



October 15, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Attorney General:

We write as four members of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole. We write to express our concerns regarding a recent memorandum issued by your office.¹

On October 4, you directed the Department “to meet in the next 30 days with federal, state, Tribal, territorial and local law enforcement leaders to discuss strategies for addressing this disturbing trend” of “an increase in harassment, intimidation and threats of violence against school board members.”² The Department has indicated that it will “create specialized training and guidance for local school boards and school administrators. This training will help school board members and other potential victims understand the type of behavior that constitutes threats, how to report threatening conduct to the appropriate law enforcement agencies, and how to capture and preserve evidence of threatening conduct to aid in the investigation and prosecution of these crimes.”³ Your memorandum echoes claims made by the National School Boards Association (NSBA) in a September 29 letter addressed to President Biden in which the NSBA asks “for federal law enforcement and other assistance to deal with the growing number of threats of violence and acts of intimidation occurring across the nation.”⁴ The NSBA noted that these “acts of intimidation” “could be the equivalent to a form of domestic terrorism and hate crimes.”⁵

Your memorandum did not cite any specific examples of “harassment, intimidation and threats of violence” that would provide any basis for law enforcement action by the Department. We are concerned that much of what the NSBA calls threats and acts of intimidation—and compares to “domestic terrorism and hate crimes”—can be merely classified as political speech. For example, a parent concerned with a local schoolboard’s policy may portend an electoral challenge against an incumbent schoolboard member. Such a challenge would be well within the parent’s First

¹ Memorandum from Merrick B. Garland, Att’y Gen. of the United States (Oct. 4, 2021) (available at <https://www.justice.gov/ag/page/file/1438986/download>).

² *Id.*

³ Press Release, Off. of Pub. Aff., Dep’t of Just. (Oct. 4, 2021) (available at <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>).

⁴ Letter from Viola M. Garcia, President, Nat’l Sch. Boards Ass’n, to Joseph R. Biden, President of the United States (Sept. 29, 2021) (available at <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>).

⁵ *Id.*



Amendment rights and well without the Department's purview as a federal law enforcement agency.⁶

We have combed the internet for signs that parents petitioning school boards are anything approaching a national problem. Nearly all of what we have seen so far makes us proud to be Americans: Parents care about the education of their children, and they are not willing to allow them to be indoctrinated into a radical ideology.⁷ It is always possible that a few of these parents have gotten out of hand and made threats that they should not have. If so, law enforcement is entirely appropriate. But is there evidence that state and local law enforcement is not up to the job? Why is federal intervention needed here and not in the thousands of other unrelated cases of overheated exchanges that occur regularly across the country? Why does this case call for federal intervention? Is it surprising to you that concerned parents across the country view your memorandum as an endorsement of the NSBA's description of their protests as comparable to "domestic terrorism"?

We now ask you to provide us with specific examples of "harassment, intimidation and threats of violence" that you purport allow for law enforcement action and an explanation of why this is a situation that calls for federal intervention in particular.

We look forward to your timely response.

Most respectfully,

A handwritten signature in black ink, appearing to read "P. Kirsanow".

Peter Kirsanow
Commissioner

A handwritten signature in black ink, appearing to read "J. Christian Adams".

J. Christian Adams
Commissioner

⁶ The U.S. Supreme Court has declared that "the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). Furthermore, the Court has noted that "[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes." *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966).

⁷ Is their understanding of the law as it applies to education issues always correct? No—most of these parents are not lawyers. But they often display more common sense than many lawyers (or for that matter, many schoolboard members).



UNITED STATES COMMISSION ON CIVIL RIGHTS

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A handwritten signature in black ink, appearing to read "Gail Heriot".

Gail Heriot
Commissioner

A handwritten signature in black ink, appearing to read "Stephen Gilchrist".

Stephen Gilchrist
Commissioner