

January 22, 2019

VIA EMAIL

The Honorable Lindsey Graham  
Chair  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C., 20510

Senator Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, D.C., 20510

Re: *Nomination of William Barr to be Attorney General of the United States*

Dear Senators Graham and Feinstein:

On behalf of the National Women's Law Center (the "Center"), an organization that has advocated on behalf of women and girls for forty-five years, we write to express concerns about the confirmation of William Barr as Attorney General of the United States.

As the nation's chief law enforcement official, the Attorney General is responsible for enforcing federal laws, including laws of the utmost importance to women, such as Title VII, Title IX, the Freedom of Access to Clinic Entrances Act (FACE), the Violence Against Women Act (VAWA), as well as core constitutional protections, including the Equal Protection Clause and the right to privacy. Consequently, the Attorney General has a profound impact on the legal rights and very futures of women across this country.

Mr. Barr, during his prior tenure at the Department of Justice (DOJ) and since leaving his role, has shown his hostility to abortion access, health care, LGBTQ rights, immigrant rights, and civil rights. This record raises serious concerns that under his leadership, enforcement of key legal protections by DOJ would be ignored at best, but more likely, challenged and undermined.

At his 1991 Attorney General confirmation hearing, Mr. Barr explicitly said, "I do not believe the right to privacy extends to abortion" and stated that "*Roe v. Wade* was wrongly decided and should be overruled."<sup>1</sup> When the Supreme Court was considering the landmark case *Planned Parenthood v. Casey*, DOJ submitted an *amicus* brief echoing the beliefs Mr. Barr stated during his hearing.<sup>2</sup> The brief argued that "*Roe v. Wade* was wrongly decided and should be overruled." It also argued that "the State's interest in protecting fetal life throughout pregnancy, as a general matter, outweighs a women's liberty interest in an abortion."<sup>3</sup> After the decision, in which the Supreme Court rejected DOJ's arguments and reaffirmed a woman's constitutional right to abortion, Mr. Barr stated that the decision was "disappointing" and "I think that *Roe v. Wade* will ultimately be overturned. I think it'll fall on its own

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<sup>1</sup> *Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr*, C-SPAN, Nov. 13, 1991, <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2&start=1717>

<sup>2</sup> Brief for the United States as Amicus Curiae Supporting Respondents, *Planned Parenthood of Southeastern Pennsylvania et al. v. Casey*, 505 U.S. 833 (1992).

<sup>3</sup> *Id.* at 8.

weight. It does not have any constitutional underpinnings.”<sup>4</sup> Immediately after the *Casey* decision, when Members of Congress attempted to codify the legal protections of *Roe*, Mr. Barr wrote several letters opposing the proposed legislation, the Freedom of Choice Act (FOCA). In one of these letters, he made the false and misleading claim that FOCA would impose “an unprecedented regime of abortion on demand.”<sup>5</sup> Recently, during his current confirmation hearing, Mr. Barr did not disavow his prior statements on *Roe* and he refused to say that, if confirmed as Attorney General, DOJ would defend *Roe*. Given his record, prior statements, and refusal to affirm *Roe*, we are deeply concerned that, if confirmed, Mr. Barr would not respect *Roe* and its progeny, and instead would use his position to undermine the long-standing legal precedent that protects a woman’s right to abortion.

Mr. Barr’s actions as a private citizen demonstrate his willingness to undermine the Affordable Care Act, including its provision requiring insurance plans to cover contraception. Mr. Barr joined *amicus* briefs in two cases in 2011 arguing that the ACA must be invalidated in its entirety.<sup>6</sup> In 2016, Mr. Barr joined an *amicus* brief to the U.S. Supreme Court in *Zubik v. Burwell*, arguing in support of employers who were challenging the ACA’s contraceptive coverage requirement and the “accommodation” that allowed them to avoid compliance with it.<sup>7</sup> DOJ is already taking the unprecedented steps of refusing to defend the ACA and the contraceptive coverage requirement in courts. During the hearing, Mr. Barr refused to pledge that DOJ would reverse that position and defend the ACA. There is therefore every indication Mr. Barr would continue DOJ’s practice of undermining protections that have been critical to the health and economic security of women in this country.

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

Mr. Barr also has a troubling record and views around immigration. During his previous term as Attorney General, Mr. Barr oversaw the detention in Guantanamo Bay of hundreds of HIV-positive Haitian refugees as part of the Bush Administration’s ban on HIV-positive people from entering the United States. Although the HIV ban ultimately was upheld by the Supreme Court, the Clinton administration

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<sup>4</sup> Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)

<sup>5</sup> Sharon LaFraniere, *Barr Attacks Abortion-Rights Bill; Curb on State Restrictions Goes Beyond Roe*, *Attorney General Says*, THE WASHINGTON POST, Mar. 4, 1992,

<https://www.washingtonpost.com/archive/politics/1992/03/04/barr-attacks-abortion-rights-bill/2d29aae7-ad69-43c5-b1cf-4c5018139cef/>

<sup>6</sup> Brief of Former U.S. Department of Justice Officials as Amici Curiae in Support of Respondents (Minimum Coverage Provision), *Fla. ex rel. Atty. Gen. v. U.S. Dep’t of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011), *aff’d in part, rev’d in part sub nom. Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)); Brief of Amici Curiae Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh, in Support of Appellees, *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253 (4th Cir. 2011).

<sup>7</sup> Brief of Amicus Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) <http://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf>

later recognized that the ban was cruel and abandoned its enforcement.<sup>8</sup> The HIV ban was used by the current Administration as a model for the Muslim ban. Mr. Barr, when questioned about whether he would implement this policy again at his current confirmation hearing, did not outright disavow the HIV ban, but instead said it would depend on the circumstances and that “it was right under the law.” This answer suggests that Mr. Barr would be supportive of the Administration’s hardline immigration policies. Additionally, his other answers to immigration questions at this hearing are equally troubling. For example, he confirmed his support for building a wall. He also perpetuated the myth of the criminal alien: “I think a lot of people are under the impression that sanctuary cities are there to protect the illegal aliens who are quietly living as productive members of society and paying their taxes... it isn’t. It is preventing the federal government from taking custody of criminal aliens.”

Mr. Barr has been vocal in supporting the harmful and legally suspect actions of the Trump Administration and DOJ under then-Attorney General Jeff Sessions. He defended the legality of Trump’s discriminatory Muslim Ban and Trump’s decision to fire then-Acting Attorney General Sally Yates who directed DOJ not to follow the ban.<sup>9</sup> He lauded DOJ’s defense of employers who refused to provide contraceptive coverage to their employees.<sup>10</sup> Mr. Barr also endorsed Session’s decision to revoke the Obama era directive that interpreted sex discrimination protections under the Civil Rights Act to include protection against discrimination on the basis of gender identity.<sup>11</sup> And when he was given the opportunity at his confirmation hearing to affirm employment discrimination protections for LGBTQ individuals, Mr. Barr instead said that he does not believe that Title VII should be interpreted to protect LGBTQ workers from discrimination based on their sexual orientation or gender identity.

Mr. Barr has hurt progress for women and girls in his prior role as Attorney General and there is every reason to believe that if he were to resume the role, he would again use the power of the office to push forward harmful legal theories and upend longstanding legal rights and protections. There is no cabinet position more important to the legal rights of women than that of the Attorney General.

For all the foregoing reasons, the National Women’s Law Center is seriously concerned about the confirmation of William Barr to be Attorney General of the United States. Please feel free to contact me, or Theresa Lau, Counsel at the Center, at (202) 588-5180 should you have any questions.

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<sup>8</sup> David Lauter and Marlene Cimon, “Clinton to Drop Travel Ban on HIV Patients,” LA TIMES, Feb. 5, 1993, [http://articles.latimes.com/1993-02-05/news/mn-1021\\_1\\_white-house](http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house) ; Kate Smith, “A Stain on U.S. History,” CBS NEWS Dec. 10, 2018, <https://www.cbsnews.com/news/william-barr-attorney-general-nominee-asylum-seekers-haiti-hiv-positive-patients-guantanamo-bay-2018-12-10>

<sup>9</sup> William Barr, “Former attorney general: Trump was right to fire Sally Yates,” WASHINGTON POST, Feb. 1, 2017, [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=.ce483dc9ebad](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=.ce483dc9ebad)

<sup>10</sup> William P. Barr, Edwin Meese III, and Michael Mukasey, “We are former attorneys general. We salute Jeff Sessions,” WASHINGTON POST, Nov 7, 2018, [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?noredirect=on&utm\\_term=.194d1e6a7c88](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?noredirect=on&utm_term=.194d1e6a7c88)

<sup>11</sup> *Id.*

Sincerely,

A handwritten signature in blue ink that reads "Fatima Goss Graves". The signature is written in a cursive, flowing style.

Fatima Goss Graves  
President and CEO  
National Women's Law Center

cc: Judiciary Committee