

## **Judicial Nominee Questions and Statement on Filling the U.S. Supreme Court Vacancy**

### **Judicial Nominee Questions for the Confirmation Hearings of Judge Amy Coney Barrett**

#### ***Children's Access to Article III Courts:***

- 1. If the U.S. government is actively contributing to the actual harm of a child, does the child have a right to be heard at trial? Y or N**
- 2. Is declaratory relief under the Declaratory Judgment Act enough to establish Article III standing redressability, even if injunctive relief is unavailable? Y or N**
3. How far would you employ the doctrines of standing and political question to close the courthouse doors to children whose rights are violated but for whom there is no other political redress?

#### ***Constitutional Rights of Equal Protection for Children:***

- 1. Under the U.S. Constitution, can the political majority in government deny children a livable and safe climate system with no judicial review? Y or N**
2. Do children have protected status under the Constitution? Suspect or quasi-suspect? Y or N
  - a) *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944): Child's right to acquire knowledge and instruction of cultural and spiritual traditions from her family without government interference.
  - b) *Brown v. Board of Education*, 347 U.S. 483 (1954): protecting children from racial discrimination and providing equal protection of the law.
  - c) *Plyler v. Doe*, 457 U.S. 202 (1982): applying heightened scrutiny to government actions imposing significant risks and injury to children's well-being for matters beyond their control (undocumented children denied an education).
  - d) *Roper* (2005), *Miller* (2012), *Montgomery* (2016): criminal punishment for children is different from adults. No death penalty or life without opportunity for parole.
3. Should strict scrutiny apply in cases brought by children involving infringement of their fundamental rights to life, personal security, family autonomy and culture, and religious freedom by government actors? Y or N

#### ***Posterity Clause and Being a Good Ancestor***

1. Should the Posterity Clause guide the Court's interpretation of the Bill of Rights and its Article III role in the separation of powers? Y or N
2. Is the public trust doctrine part of our body of federal law? Y or N? What is the Court's role with respect to not just the unborn, but all future generations of Americans in our constitutional democracy?

## Statement on Filling the U.S. Supreme Court Vacancy

*Now is the time to finally protect children, of all races, genders, religions, and cultures, and to ensure for “Our Posterity” a system of government that checks the will of the political majority when such will denies a politically powerless minority their personal security, safety, and a livable future.*

### **On Timing of Filling Justice Ginsburg’s Seat:**

In the last days of her life as a member of the Supreme Court, Justice Ruth Bader Ginsburg told her granddaughter: “My most fervent wish is that I will not be replaced until a new president is installed.” Given our Nation’s present turmoil erupting from extreme partisanship, racial injustice, the climate crisis, and a global health pandemic, our leaders should pause and demonstrate reverence for the integrity of our judicial system and the seat that was held for 27 years by only the second woman to ever serve on our highest court. The process of filling her seat should be approached with the same integrity, dignity, and adherence to justice that she modeled for us all. Then, when confirmation hearings begin, the confirmation process should focus on the following areas of law.

### **On the Constitution and the Role of the Federal Courts:**

Our democracy depends on our First Amendment right to petition our government for redress, which includes access to our Article III courts, to seek declarations of rights and to resolve controversies with our government, especially when those controversies threaten our children’s safety, security, and lives. Through recent years, federal and state courthouse doors have been repeatedly closed to children who bring to the judiciary tangible personal injuries caused by their government. Many judges are denying children access to justice based on judge-made doctrines that insulate the political majorities in power from any checks and balances that our third branch of government is required to provide in our constitutional system of separation of powers. As Alexander Hamilton wrote, “[T]he job of the judge is to enforce the supreme and enduring law of the Constitution over the current will of the majority.”

The Judiciary Committee should vet any candidate to fill Justice Ginsburg’s seat about their views on the First Amendment right to petition for redress, their willingness to afford access to justice to children, and whether, in keeping with the Court’s historical duty to “say what the law is,” declaratory relief suffices for the redressability prong of standing under Article III in cases against government actors. How far would they stretch the standing and political question doctrines beyond their constitutional roots to close the courthouse doors to children whose rights are violated but for whom there is no other redress?

### **On the Constitution and the Rights of Children and Our Posterity:**

Children’s fundamental rights to equal protection and personal security in the time of climate crisis will soon come before the Supreme Court, either in *Juliana v. U.S.* or another case brought by Our Children’s Trust. The justice who fills Ruth Bader Ginsburg’s seat should carry forward her dedication to equal protection of the law and ensure that the youngest citizens of our country and “Our Posterity” will receive the equal constitutional protection to which they are entitled. As Justice Ginsburg wrote in *U.S. v. VMI*: “A prime part of the history of our Constitution ... is the story of the extension of constitutional rights and protections to people once ignored or excluded ... as our comprehension of ‘We the People’ expanded.”

The Judiciary Committee should vet any candidate to fill Justice Ginsburg’s seat for their views on the rights of children under the 5<sup>th</sup> and 14<sup>th</sup> Amendments and whether they have protected status under the Constitution, including their views on children’s rights cases such as *Oyama v. California*, *Plyler v. Doe*, *Roper v. Simmons*, and *Brown v. Board of Education*. The Committee should also question the candidate about their judicial philosophy on the Posterity Clause and the Public Trust Doctrine, and the Court’s role with respect to future generations of Americans and preserving our constitutional democracy.