

February 22, 2022

By electronic mail

President Joe Biden
Office of the White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden,

On behalf of the undersigned individuals and national advocacy organizations representing the interests of millions of people with disabilities, we write in keen anticipation of your announcement of a nominee for the United States Supreme Court, the highest court of our nation, to replace retiring Justice Stephen G. Breyer.

We applaud your stated commitment to nominate a Black woman to the Supreme Court. We agree that having a Black woman Justice on the Court is long overdue. We look forward to celebrating your nominee's confirmation, which will make the Court more representative of the diverse people and communities of our country.

As advocates for people with disabilities, we hope that the nominee will also be a judge or lawyer who has demonstrated an understanding of and commitment to a fair day in court for people with disabilities and other historically marginalized populations.

For 28 years, Justice Breyer has been a strong voice on the Supreme Court for disability rights and other civil rights. He has consistently voted to protect the rights of people with disabilities, including in cases involving our landmark disability civil rights law, the Americans with Disabilities Act (ADA). Having a new Justice on the Court who understands disability and other civil rights laws, and who is committed to a fair day in court for people bringing claims under this law, is critical.

To protect the rights of people with disabilities, we ask you to:

- **Choose a justice who respects the role of Congress in protecting disability rights.** As you know, in enacting the ADA and other disability rights laws, Congress carefully considered the history of people with disabilities in the United States. As Justice Breyer wrote in dissent in *Board of Trustees v. Garrett*, 531 U.S. 356 (2001), Congress recognized scores of examples of how people with disabilities have been harmed by disability discrimination in this country, including in the workplace and in state and local government programs. In *Tennessee v. Lane*, 541 U.S. 509 (2004), and *United States v. Georgia*, 546 U.S. 151 (2006), Justice Breyer was a critical vote in affirming the constitutionality of the ADA.

We ask you to choose a Supreme Court nominee who will respect Congress's important role and hard work in writing and enacting the ADA and other disability rights laws, which so many people with disabilities depend on to protect them from discrimination.

- **Choose a justice who understands the impact of Supreme Court decisions on people with disabilities.** Supreme Court decisions have consequences, not just for the parties before the Court, but for everyone. For example, when the Supreme Court ruled that Casey Martin, a golfer with a mobility disability, could use a golf cart on the PGA tour, this made it easier for everyone, including students and workers (not just golfers), to get the accommodations they need to have an equal opportunity. Justice Breyer joined the majority decision in *P.G.A. Tour, Inc., v. Martin*, 532 U.S. 661 (2001). Writing in dissent in another case, *Arlington Central School District v. Murphy*, 548 U.S. 291 (2006), Justice Breyer explained that the right to education for students with disabilities under the Individuals with Disabilities Education Act (IDEA) means little if parents can't afford to fight for this right.

We ask you to choose a Supreme Court nominee who understands how important Supreme Court decisions are to the everyday lives of people with disabilities and their families.

- **Choose a justice who respects precedent.** Like everyone else, people with disabilities make choices in life, such as asking for reasonable accommodations in the workplace or in school, or choosing medical care and health insurance, based on an understanding of their legal rights as interpreted in past Supreme Court decisions. Justice Breyer has played a significant role in the Supreme Court's decisions protecting the rights of people with disabilities for the last three decades. He provided a critical vote for the Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which held that the unnecessary segregation of people with disabilities is discrimination that violates the ADA. He also joined the Court's majority in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017), which announced a new and more demanding standard for what schools must do to educate students with disabilities, and in all three cases affirming the constitutionality of the Affordable Care Act (ACA), which provides critical support for medical care and long-term services for people with disabilities.

We ask you to choose a Supreme Court nominee who, like Justice Breyer, respects the role of past Supreme Court decisions in setting legal standards for critical civil rights for people with disabilities.

- **Choose a justice who understands intersectionality.** People with disabilities have other identities, and are often members of other historically marginalized communities. Disability rights are civil rights, and disability discrimination is often accompanied by other forms of discrimination, including discrimination based on race, ethnicity, sex, sexual orientation, or gender identity. In cases including *Alexander v. Sandoval*, 532 U.S. 275 (2001), and *Shelby County v. Holder*, 570 U.S. 529 (2013), Justice Breyer joined dissenting opinions strongly supporting interpretations of civil rights laws intended to prohibit race discrimination. In *United States v. Virginia*, 518 U.S. 515 (1996), Justice Breyer joined the Court's majority decision affirming the Constitutional's robust protections against sex discrimination and in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), he joined the Court's decision that LGBTQ people are protected under our federal employment discrimination laws.

We ask you to choose a Supreme Court nominee who understands that people with disabilities often face other types of discrimination, too, and need strong civil rights laws that protect against such treatment. Disability justice demands no less.

Again, we enthusiastically support your commitment to naming the first Black woman Justice to the Supreme Court. There are many Black women judges and lawyers who are highly qualified for the Court, and who have demonstrated an understanding of and commitment to a fair day in court for people with disabilities and other historically marginalized populations. We ask you to select a nominee who, like Justice Breyer, will interpret disability rights laws broadly, as Congress intended, and who understands the impact of Supreme Court decisions on people with disabilities.

The stakes are high. Justice Breyer's replacement must be committed to the protection of disability rights and other civil rights.

Sincerely,

American Association of People with Disabilities
American Council of the Blind
American Foundation for the Blind
Association of Late Deafened Adults
APSE (Association of People Supporting Employment First)
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Center for Public Representation
Civil Rights Education and Enforcement Center
The Honorable Tony Coelho
Coelho Center for Disability Law, Policy, and Innovation at Loyola Law School
Count US IN

Disability Rights Education & Defense Fund
Indiana Disability Rights
Indiana Statewide Independent Living Council (INSILC)
Kiva Centers
National Association of the Deaf
National Center for Learning Disabilities
National Disability Rights Network
RespectAbility

cc: Dana Remus, White House Counsel
dana.a.remus@who.eop.gov

Paige Herwig, Senior Counsel
White House Office of Counsel to the President
paige.i.herwig@who.eop.gov

Cedric Richmond, Director
White House Office of Public Engagement
Cedric.I.richmond@who.eop.gov

Emily Voorde, Associate Director for Disability Community Engagement
White House Office of Public Engagement
emily.f.voorde@who.eop.gov

Senator Doug Jones