



January 16, 2019

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

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

RE: Nomination of William Barr for Attorney General

On behalf of the National Center for Transgender Equality, we write to oppose the nomination of William Barr to serve as Attorney General at the U.S. Department of Justice (“Justice Department” or “DOJ”). Founded in 2003, NCTE works to improve the lives of the nearly two million Americans who are transgender.

The Attorney General is the nation’s highest law enforcement office, charged with ensuring enforcement of the nation’s civil rights laws. The person holding this position should have an impeccable record demonstrating a strong and unwavering commitment to the principle enshrined on the Supreme Court building: “Equal justice under law.” That high standard is especially important given the Justice Department’s numerous attacks on civil rights, including for LGBTQ Americans, during the past two years, and the momentous, ongoing investigations concerning the President. Unfortunately, due to his record of actions, statements, and writings—both old and new—demeaning LGBTQ Americans and those living with HIV, and opposing basic civil rights protections, as well as indications he will not be impartial in ongoing investigations involving the President, nominee William Barr does not meet that high standard.

Mr. Barr’s consistent hostility to civil rights protections for LGBTQ Americans

Mr. Barr has asserted that LGBTQ Americans are not worthy of being treated as equal to others. While serving as Attorney General in the early 1990s, Mr. Barr gave a speech warning against laws that “put on the equal plane, conduct that was previously considered immoral.” Mr. Barr then criticized a nondiscrimination statute in the District of Columbia that required Georgetown University to treat an LGBT student group (whom Barr described as “homosexual activist[s]”) as it did other student groups,” arguing that, “this kind of law dissolve[s] any kind of moral consensus in society.” Mr. Barr also expressed his disapproval of laws that prohibit landlords from discriminating against unmarried couples—with obvious legal implications for same-sex couples at the time.

Mr. Barr also has made it clear that he supports limiting fundamental liberty rights guaranteed by the Constitution. During his 1991 Senate Judiciary hearing, Mr. Barr frankly asserted that the constitutional right to privacy does not extend to abortion. This refusal to respect as settled law the right to make personal medical decisions regarding abortion should be disqualifying in its own right. We note that Mr. Barr's views, if extended to other fundamental personal freedoms, would result in dramatic limitations on individual liberty, including the right of LGBT people to enter into consensual adult intimate relationships, to marry, and to raise children.

Mr. Barr's views on these issues apparently have not changed. In an op-ed published just weeks ago, Mr. Barr praised former Attorney General Jeff Sessions for his move to withdraw "...policies that expanded statutory protections based on gender identity that Congress had not provided in law." This aggressively unprincipled statement ignores the overwhelming trend of circuit and district court authority holding that discrimination based on gender identity is unlawful. In the same opinion piece, Mr. Barr praised a memo from former Attorney General Sessions that suggested preventing discrimination against LGBTQ Americans is not a compelling government interest. This longstanding and continuing hostility toward LGBTQ Americans makes him unfit to serve as the country's top lawyer, charged to ensure that all Americans can receive equal justice under law.

Mr. Barr's response to the HIV Epidemic

Mr. Barr's response to the HIV crisis during his tenure as Attorney General in the 1990s should also be disqualifying. The role of Attorney General requires not only deep respect for the rule of law, but also a willingness to make decisions based on facts rather than ideology. By contrast, Mr. Barr's response to the HIV crisis revealed his willingness to ignore science and medicine in order to advance his own biased and punitive attitude toward those affected by the epidemic.

For example, Mr. Barr played a key role in thwarting a push to remove HIV from the list of communicable diseases of "public health consequence." In 1991, the U.S. Department of Health and Human Services ("HHS") proposed to remove HIV/AIDS from the list of communicable diseases posing public health risks that warranted exclusion of immigrants from the United States. The rule clarified that persons living with HIV did not pose a significant risk to public health because HIV is not transmitted through casual contact, and that the risk of transmission in other contexts is not contingent upon the nationality of the person living with HIV.

Mr. Barr's Personal Statements about People Living with HIV

Equally troubling are Mr. Barr's personal statements in response to the epidemic. Rather than being guided by science and medicine, Mr. Barr vilified efforts to prevent the epidemic by distributing condoms, and instead touted policies focused on "sexual responsibility." Mr. Barr urged that there be a "cost" to what he termed "personal misconduct," and that government should not act to lower that "cost" through public health prevention efforts. This attitude is—and was at the time—misguided and chilling, showing a stunning lack of judgment and compassion.

Mr. Barr's extreme views on executive power and DOJ investigations

We are also deeply concerned that it appears Mr. Barr has been chosen for his extreme views on executive power and DOJ investigations—as evidenced in writings and personal statements both old and news. Particularly under the present extraordinary circumstances, any nominee for Attorney General espousing these views should be subject to the most rigorous skepticism and scrutiny.

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For all of the above reasons, William Barr does not meet the high standard for confirmation as the next Attorney General.

Thank you for considering our views on this momentous nomination. Please do not hesitate to reach out if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Mara Keisling". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mara Keisling
Executive Director

cc: United States Senate Judiciary Committee Members