



HUMAN
RIGHTS
CAMPAIGN®

January 11, 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 Senator:

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 express our serious concern regarding 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.

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. Barr has previously advocated against interpreting federal laws to include gender identity² – a position that disregards the holdings of over forty federal courts in the last twenty years.³ He has also argued that prohibiting sexual orientation

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

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).

³ 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-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.23d4ed5564cd.

discrimination “seeks to ratify, or put on an equal plane, conduct that previously was considered immoral,” and “dissolves any form of moral consensus in society.”⁴ These statements and his acceptance of this interpretation reflects a willingness to ignore meaningful case law and a reticence to employ mainstream legal theories that run counter to his personal beliefs. This raises serious concerns as to whether as Attorney General Barr would investigate complaints of discrimination in a manner faithful to binding precedent, particularly in jurisdictions where this case law is binding.

Barr has also made personal statements promoting a draconian approach to the federal government’s role in responding to the HIV/AIDS epidemic, including the adoption of proven methods of prevention and access to treatment. Barr blamed AIDS and other sexually transmitted infections on “sexual licentiousness,” calling them “the costs associated with personal misconduct.”⁵ He openly disputed public health efforts to inform the American people about the transmission and prevention of HIV and AIDS, opposing public health interventions, such as the distribution of condoms, because “by removing the costs of [sexual] misconduct, the government serves to perpetuate it.”⁶

These scientifically unsupported and damaging comments from a public servant foster stigma and discrimination against people living with HIV. Even more troubling, however, is the influence these beliefs had on Barr’s policy positions and official duties. Specifically, Barr played a key role in stopping a proposed HHS rule that would have removed HIV as a disease of “public health significance” and would have had the effect of allowing HIV+ people to immigrate to the U.S.⁷ He also supported the indefinite detention of a group of HIV+ Haitian refugees at Guantanamo Bay and recommended they be returned to Haiti, even though they had already demonstrated credible fear of the consequences should they return.⁸

We are deeply concerned that Barr lacks both 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

⁴ William P. Barr, *Legal Issues in A New Political Order*, 36 Cath. Law. 1 (1995) at 8.

⁵ William P. Barr Senate Judiciary Questionnaire Attachment 12(d): Remarks of William P. Barr, Attorney General of the United States to the Knights of Columbus, New York, New York (p. 677) (Aug. 5, 1992) (“The state—which no longer sees itself as a moral institution, but as a secular one—takes on the role as the alleviator of bad consequences. The state is called upon to remove the inconvenience and costs of misconduct. So the reaction to HIV and illegitimacy is not sexual responsibility but handing out condoms.”)

⁶ *Id.* at 7.

⁷ Medical Examination of Aliens, 56 Fed. Reg. 2484 (proposed January 23, 1991) (to be codified at 42 C.F.R. pt. 34).; Presidential Oral Histories, William P. Barr Oral History Transcript, (Apr. 5, 2001), UVA Miller Center Interview, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

⁸ Michael Ratner, *How We Closed the Guantanamo HIV Camp: The Intersection of Politics and Litigation*, 187 Harv. Human Rights Jour. 11, 218 (1998), <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Ratner%20How%20we%20Closed%20Guantano%20camp.pdf>. (“A high-level attorney in the Bush administration told us that Attorney General Barr believed that everyone who was HIV-positive should be returned to Haiti.”)

most vulnerable to discrimination. We urge you to conduct a thorough hearing and provide an opportunity for Barr to respond to these concerns on record.

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

Sincerely,

A handwritten signature in black ink that reads "David Stacy". The signature is written in a cursive style with a prominent loop at the end of the last name.

David Stacy
Government Affairs Director