

October 10, 2022

The Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Attorney General Garland,

We write to express our concern with the Department of Justice’s (DOJ) continued pattern of abusing its investigative authority to police the speech of Americans and stifle ongoing policy debates. On October 3, 2022, the American Academy of Pediatrics, the American Medical Association, and the Children’s Hospital Association, sent you a joint letter calling on the DOJ to “investigate and prosecute organizations, individuals, and entities” that they assert are involved in “an intentional campaign of disinformation” surrounding the debate over whether minors should receive experimental gender reassignment procedures.¹ This request by advocacy organizations to have the federal government stifle critical speech on their behalf would have been unthinkable before your tenure as Attorney General. It is important to note that violence and threats are not protected speech and should be prosecuted to the fullest extent of the law. However, parents who voice their concerns about the health and safety of their children, or express opinions on matters of public policy more generally, are engaged in core First Amendment activity.

The Biden Administration has previously involved itself in stifling the critical right of parents to make decisions with respect to their children. On September 29, 2021, the National School Board Association (NSBA) wrote a letter to President Biden calling upon him to use the Department of Justice to target parents upset over the inclusion of critical race theory in school curriculum, mask mandates in schools, and other issues relating to the education of their children, doing so under the pretext that such parents were domestic terrorists. It was later reported that Secretary of Education Miguel Cardona solicited the NSBA to write this letter to the White House. Five days later, in response to this letter, you issued your October 4th memorandum directing the FBI to involve itself in policing public discourse, using the NSBA letter as a pretext.² In compliance with your memorandum, the FBI’s Counterterrorism and

¹ Letter from American Medical Association, et al., to Merrick Garland, U.S. Attorney General (Oct. 3, 2022), <https://downloads.aap.org/DOFA/DOJ%20Letter%20Final.pdf> [https://perma.cc/X4LF-WNMZ].

² Memorandum, *Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff*, U.S. Department of Justice (Oct. 4, 2021), <https://www.justice.gov/ag/page/file/1438986/download> [https://perma.cc/6VRB-W2SV].

Criminal Divisions created the threat tag “EDUOFFICIALS,” and opened dozens of investigations into the activities of concerned parents.

If there is a bedrock principle in American self-governance, it is that the federal government has no place in quashing or criminalizing civic discourse. The issue of how best to treat minors struggling with their gender dysphoria is the subject of ongoing and emotional debate, which Americans have a protected First Amendment right to fully engage in. The strength of our democracy is dependent on the ability of all citizens to peacefully participate in public debate without fear of persecution from your agency or any other.

In your confirmation hearing before the Senate Judiciary Committee, you promised that under your watch the Department of Justice would not be politicized or weaponized. I asked you specifically, “Will you commit to this Committee that under your leadership, the Department of Justice will not target the political opponents of this Administration?” In response, you stated, “Absolutely. It’s totally inappropriate for the Department to target any individual because of their politics or their position in a campaign.” You have already broken that promise more than once, and we are concerned you are poised to do so once again.

Your actions in regard to the NSBA letter sent an inappropriate message that federal law enforcement can and will be used to aid one side of a political debate, and to either silence or chill the speech of the other. Now, in a remarkably similar fashion, medical associations have written to you asking you to again treat any speech critical of their position on a sensitive matter of public policy as a physical threat warranting a law enforcement response.

We call upon you to reaffirm that you will faithfully protect the First Amendment rights of all Americans to peacefully debate this and all other policy questions, irrespective of viewpoint. The weaponization of federal law enforcement agencies like the DOJ, in order to produce preferred policy outcomes, cannot continue – our democracy depends on it.

We request your response to the following questions by Tuesday, November 1st:

1. Did you, or any other Department of Justice employee, solicit the October 3 letter from the American Academy of Pediatrics, the American Medical Association, and/or the Children’s Hospital Association or any of their representatives?
2. Have you, or any other Department of Justice employee, had any discussion prior to or since the letter’s release, with the American Academy of Pediatrics, the American Medical Association, and/or the Children’s Hospital Association or any of their representatives relating to the letter, the policy it advocates, or otherwise? If so, please provide all responsive records of those conversations in an unredacted format.

3. Is engaging in a so-called “intentional campaign of disinformation” (e.g. members of the public engaging in discourse on their differing views about the gender reassignment of minors) a prosecutable offense? If so, what statute is implicated?

Sincerely,



Ted Cruz
U.S. Senator



Roger Marshall, M.D.
U.S. Senator



Mike Lee
U.S. Senator



Marsha Blackburn
U.S. Senator



Ron Johnson
U.S. Senator