



February 23, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way urges the Senate to confirm D.C. Circuit Judge Merrick Garland as the next attorney general of the United States. As a nominee with unquestioned integrity and experience, Garland is highly qualified to restore the Justice Department to its proper role as the chief enforcer of civil rights and protector of democracy.

Perhaps no member of the executive branch has a greater role than the attorney general in eliminating societal inequities—especially the racial injustice that has infected our nation from its founding—and moving us toward the full democracy we aspire to be. But for the past four years, the individuals chosen by Donald Trump to run the Justice Department have betrayed its mission, using it instead to attack civil rights and to serve Trump’s personal interests. As just a few examples, the Justice Department in the past four years:

- defended voter suppression measures premised on false claims of voter fraud, including a Texas voter ID law that the department itself had recognized was passed with the deliberate intention to discriminate;
- ended the practice of using consent decrees with local police that mandate an end to abusive practices by law enforcement;
- collaborated with the Trump administration’s efforts to unlawfully add a citizenship question to the 2020 census designed to strip targeted communities of political representation;
- infamously ordered the inhumane separation of immigrant children from their parents;
- gave cover for the unlawful rescission of DACA, then helped perpetrate an evidentiary fraud upon the judicial system in defending that decision;
- carried out Trump’s vow to ban Muslims from entering the country;
- mischaracterized the results of Special Counsel Robert Mueller’s report in order to protect Trump from the consequences of his campaign’s contacts with Russian intelligence and his obstruction of the investigation into those contacts;
- defended efforts to block women from exercising their right to abortion;
- distorted religious liberty from its proper role as a shield into a sword to empower individuals and organizations to engage in unlawful discrimination against LGBTQ+ people;

- undermined constitutionally mandated separation of church and state;
- abused prosecutorial discretion and investigative activities to reward Donald Trump’s political allies and threaten those perceived as his political enemies; and
- supported a meritless lawsuit urging the Supreme Court to strike down the entire Affordable Care Act, using a legal argument so weak and dishonest that career Justice Department officials refused to sign the brief.

Tasked with the immense responsibility of repairing the damage caused by the Trump administration’s assault on the Department of Justice and the rule of law that has so weakened our democracy, the next attorney general must have unquestioned integrity, a deep reservoir of knowledge, and decades steeped in the laws that the Justice Department is responsible for enforcing. In nominating Merrick Garland, President Biden has made an excellent choice for this critical moment in our nation’s history.

Garland has served as a judge on the D.C. Circuit since 1997, including seven years as its chief judge. A quarter century considering an array of extraordinarily complex and important legal matters affecting the entire country has given him unquestionable expertise in the issues that will be his to address as attorney general.

Garland is well prepared to lead the Department’s work against white supremacist individuals and organizations engaged in political violence. Indeed, during his service at the Department in the 1990s before becoming a federal judge, he helped lead its responses to the Oklahoma City bombing, the Unabomber, and the Montana Freeman. [At his confirmation hearing](#), he recognized the continuing and growing threat of white supremacist violence:

I don't think that [the January 6 insurrection] is necessarily a one-off. FBI Director Wray has indicated that the threat of domestic terrorism, and particularly of white supremacist extremists, is his number one concern in this area. This is coupled with an enormous rise in hate crimes over the past few years. There is a line from Oklahoma City and there's another line from Oklahoma City all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan.

Although the U.S. Constitution and congressional statutes are filled with protections for civil rights, much of the responsibility for turning those promises into enforceable real-world rights belongs to the Justice Department. Indeed, at his hearing, Garland stressed that the fundamental reason the department exists is “to secure the civil rights promised by the 13th, 14th and 15th Amendments,” the post-Civil War measures that made racial equality part of the Constitution. Importantly, he dispensed with the fiction that America has lived up to its obligations in that regard, telling members of the Senate Judiciary Committee:

Communities of color and other minorities still face discrimination in housing, education, employment, and the criminal justice system; and bear the brunt of the harm caused by pandemic, pollution, and climate change.

One reason that federal, state, and local governments have not done enough to combat discrimination is the distortion of democracy brought about by racially discriminatory voter suppression measures. In 2013, the ultra-right conservative majority on the Supreme Court opened the door to more of such measures in the notorious 5-4 *Shelby County v. Holder* decision, which struck down the formula Congress used to make new laws affecting voting rights in certain states with a history of racial discrimination subject to preclearance. At his hearing, Garland committed to working with Congress to develop a new factual record that would allow the Justice Department to once again use that “important tool.”

Garland also recognizes the vital role played by the Justice Department in curtailing abusive law enforcement practices. For instance, at his hearing, he affirmed that consent decrees have “proven effective” in eliminating patterns and practices of unconstitutional conduct by police departments, a sharp and welcome departure from the department’s position during the Trump era. He also committed to using all of the tools Congress has given the Justice Department to bring about reform in police departments.

Garland also recognizes that the Justice Department’s impact on the lives of long-marginalized communities is not limited to laws of community-wide application, but also includes the daily decisions of those working in the area of criminal justice. He cited the observations of former Attorney General Robert Jackson:

The prosecutor has more control over life, liberty, and reputation than any other person in America. [The prosecutor's] discretion is tremendous.... While [prosecutors] at [their] best are one of the most beneficent forces in our society, when [they] act from malice or other base motives, [they are] one of the worst.

In his exchanges with committee members, he recognized and condemned racial disparities in sentencing and the damaging impact they have on people of color. He noted that:

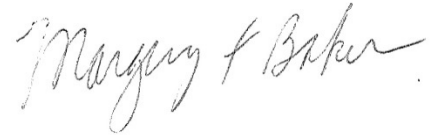
[It] is wrong and it's the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will lead to a downward economic spiral for their family.

He praised the First Step Act as taking important actions to address racial inequity in criminal sentencing, but he made a welcome recognition that it is “not enough.”

The next attorney general will have a profoundly important role to play in restoring the Justice Department, protecting democracy, and eradicating the longstanding structures of institutional

racism. We believe that Merrick Garland will ably lead the Department, and we urge senators to vote for his confirmation.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program