

March X, 2019

The Honorable Jim. Risch, Chairman
Committee on Foreign Relations
United States Senate
483 Russell Senate Office Building
Washington, DC 20510

The Honorable Bob Menendez, Ranking Member
Committee on Foreign Relations
United States Senate
528 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Risch, Ranking Member Menendez, and Members of the Senate Committee on Foreign Relations:

We, the undersigned [redacted] human rights and civil society organizations, write to express grave concerns about Professor Robert A. Destro, nominated by President Trump on January 16, 2019, to be Assistant Secretary of State for Democracy, Human Rights, and Labor. If confirmed, Prof. Destro would head the Bureau of Democracy, Human Rights, and Labor (DRL) which leads U.S. government efforts to promote democracy, protect human rights and international religious freedom, and advance labor rights globally. Prof. Destro's record evinces a strong hostility to the health and human rights of women, girls, and LGBTI individuals. We do not believe that a nominee with this record should be confirmed to lead the State Department's Bureau dedicated to protecting, defending, and promoting the human rights of all persons around the world, especially members of vulnerable communities like women, girls, and LGBTI persons. We strongly urge you to oppose his confirmation based the clear conflict between his record and the Bureau's mission.

Destro currently serves as a Professor of Law and founding Director of the Interdisciplinary Program in Law & Religion at the Catholic University of America's Columbus School of Law in Washington, D.C., where he has taught since 1982. Prof. Destro does not support a woman's constitutional right to safe, legal abortion. Rather, he has a long career of actively advocating for fetal personhood and for the reversal of the Supreme Court's precedent upholding women's constitutional liberty right to make personal decisions about abortion as recognized in *Roe v. Wade*.¹ He also has a lengthy record of supporting expanded interpretations of religious freedom under the First Amendment, to the exclusion of other constitutional rights. For example, he has represented parties that advocated for expansive religious refusal and exemption rules, especially concerning abortion and contraception.² Destro has also argued against the expansion of civil rights and liberties for LGBTI persons on the same basis.³

Further, while contraception and abortion are medically routine and necessary health care which is often difficult for many women to afford and access, Prof. Destro has a long track record and has played an active role in advocating against coverage for these services since 1977.⁴ For example, when asked to comment by the National Catholic Register on the California and Pennsylvania federal court cases brought by state attorneys general defending ACA coverage for contraception, he stated, "[t]his whole idea that you're entitled to have somebody pay for your birth-control pill is kind of ridiculous."⁵

Prof. Destro also advocated against the Community Health Care Center Fund, a provision of the Affordable Care Act (ACA) that allocated funding for comprehensive health care services

at Community Health Centers, which primarily serve disadvantaged populations such as migrant, tribal, rural and low-income communities. Prof. Destro specifically opposed the provision because it did not clearly prohibit the use of the funds for abortions as part of comprehensive health care services for women.”⁶ In 2015, Destro joined a small group of other professors to oppose the Reproductive Health Non-Discrimination Act of 2014 (RHNDA), a bill passed by the D.C. City Council that prohibited discrimination against employees based on their or their dependent’s personal reproductive health decisions. Destro, along with the other professors opposed the act arguing that it violated RFRA and precedents set post-*Hobby Lobby*.⁷

Destro has also failed to respect the rights of LGBTI individuals. In 2014, he commented on the *Hobby Lobby* ruling and its impact on President Obama’s Executive Order 11246,⁸ which prohibited federal contractors from discriminating on the basis of sexual orientation and gender identity. In his statement to the National Catholic Register,⁹ he expressed concern that the Executive Order would be interpreted to require that federal contractors offer coverage for in-vitro fertilization and sex-reassignment operations for LGBTI individuals. In referring to the anti-discrimination policy, he stated “[o]nce it becomes an issue of ‘these are my rights,’ then rational discussion goes out the window.”¹⁰

The Bureau of Democracy, Human Rights, and Labor is responsible for promoting democracy and protecting human rights, including the reproductive rights of women and girls, as well as the rights of LGBTI individuals, around the world. DRL advances the human rights of all people through bilateral diplomacy, multilateral engagement, provision of foreign assistance, imposition of economic sanctions, and through reporting and public outreach. For example, DRL is responsible for publishing the annual congressionally-mandated Country Reports on Human Rights Practices which serve to report on and expose human rights violations around the world. These reports were already subjected to inappropriate and harmful politicization when the entire reproductive rights subsection of the 2017 Reports was deleted.¹¹ Prof. Destro’s appointment risks further decimation of this critical body of reporting and would more broadly undermine the work of the State Department in monitoring human rights violations and promoting democracy globally.

As demonstrated above, Prof. Destro’s writings, interviews, and public speeches indicate that he holds a very narrow view of what constitutes human rights meriting protection. The health and human rights of women, girls, and LGBTI persons would be at severe risk if Destro were confirmed as the leader of the U.S. government’s efforts to protect democracy and promote human rights globally. Based on his extensive record working to undercut essential health, constitutional, and human rights of women, girls, and LGBTI persons, Prof. Destro has demonstrated that he would be in conflict with and unable to advance the mission of the Bureau of Democracy, Human Rights, and Labor.

We strongly urge you to stand up for women, girls, and LGBTI individuals by opposing his confirmation.

Sincerely,

Undersigned Organizations

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- ¹ See, e.g., Robert A. Destro, *Abortion and the Constitution: The Need for a Life-Protective Amendment*, 63 Cal. L. Rev. 5 (1975) available at: <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2489&context=californialawreview>; *After Roe v. Wade: 10 Years' Conflict Over Abortion*, Washington Post (Jan. 23, 1983), available at https://www.washingtonpost.com/archive/politics/1983/01/23/after-roe-v-wade-10-years-conflict-over-abortion/28c74c0e-c543-4da5-88a9-84ba1a1ed997/?utm_term=.f00108e928fd (describing Destro as a “prominent anti-abortion lawyer.”).
- ² See, e.g., *Erzinger v. Regents of University of California*, Civ. 24408, (Cal. Ct. App. 4th 1982); *Akron Center for Reproductive Health v. City of Akron*, 651 F.2d 1198 (6th Cir. 1981).
- ³ See Brian Fraga, *U.S. Bishops Wary of White House's Promised ENDA Executive Order*, NAT'L CATH. REG., Jul. 10, 2014, available at <http://www.ncregister.com/daily-news/u.s.-bishops-wary-of-white-houses-promised-enda-executive-order>.
- ⁴ Letter from Robert A. Destro, Professor of Law, to Bart Stupak, U.S. Representative (Mar. 20, 2010), available at <https://www.mdrtl.org/files/DestroLetterToStupakOnCommHealthCenters.pdf> (“I have been involved in the funding fights over abortion since 1977, and helped to write the amicus brief filed by 218 Members of the House of Representatives in *Harris v. McRae*.”).
- ⁵ See Brian Fraga, *Blue States Target Little Sisters of the Poor*, NAT'L CATH. REG., Nov. 29, 2017, available at <http://www.ncregister.com/daily-news/blue-states-target-little-sisters-of-the-poor>.
- ⁶ Letter from Destro, *supra* note 4.
- ⁷ 161 CONG. REC. H.2733 (daily ed. Apr. 30, 2015) (Disapproval of District of Columbia Reproductive Health Non-Discrimination Amendment Act of 2014).
- ⁸ Press Release, White House, President Obama Signs a New Executive Order to Protect LGBT Workers (Jul. 21, 2014) available at <https://obamawhitehouse.archives.gov/blog/2014/07/21/president-obama-signs-new-executive-order-protect-lgbt-workers>.
- ⁹ See Fraga, *supra* note 3.
- ¹⁰ *Id.*
- ¹¹ See Alison Sadiq, *Democrats, rights groups urge State Dept. to bring back reports on women's reproductive rights*, POLITICO, Oct. 14, 2018, available at <https://www.politico.com/story/2018/10/04/state-department-reproductive-rights-report-869442>; Press Release, Center for Reproductive Rights, Lawmakers and Civil Society Pressure Department of State to Bring Back Deleted Reproductive Rights Sections in Annual Human Rights Reports (Oct. 3, 2018) available at <https://www.reproductiverights.org/press-room/lawmakers-and-civil-society-pressure-department-of-state-to-bring-back-deleted-reproducti>; Press Release, United States Senate Committee on Foreign Relations, Sens. Menendez, Blumenthal lead group of 31 Senators in letter To Pompeo opposing elimination of women's rights report, available at <https://www.foreign.senate.gov/press/ranking/release/sens-menendez-blumenthal-lead-group-of-31-senators-in-letter-to-pompeo-opposing-elimination-of-womens-rights-report>.