



October 6, 2021

VIA FOIA STAR

Office of Information Policy (OIP)
U.S. Department of Justice
6th Floor
441 G St. NW
Washington, DC 20530

Re: 28 CFR § 16.8 Administrative Appeal, FOIA Request 21-00291-F (CRT)

To Whom it May Concern:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, 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.

On August 31, 2021 AFL submitted Freedom of Information Act (FOIA) Request 21-00291-F to the Civil Rights Division of the Department of Justice (CRT).¹ CRT, by letter from Kilian Kagle, Chief of CRT's Freedom of Information/Privacy Acts Unit, replied on September 10, 2021.² AFL appreciates CRT's detailed adjudication of our Request, but appeals CRT's determinations that Items H, I and J are not proper FOIA requests, and that expedited processing will not be granted.

I. Standard of Review

The FOIA broadly requires agencies to disclose federal records freely and promptly.³ The department must liberally construe requests and bears the burden of proving it has made a good faith effort to search for the requested records using methods "which can be reasonably expected to produce the information requested."⁴ At all times, the

¹ Exhibit 1.

² Exhibit 2.

³ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

⁴ *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C.Cir.1990).

FOIA must be construed in accord with the ordinary public meaning of its terms at the time of its enactment to carry out Congress's open government mandate.⁵

II. Items H, I, and J are Proper FOIA Requests.

CRT declared AFL's Items H, I, and J improper FOIA requests. It stated:

Those requests do not seek records, rather they are more akin to interrogatories in civil discovery and ask CRT to research records, analyze those records, conduct legal research and provide AFL with substantive answers to its questions. Under the Freedom of Information Act, agencies are not required to satisfy a request for records proving the veracity, justification or underlying determination of a specific statement by an Official as it would require an Agency to undertake research, analysis and formulation of opinions. *Hall & Assocs. v. EPA*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018).⁶

AFL disagrees.

To begin, *Hall* does not stand for the proposition for which CRT cites it.⁷ The requester in *Hall* asked the agency "to agree or disagree with the various contentions of the Coalition under the guise of a FOIA request" and to provide all documents proving a government statement "wrong."⁸ In an unpublished decision, the Court of Appeals for the District of Columbia held quoting a statement regarding scientific misconduct and asking the agency to provide all documents proving that statement wrong "did not reasonably describe the documents sought [] and would have required EPA to undertake research, analysis, and formulation of opinions—actions not required by FOIA."⁹

Here, by contrast, CRT did not allege that AFL failed to reasonably describe the requested records. Nor did AFL ask CRT to agree or disagree with contentions, or conduct original legal research and render an opinion, or create or retain records.¹⁰ Rather, AFL requested records in the department's possession of specific facts (Requests H5, H6, H7, J1, J2, and J5); identifying specific agency decision makers (Requests I5, I6, and I7); of specific interagency activities (Requests I3 and I4); of the department's legal and operational understanding of "disinformation" and "misinformation", terms without legal meaning that are apparently the fulcrum for key law enforcement activities and interagency partnerships (Requests H1, H3, I1,

⁵ *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

⁶ Exhibit 2, at 5

⁷ Compare *id.* with Dep't of Justice, *Guide to the Freedom of Information Act* at 31 n. 119 (Aug. 20, 2021) <https://www.justice.gov/oip/page/file/1199421/download#page=25>.

⁸ *Hall & Assocs. v. Env't Prot. Agency*, 83 F. Supp. 3d 92, 101-102 (D.D.C. 2015).

⁹ *Hall & Assocs. v. Env't Prot. Agency*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018).

¹⁰ See *Kissinger v. Repts. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980).

J3, and J4); and reflecting the Attorney General’s understanding of “disinformation” as used in his June 11, 2021 policy address, and in his law enforcement decisions (Requests H2 and I2).¹¹

AFL did *not* request the department to create new documents, answer questions with a narrative response, or engage in anything resembling a civil discovery process. Each response was carefully crafted to seek records, including communications among staff, to shed light on the Attorney General’s policies as articulated in his address, and importantly, how the department is interpreting and implementing those policies and the Biden Executive Order 14109 and interagency partnership to “combat election disinformation” referenced therein.

AFL and the public are entitled to know what the Department is up to regarding voting rights, election integrity, and its role as the apparent point of the spear in the Biden Administration’s assault and “combat” on domestic “disinformation” and “misinformation.” Distressingly, it appears the department and the Biden Administration have invested these terms, though elastic enough to encompass any speech on any topic the government wishes to suppress and punish, with real legal consequences.¹² Request H, I, and J are ordinary, proper, and standard FOIA requests. AFL’s appeal should be granted.

III. AFL is Entitled to Expedited Processing.

CRT erroneously denied AFL expedited processing because:

You have not demonstrated that your request meets the criteria necessary for expedited processing. Moreover, as I am sure you understand, CRT receives a high volume of requests, many from requestors who also ask for expedited processing. We have a limited number of staff dedicated to responding to FOIA requests and cannot always allow new requests to take precedence over the hundreds of previously submitted requests.¹³

AFL disagrees.

First, CRT should have specified why AFL’s request failed to meet the criteria for expedited processing. It did not. It simply asserted that the request did not meet the criteria and cited workload as a justification. This is an improper denial.

¹¹ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>

¹² *Id.*; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

¹³ Exhibit 2, at 5.

Second, AFL has proven “compelling need” under 5 U.S.C. § 552(a)(6)(E). First, the record shows multiple federal agencies have acknowledged AFL is primarily “engaged in disseminating information.”¹⁴ To AFL’s knowledge, the department has never disputed this. Second, the record shows the department’s voting and election integrity operations, as well as the department’s plan to “combat” “disinformation” are assuredly matters of “actual or alleged Federal Government activity.” To AFL’s knowledge, the department has never disputed this, either. Third, the common public meaning of “urgency” at the time of § 552(a)(6)(E)(v)(II)’s enactment was “the quality or state of being urgent.” The common public meaning of “urgent”, in turn, was “requiring or compelling speedy action or attention.” To AFL’s knowledge, the department agrees voting rights, election integrity, and combatting election “misinformation” or “disinformation” all require and compel speedy action and attention. Why, otherwise, would the Attorney General have promised on June 11, 2021, “within the next thirty days – we will double the [Civil Rights] division’s enforcement staff for protecting the right to vote”, affirmed that “we will not wait for...legislation to act”, committed to “partner with other federal agencies to combat election disinformation that intentionally tries to suppress the vote”, or joined an unprecedented, coordinated, interagency effort targeting American citizens who are deemed to disseminate undefined “disinformation” and/or “misinformation”?¹⁵ Accordingly, AFL should have been granted expedited processing and is entitled to injunctive relief.

In the alternative, 28 C.F.R. § 16.5(e) is the department’s expedited processing regulation. 28 C.F.R. § 16.5(e)(ii) repeats the statutory factors. Therefore, as explained above, AFL is entitled to expedited processing here as well. But as permitted by statute, the department has expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.¹⁶ Again, AFL has made the requisite determination. Attaching legal and intelligence agency consequences to undefined terms such as “disinformation” and “misinformation” as the department seems to do obviously threatens the “loss of substantial due process rights” under 28 C.F.R. § 16.5(e)(1)(iii).¹⁷ Additionally, the department’s voting rights and election integrity law enforcement activities are self-evidently of urgent and

¹⁴ Exhibit 1, at 10 n.9.

¹⁵ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

¹⁶ 28 C.F.R. §§ 16.5(e)(1)(iii), (iv).

¹⁷ See generally note 15, *supra*.

intense public interest and concern in which there are possible questions about the government's integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).¹⁸

Also in the alternative, the Circuit test for expedited processing requires weighing three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. AFL meets this test as well.

Respecting factor one, as noted above, the record shows voting rights, election integrity, and the government's efforts and plan to "combat election disinformation" are assuredly matters of public concern and media interest. There is little doubt the subject matter of the requests is central to a pressing issue of the day.

Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding election integrity, voting rights, and, critically, the Biden Administration's unprecedented decision to use the coercive power of federal government against American citizens under the rubric of "misinformation"—a malleable term without fixed statutory or regulatory definition that lends itself to government abuse and the unlawful targeting of political opponents or citizens who dare to speak or think differently.¹⁹ Being closed off from the opportunity to debate the Department's voting rights, election integrity, and "election misinformation" law enforcement policies and activities itself is a harm in an open democracy.²⁰ And the

¹⁸ Hannah Bleau, *Poll: Majority of Voters Support Voter ID and Reject 'Racism' as Reason for Election Integrity Laws*, BREITBART (July 8, 2021) <https://www.breitbart.com/politics/2021/07/08/majority-voters-support-voter-id-reject-racism-reason-election-integrity-laws/> (finding that 63% of voters identify election integrity as one of their top issues). *See also*, Catherine Kim, *Poll: 70 Percent of Republicans Don't Think the Election Was Free and Fair*, POLITICO (Nov. 9, 2020) <https://www.politico.com/news/2020/11/09/republicans-free-fair-elections-435488> (finding that Republicans trust in the election plummeted after Biden won, and Democrats trust skyrocketed). *See, also*, Richard Cowan, *U.S. Senate's Schumer Mulls Passing Election Reform Without Republicans*, REUTERS (Sept. 21, 2021) <https://news.yahoo.com/u-senate-leader-schumer-opens-152145631.html>; Carl Hulse, *Democrats Propose a Compromise Bill on Voting Rights* THE NEW YORK TIMES (Sept. 14, 2021) <https://www.nytimes.com/2021/09/14/us/politics/voting-rights-bill-democrats.html>; U.S. Dep't of Justice, *Attorney General Merrick B. Garland Delivers Remarks at Justice Department Leadership Meeting with State and Local Election Officials on Threats to Election Workers* (Aug. 26, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-justice-department-leadership-meeting>; U.S. Dep't of Justice, *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law* (June 25, 2021) <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.

¹⁹ Steven Nelson, *White House 'Flagging' Posts for Facebook to Censor Over COVID 'Misinformation'*, NEW YORK POST (July 15, 2021) <https://nypost.com/2021/07/15/white-house-flagging-posts-for-facebook-to-censor-due-to-covid-19-misinformation/>.

²⁰ In *Protect Democracy Project*, the District Court reasoned:

possibility exists that extra-legal law enforcement action may be taken by the department against States and other political opponents of the current Administration in the name of “voting rights” and “election integrity” and “stopping election misinformation.” For example, the department is now suing Georgia, dubiously claiming Georgia’s new election integrity measures are discriminatory.²¹ Disclosing relevant records months or even years from now will be of academic interest only—any damage will have been done and stale information is of little value.²² Respecting factor three, AFL’s requests manifestly concern “federal government activity.”

Although CRT cited burden and pending requests as grounds for denying expedited processing, the department cannot claim that a request to comply with the law is an undue burden on its own or others’ interests, and any complaints about the burdens of complying with the law must be addressed to Congress.²³ Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL’s FOIA requests and the extremely limited time window.

Finally, we believe CRT generally exercises its administrative discretion and waives the requirement of a separate certification of need for expedited processing under 28 C.F.R. § 16(e)(3) as a matter of course. We assume it has done so here as well. If, however, the absence of a separate certification is the reason AFL was denied expedited processing, please accept this appeal in lieu thereof. Alternatively, AFL is

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute “urgent” then certainly, issues related to voting integrity and election law are urgent as well.

²¹ Department of Justice, *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law*, <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.

²² See *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).

²³ *Protect Democracy Project, Inc.*, 263 F. Supp. 3d at 300 citing *Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999).

willing to separately submit such a certification in such form as the department might specify.

IV. Conclusion.

Accordingly, AFL asks for this appeal to be granted and for expedited processing to be provided on FOIA Request 21-00291-F at the earliest practicable time. Please contact the undersigned at FOIA@aflegal.org if additional clarification or information is required.

28 C.F.R. § 16.5(e)(4) provides that “If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.” Given the clarity of the record and the urgency of the issue, we request a determination within five (5) business days.

/S/

Reed D. Rubinstein
America First Legal Foundation

cc: DOJ Office of Information Policy by email at DOJ.OIP.FOIA@usdoj.gov
CRT FOIA Division by email CRT.FOIArequests@usdoj.gov

EXHIBIT 1



August 31, 2021

VIA ONLINE PORTAL – CRT.FOIArequests@usdoj.gov

Kilian Kagle, Chief
FOIA/PA Branch
Civil Rights Division
4CON, Room 6.153
950 Pennsylvania Ave, N.W.
Washington, DC 20530

Freedom of Information Act Request for Records from the Civil Rights Division’s Voting Section

Dear Mr. Kagle:

This Freedom of Information Act (FOIA) request for records from the U.S. Department of Justice (DOJ) regarding the Biden Administration’s apparent weaponization of the Civil Rights Division’s (CRT) Voting Section is directed to you in accordance with the Department’s “Find a FOIA Contact” webpage.¹

America First Legal Foundation (AFL) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, 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 social media platforms to educate the public.

As a part of this mission, we work to let the American people know what their government is doing, and who is doing it. The federal government is—at all levels—accountable to the people and to the electorate. But longstanding and apparently well-founded concerns regarding both the security of our election processes and systems and the extent and impact of voter fraud have stimulated great public interest in voting and election integrity.²

¹ See [Find a FOIA Contact at DOJ | OIP | Department of Justice](#)

² See, e.g., *Letter from Sens. Elizabeth Warren, Amy Klobuchar, Ron Wyden, and Mark Pocan to Sarni Mnaymneh, Founder and Co-Chief Executive Officer H.I.G. Capital, LLC, et al* (Dec. 6, 2019) <https://www.warren.senate.gov/imo/media/doc/H.I.G.%20McCarthy,%20&%20Staple%20Street%20letters.pdf>. In December 2019, Sen. Warren and the other Democrats were, “[P]articularly concerned

DOJ has sued the State of Georgia for enacting legislation protecting the Constitution’s “one person, one vote” requirement.³ However, DOJ’s suit seemingly lacks a competent statutory or Constitutional foundation. On June 11, 2021, the Biden Administration’s Attorney General promised to “double” the Voting Section’s head count on or before July 21, 2021.⁴ Over a decade ago, the Heritage Foundation documented how the Voting Section had become an adjunct of the Democrat party.⁵ Accordingly, there is ample reason for concern the Biden Administration is intent on using DOJ enforcement resources, and taxpayer dollars, not to protect the law but rather to protect Democrat politicians.

FOIA’s purpose is to ensure an informed citizenry, which is vital to the functioning of a democratic society, needed to check against corruption, and required to hold the governors accountable to the governed. 5 U.S.C. § 552; *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). AFL believes it is critical to educate the American public regarding the affiliations, backgrounds, and qualifications of the individuals who may be using the machinery of law enforcement to chill lawful State efforts to aimed at ensuring fair, lawful, and transparent elections. Given strong and ongoing public debate and interest in matters of election law and voting rights, our request is self- evidently a matter of pressing public concern.⁶ Therefore, AFL requests production of the following records within twenty days.

I. Special Definitions

“DOJ” means the U.S. Department of Justice Office of the Attorney General, the Civil Rights Division, and the Voting Section, jointly and severally.

“CRT” means the Civil Rights Division within the DOJ.

that secretive and ‘trouble-plagued Companies,’ owned by private equity firms and responsible for manufacturing and maintaining voting machines and other election administration equipment, ‘have long skimmed on security in favor of convenience,’ leaving voting systems across the country ‘prone to security problems.’” *Id.* at 1; *see also* Jack McEvoy, *Connecticut Dem Indicted for Voter Fraud*, THE WASHINGTON FREE BEACON (Jul. 31, 2021), <https://freebeacon.com/elections/connecticut-dem-indicted-for-voter-fraud/>.

³ *Reynolds v. Sims*, 337 U.S. 533 (1964).

⁴ [Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights | OPA | Department of Justice](#) (June 11, 2021).

⁵ Hans A. Von Spakovsky, *Abusing the Voting Rights Act*, NATIONAL REVIEW (Feb. 23, 2011), <https://www.nationalreview.com/2011/02/abusing-voting-rights-act-hans-von-spakovsky/>.

⁶ . According to a recent poll regarding voters’ top priorities, conducted by Georgetown University in June of 2021, “The number three issue overall is ‘voting rights.’” *NEW POLL: VOTERS RATE POLITICAL DIVISION AS TOP ISSUE FACING THE COUNTRY*, GEORGETOWN UNIVERSITY (Jun. 15, 2021), <https://politics.georgetown.edu/2021/06/15/new-poll-georgetown-institute-of-politics-and-public-service-releases-june-2021-battleground-poll/>.

“Georgia Case” means the case known as *United States v. The State of Georgia, et al*, Case 1:21-cv-02575-JPB (June 25, 2021) described and available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>

“Policy Address” means the text of *Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights, Washington, DC ~ Friday, June 11, 2021*, posted at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>.

“Voting Section” means the Voting Section of CRT.

II. Requested Records

- A. For all Voting Section attorneys, both political appointees and career, who are at the GS Grade 12 Step 1 or higher:
1. The most recent resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency’s records. AFL has no objection to the redaction of employee’s contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
 2. Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
 3. Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.
 4. Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.
 5. Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
 6. Records reflecting any recusal determination made or issued for the individual.
 7. Any mandatory public financial disclosures filed by the individual since January 1, 2017.
- B. For all attorneys employed by, detailed or assigned to, and/or supervising the Voting Section (career and political appointees), all records of, and/or referring,

regarding, or relating to communications with, any of the following persons between February 1, 2016, and the present:

1. ACLU
 2. Common Cause
 3. Brennan Center for Justice
 4. FairFight
 5. Future Forward USA
 6. LCV Victory Fund
 7. Change Now PAC
 8. Take Back 2020
 9. America's Progressive Promise PAC
 10. Priorities USA Action
 11. American Bridge 21st Century
 12. Piedmont Rising
 13. NextGen Climate Action
 14. Unite the Country
 15. Forward Majority Action
 16. Black PAC
 17. Senate Majority PAC
 18. Pacronym
 19. Mark E. Elias
 20. Any person having an email address containing "perkinscoie.com"
- C. All records of, regarding, referring, or relating to expansion of the size and staff of the Voting Section, to include all communications regarding potential new hires, detailees, and/or the category or types of attorneys whom leadership will seek out to fill the new positions, and any preferred affiliations, background, or qualifications. The time frame for this request is January 20, 2021, to the present.
- D. For any attorney employed by or detailed to the Voting Section, all records of, and/or regarding, referring, or relating to communications with, any person having an email address containing eop.gov. The time frame for this request is January 21, 2021, to the present.
- E. All records sufficient to identify every person employed by or detailed to DOJ, CRT, and/or the Voting Section, who analyzed, reviewed, researched, evaluated, approved the legal sufficiency of, and/or authorized the filing of the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- F. All records of, referring, regarding, or relating to communications between any person employed by or detailed to DOJ, CRT, and/or the Voting Section, and any person having an email address containing eop.gov, referring, regarding,

or relating to the Georgia Case. The time frame for this request is January 21, 2021, to the present.

- G. All records sufficient to identify each person who wrote, reviewed, revised, contributed to, or approved all or part of the Policy Address.
- H. With respect to the phrase “And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the word “disinformation”.
 - 2. What Attorney General Garland meant by the word “disinformation”.
 - 3. DOJ’s legal and/or operational meaning of the phrase “abnormal post-election audit methodologies”.
 - 4. What Attorney General Garland meant by the phrase “abnormal post-election audit methodologies”.
 - 5. All “jurisdictions” using “abnormal post-election audit methodologies that may put the integrity of the voting process at risk.”
 - 6. The “abnormal post-election audit methodologies that may put the integrity of the voting process at risk”.
 - 7. How the referenced “abnormal post-election audit methodologies” “may put the integrity of the voting process at risk”.
- I. With respect to the phrase “We will also partner with other federal agencies to combat election disinformation” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the phrase “election disinformation.”
 - 2. What Attorney General Garland meant by the phrase “election disinformation.”
 - 3. All measures taken by DOJ to “partner with other federal agencies to combat election disinformation.”
 - 4. All “other federal agencies”.

5. The identities and titles of all DOJ political appointees who decide or define what is and what is not “election disinformation.”
 6. The identities and titles of all DOJ career employees who decide or define what is and what is not “election disinformation.”
 7. The identities of all DOJ contractors and consultants who decide or define what is and what is not “election disinformation.”
- J. With respect to the phrase “Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots” used in the Policy Address, all records sufficient to identify the following:
1. The “several studies”.
 2. The “jurisdictions”.
 3. DOJ’s legal and/or operational definition of “nonwhite”.
 4. DOJ’s legal and/or operational definition of “white”.
 5. When the Voting Section first became aware “nonwhite voters must wait in line substantially longer than white voters to cast their ballots.”
- K. All records of communications referencing, regarding, or pertaining to the Policy Address between DOJ and any person with an email address containing eop.gov.

III. Redactions

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then the DOJ must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, you should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or

audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.

- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a

scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your regulations, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available without charge for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records.

As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest. Other government agencies, including the Department of Homeland Security, the Department of Education, and the Department of the Interior, have acknowledged AFL is entitled to a fee waiver as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II) and granted our requests for waiver of search fees.

Second, waiver is proper as disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). The public has a significant interest in DOJ's compliance with and faithful execution of the laws, and in its respect for our citizens' Constitutional rights. The Public is also deeply interested in voting rights in the United States, with a recent poll by Georgetown University finding that it is voters' third most important issue.⁷ Given the public interest in the subject and the DOJ's activity in this area, it is clear that disclosure of this information would "contribute significantly to public understanding of operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). AFL is thus entitled to a fee waiver as disclosure is in the public interest.

V. Expedited Processing

AFL seeks and should be granted expedited processing. 28 CFR § 16.5(e) provides in relevant part:

⁷ GEORGETOWN, *supra* note 5.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve... (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; (iii) The loss of substantial due process rights; or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

As explained below, the legal standard is satisfied here.

First, our website demonstrates AFL is primarily engaged in the dissemination of information regarding the activities and operations of the federal government.⁸ We do this through a variety of means and methods, including FOIA requests and litigation, to educate American citizens regarding their Constitutional and legal rights.

Second, given the pendency of the Georgia Case, there is obviously an urgency to inform the public, the Court, and the defendants about potential political bias among career attorneys in CRT and the Voting Section. Indeed, the Georgia case seems designed to prevent the State from taking steps to ensure voter integrity and protect public faith in its elections, and to facilitate ballot harvesting and other practices rife with fraud. This puts Georgia citizen's constitutional right to vote, including the "one-person, one-vote" principle as articulated by the Supreme Court in *Reynolds v. Sims* and subsequent cases, at risk.⁹

Third, government policy is almost inevitably the product of personnel, especially when the biases and preferences of political appointees are aligned with the biases and preferences of government bureaucrats. If DOJ, CRT, and/or the Voting Section are at best something less than a fair referee, or at worst actively working with Democrat political interests and operatives to protect Democrat politicians, then the public needs to know now. The biased and illegitimate exercise of law enforcement authority by CRT and/or the Voting Section to prevent States from enacting effective and fair election integrity laws and to facilitate ballot harvesting and other forms of fraud will necessarily result in widespread due process violations in Georgia and nationwide.

⁸ See e.g., America First Legal Foundation, *Political Leadership – Department of Agriculture*, available at <https://www.aflegal.org/oversight/165a6de55737d9b9b42bab8a596ec981>; America First Legal Foundation, *Political Leadership – Department of the Interior*, available at <https://www.aflegal.org/oversight/277ab33c83a47d6428b3dce6d1154104>; America First Legal Foundation, *Critical Race Theory at the Department of Education*, available at <https://www.aflegal.org/oversight/1ad2174bfcfa5f0d6ec83ee9c533306>; America First Legal Foundation, *DHS Immigration Policy*, available at <https://www.aflegal.org/oversight/17eb4c1c84e95cc81f1016d31e12e519>.

⁹ *Reynolds v. Sims*, 337 U.S. 533 (1964).

Finally, there is widespread and exceptional interest in the possibility DOJ lacks institutional commitment to non-partisan enforcement of election laws. The public has a right to know whether the attorneys in CRT, and the Voting Section are professionals committed to the Constitution and the rule of law, or activists working to protect the Democrat Party and the Biden Administration. Frankly, it is difficult to imagine a more fundamental threat to public confidence in the federal government than a politicized DOJ, CRT, and Voting Section.

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you.

/S/ Reed D. Rubinstein
Reed D. Rubinstein
America First Legal Foundation

EXHIBIT 2



U.S. Department of Justice
Civil Rights Division

21-00291-F

Freedom of Information /PA Unit- 4CON
950 Pennsylvania Ave., NW
Washington, DC 20530

Mr. Reed D. Rubinstein
600 14th Street NW, 5th Floor
Washington, DC 20005
foia@aflegal.org

Dear Mr. Rubinstein:

This is in response to your August 31, 2021 Freedom of Information Act request to the Civil Rights Division (CRT) of the Department of Justice (DOJ). As explained below, (1) CRT will begin processing those portions of your request that reasonably describe the records requested; (2) CRT will seek further clarification and narrowing of some of the requests that are exceedingly broad; (3) CRT will not provide substantive written responses to questions that are not requests for records under FOIA; (4) CRT will waive fees despite the significant expenditure of limited government resources needed to respond to this request; and (5) CRT will not expedite this request.

Records Requested:

- A. For all Voting Section attorneys, both political appointees and career, who are at the GS Grade 12 Step 1 or higher:
1. The most recent resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency's records. AFL has no objection to the redaction of employee's contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
 2. Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
 3. Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.

4. Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.
 5. Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
 6. Records reflecting any recusal determination made or issued for the individual.
 7. Any mandatory public financial disclosures filed by the individual since January 1, 2017.
- B. For all attorneys employed by, detailed or assigned to, and/or supervising the Voting Section (career and political appointees), all records of, and/or referring, regarding, or relating to communications with, any of the following persons between February 1, 2016, and the present:
1. ACLU
 2. Common Cause
 3. Brennan Center for Justice
 4. FairFight
 5. Future Forward USA
 6. LCV Victory Fund
 7. Change Now PAC
 8. Take Back 2020
 9. America's Progressive Promise PAC
 10. Priorities USA Action
 11. American Bridge 21st Century
 12. Piedmont Rising
 13. NextGen Climate Action
 14. Unite the Country
 15. Forward Majority Action
 16. Black PAC
 17. Senate Majority PAC
 18. Pacronym
 19. Mark E. Elias
 20. Any person having an email address containing "perkinscoie.com"
- C. All records of, regarding, referring, or relating to expansion of the size and staff of the Voting Section, to include all communications regarding potential new hires, detailees, and/or the category or types of attorneys whom leadership will seek out to fill the new positions, and any preferred affiliations, background, or qualifications. The time frame for this request is January 20, 2021, to the present.
- D. For any attorney employed by or detailed to the Voting Section, all records of, and/or regarding, referring, or relating to communications with, any person having an email address containing eop.gov. The time frame for this request is January 21, 2021, to the present.

- E. All records sufficient to identify every person employed by or detailed to DOJ, CRT, and/or the Voting Section, who analyzed, reviewed, researched, evaluated, approved the legal sufficiency of, and/or authorized the filing of the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- F. All records of, referring, regarding, or relating to communications between any person employed by or detailed to DOJ, CRT, and/or the Voting Section, and any person having an email address containing eop.gov, referring, regarding, or relating to the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- G. All records sufficient to identify each person who wrote, reviewed, revised, contributed to, or approved all or part of the Policy Address.
- H. With respect to the phrase “And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the word “disinformation”.
 - 2. What Attorney General Garland meant by the word “disinformation”.
 - 3. DOJ’s legal and/or operational meaning of the phrase “abnormal post- election audit methodologies”.
 - 4. What Attorney General Garland meant by the phrase “abnormal post- election audit methodologies”.
 - 5. All “jurisdictions” using “abnormal post-election audit methodologies that may put the integrity of the voting process at risk.”
 - 6. The “abnormal post-election audit methodologies that may put the integrity of the v voting process at risk”.
 - 7. How the referenced “abnormal post-election audit methodologies” “may put the integrity of the voting process at risk”.
- I. With respect to the phrase “We will also partner with other federal agencies to combat election disinformation” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the phrase “election disinformation.”
 - 2. What Attorney General Garland meant by the phrase “election disinformation.”
 - 3. All measures taken by DOJ to “partner with other federal agencies to combat

election disinformation.”

4. All “other federal agencies”.
 5. The identities and titles of all DOJ political appointees who decide or define what is and what is not “election disinformation.”
 6. The identities and titles of all DOJ career employees who decide or define what is and what is not “election disinformation.”
 7. The identities of all DOJ contractors and consultants who decide or define what is and what is not “election disinformation.”
- J. With respect to the phrase “Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots” used in the Policy Address, all records sufficient to identify the following:
1. The “several studies”.
 2. The “jurisdictions”.
 3. DOJ’s legal and/or operational definition of “nonwhite”.
 4. DOJ’s legal and/or operational definition of “white”.
 5. When the Voting Section first became aware “nonwhite voters must wait in line s substantially longer than white voters to cast their ballots.”
- K. All records of communications referencing, regarding, or pertaining to the Policy Address between DOJ and any person with an email address containing eop.gov.

In addition, you have requested that the Department waive all fees associated with this request for voluminous records on the grounds that America First Legal is a non-commercial public education and news media requester. You have also requested expedited processing.

CRT’s Initial Response to the Request:

CRT has begun reviewing and processing the portions of your request that reasonably describe the requested records, including items: A 1-7 (although some of those items will require referral to other offices or components), C, D, E, and F.

For item B, we will be communicating with you about additional specificity that will enable us to conduct a reasonable search. As written, this request is exceedingly broad and would likely result in collecting and reviewing thousands of unresponsive documents. For instance, the record search would be more likely to capture relevant records if it included specific URL or email addresses.

Regarding Item G, to the extent responsive records reside within CRT, we will conduct a search or in the alternative refer your request to the appropriate Office.

Items H, I and J regarding the Attorney General's June 11, 2021 policy address are not proper FOIA requests. Those requests do not seek records, rather they are more akin to interrogatories in civil discovery and ask CRT to research records, analyze those records, conduct legal research and provide AFL with substantive answers to its questions. Under the Freedom of Information Act, agencies are not required to satisfy a request for records proving the veracity, justification or underlying determination of a specific statement by an Official as it would require an Agency to undertake research, analysis and formulation of opinions. *Hall & Assocs. v. EPA*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018)

Fee Waiver Request:

You have requested that all fees be waived for the significant expenditure of government time and resources required to respond to your voluminous FOIA request on the grounds that AFL is a non-commercial public education and news media requester. CRT will waive fees.

Expedited Processing Request:

Your request for expedited processing is denied. You have not demonstrated that your request meets the criteria necessary for expedited processing. Moreover, as I am sure you understand, CRT receives a high volume of requests, many from requestors who also ask for expedited processing. We have a limited number of staff dedicated to responding to FOIA requests and cannot always allow new requests to take precedence over the hundreds of previously submitted requests.

Sincerely,

Kilian Kagle

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Unit
Civil Rights Division