

November 1, 2021

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

When you testified last week about your October 4th memo directing the FBI to involve itself with parents protesting at local school boards, you told me that you were concerned only with violence and threats of violence. I did not believe you. It is now clear that neither did the people who work for you. The head federal prosecutor in at least one state has now publicly directed law enforcement to go after parents for conduct that—without question—is not criminal.

The U.S. Attorney in Montana, who serves under your watch, issued a memo on October 14th directing law enforcement to “contact the FBI” if a parent calls a member of a school board “with intent to annoy.” Calling a person “with intent to annoy,” he said, “may serve as a basis for a prosecution” under federal law. This memo was published in local media for all parents to see.¹

That memo entirely misstates the law. No federal law prohibits calling a school board member “with intent to annoy.” Although that language *previously* appeared in a criminal statute, Congress repealed it nearly a decade ago—no doubt out of a concern that prosecutors in your Department would use that language to try to chill speech.² Your Department even sent a letter to the U.S. Attorney’s Office in Montana to “highlight” this change.³ Yet prosecutors under your watch, nearly a decade later, are falsely telling parents that they can be prosecuted if a member of a school board thinks the parents intended to be annoying. I can think of nothing that has a greater tendency to chill free speech of parents.

You professed not to know about this memo when you appeared before the Senate last week. But it was entirely predictable that your head prosecutors would use your October 4th memo to go after parents for making their voices heard. Indeed, the U.S. Attorney in

¹ *E.g.*, <https://www.ktvh.com/news/helena-news/u-s-acting-attorney-for-montana-sends-letters-of-statues-to-state-law-enforcement>.

² Pub. L. 113-4, title XI, § 1102, Mar. 7, 2013.

³ https://www.justice.gov/sites/default/files/usao-az/legacy/2013/07/16/AG_Memo_April1_2013.pdf.

Montana said he was issuing his memo “pursuant to the Attorney General’s directive” of October 4th. This makes it especially galling that, even though Senator after Senator highlighted this issue for you last week, you simply doubled down and insisted that the memo clearly protected First Amendment activity. Your assertion is patently false. Your interpretation was not shared by the hundreds of parents who have contacted their congressional offices to complain, and it was not shared by your own lead prosecutor in Montana. To prevent further chilling of speech, you must immediately withdraw your October 4th memo and apologize.

Before November 5, please provide my office with a copy of every memo any official in the Department of Justice has issued in response to your October 4th memo.

I await the Department’s response.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Hawley". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

Josh Hawley
United States Senator