

# United States Senate

WASHINGTON, DC 20510-0609

October 8, 2021

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

Dear Attorney General Garland,

We've seen all too often this administration, including the Department of Justice (DOJ), attack the constitutional rights that make America great, all in the name of "security" or "public health." As an experienced federal prosecutor and former Circuit Court Judge, you are a scholar of the law. As such, you are well aware that our founders believed that some rights were so core to humanity that no government had the ability to take those rights away. Thankfully, they also had the foresight to enshrine several of those unalienable rights in our Constitution. Chief among those being the freedom of speech - the right to speak one's mind.

Your recent *Memorandum* dated October 4, is an alarming attack on this most important Constitutional right. While we agree with the sentiment that there is absolutely no environment in which it is acceptable that school administrators, board members, teachers, and staff would be subject to real threats of violence, we believe any threat that constitutes a clear and imminent threat of intended violence should be investigated and prosecuted by local law enforcement officers.

We also believe parents have the right to voice their concerns, opinions, and frustrations to public servants. Parents often vehemently protect their children and have the absolute right to dissent when they believe their own children's wellbeing is threatened. It is not the job of the federal government to institute a witch hunt against parents effectively penalizing them by investigating dissent. There are clear parameters for when the federal government can get involved. It's difficult to imagine when the average parent's speech would become a federally prosecutable crime and it's preposterous to even gesture investigating parents' speech under the guise of the Patriot Act, a law used to deter and punish terrorists. Wasting federal resources investigating constitutionally protected speech simply to discourage people from that speech is as egregious as barring free speech.

We request clarification of your *Memorandum* dated October 4 and answers to the following questions by October 25, 2021:

1. It is our understanding that solicitation to commit a crime of violence under federal law must involve a clear and imminent threat of violence that would be a violation of another federal law. What federal law or laws do you believe are being violated for which a parent's speech could trigger an actual prosecution by your Department?
2. In your *Memorandum*, you acknowledge that "spirited debate about policy matters is protected under our Constitution" Can you provide specific examples of speech that is not constitutionally protected that you have the authority to prosecute under federal law?
3. What is your definition of harassment and intimidation, and is such actionable under federal law?

4. On September 29, you received a letter, *Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators*, from the National School Boards Association - did they influence or help compose your *Memorandum* in any way, shape, or form?
5. The DOJ already has scarce law enforcement resources. Is there a line item in the DOJ's FY22 budget request intended to facilitate these sorts of extraordinary law enforcement measures?
6. During your confirmation hearing, you said that an "attack on a government property at night" was not a "core attack on our democratic institutions" despite the fact that it is still a federal crime to damage federal property. If the purported acts of "harassment" and "intimidation" are carried out by parents against school boards at night, would those actions be equally punishable as if they were carried out during the day?

In closing, it is fitting to quote Justice William Brennan when he famously wrote for the court in the celebrated libel law decision *New York Times Co. v. Sullivan (1964)*: "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials."

Sincerely,



Roger Marshall, M.D.  
United States Senator



Cynthia M. Lummis  
United States Senator



John Barrasso  
United States Senator




James M. Inhofe  
United States Senator



Deb Fischer  
United States Senator



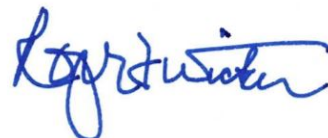
Mike Braun  
United States Senator



James Lankford  
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Ron Johnson  
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Roger F. Wicker  
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John Boozman  
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