

Senator Lindsey Graham, Chair
Senator Dianne Feinstein, Ranking Member
United States Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of William P. Barr for United States Attorney General

Dear Chairman Graham and Ranking Member Feinstein,

The undersigned nonpartisan organizations and individuals, comprised of taxpayer, scientific, labor, civil liberties, and law enforcement organizations dedicated to strengthening protections for whistleblowers in private and public sector, are deeply concerned with the recent nomination of William Barr for U.S. Attorney General based on his radical positions against legal protections for whistleblowers. We call on Congress to reject the confirmation of Mr. Barr's nomination based on his troubling position against the whistleblower provision of the False Claims Act, the nation's premier tool in combating government fraud.

Mr. Barr has demonstrated a deeply antagonistic stance towards whistleblowers. In a public transcribed interview given as part of the Presidential Oral History of the George H.W. Bush Presidency, General Barr referred to the *qui tam* provisions of the False Claims Act as an "abomination" that he wanted to "attack" and he cited a "Mexican standoff" with the then Solicitor General who supported the provisions. As you are aware, the *qui tam* provisions allow the government to leverage enforcement capabilities by empowering private individuals -- who meet the law's rigorous standing and pleading requirements -- to bring suit in the name of the government. Mr. Barr specifically called the law's highly successful *qui tam* whistleblower provision "an abomination."

A link to that interview is as follows: <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

General Barr's remarks came in response to a question posed by UVA Law Professor, and former DOJ Assistant Attorney General (1977-1979), Dan Meador:

Meador

Within the Justice Department, were there any significant disagreements, say, between the Solicitor General and the Attorney General—either you or Thornburgh—about a position to be taken, not necessarily involving the White House, but internally within the Department?

Barr

Yes, there were significant disagreements sometimes between the SG's [Solicitor General] office and my office on a position. One of the big ones was the *qui tams* statute, which is basically a bounty hunter statute that lets private citizens sue in the name of the United States and get a bounty. I felt then, and feel now, that is an abomination and a violation of the appointments clause under the due powers of the President as well as the standing issue of the Supreme Court.

So I wanted to attack the *qui tam* statute, and the SG's office wanted to defend it. That was a big dispute.

Meador

How did it come out?

Barr

Mexican standoff, we didn't file at all. [laughter]

It appears that Mr. Barr's beliefs were long-standing and not a simple misunderstanding in the interview, as evidenced by memorandum he wrote during his tenure as Assistant Attorney General that argued the same erroneous position on the False Claims Act. Neither the memorandum itself nor the position taken in it was ever the official position of the Department of Justice; his views are an aberration that go against not only the Department of Justice but the courts and Congress as well.

Barr's hostility towards whistleblowers and his ignorance as to the effectiveness of the False Claims Act is especially shocking for a person who held the position of U.S. Attorney General. The legal position he advocated was unanimously repudiated by the U.S. Supreme Court in *Vermont Agency of Natural Resources v United States ex rel Stevens*, 529 US 765 (2000) in a decision written by former Justice Antonin Scalia. Disturbingly, Mr. Barr continued to oppose the *qui tam* provision after the Supreme Court's decision. Although Mr. Barr has testified in opposition to fraud in government contracting, he has never given testimony or written commitments directly contradicting his attacks on whistleblower protections.

In 1863, President Abraham Lincoln signed the original whistleblower provisions of the False Claims Act into law. President Lincoln understood that the United States is ruled by a government 'of the people, by the people and for the people.' In the years since, the False Claims Act, as well as other whistleblower protection and incentives laws, have proven to be extremely valuable for rooting out corruption, fraud, and other criminal activity. Yearly reports from the Department of Justice show that the False Claims Act has averaged approximately \$1.5 billion in recoveries each year as a result of litigation initiated by *qui tam* Plaintiffs and recovered nearly \$60 billion overall since the law was strengthened in 1986. In fiscal year 2018 alone they recovered over \$2.8 billion from False Claims Act cases.¹

Senator Grassley said, in reference to the whistleblower rewards program under the False Claims Act that he established through amendments, "It's only fair, because none of these proceeds would have been collected without the whistleblowers' help. The reward programs are not about what whistleblowers gain

¹ <https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018>

by blowing the whistle. They're about everything that whistleblowers stand to lose. The truth is that whistleblowers are so ostracized and reviled they suffer retaliation for speaking up.”²

Insofar as Mr. Barr continues to stand by his opposition to the False Claims Act whistleblower provision, his statements are disqualifying for a nominee to the position of U.S. Attorney General and he should not be confirmed.

Thank you for your time and consideration.

Sincerely,

ACORN 8
Center for Media and Democracy
Citizens for Health
Defending Rights & Dissent
Dr. Sandra G. Nunn
FAA Whistleblower Alliance
Government Accountability Project
Government Information Watch
Katz, Marshall & Banks
Martin Edwin Andersen, Former National Defense
University Professor
National Immigration Project of the NLG
National Security Counselors
National Whistleblower Center
Project On Government Oversight
Public Citizen
The Multiracial Activist
Whistleblower Summit for Civil & Human Rights
Whistleblower Support Fund
Whistleblowers of America

CC:
Senate Judiciary Committee

² Heckman, Jory. "Grassley: Whistleblowers 'as Welcome as a Skunk at a Picnic' at Agencies. But What about the White House?" *Federal News Network*, Federal News Network, 2 Aug. 2018, federalnewsnetwork.com/agency-oversight/2018/07/grassley-urges-trump-to-honor-whistleblowers-at-white-house/.

