Feb. 22, 2021

Dear Attorney General Merrick Garland:

We write to you as a coalition of 37 organizations aligned with principles of racial, worker, environmental, and social justice. We commend you and President Biden for many of your ambitious appointments to the Department of Justice (DOJ). Nominees like Kristen Clarke and Vanita Gupta to lead the Department's Civil Rights Division model the experience senior attorneys should bring to the federal government. Both Clarke and Gupta advocated for a broad legal agenda of racial and social justice for years while leading the Lawyers Committee for Civil Rights Under Law and the Leadership Conference on Civil and Human Rights. This experience shows the public that Clarke and Gupta believe wholeheartedly in the DOJ's mission of enacting equal justice under the law, which they have been entrusted to enforce. Unfortunately, we are concerned that the corporate clients and BigLaw resumes of other potential appointees and current acting officials does not engender the same confidence.

As it currently stands, there appear to be far more defenders of big business than the public interest under consideration to lead the DOJ. This undermines the credibility and the presumption of impartiality crucial to enforcing the law — especially the white-collar criminal laws and business regulations from which these former corporate attorneys defended their clients. How can we expect former Facebook attorney Susan Davies to make unbiased decisions on enforcement of the antitrust laws which Facebook seeks to undermine right now? Filling the Department with corporate lawyers who profited defending powerful industries puts the fox in charge of the hen house — or at least the counsel who won the fox's business over dozens of other attorneys.

Influential lawyers often downplay these blatant conflicts of interest by supposing it would be discriminatory for an attorney to refuse work, as if every client were an innocent facing the death penalty pleading for representation. In reality, BigLaw firms like WilmerHale, Latham & Watkins, Covington & Burling, and others sustain their massive profits by capturing as many wealthy, corporate clients as possible, often employing whole marketing departments. These clients are principally interested in evading business regulations, taxes, white-collar criminal statutes, and any part of the legal code which impedes their bottom line. Many BigLaw firms also operate lobbying divisions on behalf of their clients.

Elite, established attorneys can choose whether their career paths will entail predominantly serving the powerful and well-connected. Choosing such a route should presumptively be taken as indicative of certain priorities and biases that are generally at tension with stewarding the interests of the general public.

Inevitably, the process of continually seeking to dodge, undermine, or override antitrust and white-collar criminal statutes tends to warp one's perception about how these and other laws should be applied. It is a gargantuan task to demand routine corporate defenders somehow rewire their practice to diligently apply laws they worked to exploit before their appointment.They are especially unlikely to work to strengthen white-collar, antitrust, civil trust, and other areas of the law. Viewing a

stint in public service as a pit-stop before returning to BigLaw encourages narrow-minded lawyers to make narrow-minded arguments, failing again and again to push back on conservative courts or advance legal interpretations that better serve workers, small businesses, and communities of color.

DOJ inaction and compromised prosecutorial priorities have dire consequences. In 2019, researchers found that white-collar criminal prosecutions had hit a record low — from 2015 to 2019, criminal penalties levied by the Justice Department fell thirty-two-fold, from $3.6 billion to roughly $110 million. That trend continued; one Syracuse University study found that in January 2020, white-collar criminal prosecution "reached an all-time low since tracking began during the Reagan administration."

Gallup polling consistently finds that only about 25 percent of Americans have faith in the criminal justice system. This is unsurprising given the Department's high-profile failings over the last several decades. Former Attorney General Eric Holder, whose private sector clients included JPMorgan, Citigroup, and Wells Fargo, led a Justice Department that failed to prosecute the banking executives responsible for the 2008 financial collapse. Until its recent, historic suit against Google, the Department has structurally and systemically failed to resist the concentration of monopoly power in Big Tech and among large corporations more broadly. It has been unable to stem police violence or crack down on white-collar crime. The far-right is eager to seize on these contradictions, indicating the breadth of interest in the DOJ demonstrating independence.

Rather than empower conflicted BigLaw attorneys, we urge you to instead appoint attorneys with a longstanding and consistent commitment to carrying out the missions of the divisions they will run. Public defenders running the criminal division, environmental lawyers leading the environment and natural resources division, plaintiffs attorneys running the antitrust division, and so on will produce more equitable outcomes. Alternative career paths which take attorneys outside of the fancified halls of corporate law firms better prepare them for the actual work of representing the federal government, and are statistically more likely to bring sorely-needed diversity to the Department's halls. A Department which looks like America, including coming from life experiences similar to those of most Americans, is more likely to earn the trust of America.

This does not mean that every attorney who ever had a stint at a major law firm should be barred from government. Working as an associate straight out of law school for a few years is substantively different than making partner, personally litigating or advising on dozens of cases on behalf of corporate interests, and maintaining a vested interest in avoiding deeper scrutiny of potential future clients while working within Main Justice. However, the status quo of only hiring well-heeled attorneys who went to certain elite schools and worked for certain elite firms in certain East Coast cities creates a legal system which favors elites. For equal justice of the law to be made real, no Department division should be led by anyone whose recent work is typified by the defense of large corporations or alleged white-collar criminals rather than a focus on fighting for the broader public or least-advantaged businesses or individuals.

We also urge you to heed a wise person who wrote urging a focus "on nominating individuals whose legal experiences have been historically underrepresented on the federal bench, including those who

are public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life." That wise person is current Biden White House Counsel Dana Remus (in the context of judicial selection, but the logic applies no less well to the Justice Department).

The picks to head the Civil Rights Division show that the Administration understands this principle at some level. We call on you and your colleagues to prove your commitment to equal justice by eschewing leaders from BigLaw and hiring officials across the rest of the Department who have been working in the public interest.

Signed,

American Economic Liberties Project
Americans for Democracy & Human Rights in Bahrain
Americans for Financial Reform
Athena
Blue Future
Blue Mountains Biodiversity Project
Businesses for a Livable Climate
CAIR SD
Center for Biological Diversity
Center for Economic and Policy Research
Climate Hawks Vote
CODEPINK
Debt Collective
Demand Progress
Fight For The Future
Fix Democracy First
Friends of the Earth
The Freedom BLOC
Greenpeace US
Jobs With Justice
Network for Environmental and Economic Responsibility of United Church of Christ
Oil Change International
Our Revolution
Peace Action
People Demanding Action
People's Parity Project
Presente.org
Progress America
Progressive Change Institute
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Western New York Peace Center
198 methods