United States Senate
WASHINGTON, DC 20510

September 26, 2017

The Honorable Jeff Sessions
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

The Honorable Rod Rosenstein
Deputy Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

The Honorable Rachel Brand
Associate Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

The Honorable John Gore
Acting Assistant Attorney General
Department of Justice
Civil Rights Division
950 Pennsylvania Ave, NW
Washington, D.C. 20530

Dear Attorney General Sessions, Deputy Attorney General Rosenstein, Associate Attorney General Brand, and Acting Assistant Attorney General Gore:

On July 11, we wrote to request information regarding the Department of Justice's June 28 letter to forty-four states requesting information about state-level procedures for maintaining voter registration lists. The Department's letter was sent on the same day that the Presidential Advisory Commission on Election Integrity ("the Commission") requested sensitive voter roll data from state election officials. As we wrote in July, we do not believe this was a coincidence. Although the Department has failed to respond to our inquiries, recent developments confirm our suspicions about coordination between the Department and the Commission.

DOJ Coordination and Politicization

It was recently revealed that in August, the Department responded to a private party's request under the Freedom of Information Act (FOIA) for information about the Commission. In response to a FOIA request from the Campaign Legal Center, the Department produced

documents that confirm both the true partisan intent behind the Commission and its direct coordination with the highest levels of Department leadership.[1] These developments underscore the concerns many of us have raised about a return to the illegal politicization of the Department's Civil Rights Division that took place under the Bush administration, and raise questions about the role of Department leadership in the formation and operation of this nakedly partisan commission.[2] It would be a low moment for the Department to have been a facilitator of the myth – perhaps a fraud in its own right – that widespread voter fraud is a problem plaguing our election system, especially when the Department has itself produced evidence to the contrary.[3]

It is now clear that the Heritage Foundation's Hans von Spakovsky – who has advocated for an illegal ideological cleansing of the Civil Rights Division[4] – was in communication with Attorney General Sessions about packing the Commission with far-right conservatives, to the exclusion of Democrats and "mainstream Republican officials and/or academics." Mr. Von Spakovsky's machinations appear to have paid off, as he was himself ultimately named to the Commission, along with Kris Kobach, J. Christian Adams, and others who frequently spread false and unsubstantiated claims about voter fraud. As a result, the Commission has proven itself to be little more than a platform for conspiracy theorists and voter suppression advocates.

That the Department of Justice and the Attorney General have entangled themselves with this effort is deeply troubling. When the Department appears in federal court, it bears the unique and authoritative responsibility of representing the interests of the United States. The positions it takes are given significant weight, thanks in part to the care the Department has historically taken to be a careful and thoughtful advocate for the interests of the federal government. Aligning itself, or even appearing to align itself, with such a highly partisan, discredited, and perhaps even fraudulent effort may do lasting damage to the Department's reputation. It is imperative upon you as the Department's current leadership to prevent this from happening.

We respectfully ask that the Department respond immediately to the outstanding requests in our above-referenced July 11 and August 9, 2017 letters, and provide responses to the following questions by October 13, 2017:

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[1] *Letter: Response to FOIA Request on Voter Fraud*, The Campaign Legal Center, Sept. 12, 2017, at http://www.campaignlegalcenter.org/document/letter-response-foia-request-voter-fraud.

[2] *Senators Urge Judiciary Committee to Prevent Politicization of Justice Department Under Trump*, Jan. 10, 2017, at https://www.whitehouse.senate.gov/news/release/senators-urge-judiciary-committee-to-prevent-politicization-of-justice-department-under-trump; *Letter to Attorney General Sessions and Acting Assistant Attorney General Gore,* Aug. 9, 2017, at https://www.whitehouse.senate.gov/imo/media/doc/DOJ%20CRT%20Letter.pdf.

[3] Ian Urbina and Eric Lipton, "In 5-Year Effort, Scant Evidence of Voter Fraud," The New York Times, 11 Apr. 2007.

[4] *Taming the Bureaucratic Beast: The Herculean Task Ahead of President-Elect Donald Trump*, The Heritage Foundation, Dec. 8, 2016, at http://www.heritage.org/government-regulation/commentary/taming-the-bureaucratic-beast-the-herculean-task-ahead-president; *Letter to Attorney General Sessions,* March 8, 2017, at https://www.scribd.com/document/343306400/Letter-to-AG-Sessions-on-Civil-Rights-Division.

1. What communications have Department of Justice or Civil Rights Division Leadership[5] had with the White House, the Office of the Vice President, or White House Counsel's Office regarding the Presidential Advisory Commission on Election Integrity, either before or after its formation? Please include any relevant documents or records of any such communications in your response, and describe the process by which such documents were searched for and collected.

2. What communications have Department or Civil Rights Division Leadership had with Hans von Spakovksy, J. Christian Adams, Kris Kobach, Roger Clegg, Gregg Phillips, Catherine Engelbrecht, or Bradley Schlozman regarding the Presidential Advisory Commission on Election Integrity, either before or after its formation? Please include any relevant documents or records of any such communications in your response, and describe the process by which such documents were searched for and collected.

3. What role did Department or Civil Rights Division Leadership play in selecting the members of the Commission?

4. What role did Department or Civil Rights Division Leadership play in the recommendation of appointment, or the appointment of Mr. von Spakovsky?

5. Why was Mr. von Spakovsky's above-referenced email sent to the Attorney General, and not to the White House?

6. What response to the email did the Administration provide to Mr. von Spakovsky, then or at the time of his appointment? Please include any relevant documents or records of any such communications in your response, and describe the process by which such documents were searched for and collected.

7. What role has the Department or Civil Rights Division Leadership played in setting the Commission's agenda?

8. On June 28, 2017, the Commission and the Civil Rights Division both sent requests to state election officials seeking an extensive set of state voter records. Were these requests coordinated in any way?

9. What steps are being taken to ensure that the Commission has no access to information related to ongoing investigations or prosecutions by the Department?

FOIA and Responsiveness to Congressional Inquiries

The Department's recent FOIA production to the Campaign Legal Center (CLC) also raises questions about the adequacy of both the Department's FOIA practices and its processes for responding to Congressional inquiries.

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[5] Including Attorney General Sessions, Deputy Attorney General Rod Rosenstein, Associate Attorney General Rachel Brand, former Acting Associate Attorney General Jesse Panuccio, former Acting Assistant Attorney General Tom Wheeler, Acting Assistant Attorney General John Gore, or any other political appointee in the Department.

First, it appears that relevant emails about the Commission's formation were sent to and from Attorney General Sessions's personal email address.[6] If the Attorney General or other Department employees use private email accounts to conduct government business, these emails constitute government records subject to FOIA disclosure.[7] As Chairman Grassley has repeatedly emphasized in other contexts, the use of private email to conduct government business may compromise government transparency, "undermining FOIA's reach and public accountability."[8]

Second, the Department's FOIA production appears deficient based on publicly available facts. CLC requested all materials relating to the "Election Integrity" commission, President Trump's voter fraud claims, DOJ investigations into alleged voter fraud, and other voting-related issues. The Department's FOIA response comprises only six pages. It is implausible the Department's production constitutes the full extent of responsive documents in the Department's possession, custody, or control. The simultaneous issuance of letters by the Commission and the Chief of the Voting Section of the Civil Rights Division to state election officials seeking voter data is one obvious instance of apparent coordination, so it is hard to believe there are no responsive documents related to those June 28 letters.

Third, the Department's production is heavily redacted, and the Department appears to have broadly asserted FOIA exemption (b)(6), with seemingly questionable basis. Exemption (b)(6) protects the disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." But the Department used this exemption broadly, for example, to redact the name and email address of Hans von Spakovsky, who maintains a public government role on the Presidential Advisory Commission on Election Integrity. Case law makes clear that public officials enjoy less of a privacy interest than do private citizens, and that the public interest in disclosures is more pronounced when it comes to currently serving government officials.[9]

Finally, the Department's production underscores concerns we have repeatedly voiced – echoed by Chairman Grassley – about the Department's unacceptably slow response time in answering Congressional requests. Particularly given that the documents produced in response to CLC's FOIA request are plainly also responsive to requests in our July 11, 2017 letter, we are alarmed

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[6] Although the FOIA production's extensive redactions make it difficult to tell, it appears that an unidentified intermediary sent Mr. von Spakovsky's email to Attorney General Sessions's assistant with instructions to "give this to JBS." Sessions's assistant subsequently forwarded the email to what appears to be Sessions's personal email account, which then forwarded the thread to Sessions's "Official DOJ Email Address." The Heritage Foundation and Mr. von Spakovsky both admit that he authored the original email.

[7] See *Competitive Enterprise Institute v. Office of Science and Technology*, No. 15-5128 (D.C. Cir. 2016) (holding that under FOIA, "[i]f an agency head controls what would otherwise be an agency record, then it is still an agency record and still must be searched or produced.").

[8] See, e.g., *Hearing Statement: Fulfilling FOIA's Promise is Critical to Government Accountability*, Sen. Chuck Grassley, July 12, 2016, at https://www.grassley.senate.gov/news/news-releases/hearing-statement-fulfilling-foias-promise-critical-government-accountability; *FOIA Process at State Department is Broken*, Sen. Chuck Grassley, Jan. 7, 2016, at https://www.grassley.senate.gov/news/news-releases/foia-process-state-department-broken.

[9] *See, e.g.*, *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review*, 830 F.3d 667, 675–76 (D.C. Cir. 2016).

that the Department is responding to private party requests with higher priority than it affords Congressional inquiries.

We ask that the Department provide responses to the following questions and requests by October 13, 2017:

10. If Attorney General Sessions did in fact use a private email address to correspond regarding relevant government business, in responding to CLC's FOIA request, did the Department search for and collect emails from that private email address?

11. Please produce all documents responsive to CLC's FOIA request from January 20, 2017 until the date the Department responds to this request.

12. Please describe the basis for each assertion of (b)(6) privilege in the Department's response to CLC's FOIA request. For each redaction, please identify whether the individual whose personal information was redacted is a private citizen or public official.

13. Please describe in detail the Department's process for responding to Congressional inquiries. Does the Department give priority to responding to requests from Members in the majority party? Why have we not received any response to our above-referenced letters of July 11 and August 9 when the Department has meanwhile produced documents responsive to those letters to private parties?

As outlined here, we continue to have serious concerns – as to both process and substance – about the Department's apparent coordination with the thoroughly discredited Presidential Advisory Commission on Election Integrity, as well as its failures to respond to our numerous oversight requests. We hope that your prompt attention to these inquiries will help allay our concerns.

Sincerely,

Sheldon Whitehouse
United States Senator

Dianne Feinstein
United States Senator

Patrick Leahy
United States Senator

Richard J. Durbin
United States Senator

Al Franken
United States Senator

Richard Blumenthal
United States Senator

Mazie K. Hirono
United States Senator