

Prepared Statement by U.S. Senator Chuck Grassley (R-Iowa)
Ranking Member, Senate Judiciary Committee
Executive Business Meeting on the Nomination of Judge Merrick Garland to be Attorney General
Monday, March 1, 2021

We're here today to vote on the nomination of Judge Garland to be Attorney General of the United States. I intend to support his nomination, but I want to state my concerns about the direction of the Department of Justice in the hope that he will work with us to do what he said he wants to do: keep the Justice Department non-partisan and apolitical.

Judge Garland, as I said in his hearing, is an honorable man. He says he wants to follow the law, nothing more and nothing less, and I believe that is what he wants to do. His career of faithful public service, I think, means I owe him a chance to do that. But he has his work cut out for him. During the campaign, Joe Biden said his administration would be the most progressive in history. I'm afraid he might be right. It'll be up to Judge Garland to stand up to efforts to turn the Justice Department into an arm of the progressive wing of the Democrat Party, as happened under Obama.

Let me get into some specifics.

First, Durham. We covered the Durham investigation a lot at Judge Garland's hearing and in written questions. While Judge Garland has consistently said that he has no preconceived notions on Durham he has, unfortunately, refused to give the same commitments on Durham that Barr gave on Mueller. In written questions, too, he has refused to explain what standard, exactly, he would apply to evaluate Durham and failed to give the kinds of easy commitments Barr gave. What he has told us, though, is that in spite of these failures to commit, he expects he will allow Durham to proceed.

I take Judge Garland at his word that he will, in fact, allow Durham to proceed. I will also put him on notice now. Because of his repeated failure to commit to protect Durham, any actions taken to end, cover up, or otherwise undermine the Durham investigation should be interpreted as premeditated and political. If Durham is sidelined, that will be the only explanation for Judge Garland's consistent refusal to answer like Barr did on Mueller. As I said, I believe Judge Garland is an honorable man, so I expect that will not happen. But his credibility is on the line.

Second, religious liberty. Judge Garland spoke movingly of his family seeking refuge in the United States while fleeing antisemitism. Like Judge Starr, I trust that he understands the importance of religious liberty. By voting for Judge Garland I am expressing confidence in his willingness to take those rights seriously. I asked him many written questions about religious liberty and was satisfied that a Justice Department run by Attorney General Garland will protect religious liberty as the broad "first freedom" envisioned by our Founders, and not marginalize it as a backwards lifestyle preference as envisioned by progressive radicals.

The right to bear arms. I'll be frank, Judge Garland's answers on the right to bear arms have not been encouraging. During his hearing he said he'd faithfully enact President Biden's gun-grabbing agenda. I hope he will stand up for the independence of the Justice Department and follow the law when

President Biden instructs him to violate the Second Amendment. If he doesn't, I expect the courts will have something to say about it.

Litigation positions. If Judge Garland really wants to show us that he's the next Ed Levi and not the next Eric Holder, he should pay close attention to positions the Justice Department takes in litigation. Just because the Trump Justice Department took a position doesn't mean it was wrong. If every four to eight years the Justice Department comes up with a new list of statutes it won't defend or rights it disfavors, what's the point in passing laws? I hope that Judge Garland—thinking back on his long judicial experience—will preserve the institutional credibility of the Justice Department.

It's a similar issue with "prosecutorial discretion." Just because a prosecutor has discretion in how to charge and try a case doesn't mean the Attorney General has "discretion" in how to charge and try all cases in ways that change the law. We saw this with DACA under Obama. I'm concerned we'll see this on the death penalty and illegal entry under Biden. The role of the President is to take care that the laws be followed. This applies to the Attorney General as well. The Attorney General doesn't get to use principles of discretion to change the law however much he or she might want to.

"Slush funds" are related to these concerns. When the Justice Department enters into a settlement with a bad actor, the money should go to the victims and the U.S. treasury. Giving that money to third-parties—especially those Congress has defunded—is a direct assault on the appropriations process. I, frankly, can't see any good reason why the Justice Department would rescind the existing regulations on this subject. Any effort to change these settlements will be pure and open political favoritism.

I could go on: there's "sue and settle," "government by blog post" with guidance documents, abusive consent decrees, defending IRS targeting, Operation Chokepoint. Democrats have collective amnesia on the scandal-a-day at the Obama Justice Department, during which it was almost always punishing Obama's political enemies.

What do all these practices have in common? Besides being partisan and political, they're an effort to do an end-run around the Congress. If Judge Garland is serious about having a non-partisan Justice Department, and I think he is, then he will nip these bad practices in the bud. He will enforce the law. He will not manipulate the powers of the executive to make the law more satisfying to progressive activists.

Judge Garland, if he's serious about what he's told us, has a big job ahead of him. He will be under tremendous pressure from within the Biden administration and from Congressional Democrats to turn the Justice Department into Marc Elias and the ACLU with guns. It'll be up to him to keep the Justice Department from turning into the Social Justice Department. I take him at his word that this is not what he wants and that his occasional evasions were in good faith. I plan to vote for him. I hope that my trust is not misplaced.