



January 28, 2019

**OPPOSE THE NOMINATION OF WILLIAM BARR
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the 78 organizations listed below, we write to oppose the nomination of William Barr to serve as Attorney General of the United States.

Many of our organizations previously wrote to the Senate expressing serious concerns about Mr. Barr's nomination. Those concerns, based on his long record of advancing positions that restricted civil and human rights in America, and his lack of independence as evidenced by his vocal criticism of the Mueller investigation, were not allayed by his hearing testimony. Regrettably, they were reinforced. We urge the Senate to oppose his confirmation.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice, the Attorney General is responsible for making real the promise of equal justice under law. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward racial equality. The Attorney General must also operate with integrity and independence in service to the people, not the president.

For the past two years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn.¹ From rollbacks in voting rights enforcement and LGBTQ rights to a reinvigoration of the failed "war on drugs" and extreme immigration policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights agenda he had advanced for decades in the U.S. Senate. This path of devastation has continued unabated under Acting Attorney General Matthew Whitaker, a hand-picked Trump loyalist whose very appointment is legally dubious.² The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil rights laws with vigor and independence. William Barr will not do so.

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¹ <https://civilrights.org/trump-rollbacks/>.

² <https://www.nytimes.com/2018/11/08/opinion/trump-attorney-general-sessions-unconstitutional.html>.

In a recent op-ed, Mr. Barr called Mr. Sessions “an outstanding attorney general” and offered praise for his policies, many of which undermined civil rights.³ This reveals that Mr. Barr would continue the deeply disturbing anti-civil rights policies and priorities of the past two years. His record and his hearing testimony bear this out. Mr. Barr failed to demonstrate that he would vigorously enforce our federal civil rights laws. In particular, we are troubled by his positions on criminal justice reform, LGBTQ equality, immigrant rights, and reproductive freedom.

Justice Reform: As Attorney General during the George H.W. Bush administration, Mr. Barr endorsed a draconian approach to law enforcement that led to our current mass incarceration crisis, which has decimated Black and Brown communities.⁴ Despite this reality, Mr. Barr has denied evidence of racial disparities, asserting that “our system is fair and does not treat people differently.”⁵ In a 1997 op-ed, he wrote: “Crack sentences are not, as commonly believed, 100 times more severe than those for power cocaine, that widely cited figure is based on a misunderstanding of the statute.”⁶ In a 1992 speech, he argued for amending the federal code to allow more children to be prosecuted as adults.⁷ That same year, Mr. Barr published a report entitled “The Case for More Incarceration”⁸ as our prison population soared. The report stated: “Ask many politicians, newspaper editors, or criminal justice ‘experts’ about our prisons, and you will hear that our problem is that we put too many people in prison. The truth, however, is to the contrary; we are incarcerating too *few* criminals....”⁹ At his hearing, Mr. Barr defended this harsh and widely rejected sentencing approach, which has not made us safer.

Mr. Barr’s views on criminal justice – strident even for the time – have not evolved, even as the country has. In 2015, he signed a letter opposing the bipartisan Sentencing Reform and Corrections Act (a precursor to the recently passed FIRST STEP Act), which would have modestly reduced mandatory minimum sentences for non-violent drug offenders.¹⁰ Mr. Barr’s letter praised the widespread use of mandatory minimums and asserted that “our system of justice is not broken.”¹¹ As a coalition, we could not disagree more. At his hearing, he agreed to implement the FIRST STEP Act if confirmed, but he offered only tepid support for the new law, testifying that “if I had been at the table, I probably would have urged a few changes to it, but you know, overall, I don’t have a problem with it.”¹² At a time when there is overwhelming support from individuals across the political spectrum to reform the criminal justice system, Mr. Barr’s anachronistic views are out of step with the values of the American people.

It is also clear that Mr. Barr would continue the Sessions Justice Department’s reluctance to hold police departments accountable for abusive and unconstitutional conduct. Mr. Barr has alleged, inaccurately, that the Obama administration’s pro-reform policies “undermined police morale, with the spreading

³ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

⁴ <https://slate.com/news-and-politics/2018/12/william-barr-jeff-sessions-new-attorney-general.html>.

⁵ http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2.

⁶ [file:///C:/Users/maz/Downloads/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(a\).pdf](file:///C:/Users/maz/Downloads/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(a).pdf) (page 114).

⁷ <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-01-1992.pdf>.

⁸ <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

⁹ *Id.* (emphasis in original).

¹⁰ <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.

¹¹ *Id.*

¹² <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

‘Ferguson effect’ causing officers to shy away from proactive policing out of fear or prosecution.”¹³ And at his hearing, in response to a question from Senator Hirono about whether he agreed with a recently issued memo making it harder for the Civil Rights Division to enter into consent decrees to address systemic police misconduct, Mr. Barr stated: “I agree with that policy.”¹⁴

LGBTQ Equality: Barr has expressed deeply disturbing views on LGBTQ equality. In a 1995 law review article entitled “Legal Issues in a New Political Order,” he argued for a return to “traditional morality” based on “natural law,” and he criticized a Washington, D.C. law that prohibited Georgetown University from discriminating against LGBTQ student groups whose conduct he called “immoral.”¹⁵ He complained: “It is no accident that the homosexual movement, at one or two percent of the population, gets treated with such solicitude....”¹⁶

Mr. Barr has shown he continues to hold these disturbing views about LGBTQ rights. In a 2018 op-ed, he expressed support for a Sessions Justice Department memo that expanded the ability of religious institutions to discriminate against LGBTQ people, women, and religious minorities. And he has indicated – both in the op-ed¹⁷ and at his hearing – that he does not believe federal civil rights laws should be interpreted to ban discrimination based on sexual orientation or gender identity. Mr. Barr’s extreme views are at odds with the holdings of many recent federal court rulings.

Immigrant Rights: Mr. Barr has defended devastating anti-immigrant positions. He expressed support for President Trump’s discriminatory Muslim ban, calling it “squarely within both the president’s constitutional authority and his explicit statutory immigration powers.”¹⁸ Multiple federal courts rejected that position and struck down this version of the ban as unconstitutional. Mr. Barr praised Attorney General Sessions for his aggressive prosecution of immigrants and for “breaking the record for prosecution of illegal-entry cases.”¹⁹ And in 1992, Barr advocated for the inhumane policy of prohibiting HIV-positive immigrants approved for political asylum – including 270 Haitians who were being detained at the U.S. naval base at Guantanamo Bay – from entering the United States.²⁰

We are also troubled by Mr. Barr’s feigned ignorance about the clear constitutionality of birthright citizenship. At his hearing, Senator Hirono asked him if birthright citizenship is guaranteed by the 14th Amendment of the Constitution, which states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States....” The answer to that question is clearly yes, but Mr. Barr couldn’t bring himself to agree with that basic principle anchored in the plain

¹³ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

¹⁴ <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

¹⁵ <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2355&context=tc1>.

¹⁶ *Id.*

¹⁷ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

¹⁸ https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.6db0727dd0d0.

¹⁹ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

²⁰ http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house.

text of the Constitution. Instead, he responded to Senator Hirono: “I haven’t looked at that issue.”²¹ Mr. Barr’s unawareness is implausible, given the recent press coverage of President Trump’s hostility to birthright citizenship – he called it “ridiculous,” complained that “it has to end,”²² and threatened an executive order to nullify it. That is an extreme position which has been rejected across the political spectrum.²³ Mr. Barr’s refusal to endorse this part of the Constitution is yet another indication that his loyalty will be to President Trump, not the Constitution, and that he will continue the Trump administration’s extreme policies that demonize immigrants.

Reproductive Freedom and Women’s Rights: Barr has attacked women’s reproductive freedom, championing policies that would deny contraceptive access and abortion services. At his 1991 Senate Judiciary Committee confirmation hearing to be Attorney General, Mr. Barr testified that “I do not believe the right to privacy extends to abortion” and “*Roe v. Wade* was wrongly decided and should be overruled.”²⁴ In a 1992 speech, Mr. Barr asserted: “Nothing symbolizes the decadence of the secular age more than the stain of abortion. You can measure the moral health of a society by the way it treats its most weak and defenseless. Our society has taken to slaughtering the most innocent – its own unborn children.”²⁵

Mr. Barr believes employers should be allowed to deny birth control coverage. In 2016, he signed onto an *amicus* brief in *Zubik v. Burwell* that defended the right of employers to impose their religious beliefs on their employees and block their employees from receiving coverage for contraception.²⁶ Such coverage is guaranteed by the Affordable Care Act, which the current Justice Department has refused to defend. At his hearing, Mr. Barr would not pledge to reverse that position.

When given the chance at his hearing to disavow his old statements on *Roe v. Wade* and commit to defending the landmark precedent were it ever challenged, Mr. Barr declined. Instead he obfuscated, stating that *Roe* has been on the books for 46 years and that most recent Supreme Court nominees have acknowledged that *Roe* is an established precedent. While those are accurate statements, they do nothing to remedy our concern that Mr. Barr would use his post at the Justice Department to further the Trump administration’s attacks on reproductive rights.

We are also concerned about comments Mr. Barr made at his hearing about Title IX rules that protect survivors of sexual assault. He claimed that the Title IX rules “essentially did away with due process” for those accused of assault but did not recognize the existing barriers to reporting faced by survivors. His viewpoint is a dangerous one since the Trump Administration is currently proposing new rules to limit Title IX protections in the context of sexual harassment, including sexual assault. If confirmed, Mr. Barr

²¹ <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

²² <https://www.axios.com/trump-birthright-citizenship-executive-order-0cf4285a-16c6-48f2-a933-bd71fd72ea82.html>.

²³ For example, conservative Fifth Circuit Judge James Ho has noted: “Birthright citizenship is guaranteed by the Fourteenth Amendment. That birthright is protected no less for children of undocumented persons than for descendants of *Mayflower* passengers.” <https://www.gibsondunn.com/wp-content/uploads/documents/publications/Ho-DefiningAmerican.pdf>.

²⁴ https://m.facebook.com/story.php?story_fbid=10155720791351813&id=18982436812.

²⁵ [file:///C:/Users/maz/Downloads/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(d\).pdf](file:///C:/Users/maz/Downloads/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(d).pdf) (page 674).

²⁶ <https://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf>.

would be in a position to further undermine these Title IX protections through court cases designed to limit schools' responsibility for addressing sexual harassment.

Voting Rights: Mr. Barr's embrace of Attorney General Sessions as an "outstanding attorney general" is an endorsement of the anti-voting rights agenda of the Sessions Justice Department. That department has reversed positions in major litigation in order to support voter suppression measures such as the restrictive Texas voter ID law and Ohio voter purge practices. The Sessions Justice Department did not bring a single Section 2 case under the Voting Rights Act, even though that provision is the primary mechanism of enforcement of that historic law in the wake of the Supreme Court's gutting of Section 5 in the 2013 case *Shelby County v. Holder*. Nor did the Sessions Justice Department attempt to block the numerous voter suppression efforts aimed at communities of color that took place during the 2018 midterm election cycle. As the U.S. Commission on Civil Rights concluded in a recent report: "The DOJ should pursue more VRA enforcement in order to address the aggressive efforts by state and local officials to limit the vote of minority citizens and the many new efforts to limit access to the ballot in the post-*Shelby County* landscape."²⁷ A William Barr Justice Department would be highly unlikely to do so.

At his hearing, Mr. Barr offered platitudes and empty rhetoric when asked about his commitment to voting rights enforcement. And in response to a question from Senator Leahy, he suggested that low voter turnout isn't due to voter suppression tactics like photo ID laws but rather to a lack of civic engagement. He testified that "voter turnout shouldn't be artificially driven up without also addressing the issue of an informed citizenry."²⁸ That statement is troubling and suggests Mr. Barr is not committed to expanding the right to vote. We are also concerned about his testimony that he would continue the Justice Department's flawed defense of the unprecedented assault on the 2020 Census. That defense is based on the false pretense that adding a citizenship question to the form that goes to all households is necessary to enforce the Voting Rights Act. This argument was flatly rejected in a recent ruling from U.S. District Judge Jesse Furman, who held that the addition of the citizenship question was unlawful.

Lack of Independence: In addition to our concerns about his civil rights record, we question whether Mr. Barr has the independence necessary to serve as attorney general. He wrote a 19-page unsolicited memorandum to the Justice Department last year arguing that Special Counsel Robert Mueller's obstruction of justice investigation was "fatally misconceived" and "grossly irresponsible."²⁹ He defended President Trump's firing of former FBI Director James Comey when the FBI opened the initial investigation into Russian interference in 2017, and he defended President Trump's firing of Acting Attorney General Sally Yates for refusing to defend his unlawful Muslim ban. And he criticized the fact that a few of the Mueller prosecutors have made small political contributions to Democratic candidates, while Mr. Barr himself has contributed over \$500,000 to Republican candidates.³⁰

²⁷ https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

²⁸ <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

²⁹ <https://www.justsecurity.org/wp-content/uploads/2018/12/June-2018-Barr-Memo-to-DOJ-Muellers-Obstruction-Theory-1.2.pdf>.

³⁰ https://www.washingtonpost.com/investigations/trump-has-blasted-muellers-team-for-political-donations-but-attorney-general-nominee-william-barr-has-given-more-than-500000/2018/12/11/dce5974a-fcb0-11e8-862a-b6a6f3ce8199_story.html?utm_term=.e3d73531cf84.

Such concerns about Mr. Barr's independence were reinforced at his hearing when he refused to commit to making the Mueller report public and when he refused to agree to recuse himself from the Mueller investigation even if advised to do so by Justice Department career ethics officials. Moreover, he made the troubling allegation at his hearing that Attorney General Sessions' decision to recuse himself from the Russia investigation based on the advice of career ethics officials was "an abdication of his own responsibility."³¹ The Mueller investigation is about whether the Trump campaign colluded with a foreign adversary to affect a national election. Political interference with this election is a clear threat to the rule of law. The president is not above the rule of law and Mr. Barr's hearing testimony did not alleviate our serious concerns.

At his confirmation hearing, Mr. Barr bore the burden of demonstrating he will not continue the civil rights rollbacks we have seen during this administration. And he needed to demonstrate that he has the independence necessary to serve as the nation's top law enforcement officer. He failed on both. At a time when the United States has a president who emboldens and enables forces of hate and division in the country; at a time when the Justice Department and the entire administration have embraced an anti-civil rights policy agenda; and when vulnerable communities across this nation are deeply terrified – of profiling, deportation, and even murder – people in America deserve better. We deserve an Attorney General who will promote racial equality, vigorously enforce our federal civil rights laws, fight discriminatory barriers for the most vulnerable among us, and stand up to a president who does not respect the role of the Justice Department as an independent guardian of the rule of law. We do not believe Mr. Barr will. We believe he will be Sessions 2.0, and we urge the Senate to reject his nomination.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Federation of State, County, and Municipal Employees (AFSCME)
American Federation of Teachers
Asian Americans Advancing Justice - AAJC
Asian Pacific American Labor Alliance, AFL-CIO
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Bend the Arc: Jewish Action
Campaign for Youth Justice
Center for American Progress
Center for Biological Diversity
Center for Law and Social Policy
Center for Popular Democracy
Center for Responsible Lending
Clearinghouse on Women's Issues

³¹ <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

Community Catalyst
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Defending Rights & Dissent
Demos
Drug Policy Alliance
Earthjustice
Equal Rights Advocates
Equality California
Feminist Majority Foundation
Freedom Network USA
Generation Progress
Government Information Watch
Harm Reduction Coalition
Hispanic Federation
Human Rights Campaign
Immigrant Legal Resource Center
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Jobs With Justice
Lambda Legal
LatinoJustice PRLDEF
League of Conservation Voters
Montgomery County Civil Rights Coalition
Muslim Advocates
NAACP
NAACP Legal Defense and Educational Fund, Inc.
NARAL Pro-Choice America
National Abortion Federation
National Action Network
National Asian Pacific American Women's Forum
National Association of Human Rights Workers
National Association of Social Workers
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National Employment Law Project
National Equality Action Team (NEAT)
National Fair Housing Alliance
National Health Law Program
National Immigration Law Center
National Institute for Reproductive Health
National Latina Institute for Reproductive Health



National Organization for Women
National Partnership for Women & Families
National Urban League
National Women's Health Network
National Women's Law Center
People For the American Way
PFLAG National
Planned Parenthood Federation of America
Prison Policy Initiative
Public Citizen
Religious Coalition for Reproductive Choice
RootsAction.org
Secular Coalition for America
SEIU
Southeast Asia Resource Action Center (SEARAC)
The National Coalition of Anti-Violence Programs
TN NAACP
UnidosUS
World Without Genocide at Mitchell Hamline School of Law
YWCA USA