Group Letter in Support of Gail Heriot, Esq.

as the Assistant Secretary for Civil Rights at the

Department of Education's Office for Civil Rights

Article I of the U.S. Constitution states, "All legislative powers herein granted shall be vested in a Congress of the United States." To this end, the Congress enacted the Administrative Procedure Act, designed to ensure that any binding policy directives issued by the Executive Branch first undergo public review-and-comment.

Unfortunately, the Department of Education's Office for Civil Rights (OCR) has repeatedly ignored this requirement,[1] particularly in regard to its interpretation of Title IX of the Education Amendments, the 1972 law designed to stop sex discrimination in schools. In recent years, the OCR has issued numerous Dear Colleague Letters (DCLs) that impose new, substantive requirements on colleges and universities.

These Dear Colleague Letters are often followed by detailed "Questions and Answers" documents, aggressive enforcement investigations, and Determination Letters that mandate the implementation of the numerous DCL provisions. The growing number of investigations has in turn been used to justify requests for additional funding, when the real problem is an executive branch agency that is engaging in abusive over-reach.[2]

These policies have had a pervasive, harmful effect on free speech[3] and due process[4] on college campuses. Collectively, the OCR actions represent a flagrant violation of Article I of the Constitution and an unlawful usurpation of Congressional powers.

Numerous individuals and groups have spoken out in opposition to the OCR actions, in the form of statements by law professors,[5] thousands of editorials,[6] and lawsuits against the Office for

[1] https://www.lankford.senate.gov/news/press-releases/senator-lankford-challenges-department-of-education-on-legal-justification-for-public-school-bathroom-directive
[2] http://www.cnsnews.com/commentary/hans-bader/senators-reward-office-civil-rights-power-grabs-budget-increase
[3] https://judiciary.house.gov/wp-content/uploads/2016/02/114-31_94808.pdf
[4] https://www.insidehighered.com/news/2016/05/17/professors-urge-department-education-revise-sexual-assault-guidance
[5] https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html
[6] http://www.saveservices.org/sexual-assault/editorials-2/

Civil Rights.[7] When questioned by lawmakers about these practices, Department of Education officials have dishonestly claimed their DCLs represent non-binding "guidance."[8]

Referring to the Department of Education, the incoming Trump Administration has vowed to "cut its power and reach" to make it more responsive and accountable to the American public and to local school authorities.[9] This will require a Department of Education Assistant Secretary for Civil Rights who has the requisite credentials, including an in-depth understanding of the functioning of the Office for Civil Rights and an unwavering commitment to civil rights.

Such a person is Gail Heriot, a professor of law at University of San Diego School of Law, where she teaches the law and history of civil rights, and a member of the U.S. Commission on Civil Rights. Professor Heriot has a demonstrated commitment to restoring control over public education to state and local authorities. She also believes a free people must be governed by their elected representatives, not by OCR bureaucrats.

Gail Heriot has repeatedly expressed concerns with the current policies and actions of the Office for Civil Rights:

- On February 26, 2015, Gail Heriot and fellow Commissioner Peter Kirsanow wrote a letter to the members of the Senate and House Appropriations Committees, opposing consideration of budget increases to OCR.[10]
- In December, 2015 Heriot stated she was "baffled" by the 6% budget increase granted to the OCR by a Republican-controlled Congress.[11]
- In May, 2016 Heriot testified before the House Judiciary Committee on the problem of executive overreach, specifically highlighting the OCR.[12]

Her full resume is available for public review.[13]

The Congressional Research Service recently explained that executive branch directives that "are not issued pursuant to the notice and comment rulemaking procedures of the Administrative Procedure Act (APA), and thus generally lack the force and effect of law…and can generally be withdrawn swiftly.[14]

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[7] http://www.thecollegefix.com/post/27153/
[8] http://foxx.house.gov/news/documentsingle.aspx?DocumentID=398827
[9] http://www.ontheissues.org/2016/Donald_Trump_Education.htm
[10] http://www.newamericancivilrightsproject.org/wp-content/uploads/2015/02/2.27OCRBudgetLetterFinal.pdf
[11] http://netrightdaily.com/2015/12/civil-rights-commissioner-baffled-by-republican-raise-to-ed-dept-office-of-civil-rights/
[12] https://judiciary.house.gov/wp-content/uploads/2016/05/HHRG-114-JU00-Wstate-HeriotG-20160524.pdf
[13] http://www.sandiego.edu/uploads/31805/4a43f77557d97934fa73ecda03a043fb.pdf .
[14] https://fas.org/sgp/crs/misc/stroke.pdf

The undersigned individuals and organizations support, without reservation, the candidacy of Gail Heriot as the new Assistant Secretary for Civil Rights at the Department of Education's Office for Civil Rights.

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