

United States Senate

WASHINGTON, DC 20510

August 9, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

John Gore
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions and Acting Assistant Attorney General Gore:

As the Senate Committee on the Judiciary prepares for its hearing on President Trump's nominee to lead the Department of Justice's (DOJ) Civil Rights Division (CRT), we write to request your commitment to protecting the integrity and independence of the Division and its career attorneys, and to seek assurances that mistakes and misdeeds of the past will not be repeated by this Administration. We also have questions and concerns about news reports that the Division has requested the submission of resumes from CRT career lawyers who wish to be considered for the Division's new anti-affirmative action initiative.¹

Our concerns are not hypothetical; they are rooted in the pattern of partisan personnel decisions and documented political interference that prevailed during the George W. Bush Administration – a pattern which threatens to repeat itself now. As you know, the Department of Justice has a duty to uphold the rule of law—not to serve a particular political ideology by pursuing partisan initiatives or making hiring decisions based on political affiliation. The Civil Rights Division was created to defend the civil rights of all Americans, and the politicization of its work and workforce is not only at odds with the mission of the Division but also potentially illegal.

As you know, a joint Office of Inspector General and Office of Professional Responsibility (OIG/OPR) report issued in July 2008 found that Bradley Schlozman, first as a Deputy Assistant Attorney General and subsequently as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General, made false statements before the Senate Judiciary Committee and broke federal law and Department policy by “consider[ing] political and ideological affiliations in hiring career attorneys and in other personnel actions affecting career attorneys in the Civil Rights Division.”² The report also found that Mr. Schlozman inappropriately considered

¹ <https://www.nytimes.com/2017/08/01/us/politics/trump-affirmative-action-universities.html>

² U.S. Department of Justice, Office of the Inspector General & Office of Professional Responsibility (“OIG/OPR Report”), *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2, 2008), at 57-58, 64.

political and ideological affiliations both in hiring new attorneys and in transferring and assigning cases among career attorneys in the sections he supervised.³ Among other egregious evidence of his improper political motives, Mr. Schlozman’s emails revealed his “plans . . . to gerrymander all those crazy libs out of the [Voting] section” and replace them with “real Americans” and “right-thinking Americans” who could “be trusted.”⁴

In light of recent news, we are concerned that illegal politicization of the Civil Rights Division is underway once again. Although Mr. Schlozman no longer works at the Department, some of his colleagues from that era have supported politicizing the Civil Rights Division. One of those former officials, Hans von Spakovsky, now with the Heritage Foundation, said that “[c]leaning . . . up [the Department of Justice] will be as difficult as cleaning out the Augean stables. Hercules had to divert two rivers to wash out the filth, and it will take a similarly massive effort at Justice to wash out the politics and progressive liberal activism that infests the agency from top to bottom.”⁵ Meanwhile, J. Christopher Adams, another of Mr. Schlozman’s former CRT colleagues and a Bush-era Voting Section alumnus, has laid out on his blog a three-step proposal for “draining the swamp” based on lessons learned from the Bush Administration’s “failure to take swift remedial action” against career attorneys.⁶ To get around civil service protections, Mr. Adams has gone so far as calling on Congress to pass a Reduction in Force aimed at “dislodging” career staff.⁷

In a March letter organized by Mr. Adams’s Public Interest Legal Foundation, Mr. Adams, Mr. von Spakovsky, and Kris Kobach – now Vice Chair of President Trump’s Presidential Advisory Commission on Election Integrity– called on President Trump’s Justice Department to rid CRT of so-called “ideological rot” by stripping career attorneys of hiring and firing authority and vesting such authority in Trump’s political appointees.⁸ Mr. von Spakovsky’s and Mr. Adams’s efforts are particularly alarming now that both have been appointed to this commission, which appears to be coordinating with CRT’s Voting Section.⁹

As others have noted, this recommendation appears to call for a return to the improper and illegal personnel practices of the Bush era, when hiring, firing, and assignment decisions in CRT were made based on whether a career attorney was perceived to be “on the [right] team.” As explained in the 2008 OIG/OPR joint report, both federal law – the Civil Service Reform Act (CSRA) – and DOJ policy prohibit discrimination in federal employment based on political and ideological affiliations.¹⁰ The CSRA further provides that “[a]ll employees and applicants for

³ *Id.* at 33-35, 42-43

⁴ *Id.* at 20-21 n.13, 34, 44 n.37.

⁵ <http://www.heritage.org/government-regulation/commentary/taming-the-bureaucratic-beast-the-herculean-task-ahead-president>

⁶ <https://pjmedia.com/jchristianadams/2016/11/13/transition-ales-draining-the-swamp-wont-be-as-easy-as-you-think/>

⁷ *Id.*

⁸ <https://www.scribd.com/document/343306400/Letter-to-AG-Sessions-on-Civil-Rights-Division>

⁹ On June 28, 2017, the Commission sent a letter to election officials in all 50 states with an extraordinarily broad demand for sensitive personal voter information. On that same date, the chief of CRT’s Voting Section also sent a letter to 44 state election officials asking for information about state-level procedures for maintaining voter registration lists. Several Senators requested further information about the apparent coordination between the Commission and CRT, but that request remains unanswered.

¹⁰ OIG/OPR Report at 4.

employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation,” and that “[e]mployees should be . . . protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.”¹¹ Congress enacted these laws to protect civil servants from exactly the sort of political gamesmanship perpetrated by Mr. Schlozman, which his former colleagues seem eager to see repeated now.

In the aftermath of the Bush-era personnel scandal, the Department took several actions, and OIG/OPR made recommendations, to ensure compliance with federal civil service laws and Department policy. According to a March 2008 memorandum from the Attorney General, beginning in the summer of 2007, new political employees at the Department were briefed on “Merit System Principles and Prohibited Personnel Practices” as part of their orientation process.¹² Along those lines, OIG/OPR recommended that the Department also regularly provide training on merit system principles and prohibited personnel practices in the Civil Service Reform Act, federal regulations, and Department policies to personnel with a role in hiring or supervising career employees.¹³ OIG/OPR also recommended that the Department issue periodic statements to all employees about what constitute prohibited personnel practices under federal law, regulations, and Department policy, and provide information to employees about how they can report violations and where they can seek redress.¹⁴

Now, as the Civil Rights Division prepares for new leadership, it is imperative that this crown jewel of the Department of Justice remain free from the improper and unlawful politicization it experienced in the Bush era, which threatens it again today. To that end, we ask that you respond to the following questions and requests by August 30, 2017:

- Why is CRT’s new anti-affirmative action program being managed by the Division’s front office rather than by the Educational Opportunities Section? Historically, has any other enforcement initiative of the Division that relates exclusively to the work of a single section of the Civil Rights Division been managed instead by the front office? In its solicitation for detailees to this program, why did the Division waive its ordinary requirement that a Division employee must have been in his or her section for two or more continuous years before being eligible for a detail?
- What coordination or communication, if any, has the Division or other DOJ leadership conducted with respect to this program with Secretary of Education Betsy DeVos or other officials at the Department of Education? Please provide copies of all written communications between the Department of Education and the Department of Justice related to affirmative action strategy.
- Why did the Division solicit the submission of resumes for lawyers who wish to be considered for that program? Has the Division ever requested resumes from its own attorneys for an internal initiative in the past? What specific information contained in such resumes does the Division intend to consider? In light of the inappropriately

¹¹ 5 U.S.C. § 2301(b)(2), (8)

¹² <https://www.justice.gov/sites/default/files/ag/legacy/2008/09/05/ag-031008.pdf>

¹³ *Id.*

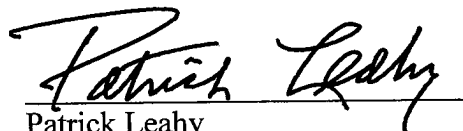
¹⁴ *Id.*

politicized transfer and case assignment decisions detailed in the 2008 OIG/OPR report, what measures has the Division taken to ensure compliance with the law?

- Are political appointees in the Civil Rights Division briefed on “Merit System Principles and Prohibited Personnel Practices” as part of their orientation process? Please describe this briefing in detail and provide any relevant training materials.
- Consistent with the recommendations of OIG/OPR, does the Department regularly provide training on merit system principles and prohibited personnel practices in the Civil Service Reform Act, federal regulations, and Department policies to personnel with a role in hiring or supervising career employees? Please describe this training in detail and provide any relevant training materials.
- Consistent with the recommendations of OIG/OPR, does the Department issue periodic statements to all employees about what constitute prohibited personnel practices under federal law, regulations, and Department policy, and provide information to employees about how they can report violations and where they can seek redress? If so, please provide a sample(s) of such statements.
- For each component section in the Civil Rights Division, which specific individuals make hiring, firing, and case assignment recommendations and/or decisions regarding career attorneys? To the extent these responsibilities are shared between career and political staff, please describe in detail the allocation of responsibilities and authority, as well as the decision-making process.
- During the last Administration, in response to concerns raised by the OIG, CRT adopted an “Experienced Attorney and Attorney Manager Hiring Policy” to ensure, among other things, a “fair, transparent and merit based hiring process.”¹⁵ Is that policy still being followed for all career experienced attorneys and attorney manager positions? If not, please explain why the policy, or any part thereof, has been discontinued and provide the new policy for hiring these individuals.

Sincerely,


Sheldon Whitehouse
United States Senator


Patrick Leahy
United States Senator

¹⁵ <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/13/attyhire.pdf>



Richard J. Durbin
United States Senator



Al Franken
United States Senator



Richard Blumenthal
United States Senator



Mazie Hirono
United States Senator