

**For Immediate Release:**

October 20, 2020

## **TRANSCRIPT: JIM OBERGEFELL AND RICK HODGES COME TOGETHER TO CALL ON SENATE TO DELAY SUPREME COURT CONFIRMATION**

*See below for a transcript of the full remarks for Jim Obergefell, Rick Hodges, and Denise Brogan-Kator:*

Denise Brogan-Kator, CEO (Interim) and Chief Policy Officer at Family Equality:

Family Equality is the national organization expressly dedicated to advancing full legal and lived equality for LGBTQ+ families.

We oppose the nomination of Amy Coney Barrett to the Supreme Court because she threatens LGBTQ+ Americans' well-being, our ability to protect our families, and our ability to form families. AS Jim Obergefell and others have said, "the nomination of Amy Coney Barrett is an LGBTQ+ rights emergency." And our families are justifiably afraid—as am I—of how this nomination will effect, and possibly degrade, our daily lives.

First of all, we're worried that marriage equality will be chipped away, and that Ruth Bader Ginsburg's vision of "full milk" rather than "skim milk" marriage equality will be eroded under a Supreme Court with Amy Coney Barrett on it. Judge Barrett has implied that marriage equality "wasn't for the Court to decide" (quoting the dissent in Obergefell) and that perhaps recognition of our marriages should be decided state by state, which as an attorney I find particularly telling given that she believes that Loving v. Virginia WAS properly decided by the Court (in case you don't know your case law, that's the case that overturned state laws prohibiting interracial marriage). Jim will speak more about that, but I'd like to say, that if the 1,200 rights and responsibilities attendant to marriage are chipped away one by one, or state by

state - then we might have marriage, but not marriage equality. That is not the vision of the Obergefell v Hodges decision.

Again, this nomination is an “LGBTQ+ Rights Emergency.”

LGBTQ+ Americans are deeply worried about losing rights we have fought so hard for.

This spring, the Supreme Court ruled you can’t fire people because they are gay or trans - because that’s a form of sex discrimination. Judge Barrett has said that sex discrimination should not extend to trans people. The families we represent fear an erosion of protections in employment, education, housing, credit and more, and I’ll give you some examples in a moment.

Then there’s the Affordable Care Act. We remember what life was like before the ACA. Look, here’s the deal.

First of all, the ACA protects trans Americans from discrimination in healthcare. Even WITH the ACA’s protections, 28% of transgender people reported avoiding needed medical care this year because of discrimination.

Second, the ACA makes healthcare much more affordable for LGBTQ people. Even WITH the ACA, 51% of transgender people have postponed needed care in the last year because they couldn’t afford it.

Finally, the ACA ensures coverage for Americans with pre-existing conditions. 65% of LGBTQ+ people have pre-existing conditions compared to just half of Americans overall, and often, being trans ITSELF is considered a pre-existing condition.

Our LGBTQ+ Family Building Survey, released last year, showed that there is a surge in LGBTQ+ people planning to form families and have children. We fear for our ability to form those families - to provide loving, supportive homes and raise children - if Barrett is seated on the Supreme Court.

Our survey showed that 63% of LGBTQ+ people plan to form their families through foster care, adoption or alternative reproductive technology. Judge Barrett’s views that life begins at fertilization, and her support for organizations that seek to criminalize IVF doctors and possibly even parents, is a huge threat. 21% of LGBTQ+

people anticipate forming their family using IVF. And, then, there is the case of *Fulton v. City of Philadelphia*, a case being argued before the Supreme Court on November 4 - a day after the election. The plaintiffs in that case want to allow taxpayer-funded foster care agencies, which are open to the general public, to be able to turn away some taxpayers, if they are same-sex couples. So this nominee could really impact our basic ability to create our families.

There's also a police accountability case coming before the Court this fall. With high rates of violence against our community, particularly African-American trans women, and with the over policing of black and brown bodies, LGBTQ+ Black, Indigenous and people of colors' lives are literally on the line.

In closing, I just want to tell you a little about what our families are telling us. They're reaching out to us, daily, and they are afraid. Let me give you an example. We spoke last week with five Iowa LGBTQ+ families. Two of those families had left Iowa due to discrimination they and their families experienced, only returning to the state once Iowa passed nondiscrimination laws and after the ACA passed so they felt assured they could get health insurance. Those same families are now contemplating leaving Iowa again, should their fundamental rights and their ability to protect their families be eroded. This is why Amy Coney Barrett's vision of having a state by state approach to our rights and our healthcare would be hugely disruptive and destructive, not just to LGBTQ+ people, but to our children, our loved ones, and our communities.

So I stand with Jim and Rick, and these terrific Senators—Senators Brown, Wyden, and Murray - to URGE the Senate: Slow down. Let the people decide. Tens of millions of Americans have voted. We can't parse out what this nominee will mean to everyday LGBTQ+ Americans in just a few weeks. We urge the Senate to wait to confirm the next Justice until AFTER the next President is inaugurated on January 21.

And with that I will turn it over to a wonderful champion for our families, for our ability to foster and adopt, and for our access to healthcare and human services - Senator Patty Murray of the great state of Washington.

Jim Obergefell, lead plaintiff in *Obergefell v. Hodges*, Family Equality's Director of Individual Giving:

Hello, I'm Jim Obergefell. I'm with Family Equality, the only national organization expressly dedicated to advancing full legal and lived equality for LGBTQ+ families. I'm also the named plaintiff in *Obergefell v. Hodges*, the Supreme Court decision that made marriage equality the law of the land.

I'm here today with Rick Hodges, the defendant in this landmark case, and my friend. Thank you, Rick, for joining me today to speak out in support of LGBTQ+ equality. Rick will share more with you, but I can't stress enough how important I believe it is that the two opposing sides of such a momentous ruling can stand together as friends and defend the LGBTQ+ community's right to fully engage in our society as equals.

More than 30 other plaintiffs and I took advantage of the relief the founders of our nation enshrined in our Constitution – the ability to appeal to the highest court in the land when our civil rights were being abridged. Much of the progress the LGBTQ+ community has made in achieving legal and lived equality in our nation has come as a result of the Supreme Court.

In Amy Coney Barrett's opening statement ahead of her Supreme Court confirmation hearing, she said: there is a tendency in our profession to treat the practice of law as all-consuming, while losing sight of everything else, but that makes for a shallow and unfulfilling life."

I refer Ms. Barrett – indeed the entirety of the Supreme Court – to the words she used in her opening statement: a shallow and unfulfilling life.

This is exactly what LGBTQ+ youth and families, indeed the entire LGBTQ+ community, could be facing – a shallow and unfulfilling life - with upcoming oral arguments before the court about our families, a recent dissent by Justices Thomas and Alito again opposing the court's ruling in my case, and the potential confirmation of Judge Barrett to the highest court in the land.

In ruling after ruling, dissent after dissent, Justice Ruth Bader Ginsburg stood for full equality for our families and our children. She never let the personal, political, or religious beliefs of adults trump the best interests of children and families. She famously advocated for “full milk” marriage rather than “skim milk” marriage for same-sex couples, with all the attending rights and responsibilities – nothing short of full equality for all was acceptable to her.

Rick and I stand here today together, to support that vision of full equality, won through the Obergefell v. Hodges decision that bears both of our names. We greatly fear that if Judge Amy Coney Barrett is confirmed to the Supreme Court, marriage equality could be chipped away.

Quoting Roberts’s dissent in a 2016 lecture, Judge Barrett said that same-sex marriage wasn’t for the court to decide. In that same talk, she questioned whether federal anti-discrimination law includes protections for transgender Americans, as the court decided just this spring.

I remember clearly what life was like before the day that the right of same-sex couples to marry became the law of the land. We were able to have, at most, what Ginsburg called “skim-milk” marriages — marriages in which, depending on state laws, we were not recognized as the families that we are; we could not file taxes jointly, or make medical decisions for one another, or, after a death, be treated legally as the surviving spouse. I remember when we could be evicted from our apartments or fired from our jobs for being who we are, or arrested for loving our same-sex partners. These were the experiences, the routine discrimination, that sent us the message that we and our relationships and families were “less than” - and those harms, and those messages, could contribute to a “shallow and unfulfilling life.”

Not surprisingly, this issue is personally very important to me. I ask every married person in our nation - and every person who hopes to one day marry the person they love - if they want to be forced to go to their state houses, to appeal to their state legislatures, or live through ballot issues in order to have their right to marry, or the validity and dignity of their marriages, decided by others.

Our nation has already been down that road - prior to Loving v. Virginia with interracial marriage and prior to Obergefell v. Hodges with same-sex marriage. This

is what Justices Thomas and Alito, as well as Amy Coney Barrett based on her previous remarks, believe we should be forced to do - plead for others to treat us as equals instead of relying on the Constitution to guarantee it.

This is not only demeaning, it is detrimental to our relationships, our families, and our membership in We the People. And that's solely regarding our right to marry. .

Judge Barrett would also impact LGBTQ+ people's health care. 65% of LGBTQ+ Americans have pre-existing conditions, compared to just half of Americans overall<sup>1</sup>. We are more likely to depend on public benefits, and less likely to have health insurance. The Affordable Care Act protects those with pre-existing conditions and provides health care to hundreds of thousands, if not millions of LGBTQ+ Americans. Critically, the ACA also protects transgender Americans from discrimination in health care - discrimination that is so pervasive that 28% of transgender people in just the past year postponed or avoided needed medical care when sick or injured because of discrimination<sup>2</sup>. Having the Affordable Care Act overturned would be devastating to LGBTQ+ Americans.

Judge Barrett would impact LGBTQ+ people's very ability to form our families. Family Equality found in a survey that 63% of LGBTQ+ people forming families plan to do so through foster care, adoption, or alternative reproductive technologies. If confirmed before Nov. 4, Judge Barrett will be ruling on whether same-sex couples can equally access government-funded foster care and adoption services. She believes life begins at fertilization, and supports organizations that believe doctors, and possibly even parents, should be criminalized for utilizing IVF.

We strongly oppose Amy Coney Barrett's nomination to the Supreme Court, and we ask the Senate to vote no on this nomination. Our families are our future, and Ms. Barrett's well-known stances on marriage equality, trans equality, and other issues

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<https://www.americanprogress.org/issues/lgbtq-rights/news/2017/07/06/435452/senate-health-care-bill-devastating-lgbtq-people/>

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<https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/>

represent a serious risk to our civil rights and our ability to form and protect our families.

Rick Hodges, lead defendant in *Obergefell v. Hodges*

I stand before you as a lifelong Republican and longtime public servant, having served in the Ohio House of Representatives and as the former Director of the Ohio Department of Health.

As Director of that Department, I was responsible for providing spouse's names on death certificates - including the name of John Arthur, Jim's husband, who sadly passed away in 2013.

Throughout my life, including as a public servant, my faith and conscience have compelled me to respect everyone and treat others the way I wish to be treated. This is why I, along with over 70% of Americans, fully support marriage equality.

That's also why, at the Ohio Health Department, as we awaited the Court's ruling on Jim's case, I made sure I did everything I could to prepare my department for marriage equality and equal treatment of all Ohioan's marriages. I did that for all Ohioans, but I also did so to ensure the LGBTQ+ civil servants in my Department, who worked hard day in and day out for the residents of our great state, knew that I respected and supported them.

I fear that that's what's at stake with this fateful nomination to replace Justice Ruth Bader Ginsburg: that all Americans are treated with full dignity and respect, regardless of who they are or whom they love, and that all American families benefit fully and equally from the government services they pay for through their taxes.

Thus I stand here today with my friend Jim, bound by our names on a historic, momentous, and frankly, wonderful decision, to oppose the nomination of Amy Coney Barrett.



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**About Family Equality**

Family Equality advances legal and lived equality for LGBTQ+ families, and for those who wish to form them, through building community, changing hearts and minds, and driving policy change. Family Equality believes every LGBTQ+ person should have the right and opportunity to form and sustain a loving family, regardless of who they are or where they live. Learn more at [familyequality.org](http://familyequality.org).

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