

## **The Center for Reproductive Rights Opposes William Barr's Nomination to Serve as Attorney General**

The Attorney General is the head of the Department of Justice, which is tasked with both enforcing federal laws and defending the federal government in litigation. In addition, the Department of Justice administers certain programs that ensure compliance with federal law. As the chief law enforcement office in the United States, the policies of the Attorney General shape the application of laws across the country and directly impact access to key protections for women.

William Barr has not demonstrated a willingness to direct the DOJ to adopt policies that protect access to crucial health care or to vigorously defend constitutional protections for reproductive rights. Based on his record, and his testimony at his January 15, 2019 confirmation hearing in front of the Senate Judiciary Committee, **we urge members of the Senate to VOTE NO on the Barr nomination.**

### **About William Barr:**

William P. Barr is currently Of Counsel with the private law firm, Kirkland & Ellis LLP. Mr. Barr previously served as the 77th U.S. Attorney General from 1991 to 1993 under George H.W. Bush's presidential administration and has otherwise occupied a variety of roles in both the public and private sector.

**Mr. Barr demonstrates a legal and doctrinal hostility to reproductive rights, opposing the recognition of reproductive rights as fundamental liberty rights under the Constitution.** He openly disfavors abortion and favors restraints on women's reproductive freedoms, repeatedly expressing disapproval for what he sees as a "moral crisis" gripping the country and criticizing the "general moral decline we see all about us in society" wherein "[t]hings which not long ago were immorally impermissible are not only tolerated, but encouraged. Abortion, euthanasia, sexual licentiousness..."<sup>1</sup> During his confirmation hearing to become U.S. Attorney General in 1991, Barr criticized *Roe v. Wade* by stating "I do not believe the right to privacy extends to abortion... I believe *Roe v. Wade* should be overruled."<sup>2</sup>

### **Barr used his position as Attorney General to advocate against reproductive rights:**

- In March 1992, Barr sent a letter to then-Rep. Henry Hyde expressing strong opposition to the Freedom of Choice Act ("FOCA") and warning that he would advise President Bush to veto if the bill passed Congress. Barr argued that the bill, which would have codified *Roe v. Wade*, "would impose on all 50 states an unprecedented regime of abortion on demand going well beyond the requirements of *Roe v. Wade*."<sup>3</sup>
- Under his leadership in 1992, the DOJ [filed an amicus brief](#) in *Planned Parenthood v. Casey* arguing that **"In our view, a state's interest in protecting fetal life throughout pregnancy, as a general matter, outweighs a woman's liberty interest in an abortion."**
- Two days after the Supreme Court's ruling in *Planned Parenthood v. Casey*, Barr wrote a letter to Sen. Ted Kennedy repeating his opposition to FOCA and critiquing the amended version of the bill then being

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<sup>1</sup> William Barr, Attorney General, Speech at Brent Society Awards Dinner, Brent Society of the Roman Catholic Diocese of Arlington, Arlington, Virginia (May 20, 1992), available at [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(d\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(d).pdf), at 896-902.

<sup>2</sup> *Nomination of William Barr to be Attorney General of the United States: Hearings Before the S. Comm. on the Judiciary*, 102nd Cong., 1st Sess. 65-66 (1991), <http://civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf>.

<sup>3</sup> William Barr, Attorney General, Letter to Congressman Henry Hyde (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) at 1957-1959.

considered by the Senate health committee. In that letter, Barr challenged the constitutional underpinnings for abortion access, including stating that “[t]he Fourteenth Amendment...prohibits only certain deprivations of liberty, for instance those that have no rational relationship with a legitimate state interest; were it to prohibit all deprivations of liberty, it would forbid an enormous range of laws including laws against homicide.”<sup>4</sup>

- [Discussing Casey on CNN](#), Barr said “**It’s 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. I think *Roe v. Wade* should be overturned.**” He continued, “**I think that *Roe v. Wade* will ultimately be overturned. I think it’ll fall of its own weight. It does not have any constitutional underpinnings.**” Of the direction of the Department of Justice, Barr said: “I think this department will continue to do what it’s done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation.”
- In August 1992, as the American Bar Association’s House of Delegates prepared to vote on whether to remain neutral or take a stance supporting the right to abortion, Barr [wrote a letter](#) on behalf of the Bush Administration, warning the ABA that “[b]y endorsing one side of this debate, the ABA will endanger the perception that it is an impartial and objective professional association.”

**Barr repeatedly opposed the Affordable Care Act – the greatest advancement in women’s health care in a generation and one of the many federal laws he would be responsible for defending if confirmed as Attorney General.** He joined four amicus briefs filed with other former Attorneys General and DOJ officials opposing the ACA and arguing that the law was unconstitutional.<sup>5</sup> After the Supreme Court upheld the ACA in *National Federation of Independent v. Sebelius*, Barr again joined other former Department of Justice officials in supporting the plaintiffs in *Zubik v. Burwell*, religious non-profits who claimed requesting an accommodation, or even notifying the federal government of their objection to providing contraception coverage to their employees, unconstitutionally violated their religious beliefs.<sup>6</sup>

**Recent statements from Barr suggest his positions on contraception coverage have not evolved over time.** Instead, he advocates for an expansive interpretation of religious freedom, to the detriment of individual rights and reproductive health. Barr recently co-authored [an op-ed](#) in the Washington Post publicly praising former Attorney General Sessions’ policies favoring vendors who did not want to “participate in activities that would violate their religious beliefs and the right not to have the religious beliefs of business owners burdened by a mandate to provide funding for contraceptives.”

### **In His Own Words:**

- “**Nothing symbolizes the decadence of the secular age more than the stain of abortion.** You can measure the moral health of a society by the way it treats its most weak and defenseless.... About 1.5

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<sup>4</sup> William Barr, Attorney General, *Proposed Federal Abortion Legislation*, Letter for the Chairman, Committee on Labor and Human Resources, U.S. Senate 11 (July 1, 1992), available at <https://www.justice.gov/olc/file/476961/download> at 11-15.

<sup>5</sup> 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); Memorandum of Former United States Attorneys General William Barr, Edwin Meese, and Dick Thornburgh, in Support of Plaintiff’s Motion for Summary Judgment, *Virginia ex rel. Cuccinelli v. Sebelius*, 702 F.Supp.2d 598 (E.D.Va 2010) (No. 3:10-cv-00188-HEH), 2010 WL 4168827; 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) (Nos. 11-1057, 11-1058), 2011 WL 1251261 (C.A.4); Brief of Former Department of Justice Officials as Amicus Curiae in Support of Respondents (Minimum Coverage Provision), *U.S. Department of Health and Human Services v. Florida*, 565 U.S. 1033 (2011) (No. 11-398), 2012 U.S. S. Ct. Briefs LEXIS 656.

<sup>6</sup> Brief for Former Justice Department Officials, as Amici Curiae Supporting Appellees, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

million children are aborted each year. Almost a third of these abortions are performed on teenagers. Today alone, 4000 unborn children will be killed by abortion. This is a moral catastrophe.”<sup>7</sup>

- **“Violations of the moral law have bad practical consequences for society. H.I.V., venereal disease, is the price we pay, among others, for sexual license.** Violent juvenile crime is a price we pay for the breakdown of the family. So, in the past, societies have been driven back to their senses by the sheer cost of misconduct. But today, something is new. The state—which no longer sees itself as a moral institution, but as a secular one—takes on the role of the alleviator of bad consequences. The state is called upon to remove the inconvenience and costs of misconduct. So the reaction to H.I.V. and illegitimacy is not sexual responsibility but handing out condoms. While we think we are solving problems we are actually subsidizing them. And **by lowering the cost of misconduct, the government perpetuates it.**”<sup>8</sup>

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<sup>7</sup> William Barr, Attorney General, Speech to the Knights of Columbus, New York, New York (Aug. 5, 1992), available at [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(d\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(d).pdf) at 674-675.

<sup>8</sup> *Id.*, at 677.