

Children's Rights

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<https://www.childrensrights.org/justice-barretts-principles-of-justice-should-protect-vulnerable-children/>

Public Facing Advocacy Writing

By Harry Frischer, Lead Counsel



In her recent [opening statement](#) before the Senate Judiciary Committee, now-Justice Amy Coney Barrett described her process for deciding cases:

When I write an opinion resolving a case, I read every word from the perspective of the losing party. I ask myself how would I view the decision if one of my children was the party I was ruling against: Even though I would not like the result, would I understand that the decision was fairly reasoned and grounded in the law?

Justice Barrett also acknowledged the Courts vital responsibility to enforce the rule of law, which she understands is critical to a free society. But, reflecting a so-called conservative judicial philosophy, Justice Barrett also stated that courts are not designed to solve every problem or right every wrong in our public life. Rather, the policy decisions and value judgments of government must be made by the political branches elected by and accountable to the People.

Regardless of the political label attached to them, Justice Barretts articulated principles, if consistently applied, would require the federal courts to continue protecting vulnerable children stuck in the foster care, juvenile justice or public health systems. In institutional reform litigation throughout the country, federal courts have issued reasoned, well-grounded decisions that merely enforce the rules of law requiring the state to provide for the health and safety of these children.

In [Texas](#), for example, a federal judge found in 2015 that the states foster care system seriously harmed many of the children in its custody. Children were assigned a carousel of overburdened caseworkers, suffered abuse and neglect that was rarely treated, shuttled between multiple inappropriate placements, migrated through schools at a rate that made academic achievement impossible, and then aged out of foster care damaged, institutionalized, and unable to succeed as adults.

Finding that the States conduct violated well-established rules of law prohibiting the State from harming the children in its custody, the Court ordered state officials to make the reforms necessary to meet their legal obligations.

In [Iowa](#), a federal judge determined earlier this year that mentally ill youth incarcerated in a juvenile corrections facility failed to receive minimally adequate treatment and, instead, were routinely punished with mechanical restraints and solitary confinement for behaviors symptomatic of their mental illness.

In particular, youth as young as 15 were improperly and unnecessarily restrained for hours in a device known as the wrap, consisting of a bed frame and a number of straps which restricted the youths movement at fourteen distinct points. The Court determined that the state violated long-settled principles of law by using this device as punishment, finding that the the wrap inflicts severe pain and suffering unrelated to any legitimate purpose and that the states use of the wrap amounted to torture.

Here too, the court applied longstanding legal principles to order state officials to provide medically-necessary mental health treatment to the youth in their custody, end the punitive use of solitary confinement and remove the wrap from the facility.

In currently-pending federal lawsuits in several states, children eligible for Medicaid have challenged the states failure to provide

medically-necessary medical treatment, and mental health treatment in particular, on a timely basis as required by the Medicaid Act. Plaintiffs seek a court order requiring state Medicaid officials to meet their legal obligations

In all these cases and many others, Justice Barretts framework presents a clear path for reaching the right result. Viewed through the lens of how a decision could affect a judges own children, and using reasoned analyses well-grounded in law, federal courts should have no hesitation requiring state officials to comply with their legal obligations.

Doing so does not require a judge to substitute its policy judgment for that of elected officials, or require the courts to right every wrong. It merely requires a court to enforce the rule of law, which, as Justice Barrett said, is critical in a free society.

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