

March 28, 2017

**RE: Restore lawful enforcement policies in the Civil Rights Division**

Dear Attorney General Sessions:

We, the undersigned wish to congratulate you on your new post as U.S. Attorney General and seek to offer guidance on leadership considerations for the next Assistant Attorney General for the Civil Rights Division.

As you know, the “crown jewel” of the Department, the Civil Rights Division, celebrates its 60<sup>th</sup> anniversary in 2017. We encourage you to look forward to the next 60 years and discern what good works the Division may do for generations to come.

Our nation is changing. The mosaic image of America is growing richer in color and detail as each decade passes. For these reasons, the American people deserve a Division that seeks to represent and protect all citizens. It also deserves a Division that follows the law and recognizes the dangers of an oppressive federal government outside the bounds of the law when it comes to our elections, businesses and criminal justice system.

Together, we have witnessed longstanding conventions held from the mid-20<sup>th</sup> century prove outmoded in recent years and discovered new fronts in need of protection where civil rights are concerned—with particular respect to voting. Discrimination, dilution, and poor processes will always be constants, yet the victims can vary in our contemporary era. The next Assistant Attorney General should be cognizant of this reality and be prepared to offer constitutional leadership promoting the Rule of Law and equal protection for all.

During the Obama administration, the Division served purely ideological ends with rigidity unmatched in other federal offices. Entrenched federal bureaucrats jettisoned precepts like equal enforcement in favor of political and racialized dogmas with a zeal that risks litigation failure and invites court sanctions. Worst of all, the Division has placed itself in the passenger seat while political allies bring faulty actions against states working to protect their voters.

We offer three general areas of concern demonstrating the need for internal reforms.

**The Civil Rights Division has relegated its leadership role to political activists. This must end.**

Perhaps one of the greatest myths pushed by the Obama DOJ’s apologists was the claim of being the driving force for voter protection. That administration’s record paints an entirely different picture. In the eight year period, hardly any cases were filed under the Voting Rights and

National Voter Registration Acts.<sup>1</sup> At no time did the division bring a suit against voting discrimination or intimidation on its own. Yet, the public perception was that the previous Attorneys General were somehow vigorous champions of civil rights.

The past eight years have shown what “leading from behind” can do to state interests in protecting voters when dedicated activists are acting as signal callers. Voter identification suits were needlessly brought and lost such as in South Carolina; a single, racially-focused redistricting case can drag almost a decade; and millions of taxpayer dollars were wasted perverting voting laws to engineer political advantage.

**The ideological rot impacting the Civil Rights Division was already laid bare by the Office of Inspector General. It’s time to make changes.**

After a four year investigation, the U.S. Department of Justice Office of the Inspector General released a review of operations within the Voting Section of the Civil Rights Division in March 2013.<sup>2</sup> The 250 page report detailed the toxic manner in which the Division placed preferences on voting rights victim cohorts and bullied employees from daring to enforce the law in a colorblind fashion.

Investigators noted that the Division, then led by AAG Tom Perez, maintained a culture of holding that they did not believe civil rights laws should protect all Americans. Investigators were also not amused by the “petty and juvenile personal attacks” some Division employees posted on public websites about coworkers they shared legal disagreements with, particularly against employees who were openly Christian. Far beyond collegial banter, the report found that such statements were “highly offensive and potentially threatening” to others. Noted in the report:

The highly offensive comments included suggestions that the parents of one former career Section attorney were Nazis, disparaging a career manager’s physical appearance and guessing how he/she would look without clothing, speculation that another career manager was watching pornography in her office, and references to “Yellow Fever,” in connection with allusions to marital infidelity involving two career Voting Section employees, one of whom was described as ‘look[ing] Asian.’”

Perhaps most demonstrable of how close Division staff were to third party allies, the report stated, “We also found incidents in which Voting Section career staff shared confidential Section information with outside civil rights attorneys, some of whom were working on matters where they were adverse to the Department.”

Worst of all, former Assistant Attorney General Perez specifically refused to implement the recommendations of the Inspector General when it comes to hiring. Specifically, the Inspector

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<sup>1</sup>U.S. Department of Justice; Voting Section Litigation (accessed March 1, 2017), <https://www.justice.gov/crt/voting-section-litigation>

<sup>2</sup>DOJ-OIG; A Review of the Operations of the Voting Section of the Civil Rights Division (March 2013), <https://oig.justice.gov/reports/2013/s1303.pdf>

General recommended that “demonstrated commitment to civil rights” resulted in the perception that attorney hires were only made from employees of left-wing groups. In this case, perception and reality were synonymous. The Assistant Attorney Generals in each component Division must preserve or reacquire hiring authority and not leave the decisions in the hands of career bureaucrats who are reliably opposed to President Trump’s agenda.

**The Division has repeatedly been admonished for unethical behavior by the federal courts. We deserve better.**

In 2006, the DOJ Office of Legislative Affairs compiled a list of episodes upon request where Division attorneys’ “legal work was either admonished in a court opinion or where the Division paid attorneys’ fees or settlement fees over its involvement in a lawsuit.”<sup>3</sup> The letter detailed 11 cases from 1993 to 2000 where the federal government was required to pay \$4,107,595.09 in fees and court costs after bringing faulty actions. Roughly half of the taxpayer burden belonged in the Voting Section alone. Repeatedly, employees abused their former powers under the Voting Rights Act by mandating racial gerrymandering in states like Florida, Georgia, Louisiana, and South Carolina to create partisan advantages. State and individual parties saw repeat success in overturning these matters, leaving the courts to require that \$2.5 million public dollars be paid out at the conclusion of litigation.

The letter provides additional insight into the culture of collegiality that is shared between Division staff and third party activist organizations. In a 1993 Georgia redistricting case, the court found that an America Civil Liberties Union attorney was in “constant contact” with DOJ staff communicating in “disturbing” tones that were “informal and familiar”, as opposed to an “advocate submitting proposals to higher authorities.”

Looking forward, the next Assistant Attorney General should be committed to returning the Civil Rights Division to equal enforcement of all federal voting statutes strictly to advance the Rule of Law—rather than partisan gamesmanship. Listed below are brief examples of immediate strategic shifts to pursue.

- Return to race-neutral Voting Rights Act enforcement that seeks to block discriminatory policies and procedures based on demonstrable impacts rather than mere statistical analysis.
- Put an end to politically-driven pursuits against state photo voter identification requirements, citizenship verification in voter registration, and common-sense adjustments to early voting periods.
- Return to enforcing federal statutes barring against voter intimidation. Repeatedly, the Obama DOJ failed to act.
- Return to enforcing Section 8 of the National Voter Registration Act requiring that voter rolls meet federal maintenance standards.

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<sup>3</sup>DOJ-OLA letter to Rep. James F. Sensenbrenner dated April 12, 2006  
(<https://www.scribd.com/document/48673021/2006-0412-Ltr-to-House-of-Rep-re-Voting-Rights-Act-Procedures>)

If the persistent, flagging voter participation rates are any indication, the American electorate is crying out to see protection against political enforcement of the law. The road to reform will be a rough one requiring time and perseverance. The next AAG certainly cannot be a proponent of the status quo by any means.

Thank you for the attention given to these observations. Together, we look forward to further, fruitful conversations as you consider this most critical staffing position.

Respectfully,  
(Title and affiliation for informational purposes only)

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Center for Equal Opportunity

Hans von Spakovsky  
The Heritage Foundation

Kris Kobach  
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