

February 12, 2019

Dear Senator:

On behalf of Americans United for Separation of Church and State, representing members and supporters in all 50 states and the District of Columbia, we write to voice our opposition to the confirmation of William Barr as Attorney General.

As our nation's top law enforcement officer and head of the Justice Department, Mr. Barr would have the responsibility of enforcing federal law, including the civil and constitutional rights that protect all Americans. Yet, his prior writings and speeches, as well as his testimony before the Judiciary Committee, demonstrate a troubling record on matters related to the separation of church and state. We are concerned that he will follow in the footsteps of former-Attorney General Jeff Sessions and erode important civil rights protections, especially those for LGBTQ people, women, religious minorities, and the nonreligious.

Lack of Respect for Religious Freedom for All

Mr. Barr has stated that our country's system of governance is rooted in a Judeo-Christian religious belief system and our nation was founded on a belief system that flows from "God's eternal law." He laments what he calls a "steady and mounting assault on traditional values" that started in the 1960s and that has led us to "an increasingly militant, secular age."¹ Mr. Barr claimed that these developments have led to changes in the law that have been used "as a weapon directly against religion and religious institutions."² He has "blamed secularism for virtually every contemporary societal problem."³ According to Mr. Barr, "the secularists of today are clearly fanatics."⁴

Having an Attorney General with these views raises serious concerns. First, he has demonstrated hostility towards secular Americans. Second, he has falsely blamed secularism for most of our societal ills and shown a preference for a government that can impose religion—specifically "Judeo-Christianity"—on all Americans. Mr. Barr fails to recognize that our Constitution established a secular government that provides both religious and nonreligious Americans the same rights and protections.

The First Amendment ensures the separation of church and state, which is the linchpin of religious freedom and one of the hallmarks of American democracy. It ensures that each person has the right to choose whether to be religious or nonreligious without pressure from the government. It protects taxpayers from being forced to fund the religious activities and education of others. And, it ensures that all Americans feel welcome and treated equally under the law regardless of their religion.

¹ William P. Barr, [Legal Issues in a New Political Order](#), 36 THE CATHOLIC LAWYER 1-3 (1995).

² *Id.* at 9.

³ William R. Wineke, [U.S. Attorney General Blames Secularism for Woes](#), WISC. STATE J., Nov. 28, 1992, at 3C.

⁴ Associated Press, [Attorney General Bewails 'Moral Decline'](#), DESERET NEWS, Oct. 7, 1992.

Confirming an attorney general who fails to recognize these key components of the separation of church and state could have real consequences for people who most need the protections guaranteed by the First Amendment and nondiscrimination laws.

Using Religious Freedom as a Justification for Discrimination

Religious freedom is a fundamental American value. It provides heightened but not unlimited protections for religious exercise. If a government action substantially burdens a person's religious exercise, the government must, in some circumstances, create a tailored and appropriate exemption to accommodate the person. The Constitution prohibits the government from granting religious exemptions, however, when they would cause harm to others. For example, the government should not issue exemptions that would allow discrimination or deny access to healthcare. Mr. Barr, however, has failed to recognize this important constitutional limitation and has indicated support for religious exemptions even where they would undermine important civil rights laws and policies that protect others.

When asked about his position that religion can be used as a justification for ignoring civil rights protections for LGBTQ people at the Senate Judiciary Committee, Mr. Barr answered that laws prohibiting anti-LGBTQ discrimination should have accommodations for religion. In a 2017 *Washington Post* op-ed, Mr. Barr praised then-Attorney Jeff Sessions for protecting "the rights of vendors not to participate in activities that would violate their religious beliefs." He was referencing Sessions's position in a Department of Justice memorandum that stated that businesses could use religion as a reason to ignore public accommodations laws that protect others from discrimination. In a 1995 law review article, Mr. Barr criticized housing laws that prohibit discrimination against unmarried couples, arguing that landlords should be allowed to make a "moral distinction" and deny certain couples housing.⁵

Mr. Barr's broad interpretation of religious freedom could allow religion to be used to deny rights and benefits to others. In 2016, Barr joined an amicus brief in *Zubik v. Burwell*, arguing that under RFRA the government may not require a nonprofit organization to fill out a form to request a religious exemption from the Affordable Care Act's birth control benefit. The brief argued that RFRA authorized employers to refuse to provide the benefit to their employees, but did not acknowledge that this would result in harm to the employees, especially women and their families. His interpretation of RFRA fails to acknowledge that the Establishment Clause of the First Amendment guarantees that RFRA cannot be used in ways that result in harm to others.⁶

Supporting Public School Sponsored Prayer

Five decades of Supreme Court rulings bar public schools from sponsoring prayer and religious activities. This constitutional jurisprudence protects students by ensuring that all students, regardless of their religious beliefs, can attend public schools without fear of being evangelized by teachers or forced to pray according to someone else's faith tradition. It also protects parents who want to send their children to public schools without fear that they will be subjected to a teacher, principal, or coach's religion.

⁵ Barr *supra* note 1 at 9.

⁶ *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring); *Cutter*, 544 U.S. at 726 (may not "impose unjustified burdens on other[s]"); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (may not "impose substantial burdens on nonbeneficiaries").

William Barr, however, has indicated his disagreement with two important public school prayer cases. He called *Lee v. Weisman*,⁷ in which the Supreme Court held that public schools could not sponsor prayers at high school graduation ceremonies, a “very disappointing setback.”⁸ And, he has argued that the coercion test, which was later applied in *Santa Fe Independent School District v. Doe*⁹ to strike down a public school practice of sponsoring prayer at football games, was “hostile to religion.”¹⁰

We need an Attorney General who will protect the rights of the nonreligious and students of minority faiths in our public schools, not one who will support policies that allow the religion of the majority to be imposed on public schools students.

For these reasons, Americans United opposes the confirmation of William Barr as Attorney General.

Sincerely,

A handwritten signature in cursive script that reads "Maggie F. Garrett".

Maggie Garrett
Vice President of Public Policy

⁷ 505 U.S. 577 (1992).

⁸ *Id.*

⁹ 530 U.S. 290 (2000).

¹⁰ Barr *supra* note 1 at 9.