



VIA EMAIL AND OVERNIGHT DELIVERY

October 7, 2021

The Hon. Michael E. Horowitz, Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

Re: Request for Investigation Regarding Potential Improprieties Related to the October 4, 2021, Attorney General’s Memorandum

Dear Inspector General Horowitz:

America First Legal Foundation (“AFL”) is a national, nonprofit organization, working to promote the rule of law, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. Whether the President and the agencies he directs, including the U.S. Department of Justice, respect citizens’ rights and faithfully execute the laws passed by the Congress are core AFL concerns.

The Supreme Court has repeatedly recognized American parents’ fundamental liberty interest in and Constitutional right to control and direct the education of their own children.¹ On this basis alone, the nationwide protests by parents against public school policies and practices—regarding Critical Race Theory indoctrination; anti-religious and anti-family gender ideology; and/or forced online education and mask mandates—are entitled to the most robust federal constitutional protection.² Instead, the facts surrounding the Attorney General’s Memorandum of October 4, 2021³

¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O’Connor, J.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

² *Troxel*, 530 U.S. at 80 (Thomas, J., concurring).

³ U.S. Dep’t of Justice, ATTORNEY. GEN. MEM. RE PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD MEMBERS, TEACHERS, AND STAFF (Oct. 4, 2021) (the “Attorney General’s Memorandum”) <https://www.justice.gov/ag/page/file/1438986/download>; see also U.S. Dep’t of Justice Office of Public Affairs, *Justice Department Addresses Violent Threats Against School Officials and Teachers* (Oct. 4,

suggest the department may be committing federal law enforcement resources to inappropriately prevent parents from exercising constitutionally-protected rights and privileges.

Our understanding of the facts is as follows:

- Parents nationwide have protested public school policies and practices associated with, *inter alia*, the teaching or indoctrination of K-12 students in certain principles of Critical Race Theory and gender-related ideology.⁴
- Key Biden Administration stakeholders, including the National Education Association, the American Federation of Teachers, and others, have combined to oppress, threaten, and intimidate parents to chill and prevent them from exercising the rights or privileges secured by the Constitution.⁵ To date these efforts, though extensive, have generally proven ineffectual.
- In early September, Biden Administration stakeholders held discussions regarding avenues for potential federal action against parents with a key Biden Domestic Policy Council official (Jane Doe #1) and White House staff (John Doe #1). Stakeholders also held discussions with senior department officials, including at least one political appointee in the department's Civil Rights Division (Jane Doe #2). Jane Doe #1, John Doe #1, and others in the White House separately expressed concern regarding the potential partisan political impact of parent mobilization and organization around school issues in the upcoming midterm elections.
- Upon information and belief, at the express direction of or with the express consent of Jane Doe #1, Jane Doe #2 and other Biden Administration officials developed a plan to use a letter from an outside group ("not the usual suspects") as pretext for federal action to chill, deter, and discourage parents from exercising their constitutional rights and privileges.

2021) <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>.

⁴ Mary Margret Olohan, *A Parent-Led Rebellion Against Critical Race Theory Is Storming School Boards Across The Country*, THE DAILY CALLER (June 17, 2021) <https://dailycaller.com/2021/06/17/nbc-critical-race-theory-loudoun-county/>.

⁵ See Samuel Chamberlin, *Teachers' union sues Rhode Island mom over requests for CRT curriculum info*, NEW YORK POST (Aug. 5, 2021) <https://nypost.com/2021/08/05/teachers-union-sues-mom-over-requests-for-crt-curriculum-info/>; William A. Jacobson, *Union-Linked Coalition Scripts 'Messaging' To Counter Parental Pushback Against Critical Race Theory*, LEGAL INSURRECTION (July 5, 2021) <https://legalinsurrection.com/2021/07/union-linked-coalition-scripts-messaging-to-counter-parental-pushback-against-critical-race-theory/>; Harold Hutchinson, *'Expose These People Publicly': Parents Against Critical Race Curriculum Listed By Teachers Attempting To 'Infiltrate' Them*, Daily Caller (March 17, 2021) <https://dailycaller.com/2021/03/17/virginia-parents-targeted-for-opposing-critical-race-theory/>. The described conduct, if it occurs, implicates significant 18 U.S.C. § 241 concerns.

- Upon information and belief, in or about mid-September work began on development of what became the Attorney General’s Memorandum. Concerns expressed by department staff included (1) the absence of federal law enforcement nexus and authority, and (2) the constitutionally protected nature of parent protests. However, Jane Doe #2 made it clear this was a White House priority and a deliverable would be created.
- On or about September 29, citing legal authorities including the Patriot Act, the “National School Boards Association” made public a letter demanding federal action against parents citing authorities including the Patriot Act. The justification for federal action included, *inter alia*, parents were “posting watchlists against school boards and spreading misinformation (sic) that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.”⁶ It is not yet clear whether and to what extent drafts of this letter were shared with Biden Administration officials, including Jane Doe #1 and Jane Doe #2, and whether changes were suggested or made by them, prior to the ostensible public release date.
- On October 4, the Attorney General’s Memorandum was made public. The short time frame between the September 29 letter and the Attorney General’s Memorandum suggests that either the entire matter was precoordinated and the September 29 but pretext, or that the normal clearance process and standard order both within the department (including legal sufficiency review by the Office of Legal Counsel, the Civil Rights Division, the Criminal Division, the Office of Legal Policy, and other components), and between the department and the White House Counsel’s Office and the Office of Management and Budget, were bypassed or corrupted.
- On October 5, there was a follow up call involving, *inter alia*, the White House Counsel’s Office, Jane Doe # 2, and many other Biden Administration political and career officials. The briefing included how to talk about “equity” initiatives, to avoid liability for violating discrimination laws, and, critically, to hide “equity” measures, initiatives, and action from Freedom of Information Act disclosure. The intention, it seems, is to evade public scrutiny of these Biden Administration activities.

⁶ Nat’l School Board Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) at 5 (Sept. 29, 2021) <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>. This letter repeated teacher union-approved talking points, including the claim “critical race theory is not taught in public schools...” *Id.* at 1; *but see* William A. Jacobson, *supra* note 5; Jessica Anderson, *Reading, Writing, and Racism: the NEA’s Campaign to Gaslight Parents*, NATIONAL REVIEW ONLINE (July 10, 2021) <https://www.nationalreview.com/2021/07/reading-writing-and-racism-the-neas-campaign-to-gaslight-parents/>.

Accordingly, we request your Office investigate whether the Attorney General's Memorandum was formulated and issued based on improper considerations.⁷ At this point, the dangers inherent in the undue politicization of the department's criminal and civil law enforcement authorities, and in the corruption of the department's standard order and process, should be evident.⁸ Therefore, we thank you in advance for your attention to this important matter.⁹ Please contact me at reed.rubinstein@aflegal.org if you have any questions or if I may be of further assistance.

Sincerely yours,

Reed D. Rubinstein
Senior Counselor and Director of Oversight
and Investigations
America First Legal Foundation

Cc: Jeffrey R. Ragsdale, Counsel, Office of Professional Responsibility, U.S. Department of Justice
The Hon. Sen. Dick Durbin, Chairman, Committee on the Judiciary
The Hon. Chuck Grassley, Ranking Member, Committee on the Judiciary
The Hon. Rep. Jerrold Nadler, Chairman, House Committee on the Judiciary
The Hon. Rep. Jim Jordan, Ranking Member, House Committee on the Judiciary

⁷ Accord U.S. Dep't of Justice Office of the Inspector General, *DOJ OIG Initiates a Review of the Department of Justice's Use of Subpoenas and Other Legal Authorities to Obtain Communication Records of Members of Congress and Affiliated Persons, and the News Media* (June 11, 2021) (examining whether department action was "based upon improper considerations.")

⁸ See, e.g., *United States v. Sussman*, ECF No. 1, Case 1:21-cr-00582-CRC (D.D.C., June 16, 2021); U.S. Dep't of Justice Office of the Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 2019 rev.) <https://www.justice.gov/storage/120919-examination.pdf>; U.S. Dep't of Justice Office of the Inspector General, *Report of Investigation of Former Federal Bureau of Investigation Director James Comey's Disclosure of Sensitive Investigative Information and Handling of Certain Memoranda* (Aug. 2019) <https://oig.justice.gov/reports/2019/o1902.pdf>; U.S. Dep't of Justice Office of the Inspector General, *Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) <https://www.oversight.gov/sites/default/files/oig-reports/o1804.pdf>

⁹ AFL is aware of allegations suggesting the Attorney General is related by the marriage of his daughter to a person who is compensated by public schools to conduct "gender identity" surveys and data analysis. See Mark Moore, *Parents group: AG Garland has conflict of interest with Facebook, critical race theory*, NEW YORK POST (Oct. 6, 2021). AFL cannot confirm or deny these allegations at this time.