



September 13, 2017

Chairman Chuck Grassley
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to express my concern regarding certain questions asked of and statements made about Professor Amy Coney Barrett at her September 6 confirmation hearing. The following statements form the basis for my concern:

- **Senator Dick Durbin** of Illinois asked Professor Barrett, “Do you consider yourself an orthodox Catholic?”¹
- **Senator Dianne Feinstein** said, “The dogma lives loudly within you. And that’s of concern when you come to big issues that large numbers of people have fought for.”²
- **Senator Mazie Hirono** said, “I think your article is very plain in your perspective about the role of judges, and particularly with regard to Catholic judges.”³
- **Senator Al Franken** attacked Professor Barrett⁴ for giving a speech to a religious liberty organization that spuriously has been branded a hate group by the Southern Poverty Law Center⁵, and compared giving a speech to an organization that litigates on behalf of Christian grandmothers to giving a speech to Pol Pot.

¹ Kevin Daley, “Nominee’s Religious Faith Dominates Senate Confirmation Hearing,” Daily Caller, Sept. 6, 2017, <http://dailycaller.com/2017/09/06/nominees-religious-faith-dominates-senate-judicial-confirmation-hearing/>.

² <https://www.youtube.com/watch?v=PlgwlhOfvzY>

³ Alexandra DeSanctis, “Dianne Feinstein Attacks Judicial Nominee’s Catholic Faith,” National Review, September 6, 2017, <http://www.nationalreview.com/corner/451137/dianne-feinstein-amy-coney-barrett-senator-attacks-catholic-judicial-nominee>.

⁴ Tyler O’Neil, “Citing the SPLC, Sen. Al Franken Compares Alliance Defending Freedom to Pol Pot,” PJ Media, Sept. 7, 2017, <https://pjmedia.com/faith/2017/09/07/citing-the-splc-sen-al-franken-compares-alliance-defending-freedom-to-pol-pot/>.

⁵ Ann E. Marimow, “Family Research Council shooter pleads guilty to three felonies,” Wash. Post, Feb. 6, 2013 (“[Corkins] told FBI agents that his goal was to target people opposed to same-sex marriage and “smother Chik-Fil-A sandwiches in their faces,” ... Corkins told FBI agents that he identified the Family Research Council as anti-gay on the website of the Southern Poverty Law Center”), https://www.washingtonpost.com/local/family-research-council-shooter-pleads-guilty-two-three-felonies-including-terrorism-charge-in-federal-court/2013/02/06/aa2086b2-7075-11e2-ac36-3d8d9dcaa2e2_story.html?utm_term=.43d9dc143ed7; Megan McArdle, “Southern Poverty Law Center Gets Creative to Label ‘Hate Groups,’” Bloomberg, Sept. 7, 2017, <https://www.bloomberg.com/view/articles/2017-09-07/southern-poverty-law-center-gets-creative-to-label-hate-groups>.



These statements are, to say the very least, troubling. Professor Barrett repeatedly stated that as a court of appeals judge, she would be bound by all Supreme Court precedent, and that she would faithfully follow that precedent.⁶ That should have been the end of questioning about her faith. But it was not.

The evidence suggests that Senators Durbin and Feinstein object to someone who identifies as a Catholic serving as a judge, if that person has made clear that they do not support abortion and same-sex marriage. Some people in this country, likely including some senators, object to anyone serving in public life who adheres to traditional Catholic or evangelical Christian views regarding sexual morality or abortion, or even who believes his faith is the sole route to heaven.⁷ Americans are free to believe, in accordance with their faith or lack thereof, that a statute is immoral or a case was wrongly decided, and that that statute ought to be repealed or decision overturned. As long as individuals respect the constitutional and statutory limits of their roles, they are even free to serve in public office while holding these beliefs.

It may be unusual to witness the overt religious hostility on display at Professor Barrett's confirmation hearing, but its quieter, insidious cousin is increasingly common: no, you may not serve on an obscure commission if your faith does not recognize same-sex marriage as legitimate; no, you may not serve as a federal judge if you maintain *Roe* invented a constitutional right out of thin air; no, you may not serve as a mid-level political appointee if you believe Jesus Christ is the only way to heaven. If, because of your Christian faith (it is highly unlikely any senator today would dare impugn the faith of a nominee of any other faith), you disagree with the tenets of regnant secularism, you must not be allowed in any position of authority. Even if one individual manages to get confirmed, her experience may be so miserable that other individuals who share her views decline to be considered for other such positions. Before long, there is the effect, if not the form, of a religious test for office.

Senators Feinstein and Durbin have been questioned regarding this episode, and neither one appears likely to apologize for their questioning of Professor Barrett.⁸ This is deeply disappointing, but not unexpected. Last year, the Commission issued a report on conflicts between religious liberty and nondiscrimination. When we held the hearing that formed the basis of the report, I hoped that there might be room for people of goodwill across the political spectrum to carve out a place for religious liberty in public life. Those hopes were quickly dashed by public events in the past few years, and it appears the views of many on the Left are reflected in the statement of the then-Chairman of the Commission that accompanied the report:

⁶ <https://www.youtube.com/watch?v=H5aj21ASM84>

⁷ Emma Green, "Bernie Sanders's Religious Test for Christians in Public Office," *The Atlantic*, June 8, 2017, <https://www.theatlantic.com/politics/archive/2017/06/bernie-sanders-chris-van-hollen-russell-vought/529614/>.

⁸ Alexandra DeSanctis, "Feinstein: 'I Never Have and Never Will Apply a Religious Test to Nominees,'" *NATIONAL REVIEW*, Sept. 12, 2017, <http://www.nationalreview.com/corner/451285/dianne-feinstein-amy-coney-barrett-senate-judiciary-hearing-religious-litmus-tests-catholic-faith>; Kevin Daley, "Nominee's Religious Faith Dominates Senate Confirmation Hearing," *DAILY CALLER*, Sept. 6, 2017, <http://dailycaller.com/2017/09/06/nominees-religious-faith-dominates-senate-judicial-confirmation-hearing/>.



“The phrases ‘religious liberty’ and ‘religious freedom’ will stand for nothing except hypocrisy as long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance.”⁹

Respectfully, all members of the Judiciary Committee should consider what would be lost if we excluded individuals from public life because “the dogma lives loudly in you.” It is my privilege to serve on the U.S. Commission on Civil Rights. In its 60 year history, the Commission has had at least one member in whom “the dogma lived loudly” – the late Father Ted Hesburgh of Notre Dame. Father Hesburgh was one of the first members of the Commission. He also was an “orthodox Catholic”. Because the dogma lived loudly in Father Hesburgh, he helped lead the struggle for civil rights when it was not popular or easy to do so. As someone who is proud to follow in his footsteps, it is sad that the old anti-Catholic slur of “dogma” has been hurled against a distinguished member of the University he served for so long.¹⁰

I urge you to do what you can, in your capacity as Chairman of the Judiciary Committee, to protect the rights of religious individuals to serve in our government without denying the tenets of their faith.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

Cc: Senate Judiciary Committee

⁹ Chairman Martin R. Castro Statement, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, U.S. COMMISSION ON CIVIL RIGHTS, at 29 (2016), <http://www.usccr.gov/pubs/Peaceful-Coexistence-09-07-16.PDF>.

¹⁰ Sohrab Amari, “The Dogma of Dianne Feinstein,” N.Y. TIMES, Sept. 11, 2017, <https://www.nytimes.com/2017/09/11/opinion/the-dogma-of-dianne-feinstein.html>.

The notion that Catholics are so beholden to Rome as to be incapable of rendering independent judgment in public office has a long, sordid history. It was a mainstay of 19th-century nativist propaganda, and it would dog John F. Kennedy in the following century. Senator Feinstein later denied exhibiting anti-Catholic bias. But as with other forms of racial or religious animus, one needn’t always use an explicit epithet to arouse ugly emotions.