



March 14, 2017

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the National Latina Institute for Reproductive Health, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum and the 43 undersigned organizations dedicated to achieving reproductive justice for women of color and all people, we are writing to express our opposition to the confirmation of Judge Neil M. Gorsuch for Associate Justice of the Supreme Court of the United States. Gorsuch's record on human rights and justice issues is deplorable, and is especially detrimental and hostile towards women of color, youth, LGBTQ people and immigrants. It is clear that if nominated to the highest court in the land, he will take the country backwards not forward. As advocates for reproductive justice, we implore you to stand up for the rights of all people and block the nomination of Judge Gorsuch.

Reproductive Justice will be attained when all people have the economic, social, and political power and means to make decisions about our bodies, sexuality, health, and family, with dignity and self-determination. Our health, safety and wellbeing are intrinsically linked. Nothing about Judge Gorsuch's record indicates that he will uphold these basic human rights. As reproductive justice advocates, we are deeply concerned that President Trump will fulfill his promise and only put forward Supreme Court nominees who would seek to overturn *Roe v. Wade*.

In too many cases to recount here, Judge Gorsuch ruled against the health and wellbeing of people and personal autonomy in favor of corporations or political interests. For example:

- In *Hobby Lobby Stores, Inc. v. Sebelius*, Judge Gorsuch signed on to an opinion that held that corporations can be "persons" and thus can exercise religious rights allowing them to refuse to comply with the Affordable Care Act mandate requiring that all health insurance plans for employees include contraceptive coverage.ⁱ
- In *Little Sisters of the Poor Home for the Aged v. Burwell*, Judge Gorsuch dissented against the majority's ruling that had approved a reasonable accommodation for religious non-profits while still allowing women to obtain contraceptive coverage from their regular insurance plan.ⁱⁱ
- In *Planned Parenthood Association of Utah v. Herbert*, Judge Gorsuch supported legislation that would have allowed the Utah Governor to defund Planned Parenthood, a critical safety-net provider that our communities rely on for life-saving preventative care.ⁱⁱⁱ For many women of color, Planned Parenthood health centers are the only healthcare providers they will see.

In every instance, Judge Gorsuch supported decisions that added barriers to accessing care under the guise of religious freedom. When religious freedom is used as a license to discriminate, particularly when it comes to health care as in these decisions, people of color are disproportionately harmed.



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Women of color, across all races and ethnicities, disproportionately have poorer reproductive health outcomes as compared to white women. This is as a result of both human right offenses and bad policies. As advocates for full equality for all communities, we need to ensure that every person is able to make personal decisions about their health, their families, and their futures without discrimination. Religious exemptions such as these misuse religion to harm and discriminate against others and fall hardest on marginalized communities. It is for this reason that we reject Judge Gorsuch's record in this area.

Gorsuch has consistently not stood for women or vulnerable communities. In case after case, when sexual harassment or employee discrimination was alleged, Gorsuch either refused to allow the case to go to jury or ruled in favor of the employer. A few such examples include:

- In *Pinkerton v. Colorado Department of Transportation*,^{iv} Gorsuch sided with the Colorado Department of Transportation on an employee's claim that she had been sexually harassed and fired when she complained. In part Gorsuch agreed with the majority opinion that job performance, not discrimination, resulted in her termination and that Pinkerton had waited an unreasonably long time to report the harassment.
- Gorsuch agreed with the majority opinion in *Zamora v. Elite Logistics, Inc.*,^v a case in which a Mexican-born employee was fired after he complained that the company had made excessive requests for work-authorization documentation from him in a discriminatory fashion. Gorsuch found that the employee had not presented sufficient evidence of discriminatory motive and wrote separately to chastise the courts application of the Immigration Reform and Control Act anti-discrimination provision.

The work environment should not be a hostile environment. According to the *Center for American Progress*, "in 2010, 13.1 percent of women in the workforce were black, 4.7 percent were Asian, and 12.8 percent were Latina."^{vi} Most of the women are parents, and in many cases the sole breadwinner.^{vii} We need judges that protect them, not corporations, so that they can provide for themselves and their families.

When it comes to transgender rights, Gorsuch has consistently favored corporations or government over human rights. For example:

- In *Druley v. Patton*,^{viii} Judge Gorsuch rejected the claim made by a transgender woman who was incarcerated and who was denied medically necessary hormone treatment and the right to wear feminine clothing. Judge Gorsuch concurred with the Tenth Circuit's ruling that rejected the claims that the denial of health care was cruel and unusual punishment under the Constitution.
- In *Kastl v. Maricopa County Community College*,^{ix} a transgender woman was banned by her employer from using the women's restroom until she showed proof that she had undergone sex reassignment surgery and then was denied the renewal of her teaching contract. Gorsuch agreed with the panel decision that the College had not discriminated but rather had legitimate "safety reasons" for banning her from the women's restroom.

These decisions concern all of us, as transgender and gender nonconforming individuals face severe discrimination and violence. Due to increased stigma and discrimination, the transgender community is more vulnerable than ever, and needs their rights confirmed and protected by the judiciary system. The 2015 U.S. Transgender Survey showed that transgender people of color were three times more likely to live in poverty in comparison to the U.S. population and experienced greater health inequities.^x Sadly,



Judge Gorsuch's views signal to the transgender community that their lived realities do not merit protection under the law.

Gorsuch is equally bad when it comes to immigrant rights and criminal justice. People of color are disproportionately represented in our criminal justice systems. Whether it be the prison industrial system or immigrant detention centers, our communities are overrepresented, more severely and harshly prosecuted and less likely to receive a fair trial. This has resulted in the decimation of our communities and families. There is nothing in Judge Gorsuch's record to indicate that he will protect the rights of the accused or incarcerated. For example:

- In *Bhattarai v. Holder*,^{xi} Gorsuch denied "a motion to reopen the removal proceedings of a Nepalese citizen who feared persecution because of his political opinions," and denied asylum in his opinion. In this case and others, Gorsuch has upheld the decisions of the Board of Immigration Appeals to the detriment of immigrants.
- In the case *Wilson v. City of Lafayette*,^{xii} a 22-year-old man possessing marijuana was fleeing arrest when a police officer shot him in the head with a stun gun from a short distance (10-15 feet), even though that was contrary to the police department's training manual. The young man, Ryan Wilson, died. Judge Gorsuch held that the officer was entitled to qualified immunity from an excessive force claim, because the use of force was reasonable for someone who was fleeing arrest. The dissent in this case criticized Judge Gorsuch's analysis and stated: "In the present case, it would be unreasonable for an officer to fire a taser probe at Ryan Wilson's head when he could have just as easily fired the probe into his back."

All of these are just a few of the examples available that testify to the fact that Judge Gorsuch's decade-long record on the federal bench, as well as his writings, demonstrate that he will not only fail to protect but will be hostile to those who are seeking the full recognition of their constitutional rights—communities of color, low income people, LGBTQ people and women. Our communities thrive when we have opportunity, resources, and support to make the personal decisions that are best for our reproductive health, economic stability and personal safety, and that of our families. **We urge you to use every available option to block the nomination of Neil Gorsuch to the Supreme Court.**

Sincerely,

Abortion Rights Fund of Western Massachusetts
Access Reproductive Care-Southeast
ACCESS Women's Health Justice
Advocates for Youth
BiNet USA
Black Women's Health Imperative
BLUE RIDGE Abortion Assistance Fund, Inc.
California Latinas for Reproductive Justice
Carolina Abortion Fund
Center on Reproductive Rights and Justice
Central Florida Women's Emergency Fund
Chicago Abortion Fund



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Colorado Organization for Latina Opportunity and Reproductive Rights
(COLOR)

Desiree Alliance

Forward Together

Fund Texas Choice

If/When/How

In Our Own Voice: National Black Women's Reproductive Justice Agenda

Jane Fund of Central Massachusetts

Mississippi Reproductive Freedom Fund

National Advocates for Pregnant Women

National Asian Pacific American Women's Forum

National Center for Transgender Equality

National Latina Institute for Reproductive Health

National LGBTQ Task Force Action Fund

National Network of Abortion Funds

Network for Reproductive Options

New Orleans Abortion Fund

New Voices for Reproductive Justice

NYU School of Law Reproductive Justice Clinic

Options Fund Inc.

Positive Women's Network

Pro-Choice Resources

SisterLove, Inc.

SisterReach

SisterSong

SPARK Reproductive Justice Now!

TEWA Women United

The Afiya Center

The Freedom Fund

Third Wave Fund

URGE: Unite for Reproductive & Gender Equity

West Fund

Women's Health Specialists of California

Women's Medical Fund, Inc.

WV FREE

ⁱ Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013).

ⁱⁱ Little Sisters of the Poor Home for the Aged v. Burwell, 799 F.3d 1315 (10 Cir. 2015).

ⁱⁱⁱ Planned Parenthood Ass'n of Utah v. Herbert, 839 F.3d 1301 (10th Cir. 2016).

^{iv} Pinkerton v. Colorado Department of Transportation, 563 F.3d 1052 (10th Cir. 2009).



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^v *Zamora v. Elite Logistics, Inc.*, 478 F.3d 1160 (10th Cir. 2007).

^{vi} Sophia Kerby, "How Pay Inequity Hurts Women of Color." Center for American Progress, 2013, available at <https://www.americanprogress.org/issues/economy/reports/2013/04/09/59731/how-pay-inequity-hurts-women-of-color/>.

^{vii} *See id.*

^{viii} *Druley v. Patton*, 601 F. App'x 632 (10th Cir. 2015).

^{ix} *Kastl v. Maricopa County Community College District*, 325 F. App'x 492 (9th Cir. 2009).

^x James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. 2016; 4. The Report of the 2015 U.S. Transgender Survey: Executive Summary. Washington, DC: National Center for Transgender Equality. Available at: <http://www.transequality.org/sites/default/files/docs/usts/Executive%20Summary%20-%20FINAL%201.6.17.pdf>

^{xi} *Bhattarai v. Holder*, 408 F. App'x 212 (10th Cir. 2011).

^{xii} *Wilson v. City of Lafayette*, 510 F. App'x 775 (10th Cir. 2013).