



HUMAN
RIGHTS
CAMPAIGN®

January 16, 2019

The Honorable Lindsey Graham
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, and our more than three million members and supporters nationwide, I write to oppose the nomination of William Barr to serve as Attorney General of the United States. The Attorney General, as the nation's top law enforcement officer and leader of the U.S. Department of Justice, is responsible for protecting the civil and constitutional rights of all Americans. Barr's public record indicates deeply disturbing views towards LGBTQ people and people living with HIV that are out of step with the values of the American people. His hearing this week failed to alleviate these concerns and confirmed he will continue the Trump Justice Department's biased and negligent approach to enforcing laws impacting LGBTQ people.

Mr. Barr has a troubling record of hostility towards nondiscrimination protections for LGBTQ people and people living with HIV. He has been a vocal supporter of former Attorney General Jeff Sessions' memo sanctioning religious-based discrimination,¹ as well as the Justice Department's interpretation excluding transgender people from coverage under Title VII and Title IX sex discrimination provisions. In the hearing held by this committee on Tuesday, Barr reiterated his previously stated position advocating against interpreting federal laws to include

¹ Memorandum from the Office of the Att'y Gen to all Executive Depts and Agencies (Oct. 6, 2017) (on file with the Dep't of Justice).

gender identity or sexual orientation² – a position that disregards the holdings of more than forty federal courts in the last twenty years.³

Barr was directly questioned as to whether under his leadership the Department of Justice would continue to argue against the inclusion of sexual orientation within the definition of “sex” in Title VII in the context of *Zarda v. Altitude Express*.⁴ He specifically stated that he would look to the interpretation of “sex” as understood in 1964, arguing that this interpretation had been the “common understanding for almost 40 years.” This interpretation runs counter to current legal analysis⁵ and existing Supreme Court precedent regarding the interpretation of Title VII to include classes or characteristics not originally considered by the 1964 Congress.⁶ Barr’s statements Tuesday and his acceptance of the Justice Department’s current interpretation reflect a willingness to ignore meaningful case law and a reticence to employ mainstream legal theories that run counter to his personal beliefs. Barr’s testimony this week confirm our previously expressed concerns that he would not investigate complaints of discrimination in a manner faithful to binding precedent, particularly in jurisdictions where this case law is binding.

Barr has failed to establish the commitment to equal justice under the law, and faithfulness to the law regardless of political ideology that are essential for our nation’s top attorney. In a time of great division, we need an Attorney General who will promote equality for all Americans by vigorously enforcing the federal civil rights laws that so critically protect those most vulnerable to discrimination. Barr has not proven himself to be this public servant. Therefore, we must oppose his nomination.

Thank you for your consideration. If you have any questions or need more information, please contact me at david.stacy@hrc.org.

Sincerely,

² Dear Colleague Letter from the Dep’t of Justice and the Dep’t of Education (Feb. 22, 2017) (on file with the Dep’t of Justice); Memorandum from the Office of the Att’y General to United States Attorneys Heads of Department Components (October 4, 2017) (on file with the Dep’t of Justice); William P. Barr, Edwin Meese III & Michael B. Mukasey, *We Are Former Attorneys General. We Salute Jeff Sessions*. (November 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2ef-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.23d4ed5564cd.

³See, *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc*, 884 F.3d 560 (6th Cir. 2018); *Zarda v. Altitude Express*, 855 F.3d 76 (Apr. 18, 2017); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017); *Dodds v. U.S. Dept. of Education*, 945 F.3d 217 (6th Cir. 2016); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000).

⁴ 883 F. 3d 100 (2018).

⁵ See supra note 3 and accompanying text.

⁶See, *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998) (Holding, in an opinion drafted by the late Antonin Scalia, that Title VII must be applied to prohibit sexual harassment of men by other men, even though Congress did not have that problem in mind when it enacted Title VII. The Court ruled that “statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”)

David Stacy

David Stacy
Government Affairs Director