

January 14, 2019

The Honorable Lindsey Graham, Chairman
Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking
Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary:

On behalf of the Center for Reproductive Rights, we write to express our serious concerns regarding the nomination of William Barr to serve as Attorney General of the United States. The American people need an Attorney General who will respect the fundamental constitutional rights of equal protection, liberty, and privacy, including the right to access contraception and safe, legal abortion. Based on his record, we question his ability to do so and urge the committee to scrutinize Mr. Barr's history of hostility towards the personal liberty rights guaranteed by the U.S. Constitution.

The Center for Reproductive Rights uses the power of law to advance reproductive rights as fundamental human rights around the world. For over 25 years, our game-changing litigation and advocacy work—combined with our unparalleled expertise in the use of constitutional, international, and comparative human rights law—has transformed how reproductive rights are understood by courts, governments, and human rights bodies. We litigate extensively in federal and state courts to ensure reproductive health services are available across the country. Since our founding, we have been involved in every major Supreme Court case on abortion rights. In 2016, we won the landmark Supreme Court case, *Whole Woman's Health v. Hellerstedt*,¹ the most significant ruling on abortion in more than two decades.

As the nation's top law enforcement officer and head of the Department of Justice, the Attorney General is responsible for safeguarding our civil and constitutional rights, including the right to abortion. The Attorney General must demonstrate to the American people that they are loyal first and foremost to the faithful execution and enforcement of the law. They must possess a sound understanding of constitutional law and the principle of stare decisis, must respect and hold sacred the role of the courts, and must be prepared to serve as a check on federal officials whose policy actions endanger women's reproductive freedom.

We are greatly disturbed by Mr. Barr's blatant hostility to *Roe v. Wade*² and by his efforts to undermine the constitutional rights protected therein, demonstrated by his record as the former Attorney General, as well as in his personal speeches and writings. At his first confirmation hearing for Attorney General in 1991, Mr. Barr was asked whether he had a view on the right to

privacy and the right of a woman to choose to terminate her pregnancy; he responded “I do not believe the right to privacy extends to abortion...I believe *Roe v. Wade* should be overruled.”³ Similarly, when the Supreme Court reaffirmed the constitutional right to abortion in the 1992 decision *Planned Parenthood v. Casey*,⁴ Mr. Barr told CNN that the decision was “a step in the right direction because it does allow the states greater latitude in placing reasonable restrictions on abortion. But it doesn't go far enough in my view.” Mr. Barr further stated that he believed *Roe v. Wade* “does not have any constitutional underpinnings.”⁵

Further, as Attorney General for President George H.W. Bush, Mr. Barr used his position to not only vocally call for the overturning of *Roe v. Wade*, but also to oppose Congressional legislation codifying reproductive rights, writing letters to Congress expressing strong opposition to a proposed bill to establish a federal right to abortion.⁶ He also wrote a letter to the American Bar Association on behalf of the Bush Administration discouraging the organization from formally supporting the constitutional right to abortion.⁷ After leaving the Department of Justice, Mr. Barr remained active in efforts to undermine women’s health, including by joining other former DOJ officials in filing amicus briefs opposing the Affordable Care Act⁸ and supporting efforts to hinder women’s access to affordable contraception.⁹

For over four decades, women have relied on the Supreme Court’s decisions repeatedly reaffirming that the Constitution affords robust protections for access to abortion and contraception, along with the underlying principles of liberty, dignity, equality, and bodily integrity the right reflects. These rights have helped women equally participate in the social and economic life of the nation, and as a result, the strong framework of legal precedent protecting these fundamental constitutional values is of critical importance to women. Moreover, *Roe* is the foundation for a broad swath of constitutional law that protects our right to make decisions about marriage, procreation, contraception, family relationships, child-rearing and education, and more.¹⁰ It is essential that the Attorney General possess a deep commitment to defending these core constitutional values and substantive fundamental rights, regardless of their personal beliefs or those of the President. Mr. Barr’s record raises significant concerns about his ability to fulfill this responsibility. Accordingly, we have grave concerns about how he will execute his responsibilities if confirmed a second time to this crucial position.

At his upcoming hearing before your Committee, we urge you to thoroughly question Mr. Barr about his record and current understanding and interpretation of abortion jurisprudence, about his commitment to the rule of law and respect for precedent, and about his analysis of substantive due process rights to bodily autonomy. Mr. Barr’s past explicit opposition to the constitutional right to abortion, combined with President Trump’s campaign promise to overturn *Roe v. Wade*,¹¹ only amplify the importance of scrutinizing Mr. Barr’s ability to impartially dispense his responsibilities. Mr. Barr must commit to rigorously uphold all constitutional rights, including protections for abortion. We strongly encourage you to press Mr. Barr on these matters.

If you have any questions or would like any additional information, please contact Sara Outtersen, Senior Federal Legislative Counsel at souttersen@reprorights.org or 302-927-6980.

Sincerely,
Center for Reproductive Rights

¹ *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr, C-SPAN (November 13, 1991), <https://www.c-span.org/video/?c4765758/barr-roee>.

⁴ *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833 (1992).

⁵ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992).

⁶ Letter to Congressman Henry Hyde, pgs. 1957-1959 (Mar. 2, 1992), *available at* [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(c\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(c).pdf); Letter for the Chairman, Committee on Labor and Human Resources, U.S. Senate, pgs. 11-15 (July 1, 1992), *available at* <https://www.justice.gov/olc/file/476961/download>.

⁷ *Endorsement Puts ABA in Thick of Abortion Fray*, ASSOCIATED PRESS (Aug. 12, 1992), <https://www.deseretnews.com/article/241844/ENDORSEMENT-PUTS-ABA-IN-THICK-OF-ABORTION-FRAY.html>.

⁸ Brief for Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh et al. as Amici Curiae Supporting Appellees, *Commonwealth of Virginia v. Sebelius*, 728 F. Supp. 2d 768 (E.D. Va. 2010).

⁹ Brief for Former Justice Department Officials, as Amici Curiae Supporting Appellees, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

¹⁰ CENTER FOR REPRODUCTIVE RIGHTS, *Roe and Intersectional Liberty Doctrine* (2018), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Liberty-Roe-Timeline-spread-for-web.pdf>.

¹¹ Mark Berman, *Trump promised judges who would overturn Roe v. Wade*, WASH. POST (Mar. 21, 2017), https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/neil-gorsuch-confirmation-hearings-updates-and-analysis-on-the-supreme-court-nominee/trump-promised-judges-who-would-overturn-roe-v-wade/?utm_term=.755638cbe7d7.