



National Police Accountability Project

A Project of the National Lawyers Guild

NPAP Responds to the Nomination of Amy Coney Barrett to the Supreme Court

The National Police Accountability Project (NPAP) condemns the hypocrisy of President Trump, Senator Mitch McConnell, and other Republican senators in rushing to fill Justice Ruth Bader Ginsburg's seat on the Supreme Court on the eve of the election. In 2016, McConnell and the Republicans refused to give President Obama's nominee, Merrick Garland, a hearing, despite the fact that he was nominated nine months prior to the election. Now, just weeks before election day, the president and McConnell are racing to install another reactionary on the Court. Just as civil rights champion Justice Thurgood Marshall was replaced by the right-wing Clarence Thomas, women's rights champion Justice Ginsburg will be replaced by the equally reactionary Amy Coney Barrett. This appointment should be postponed until after the people of this country determine who the next president will be.

The legendary constitutional litigator and law professor, Arthur Kinoy, would tell his students there are four branches of government: executive, legislative, judicial, and the people. "And," he would thunder, "the people are supreme!" The death of Justice Ginsburg and her imminent replacement with yet another Federalist Society devotee makes clear that the people must take control as there is no other branch of government to protect their interests.

For NPAP the threat to the interests of our clients is clear, but by no means new. We have watched the judge-invented concept of "qualified immunity" become more and more unqualified when police violate the constitutional rights of citizens. The Supreme Court now routinely reverses decisions in which lower courts find plaintiffs to have met their burden of showing that their clearly-established constitutional rights have been violated. These reversals come not after a jury has found liability, but after a judge has determined that a plaintiff has the right to a trial which is to say, to have the facts determined by the people as represented by a jury.

Yet the threat to the people, individuals and the people collectively, is not limited to lawsuits against police. Voter suppression has become the order of the day since the decision in *Shelby County v. Holder* and Republicans will openly acknowledge that their restrictions on voting rights are designed so that certain people who might vote Democratic (people of color, the poor, the disabled) find it so difficult to exercise their franchise that they don't bother. The court has determined that even the most egregious instances of gerrymandering for political advantage are beyond its authority, implicitly finding that democratic rights are not enshrined in the Constitution. The electoral college more and more makes a mockery of the concept of one person, one vote. Of the last five presidents, only Barack Obama received a majority of the votes cast and two, Donald Trump and George W. Bush in his first term, failed to win a plurality. In light of all this, the constant references to the U.S. government as "our democracy" would be laughable were they not so dire.

2022 St. Bernard Avenue, Suite 124A | New Orleans, Louisiana 70116

504-220-0401 tel | www.npapjustice.org

Trump's latest appointment will create a Court with a conservative majority composed of six members of the Federalist Society. Never before in our history has an ideologically driven organization had such control over the law. This Court will enshrine private property with protection from regulations designed to protect the environment, our health, worker's rights, consumers, minorities, women, people with disabilities, immigrants, and other vulnerable groups. Millions of Americans may lose their health care, women may lose their reproductive rights, workers' rights to organize will become even more restricted, and Black Americans will continue to be at the mercy of police officers who violate the laws they are sworn to uphold.

The hypocrisy of the Republican Party is manifest, yet its leaders do not blush when explaining why they should now confirm a nominee in the middle of an election campaign when, four years ago, they refused to even consider a nominee months before the campaign began. Mitt Romney contends that the Supreme Court has been "liberal" for decades and there is nothing in the Constitution to say it should remain so. That claim is utterly false. The court has historically been the most reactionary of the three non-people branches of government. To take just one example, it refused for decades to allow the Fourteenth Amendment, specifically enacted to provide equality for formerly enslaved Black people, to protect formerly enslaved Black people. At the same time, it decided that the amendment insured that corporations had equality with flesh-and-blood human beings.

If there had been any doubt before, it is now clear that the judiciary is not above and apart from politics, but is being used as an instrument of preserving minority rule. We are now threatened with the prospect that much of what Justice Ginsberg fought for and attained during her life will be reversed by a federal bench populated with ideologues who care little for principle or precedent. The police say they "defend and protect," but fail to add that they defend and protect the rich and well-connected at the expense of the poor, the downtrodden and people of color. The federal judiciary will not only be defending and protecting those same people, it will also defend and protect the police whenever they go too far. It falls to the people, now, to defend and protect themselves.

NPAP member Michael Avery stated, "All Americans should protest this appointment and insist upon a Supreme Court dedicated to the safeguarding of constitutional values and individual rights, not the protection of private property and the privileged classes. Trump's tyranny cannot be allowed to continue."