



U.S. Department of Justice

November 13, 2020

The Honorable William P. Barr
The Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Mr. Attorney General:

We are District Election Officers (DEOs) from fifteen United States Attorney's Offices and career professionals charged with investigating and prosecuting election crimes. We have served under Attorneys General from both political parties and have decades of collective experience in the neutral, non-partisan application of federal criminal law to the electoral process. The views expressed herein are solely our own and are offered in our roles as DEOs and career professionals with expertise in election crimes.

We write in response to your November 9, 2020, memorandum titled "Post-Voting Election Irregularities Inquiries" (the "Memorandum").

We urge you to rescind it.

The Memorandum's abrogation of the Department's Election Non-Interference Policy is not based in fact. It was developed and announced without consulting non-partisan career professionals in the field and at the Department. Finally, the timing of the Memorandum's release thrusts career prosecutors into partisan politics.

The policy change was not based in fact. In the jurisdictions where we serve as DEOs, in the 2020 election cycle, there is no evidence of "substantial allegations of voting and vote tabulation irregularities" that "could potentially impact the outcome of a federal election," to use the language from the Memorandum. *See* Memorandum at page 1-2. Further, it is our understanding that the Public Integrity Section, which has nationwide oversight of election fraud matters, has not seen evidence of "substantial allegations of voting and vote tabulation irregularities" that "could potentially impact the outcome of a federal election," in other jurisdictions. Therefore, as a factual matter, we do not believe justification exists for abrogating the Department's 40 year-old Election Non-Interference Policy in all jurisdictions, including our own. Without a basis in fact, the policy change announced in the Memorandum has and will engender speculation that it was motivated by partisan political concerns, rather than the neutral, non-partisan application of federal criminal law.

The policy change was not a product of consultation with career professionals. The Memorandum was drafted without consulting a single District Election Officer and without

consulting the career professionals and subject matter experts within the Criminal Division's Public Integrity Section.

If we had been consulted, this is the advice we would have given.

The Election Non-Interference Policy has served the Department well over the decades that we, as professionals, have operated under it. It is the cornerstone of the legal and practical framework that maintains the Department's neutrality during election cycles. The Policy has always allowed for exceptions to the presumption that overt ballot fraud investigations should be deferred until after election results are certified based on the facts and circumstances of individual investigations. The Memorandum states you have already made such determinations in an unspecified number of cases prior to the policy change. That fact proves the point.

A further reason for non-interference is the fact that, as you well know, elections are conducted by the States, not the federal government. Absent some extraordinary reason, respect for the principles of federalism demands that the States be given an opportunity to complete their elections through certification absent interference or disruption by the federal government. Federal non-interference does not mean that voter fraud is not being investigated. Rather it is referred to and handled by state and local law enforcement.

Finally, the Memorandum is, by its plain text, at odds with both the Election Non-Interference Policy and portions of the "Election Year Sensitivities" memorandum you disseminated on May 15, 2020. As a result, career prosecutors now face competing and contradictory guidance at a moment when clarity and consistency are particularly important. This tension may be seized on by the defense bar who will argue we are violating our own policies. More fundamentally, defendants will be able to argue that they were singled out precisely because their case could affect the outcome of a given election and not because of the underlying merits of their case.

The timing of the announcement inserts all of us into a partisan political debate. The Memorandum was issued less than one week after the election. We have all experienced the phenomenon of candidates and their lawyers trying to weaponize investigations and even the specter of investigations for political advantage. The timing of this Memorandum affords them that opportunity.

As career professionals we must strictly maintain our neutrality during the campaign, when the public is voting and in the period when voting ends and until the election is certified. We do that so the public has confidence both in the electoral process and in the criminal justice system. We disagree with the Memorandum's argument that the impact of taking overt investigative and prosecutorial actions on the outcome of an election is "greatly minimized" after voting ends but before certification occurs. Important concerns that animate our restraint during the campaign and when voting is underway are also present in the period after voting ends leading up to certification.

For these reasons we ask that you reconsider your decision to abandon the Election Non-Interference Policy and rescind the Memorandum of November 9, 2020.

Very truly yours,

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