision^{ix} to uphold the law and has opposed the provision requiring contraception coverage. At the same time, we know the Supreme Court will be hearing arguments in a

case challenging the constitutionality of the ACA on November 10th. We cannot afford to go backward on the protections available to victims through the ACA. The ACA sets a baseline for victims ensuring they cannot be charged more for, or turned away from, health coverage because of the physical and mental health consequences of sexual violence. The ACA provides options for victims to access health insurance not tied to their partner or job. These policies have helped millions of women purchase health insurance, opening doors for them to get the critical services they need ensuring peace of mind knowing they are covered.

Title IX:

Secondly, we disagree with Judge Barrett's views on Title IX. With the *Doe v. Purdue* case, Judge Barrett made it easier for students who are being held accountable for sexual assault to sue their schools for sex discrimination. Her opinion that a school's commitment to taking sexual misconduct seriously can form the very basis and evidence of sex discrimination against men is deeply disturbing. NAESV has long advocated for a fair process that takes victims' needs seriously in the education context especially after decades of ignoring victims' needs and the impact of sexual violence on their educational attainment.

Additionally, we are disturbed that Judge Barrett believes a preponderance of the evidence standard is too "lenient" of a standard on victims who bring their cases forward.^x NAESV has called for schools to maintain campus processes with standards befitting a non-criminal, internal proceeding to respond to sexual misconduct, to keep these processes separate from any criminal justice process, and to use a standard of evidence no higher than preponderance of the evidence similar to other civil proceedings. Judge Barrett's decision in *Doe v. Purdue* goes in precisely the opposite direction of what student victims need. Fair and accessible disciplinary processes are essential to ensure schools take sexual violence seriously and redress the harm caused to victims.

Victims' Access to Reproductive Healthcare:

Finally, NAESV disagrees with Judge Barrett on reproductive healthcare including emergency contraception and abortion. Every area of a victim's life is affected by sexual violence whether it is a child sexually abused by a family member; a teenager coerced into sex by an older man; a college student drugged and assaulted at a party; or an adult raped by a stranger or by her ex-husband. Advocates at 1500 rape crisis centers across the United States bear witness to the trauma of sexual violence every day and see the torment caused by the loss of power and control over one's body—one's most intimate self—that is at the heart of sexual violence. For these reasons, we advocate for the availability of the full range of access to reproductive healthcare for victims of sexual assault whether or not they have reported their experiences.

We know that at least 1-5% of sexual assaults results in pregnancy.^{xi} If after exploring all of her options, a victim of any form of sexual violence decides that she cannot go through with a pregnancy resulting from the crime and chooses to have an abortion, we should not add hurdles or barriers to the process.

Furthermore, a narrow exemption for rape fails to address the reality of women who become pregnant against their will who may not report or tell anyone. Sexual violence occurs on a continuum of complex crimes and difficult crimes having devastating impacts on victims. The conditions, impact, and societal context in which sexual violence occurs often make it extraordinarily difficult for victims to report their experiences. In fact, according to the National Institute of Justice, only 36% of sexual assaults are reported.^{xii} The healing process begins with empowerment and regaining the control lost in an assault. Victims of sexual assault must be able to reclaim control of their own bodies and lives free from restrictions and reporting requirements.

Judge Barrett's record indicates a willingness to change longstanding precedent that she does not agree with: in a 2013 article prior to becoming a judge, she was critical of *Roe v. Wade* and wrote that in her view, it is legitimate for justices to overturn precedent if it does not match their interpretation of the Constitution.^{xiii}

We urge the Senate to be very careful in their work to fill the seat of Justice Ruth Bader Ginsburg. Based on our serious disagreements on key policy issues, we respectfully raise grave concerns about moving forward with the confirmation of Judge Amy Coney Barrett to the Supreme Court.

For more information about this statement, please contact Terri Poore, Policy Director, at terri@endsexualviolence.org.

ⁱ https://endsexualviolence.org/where_we_stand/survivors-need-access-to-health-care-insurance/

ⁱⁱ <https://endsexualviolence.org/wp-content/uploads/2017/09/CAMPUS-SEXUAL-ASSAULT-KEY-POLICY-ISSUES-MAY-2017.pdf>

ⁱⁱⁱ https://endsexualviolence.org/where_we_stand/victims-rights-following-pregnancy-as-a-result-of-rape/ & https://endsexualviolence.org/where_we_stand/rape-exemptions-and-abortions/

^{iv} <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2894717/>

^v <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>

^{vi} Watson-Johnson, L, Townsend, J, Basile, K, Richardson, L. Cancer screening and history of sexual violence victimization among U.S. adults. *Journal of Women's Health* 2012

^{vii} <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4302144/>

^{viii} <https://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-14-1286>

^{ix} https://www.washingtonpost.com/health/judge-barrett-aca-health-care-law/2020/09/28/429d165e-ff4c-11ea-b555-4d71a9254f4b_story.html

^x *Doe v. Purdue* decision (page 26): <https://law.justia.com/cases/federal/appellate-courts/ca7/17-3565/17-3565-2019-06-28.html>

^{xi} Holmes, M.M., et al. (1996). Rape-related pregnancy: Estimates and descriptive characteristics from a national sample of women. *American Journal of Obstetrics and Gynecology*, 175(2): 320-25.

^{xii} National Institute of Justice, "Reporting of Sexual Violence Incidents," October 25, 2010, nij.ojp.gov: <https://nij.ojp.gov/topics/articles/reporting-sexual-violence-incidents>

^{xiii} Amy Coney Barrett, *Precedent & Jurisprudential Disagreement*, 91 TX. L. REV. 1711 (2013)