



**CONSTITUTIONAL**   
**ACCOUNTABILITY CENTER**

February 13, 2019

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, D.C. 20510

Dear Majority Leader McConnell and Minority Leader Schumer,

The United States Department of Justice (“DOJ” or “the Department”) should be guided by the principle Thomas Jefferson believed was the “most sacred of the duties of government”: “to do equal and impartial justice” to all.<sup>1</sup> The Department plays a critical role in our country’s noble pursuit of equal and impartial justice, helping to realize values embedded in the Constitution and codified in a long list of federal statutes that help implement constitutional guarantees.

DOJ executes this charge through its numerous agencies and components, including such notable divisions as the Civil Rights Division, the Executive Office for Immigration Review, the Federal Bureau of Investigation, and the Office of Legal Counsel. In order to carry out the Department’s mission, its head, the Attorney General, must have a certain set of values: a deep commitment to the core constitutional principles of liberty, equality, and fairness; a history of defending and/or advancing substantive fundamental rights; and a demonstrated willingness to respect the whole Constitution and the values therein, whatever his or her own policy preferences, or those of the President. These values are important, as they will guide the Attorney General in exercising one of his greatest powers—determining what issues, laws, regulations, and policies will receive the attention, support, and resources of the Department. As “the people’s lawyer,” the Attorney General must rise above partisan politics and, with independent fortitude and objectivity, enforce the Constitution and the rule of law fairly, even if that means standing up to the President himself.<sup>2</sup>

Unfortunately, during his confirmation hearing, William P. Barr, the President’s nominee for U.S. Attorney General, did not demonstrate that he has the commitment, history, respect, and independence so required. Additionally, he said nothing to quell the concerns we first expressed to you in our recent letter dated the tenth of January.<sup>3</sup> His record and testimony suggest that a Department under his stewardship would not be “fair and impartial” toward those who are among the most marginalized and at-risk in the United States, such as people of color, the LGBTQ community, and immigrants. He also failed to make sufficient commitments to assure the American people he would prevent and curb abuses of power by the government.<sup>4</sup> He has not demonstrated that he possesses the independence necessary to hold the Executive Branch accountable to the rule of law. Therefore, the Constitutional Accountability Center (“CAC”) opposes the confirmation of William Barr to be the next U.S. Attorney General and respectfully asks that the Senate **vote no on his confirmation.**

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**Constitutional Accountability Center**

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## **1. Maintaining Independence and Holding the Executive Accountable to the Rule of Law**

During Mr. Barr's confirmation hearing, Senators and Mr. Barr himself often mentioned upholding the rule of law as critical to the proper role of both DOJ and the Attorney General. Our nation's commitment to the "rule of law" means that the United States is a nation ruled by law, not by the dictates of any one man. The Constitution, including its Amendments, as well as numerous federal statutes, guarantee rights for all in America, define responsibilities for government officials, and mark the boundary between the federal and state governments.

CAC works to hold our government, including the Department of Justice and its head, the Attorney General, accountable to the commands of our Constitution and federal law more broadly. Among other things, we have written on the importance of the grand jury impaneled at the request of Special Counsel Robert Mueller<sup>5</sup> and the history of the Constitution's Domestic Emoluments Clause.<sup>6</sup> We also represent nearly 200 members of Congress who are asking the court to compel President Trump to comply with the Constitution's Foreign Emoluments Clause.<sup>7</sup>

In light of our efforts to promote the rule of law, we find it troubling that Mr. Barr would not commit to following the advice of career DOJ ethics experts should they advise he recuse himself from the Russia investigation, that he would not commit to making Mr. Mueller's report public, and that he was ill prepared to discuss the Foreign and Domestic Emoluments Clauses during his hearing.

### **a. Maintaining the Integrity of and Releasing the Findings of the Special Counsel Investigation into Russian Interference in the 2016 Election**

As you are aware, Special Counsel Mueller's investigation of the Russian government's efforts to interfere with the 2016 election has led to dozens of indictments and at least eight guilty pleas or convictions, including of people at the center of the President's campaign (e.g., former campaign chairman Paul Manafort, former campaign advisor George Papadopoulos, and the President's personal lawyer Michael Cohen).

Mr. Barr's public statements concerning the investigation suggest he was cherry-picked by President Trump to install a supervisor to Special Counsel Mueller who is biased and sympathetic to Trump's position. Mr. Barr submitted an unsolicited memorandum to DOJ attempting to exonerate Trump of obstruction of justice.<sup>8</sup> He wrote that the investigation is "fatally misconceived" and Special Counsel Mueller's reasoning is "grossly irresponsible,"<sup>9</sup> even though he did not know Special Counsel Mueller's reasoning.<sup>10</sup>

Furthermore, in the memo, Mr. Barr advanced an extreme form of the unitary executive theory, claiming, "The Constitution itself places no limit on the President's authority to act on matters which concern him or his own conduct. On the contrary, the Constitution's grant of law enforcement power to the President is plenary. Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone *is* the Executive branch."<sup>11</sup> This view is at odds with Article II of the Constitution, which recognizes that the executive branch will have "Departments" that Congress will create and to which Congress shall assign "duties."

If it is not yet already clear by the statements above, Senator Patrick Leahy spelled out quite clearly why having an Attorney General who places maintaining the rule of law above loyalty to the President who nominated him is critical in this specific moment in history:

President Trump has made it clear he views the Justice Department as an extension of his political power. He's called on it to target his opponents. He obsesses over the Russian investigation, which looms over his presidency—it may define it. He attacks the Special Counsel almost daily. He fired both the previous FBI Director and Attorney General for not handling the investigation as he pleased. That tells me the rule of law can no longer be taken for granted. So, if confirmed, the President's going to expect you to do his bidding.<sup>12</sup>

To ensure the rule of law is followed, Senator Leahy asked Mr. Barr if he would “commit, if confirmed, to both seeking and following the advice of the Department’s career ethics officials on whether [Mr. Barr] must recuse from the “Special Counsel’s investigation”.”<sup>13</sup> Unfortunately, in this instance and in others when asked similar questions by other Senators, Mr. Barr refused to commit to abide by an ethics review by career DOJ ethics officials. Instead, he said that although he would seek their advice, he would ultimately make the decision whether to recuse on his own.<sup>14</sup> Former Director for the U.S. Office of Government Ethics Walter Shaub made a statement on Twitter explaining, “Barr is wrong in saying he could ignore ethics officials. 5 CFR 2635.502(c) says that, if he consults ethics officials and they say he must recuse, he is ‘disqualified from participation in the matter’ and, under 2635.502(e), he ‘shall not participate.’”<sup>15</sup>

Additionally, while he committed to “providing Mr. Mueller with the resources, funds, and time needed to complete his investigation,”<sup>16</sup> Mr. Barr refused to commit to make public any report made by Special Counsel Mueller. Instead, he said that “the special counsel report is confidential... [and] the report that goes public would be a report by the Attorney General.”<sup>17</sup> This leaves open the possibility that he will write his own summary of the report, which may exclude information at his or the President’s discretion.

#### **b. Emoluments**

The Framers of the Constitution recognized the extreme danger posed by corruption. They were troubled by the possibility that governments, both foreign and domestic, might give the President financial benefits in order to compromise his independence and gain his loyalty. They feared that if our President could accept such benefits, the well-being of the American people might take a backseat to the President’s personal interests.

The Foreign Emoluments Clause was included in the Constitution to protect against foreign corruption and influence. But President Trump’s continued and unknown business interests make it impossible to know if he is making policy decisions concerning trade, military efforts, or diplomatic overtures based on his personal interests or the best interests of the American people. That is why nearly 200 members of Congress, including nine members of the Senate Judiciary Committee, are asking the courts to compel the President to comply with this anticorruption provision.

Moreover, there are other lawsuits pending in federal court that seek to hold the President accountable to both the Foreign and Domestic Emoluments Clauses. Given that these lawsuits have made headline news over the past two years and that DOJ is defending the President in these lawsuits, it is hard to understand how or why Mr. Barr was ill-prepared to discuss the matter during his confirmation hearing. It is unacceptable for the Attorney General to ignore this critically important safeguard against foreign corruption. It is equally unacceptable if Mr. Barr meant to avoid fully addressing his views on the topic, as such a silence keeps his position unknown to the American public, whom the Emoluments Clauses were crafted to protect.

## 2. Civil Rights

The Civil Rights Division of the Department of Justice is one of our nation's most powerful governmental entities responsible for combating discrimination in all walks of life and ensuring our Constitution's promise of equality for all. The Division is charged with enforcing the many federal statutes that prohibit discrimination on the basis of race, sex, disability, religion, and national origin. This includes investigating abuses and seeking relief in cases involving discrimination in the areas of education, credit, employment, housing, public accommodations and facilities, federally funded programs, and voting. It also includes protecting the rights of prisoners, persons with intellectual and physical disabilities, and senior citizens. Notably, the Division recommends observer and examiner activities, and reviews and approves regulatory changes proposed by all federal executive branch agencies as they pertain to civil rights. For women, people of color, people with disabilities, low income people, incarcerated people, abortion providers, victims of police misconduct and brutality, and immigrants, the Civil Rights Division is of particular importance.

Given his record, Mr. Barr is the wrong person to be put in charge of an agency that is responsible for working to end discrimination; indeed, if confirmed, he would be far more likely to further entrench discrimination in America by ignoring systemic examples of it and by undercutting laws enacted and programs put into place to fight it. What's more, Mr. Barr never uttered the words "civil rights" when laying out his understanding of and vision for the Department and the role of Attorney General in his introductory remarks.<sup>18</sup> In fact, during his several hours before the Senate Judiciary Committee, he said the phrase exactly once.<sup>19</sup> CAC opposes Mr. Barr's confirmation to be the next Attorney General based on his record on reproductive freedom, LGBTQ rights, criminal justice, and immigrants' rights and citizenship.

### a. Reproductive Freedom

It is imperative that the Attorney General enforce the rights and liberties guaranteed by our Constitution. The Attorney General does so by enforcing laws passed to carry out these constitutional guarantees, overseeing the Solicitor General's involvement in litigation, and helping to select federal judicial nominees.

Embedded in the Fourteenth Amendment is the right to abortion, and Mr. Barr's record on defending that right is abysmal. During his 1991 Senate confirmation hearing for Attorney General, Mr. Barr stated that "*Roe v. Wade* was wrongly decided and should be overruled."<sup>20</sup> After the Supreme Court's ruling in *Planned Parenthood v. Casey*, a decision that limited the right to abortion, Mr. Barr expressed disappointment in the decision, pledged DOJ would "continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation", and predicted *Roe* would eventually fall due to "further appointments to the Supreme Court."<sup>21</sup>

In addition, while Attorney General, Mr. Barr authored a letter expressly opposing the Freedom of Choice Act ("FOCA"), a bill that would have codified *Roe*. Therein he stated that he would advise then-President George H. W. Bush to veto the legislation should it come to his desk and wrongly questioned congressional authority to enact such a law to enforce the constitutional right to abortion, claiming it was reserved to the states.<sup>22</sup> Furthermore, he wrote a similar letter to Representative Henry Hyde, erroneously claiming that FOCA "would impose on all 50 states an unprecedented regime of abortion on demand going well beyond the requirements of *Roe v. Wade*."<sup>23</sup>

Mr. Barr's public opposition to the constitutional right to abortion continued after his tenure as Attorney General. In an article for *The Catholic Lawyer*, Mr. Barr characterized *Roe* as a "secularist" effort to "eliminate laws that reflect traditional moral norms,"<sup>24</sup> as if abortion could never be a moral choice,

demonstrating a clear bias in his view of the law. And just last year, he praised Attorney General Jeff Sessions for dedicating Department resources to “protecting . . . the right not to have the religious beliefs of business owners burdened by a mandate to provide funding for contraceptives.”<sup>25</sup>

The Special Litigation Section of the Civil Rights Division enforces the civil protections of the Freedom of Access to Clinic Entrances Act of 1994 (“FACE”), which protects abortion clinics, places of worship, their staff, and visitors from harassment and/or violence. FACE authorizes the Attorney General to seek injunctive relief, damages, and civil penalties against those who violate that statute. Abortion clinic violence remains a threat across the country, and people continue to rely on law enforcement to keep clinics accessible so they can obtain necessary health care.<sup>26</sup> Although federal law requires DOJ to devote resources to defend abortion providers, while Mr. Barr was Deputy Attorney General, DOJ intervened in several cases in support of anti-abortion protestors who were blocking access to abortion clinics.<sup>27</sup>

During his confirmation hearing, Mr. Barr said nothing to indicate that his views on the right to abortion have changed. Senator Richard Blumenthal asked if Mr. Barr still believed that *Roe v. Wade* should be overruled, and he would not directly answer the question.<sup>28</sup> Senator Blumenthal further asked if Mr. Barr would defend *Roe* if it were challenged<sup>29</sup> as Attorney General Loretta Lynch did in 2016 via Solicitor General Donald Verrilli,<sup>30</sup> who argued before the Supreme Court in defense of *Roe* and *Casey* in *Whole Woman’s Health v. Hellerstedt*.<sup>31</sup> Mr. Barr made no such commitment, stating only that *Roe* is “an established precedent . . . [that has] been on the books [for] 46 years.”<sup>32</sup>

#### **b. LGBTQ Rights**

The Trump Administration has been relentless in its attacks on the rights of the LGBTQ community. Now more than ever, we need a DOJ and an Attorney General who will defend the cherished constitutional principle of equality and enforce civil rights protections for all.

Unfortunately, Mr. Barr’s record on LGBTQ rights demonstrates he is not fit for the responsibility. In an article in *The Catholic Lawyer*, he criticized a Washington, D.C. law that prohibited Georgetown University from discriminating against LGBTQ student groups, calling their conduct “immoral.”<sup>33</sup> He called gays and lesbians a “homosexual movement” one that “gets treated with such solicitude while the Catholic population . . . is given the back of the hand.”<sup>34</sup>

Senator Cory Booker challenge him on these statements, asking if his position evolved over the years. Mr. Barr never said that his position that “being gay or bisexual, lesbian or transgender is immoral”<sup>35</sup> changed. Instead, Mr. Barr spoke of his legal support of “marital unions single sex”. While he stated that “laws designed to protect LGBTQ individuals from discrimination [do not] contribute to what [he] described as a breakdown of traditional morality,” and that it is “totally wrong” for an employer to fire an employee based on their sexual orientation, he would not go so far as to say that the employee “should be protected under civil rights law.” Nor would he say that a DOJ under his stewardship would continue the work of the Obama Administration to use Title VII to defend the rights of transgender children in school.<sup>36</sup> In fact, Mr. Barr has applauded Attorney General Sessions for withdrawing what he called “policies that expanded statutory protections based on gender identity that Congress had not provided for in law.”<sup>37</sup> And while he spoke of “mutual tolerance,” he made it clear that he believes that “tolerance” of individuals’ religious beliefs requires that they be permitted to discriminate against LGBTQ individuals.

Both Mr. Barr's record and his testimony strongly suggest that he would use his position as Attorney General to limit the civil rights of the LGBTQ community.

### **3. Criminal Justice**

The Department of Justice plays an extremely broad and critical role in our nation's criminal justice system. Among other things, it is responsible for enforcing more than 5,000 federal laws dealing with such varied problems as organized crime, drug trafficking, white-collar crime, cybercrime, and much more.<sup>38</sup> At the heart of this work are the Department's Criminal Division and the 93 United States Attorneys throughout the country, appointed by the President. Among their responsibilities, these attorneys prosecute criminal cases brought by the federal government.<sup>39</sup> Together, the Criminal Division and U.S. Attorneys determine who will be charged for federal crimes and face the full power of the U.S. government in court. They can also recommend to judges the length of sentences guilty defendants should serve. The Attorney General plays an important role here through "charging memos," which set the guidelines that federal prosecutors follow in deciding what charges to bring and the length of sentences for which to advocate.

In addition to prosecuting federal offenders, DOJ also has the power to investigate local law enforcement agencies accused of a "pattern or practice" of violating civil rights. Among its other responsibilities, the Special Litigation Section of the Civil Rights Division (SLS) helps protect the civil rights of the institutionalized and the rights of people who interact with local law enforcement—both prisoners and communities at large. For instance, in 2016, SLS found that the Baltimore Police Department had been engaging in a pattern or practice of unlawful stops, searches, and arrests that disproportionately harm African Americans and that it had engaged in a pattern or practice of excessive force and discrimination against people with mental health disabilities.<sup>40</sup> In 2015, SLS issued a report regarding the Ferguson, Missouri Police Department, finding that both the "police and municipal court practices systematically violate[d] the First, Fourth and Fourteenth Amendments."<sup>41</sup> Especially in the wake of high-profile shootings and killings of unarmed Black people by local police, it is imperative that the Department continue to use its power to investigate law enforcement in order to help determine how to address police brutality.

During his tenure as Attorney General in the early 1990s, Mr. Barr led a DOJ that instituted aggressive policies that harmed communities of color, the effects of which can still be felt today, including mass incarceration and the failed War on Drugs.<sup>42</sup> While Attorney General, Mr. Barr championed mass incarceration and building more prisons as the primary way to reduce crime, issuing the DOJ report, "The Case for More Incarceration," which stated, "we are incarcerating too *few* criminals" and "we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them."<sup>43</sup> When courts imposed restrictions on prison populations, then-Attorney General Barr told states his DOJ would assist them in lifting the restrictions. In his view, "[t]he choice is clear. More prison space or more crime."<sup>44</sup>

Time has not changed Mr. Barr's views. In 2015, he signed on to a letter opposing the Sentencing Reform and Corrections Act, condemning the bill's reduction of mandatory minimums and its retroactivity provisions.<sup>45</sup> And in an op-ed, he praised Attorney General Sessions for opposing Obama-Era measures to reform police departments that had been threatening civil rights and civil liberties. In the same op-ed, he claimed the "previous administration's policies had undermined police morale . . . causing officers to shy away from proactive policing out of fear of prosecution," calling it the "Ferguson effect."<sup>46</sup> During his confirmation hearing, Mr. Barr agreed with the Sessions policy making it more difficult for the Civil Rights Division to "enter into consent decrees to address systemic police misconduct."<sup>47</sup>

Mr. Barr continues to turn a blind eye to the inequality people of color face within the criminal justice system. In a 1992 interview, Mr. Barr stated, “if a black and a white are charged with the same offense, generally they will get the same treatment in the system, and ultimately the same penalty.”<sup>48</sup> He went on in the same interview to defend laws that make prison sentences for crack cocaine much harsher than prison sentences for powder cocaine.<sup>49</sup> The higher sentence for crack has a disproportionate racial impact because crack is more commonly used in Black communities and powder cocaine is more commonly used in white communities. When Senator Booker pressed him on his ignorant stance, Mr. Barr claimed that the policies he enacted were at the behest of African Americans, and he was unfamiliar with any reports on the “rife nature of racial bias within the [criminal justice] system.”<sup>50</sup> Mr. Barr’s inability to see or understand the disparate impact of the criminal justice system might alone disqualify him from being the country’s top law enforcement official.

#### **4. Immigrants’ Rights & Citizenship**

The Justice Department plays an important role in our country’s immigration system, and the Attorney General has considerable influence over how the government’s power to detain and charge undocumented immigrants is exercised. The Trump Administration’s posture toward immigration and citizenship has been among the most aggressive and extreme of any administration in U.S. history. The Administration, with a complicit DOJ, has narrowed the availability of legal asylum relief for those fleeing persecution, attacked the ability of sanctuary cities to make decisions on how to best serve their communities, undermined the independence of immigration courts and due process provided there, and defended the President’s anti-immigration efforts.

Mr. Barr’s record suggests he will continue the harsh policies of the Trump Administration and he acknowledged as much to Senator Josh Hawley during his confirmation hearing.<sup>51</sup> He has a history of public statements that misrepresent the American asylum system, furthering myths of an overly permissive system while ignoring the importance of American’s humanitarian obligations.<sup>52</sup> During his tenure as Attorney General in the 1990s, Mr. Barr advocated for detaining in Guantanamo Bay HIV-positive people from Haiti fleeing violence caused by a coup d’etat.<sup>53</sup> In effect, he created an overseas internment camp for migrants with HIV. A judge ordered the government to release the refugees.<sup>54</sup> When asked by Senator Blumenthal if he would house asylum seekers in Guantanamo again, Mr. Barr stated “it would depend on the circumstances”.<sup>55</sup>

As a private citizen, Mr. Barr praised Attorney General Sessions for “attack[ing] the rampant illegality that riddled our immigration system, breaking the record for prosecution of illegal-entry cases and increasing by 38 percent the prosecution of deported immigrants who reentered the country illegally.”<sup>56</sup> Furthermore, he defended the legality of the Muslim ban, declaring it was “squarely within both the president’s constitutional authority and his explicit statutory immigration powers.” In addition, he supported the firing of Acting Attorney General Sally Yates who directed the Department not to defend the ban in court, claiming it was “a serious abuse of office,”<sup>57</sup> failing to remember that when confirmed to the post, Yates swore an oath to the Constitution, not to the President.

And finally, during his confirmation hearing, Mr. Barr refused to honor the Fourteenth Amendment’s guarantee of birthright citizenship. Eroding birthright citizenship was a passion project of Mr. Barr’s would-be predecessor Attorney General Sessions while he was a Senator,<sup>58</sup> and has been a passion project for President Trump, who suggested he might revoke birthright citizenship via executive order.<sup>59</sup> These positions are in direct contradiction to the plain text of the Constitution.<sup>60</sup> Senator Hirono asked him directly

if he believes birthright citizenship is guaranteed by the Fourteenth Amendment and Mr. Barr responded that he “[hadn’t] looked at that issue” and it is “the kind of issue I would ask OLC to advise me on as to whether it’s something that’s appropriate for legislation.”<sup>61</sup> The fact that Mr. Barr turned a blind eye to the plain meaning of the Constitution’s text is deeply troubling.

## CONCLUSION

The Constitution must be the Attorney General’s guide as he advises the President and enforces federal law, and he must read and apply the *whole* Constitution in order to ensure its promises reach everyone in America. It is the responsibility of the Department of Justice to ensure that the Constitution’s guarantees are upheld and enjoyed equally by all persons; Mr. Barr’s positions on a range of issues—positions that have been consistent over decades—make clear that he is not qualified to lead the Department in fulfilling that responsibility. Furthermore, he was not prepared to disclose to the American people whether he would continue controversial policies and litigation postures instituted by Attorney General Jeff Sessions (including defending the President in his foreign emoluments lawsuit,<sup>62</sup> not defending the Affordable Care Act in court,<sup>63</sup> using private prison companies,<sup>64</sup> and narrowly construing the scope of the prohibition on employment discrimination on the basis of sex<sup>65</sup>) and whether the Fourteenth Amendment guarantees birthright citizenship.<sup>66</sup> CAC must therefore oppose Mr. Barr’s confirmation.

If you have any questions or would like any additional information, please contact Kristine Kippins, Constitutional Accountability Center’s Director of Policy, at [kristine@theusconstitution.org](mailto:kristine@theusconstitution.org) or (202) 296-6889 x313.

Respectfully,



**Praveen Fernandes**  
Vice President of Public Engagement



**Kristine A. Kippins**  
Director of Policy

cc: U.S. Senate

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<sup>1</sup> *About DOJ*, The United States Department of Justice, <https://www.justice.gov/about> (last visited Jan. 18, 2019).

<sup>2</sup> President Obama, Remarks by the President at Nomination of Loretta Lynch for Attorney General (Nov. 9, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/09/remarks-president-nomination-loretta-lynch-attorney-general>.

<sup>3</sup> See Letter from CAC to Chairman Graham & Ranking Member Feinstein on the Nomination of William P. Barr for U.S. Attorney General (Jan. 10, 2019), available at <https://www.theusconstitution.org/wp-content/uploads/2019/01/CAC-Barr-Letter-of-Concern.pdf>.

<sup>4</sup> *Id.* (quoting *About DOJ*, The United States Department of Justice, <https://www.justice.gov/about> (last visited Jan. 18, 2019)).

<sup>5</sup> Brianne J. Gorod & Ashwin P. Phatak, *The Russia Investigation: What Happens to the Grand Jury if Mueller Is Fired?* (May 2018), <https://www.theusconstitution.org/wp-content/uploads/2018/05/20180521-White-Paper-The-Russia-Investigation-What-Happens-to-the-Grand-Jury-if-Mueller-Is-Fired.pdf>.

<sup>6</sup> Brianne J. Gorod, Brian R. Frazelle, & Samuel Houshower, *The Domestic Emoluments Clause: Its Text, Meaning, an Application to Donald J. Trump* (July 2017), [https://www.theusconstitution.org/wp-content/uploads/2017/07/20170726\\_White\\_Paper\\_Domestic\\_Emoluments\\_Clause.pdf](https://www.theusconstitution.org/wp-content/uploads/2017/07/20170726_White_Paper_Domestic_Emoluments_Clause.pdf).



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<sup>7</sup> See *Blumenthal v. Trump*, Constitutional Accountability Center, <https://www.theconstitution.org/litigation/trump-and-foreign-emoluments-clause/> (last visited Jan. 22, 2019).

<sup>8</sup> Memorandum from William P. Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel (June 8, 2018), <https://www.justsecurity.org/wp-content/uploads/2018/12/June-2018-Barr-Memo-to-DOJ-Muellers-Obstruction-Theory-1.2.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General of the United States Before the S. Comm. on the Judiciary*, 116th Cong. (Jan. 15, 2019) [hereinafter *Jan. 15 Hearings*], (statement of Ranking Member Feinstein), available at <https://www.c-span.org/video/?456626-1/attorney-general-nominee-william-barr-confirmation-hearing>.

<sup>11</sup> See Memorandum from William P. Barr, *supra* note 8.

<sup>12</sup> *Jan. 15 Hearings* (statement of Sen. Leahy in conversation with William P. Barr).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (statements of Sen. Leahy, Sen. Klobuchar, Sen. Hirono, and Sen. Harris in conversation with William P. Barr).

<sup>15</sup> Walter Shaub (@waltshaub), Twitter (Jan. 15, 2019, 10:07 AM), <https://twitter.com/waltshaub/status/1085206918849806337>.

<sup>16</sup> *Jan. 15 Hearings* (statement of Ranking Member Feinstein in conversation with William P. Barr).

<sup>17</sup> *Id.* (statement of William P. Barr in conversation with Sen. Blumenthal).

<sup>18</sup> *Id.* (statements of William P. Barr).

<sup>19</sup> *Id.* (statement of William P. Barr in conversation with Sen. Blackburn) (in reference to work done on housing discrimination when he was Attorney General under George H.W. Bush)

<sup>20</sup> *Confirmation Hearing on the Nomination of Assistant Attorney General William P. Barr to be Attorney General of the United States Before the S. Comm. on the Judiciary*, 102nd Cong. (Nov. 13, 1991), (statement of Assistant Attorney General Barr in conversation with Sen. Metzenbaum), available at <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2>.

<sup>21</sup> Mariana Alfaro, *William Barr, Trump's Attorney General Nominee, said Roe v. Wade 'will fall' in Unearthed CNN Interview from 1992*, Business Insider (Jan. 11, 2019, 12:32 PM), <https://www.businessinsider.com/william-barr-attorney-general-roe-v-wade-abortion-1992-2019-1>.

<sup>22</sup> *Bush Rejects Abortion Rights Bills*, CQ Almanac (1992), <https://library.cqpress.com/cqalmanac/document.php?id=cgal92-1108204>

<sup>23</sup> Sharon LaFraniere, *Barr Attacks Abortion-Rights Bill*, The Washington Post (March 4, 1992), [https://www.washingtonpost.com/archive/politics/1992/03/04/barr-attacks-abortion-rights-bill/2d29aae7-ad69-43c5-b1cf-4c5018139cef/?noredirect=on&utm\\_term=.92d5541ddc0b](https://www.washingtonpost.com/archive/politics/1992/03/04/barr-attacks-abortion-rights-bill/2d29aae7-ad69-43c5-b1cf-4c5018139cef/?noredirect=on&utm_term=.92d5541ddc0b). (FOCA simply would have codified *Roe* as opposed to expanding abortion rights to “on demand.”)

<sup>24</sup> William P. Barr, *Legal Issues in a New Political Order*, 36 Cath. Law. 1, 8 (1995).

<sup>25</sup> William P. Barr, Edwin Meese III, and Michael B. Mukasey, *We Are former Attorneys General. We Salute Jeff Sessions.*, The Washington Post (Nov. 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?utm\\_term=.9003e5d2e665](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?utm_term=.9003e5d2e665).

<sup>26</sup> Aneri Pattani, *Threats at Abortion Clinics Rise Since Trump's Election*, CNBC: Modern Medicine (Dec. 15, 2016, 9:31 AM ET) (last updated Dec. 15, 2016, 10:37 AM ET), <http://www.cnbc.com/2016/12/15/abortion-providers-see-increased-threat-since-trumps-election.html>.

<sup>27</sup> Br. for the United States as Amicus Curae Supporting Pet'rs, *Bray v. Alexandria Women's Clinic*, 506 U.S. 263 (1993), (No. 90-985).

<sup>28</sup> *Jan. 15 Hearings* (statement of Sen. Blumenthal in conversation with William P. Barr)

<sup>29</sup> *Id.*

<sup>30</sup> Br. for the United States as Amicus Curae Supporting Reversal, *Whole Woman's Health v. Cole*, No. 15-274 (5th Cir. 2016).

<sup>31</sup> Oral Argument, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), <https://www.oyez.org/cases/2015/15-274>.

<sup>32</sup> *Jan. 15 Hearings* (statement of Sen. Blumenthal in conversation with William P. Barr).

<sup>33</sup> See William P. Barr, *Legal Issues in a New Political Order*, *supra* note 24 at 9.

<sup>34</sup> *Id.* at 11.

<sup>35</sup> *Jan. 15 Hearings* (statement of Sen. Booker in conversation with William P. Barr).

<sup>36</sup> *Id.* (statement of William P. Barr in conversation with Sen. Booker).

<sup>37</sup> See William P. Barr, Edwin Meese III, and Michael B. Mukasey, *supra* note 25.

<sup>38</sup> Matt Vespa, *How Many Federal Laws Are There Again?*, Townhall (June 6, 2018, 7:00 PM), <http://townhall.com/tipsheet/mattvespa/2015/06/06/how-many-federal-laws-are-there-again-n2009184>.

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- <sup>45</sup> Letter from John Ashcroft et. al to Senate Majority Leader Mitch McConnell and Senate Minority Leader Harry Reid (Dec. 10, 2015), available at <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.
- <sup>46</sup> See William P. Barr, Edwin Meese III, and Michael B. Mukasey, *supra* note 25.
- <sup>47</sup> *Jan. 15 Hearings* (statement of Sen. Hirono in conversation with William P. Barr).
- <sup>48</sup> Ronald J. Ostrow, *William Barr: A 'Caretaker' Attorney General Proves Agenda-Setting Conservative*, L.A. Times (June 21, 1992), [http://articles.latimes.com/1992-06-21/opinion/op-1236\\_1\\_attorney-general/2](http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2).
- <sup>49</sup> *Id.*
- <sup>50</sup> *Jan. 15 Hearings* (statement of Sen. Booker in conversation with William P. Barr).
- <sup>51</sup> *Id.* (statement of William P. Barr in conversation with Sen. Hawley).
- <sup>52</sup> Interview with William P. Barr, Assistant Attorney General; Deputy Attorney General; Attorney General in Charlottesville, Va. (Apr. 5, 2001), <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.
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