



July 26, 2017

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Chairman Grassley:

On March 21, we wrote to urge you and members of the committee to conduct basic oversight with respect to the president's nominees to serve as United States Attorneys. (We have attached a copy of that letter.) In that letter we noted the enormous influence federal prosecutors have over the criminal justice system, and we encouraged you to ask each nominee (at a hearing or in writing) about their prosecutorial philosophy on several key issues, including sentencing, asset forfeiture, and respecting the authority of the states in our federalist system. In view of the recent policies announced by the Department of Justice (DOJ), it is even more important that the Senate understand each nominee's views of the proper role government attorneys play in seeking justice rather than merely "winning" the cases they bring. Therefore, we write again today to renew our request.

Since we sent our original letter in March, the attorney general of the United States has taken steps to further increase the power and influence of federal prosecutors:

- On May 1, the DOJ urged congressional leaders to oppose any limitation on the Justice Department's ability to prosecute individuals who buy, sell, or cultivate medical marijuana in states that have legalized such conduct. A bipartisan majority in Congress had voted to limit federal prosecutions out of respect for states' sovereignty in our federal system;
- On May 10, the DOJ released a new charging memo, which directed all U.S. Attorney offices to seek the most severe penalties possible, including mandatory minimum sentences, no matter how minor the role played by the accused;
- On July 19, the DOJ announced a new policy to expand the use of civil asset forfeiture, a constitutionally suspect practice. Many states have limited their use of civil asset forfeiture because of due process concerns. The DOJ's new policy would allow law enforcement officials in states that have curtailed forfeiture to circumvent their state's restrictions. This new DOJ policy would encourage law enforcement officials to defy the laws of their state.

As we wrote in March, federal prosecutors are the most powerful actors in the criminal justice system today. Recent policies adopted by the DOJ will only increase the authority and influence of prosecutors and erode the roles of the legislative and judicial branches in our justice system.

In response to criticism of the new drug charging memo, the Attorney General said that fundamental liberties would be safeguarded because federal prosecutors could be expected to exercise “good judgment.” Certainly most U.S. Attorneys have unquestioned integrity, but some, unfortunately, have violated their oaths in order to “win” cases. A glaring example of this unethical conduct occurred in the wrongful prosecution of the late Senator Ted Stevens.

The Framers of our Constitution recognized the danger that well-intentioned but unchecked governmental actors posed to individual freedoms. They understood that fundamental liberties protected in our nation’s charter, including the rights of trial by jury and due process, could be preserved only if government power was divided between co-equal branches and between national and state governments.

Given the growth in prosecutorial power over the past few decades, and in light of the new policies proposed by the DOJ that will further increase prosecutors’ power, we believe that it is imperative that Congress exercise its oversight responsibility over the DOJ. Some have suggested that the Judiciary Committee will ignore our request for basic oversight because members of the committee (and the Senate) play a role in recommending the individuals who will be nominated to serve as U.S. Attorneys in their home states. We reject this cynical view for a number of reasons, not the least of which is that Senators also recommend federal judicial nominees from their home states, and this committee seeks those nominees’ views before voting to confirm or oppose them. Having said that, we are not aware of any reason why the committee should not explore basic questions about prosecutorial philosophy and approach with nominees for these powerful positions.

As we stated in March, we do not seek to delay the nominations process. The president is entitled to speedy consideration of his choices to serve as U.S. Attorneys. We strongly believe, however, that the modest oversight we are urging the Committee to conduct with regard to these powerful government actors is extremely important and will not result in any significant delay in the nominations process.

Sincerely,

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cc: Members of the Senate Judiciary Committee