

MEMORANDUM

From: The Revolving Door Project

To: Interested Parties

Subj.: To Address Racial Injustice, Economic Inequality, Biden Must Remove and Replace Clifford J. White, III, as Director of the Executive Office for US Trustees

President Biden has repeatedly made clear that addressing the coronavirus pandemic, economic inequality, and racial injustice will be his administration's highest priorities. To fulfill this promise, Biden has worked quickly to remove Trump administration holdovers beholden to the wealthy and corporate interests and replace them with committed civil servants. In some cases, however, it may require that the administration cast its gaze further back in history.

The Biden administration's actions with regards to a little known but powerful position, Director of the Executive Office for US Trustees (EOUST), will be a test of its resolve to put the federal government to maximum use in service of the public interest.

Clifford J. White, III, has served as the Director of the EOUST since December 2006, when he was appointed by then-President George W. Bush's Attorney General Alberto Gonzales¹. The EOUST is the federal office in charge of the US Trustees Program which has primary oversight responsibility over Chapter 7, 11, 12, and 13 bankruptcies. As Director, White is responsible for reviewing corporate and consumer bankruptcy filings and reporting potential cases of fraud to the Attorney General. He also appoints and provides guidance to individual US trustees who advocate for consumers and creditors at the court level.

However, White is no friend to consumers. He believes deeply that personal irresponsibility is the primary cause of bankruptcy and puts that into practice by enforcing the law ruthlessly against struggling individuals. In contrast, he has been notoriously lenient towards corporate debtors, allowing companies like [Patriot Coal](#) to use bankruptcy to relieve its responsibility to pay employee benefits.

Bankruptcy policy is an economic and racial justice issue, and the Director of the EOUST must be someone who understands that the vast majority of individuals who file for bankruptcy do so due to misfortune, not malevolence or imprudence. Moreover, they must be willing to scrutinize abusive practices throughout the system, including parties who prey on consumer debtors and corporate bankruptcy filings that aim to dissolve workers' hard-earned pensions while leaving executive compensation unscathed.

¹ All appointments made by Alberto Gonzales should be highly suspect. As Attorney General, Gonzales oversaw and [personally participated in](#) the manipulation of career hiring practices at the Department of Justice. During his tenure, Gonzales and his staff improperly discriminated against prospective hires on the basis of political affiliation for [US attorney positions](#) and jobs in the [DOJ Honors Program and Summer Law Intern Program](#). Gonzales later resigned in disgrace after a congressional investigation led to bipartisan calls for his ouster.

Biden must remove White as Director as soon as possible before the inevitable wave of [bankruptcies from COVID-related medical expenses](#) hits once the pandemic and/or individual financial relief ends. Further, [numerous corporations](#) have filed for bankruptcy during the pandemic, including the [incredibly suspicious filing by the National Rifle Association](#). Based on his past statements, White is uniquely ill-equipped for the moment:

- White [praised](#) the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 for enacting a means-test for consumer filers which [notably increased the burden on debtors](#) and led to a [significant decrease in filings](#). President Biden [no longer supports this view](#), whereas there is no evidence of White having a similar change of heart.
- In a [July 2007 hearing](#) before the House Judiciary Subcommittee on Commercial and Administrative Law, White argued that BAPCPA did not make it more difficult for individuals with high medical debt to file for bankruptcy. He further argued that there was insufficient evidence that large medical bills increase the risk of bankruptcy, a claim which is outright [false](#). It is an unforgivable, entirely avoidable error to have the chief overseer of consumer bankruptcies be a skeptic of medical bankruptcies *during a global pandemic*.
- In a [September 2018 hearing](#) before the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, White defended BAPCPA's punitive requirement for pre-filing credit counseling. This testimony came in the face of evidence that such mandatory counseling increases the fees associated with filing for bankruptcy and delays debtors' financial relief even longer with [little to no benefit](#).
- White has on [numerous occasions](#) dismissed concerns over raising filing fees for consumer bankruptcies, even though doing so would raise the up-front cost by up to 15 percent.
- In a May 2015 hearing before the House Judiciary Committee, White stated in his prepared remarks that "[incur\[ring\] debt on the eve of bankruptcy](#)" could be a reason to believe a consumer bankruptcy case was fraudulent, yet this is an extremely low bar. Bankrupt debtors must still regularly pay for essential goods and services like groceries, utilities, and rent. Even filing for bankruptcy itself and paying for the services of bankruptcy lawyers costs additional money.

Potential Hurdles?

Thankfully, Biden can act quickly to replace White as Director of the EOUST. The [statutory language establishing the office](#) does not specify any limitations on removal of the Director.

White is a member of the Senior Executive Service and, therefore, can only be removed from government employment for good cause. It is, however, perfectly legal and routine for senior career officials to be reassigned to new positions — such flexibility was specifically envisioned for members of the Senior Executive Service when it was established in 1978. President Biden's Attorney General can and should reassign White to another position of equivalent pay status.