

United States Senate
WASHINGTON, DC 20510

July 18, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Christopher Wray
Director
Federal Bureau of Investigation

Dear Attorney General Garland and Director Wray:

On May 31, 2022, I wrote to you regarding likely violations of Federal laws, regulations and Federal Bureau of Investigation (“FBI”) guidelines by Assistant Special Agent in Charge (“ASAC”) Timothy Thibault of the Washington Field Office (“WFO”) based on a pattern of active public partisanship in his then public social media content. Thibault thereafter suppressed his social media postings from public view. My letter encouraged current and former government employees to contact my office to confidentially report allegations of fraud, waste, abuse and gross mismanagement by FBI and Justice Department (“Department”) officials including, but not limited to, ASAC Thibault. In response, I have received a significant number of protected communications from highly credible whistleblowers.

As you know, Thibault is a high-ranking FBI agent in the WFO. In 2020, Thibault became the FBI WFO’s ASAC overseeing the highest-level national public corruption investigations and prosecutions. Prior to that, Thibault had various positions as an FBI line agent and supervisor during the past 20 years in which he was involved in highly sensitive political corruption investigations and prosecutions.

The information provided by whistleblowers confirms my concerns about a pattern of clear political partisanship by Thibault as well as other senior FBI and Justice Department officials. In fact, the information I have received reveals that Thibault’s political partisanship went much deeper than the inappropriate social media posts. Instead, it impacted his official decision-making on sensitive public corruption investigations. Equally concerning is that, based on Justice Department and FBI policies, Thibault’s partisanship likely affected investigations briefed to, and approved by, senior Justice Department and FBI officials.

Whistleblowers have reported to me that, although the FBI and Justice Department maintain policies dictating specific standards requiring substantial factual predication to initiate an investigation, Thibault and other Justice Department and FBI employees failed to comply with these requirements. By disregarding these policies, Thibault was able to open or approve, or cause to be opened or approved, investigations based on unsubstantiated or unverified statements sourced to biased media publications. In other instances, whistleblowers have reported that Thibault declined to open or approve investigations based on partisan objectives notwithstanding the existence of proper predication. This double standard in the application of Justice Department and FBI policies has resulted in investigations opened in a manner appearing to benefit the political aims and objectives of a select few Justice Department and FBI officials. Further, it is my understanding from whistleblowers that when FBI agents sought a uniform and consistent application of these standards, their concerns were marginalized or otherwise not acted upon.

According to CNN, the FBI is investigating former President Trump's campaign and its advisors, and the Justice Department has issued subpoenas to individuals linked to electors during the 2020 election.¹ Whistleblowers have indicated that Thibault and Richard Pilger, Director of the Election Crimes Branch within the Justice Department's Public Integrity Section, were deeply involved in the decisions to open and pursue this investigation. Based on allegations, the investigation's predication document is based in substantial part on January 2022 CNN news articles which relied on information derived from a liberal non-profit, American Oversight, and referenced a Boris Epshteyn interview on MSNBC.² As you know, a high-profile investigation such as this would require the Attorney General and FBI Director to be briefed on the full factual predication which they would then review and approve. Based on allegations, the opening memo that you approved included selective assertions created in large part by Thibault and either removed or watered-down material connected to the aforementioned left-wing entities that existed in previous versions and recommended that a full investigation – not a preliminary investigation – be approved. As you know, a full investigation requires a heightened factual basis as compared to a preliminary investigation.

In light of these allegations, I remain very concerned that political bias by a select group of Justice Department and FBI officials has infected the Justice Department's and FBI's usual process and procedure to open and pursue high-profile and politically charged investigations. Unfortunately, such conduct will come as no surprise to the both of you. On March 28, 2022,

¹ Zachary Cohen & Sara Murray, *Multiple fake electors cooperating in Georgia criminal probe of Trump's efforts to overturn 2020 election*, CNN (May 10, 2022), <https://www.cnn.com/2022/05/10/politics/georgia-trump-investigation-fake-electors-witness-interviews/index.html>; Katelyn Polantz et al., *Federal prosecutors expand criminal probe into January 6, examining rally planning and fake electors*, CNN (Mar. 31, 2022), <https://www.cnn.com/2022/03/31/politics/january-6-criminal-probe/index.html>.

² Marshall Cohen et al., *Trump campaign officials, led by Rudy Giuliani, oversaw fake electors plot in 7 states*, CNN (Jan. 20, 2022), <https://www.cnn.com/2022/01/20/politics/trump-campaign-officials-rudy-giuliani-fake-electors/index.html>; Sonnet Swire, *Former Trump campaign adviser acknowledges being part of 2020 'alternate electors' plot*, CNN (Jan. 22, 2022), <https://www.cnn.com/2022/01/22/politics/boris-epshteyn-trump-campaign-fake-electors/index.html>; Zachary Cohen & Marshall Cohen, *Trump allies' fake Electoral College certificates offer fresh insights about plot to overturn Biden's victory*, CNN (Jan. 12, 2022), <https://www.cnn.com/2022/01/12/politics/trump-overturn-2020-election-fake-electoral-college/index.html>.

Chairman Durbin and I wrote to you with respect to an FBI audit conducted in 2019 that “found widespread violations of internal policies designed to ensure proper handling of the FBI’s most sensitive investigations.”³

Simply put, if a politically charged investigation is to be opened, the Justice Department and FBI have an obligation to ensure that it’s done the right way. Based on the allegations, that does not appear to have happened. Such improper conduct demands further explanation from the Justice Department and FBI.

In addition, multiple whistleblowers have reported that various individuals, including Thibault and Pilger, did not support FBI agents seeking to follow normal investigative procedures related to investigating election crime allegations during multiple presidential elections. The allegations that I’ve received include, but are not limited to, campaign finance allegations, which historically has been an area in which Thibault and Pilger are said to have applied these double standards. This also demands further explanation from the Justice Department and FBI.

These allegations against Thibault and Pilger fit with previous oversight work done by the Senate Judiciary Committee (“committee”). For example, I raised similar concerns about Pilger’s interference just last year. On October 7, 2021, I issued a staff report as part of Chairman Durbin’s investigation into alleged Justice Department misconduct.⁴ In my report, I devoted an entire section to Pilger’s apparent misconduct at the Public Integrity Section’s Election Crimes Branch.⁵ My findings were based on testimony from senior Justice Department employees, including Principal Associate Deputy Attorney General Richard Donoghue. Donoghue testified to the committee that “[t]he problem was that [the Election Crimes Branch] routinely implied that they had approval authority” for investigative steps to be taken or not taken, which was incorrect and frustrated efforts to open investigations.⁶ Donoghue also stated that, “FBI agents were, again, extremely reluctant to proceed without [the Election Crimes Branch’s] explicit approval,” approval which they didn’t need.⁷ Donoghue’s testimony before the committee further supports increasing congressional concerns that the Justice Department and FBI have failed to prevent political bias from infecting the process and procedure to open and pursue investigations.

³ S. Comm. on the Judiciary, *Durbin, Grassley Press FBI on Reports of Widespread Rule-Breaking in Sensitive Investigations* (Mar. 28, 2022) <https://www.judiciary.senate.gov/press/dem/releases/durbin-grassley-press-fbi-on-reports-of-widespread-rule-breaking-in-sensitive-investigations>.

⁴ Minority Staff of S. Comm. on the Judiciary, 117th Cong., Rep. on *In Their Own Words: A Factual Summary Of Testimony From Senior Justice Department Officials Relating To Events From December 14, 2020 To January 3, 2021* (Oct. 7, 2021), https://www.judiciary.senate.gov/imo/media/doc/in_their_own_words_a_factual_summary_of_testimony_from_senior_justice_department_officials_relating_to_events_from_december_14_2020_to_january_3_2021.pdf.

⁵ *Id.* at Section 6.

⁶ Interview of Richard Donoghue at 69 (August 6, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Donoghue%20transcript.pdf>.

⁷ *Id.* at 69.

As a preliminary matter, I'm apprising you of these allegations because the conduct that has been brought to my attention by whistleblowers prompts fundamental questions about whether the Justice Department and FBI are properly fulfilling their combined law enforcement mission with impartiality and without waste, fraud, abuse and gross mismanagement. My office is in the process of reviewing additional information and will continue to investigate these matters.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member
Committee on the Judiciary