

October 4, 2019

Mr. Corey Amundson
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, DC 20530-0001

Dear Director Amundson:

We write to request that your office review whether the conduct of John Gore, former Principal Deputy Assistant Attorney General of the Civil Rights Division (CRT) of the Department of Justice (DOJ), described herein, violated OPR's ethics framework. Although Mr. Gore has reportedly left DOJ, his conduct remains at issue in at least two ongoing lawsuits, and the Department and its lawyers continue to rely on his testimony in these and other matters. As discussed in greater detail below, other documents within DOJ's possession—though not produced by DOJ in relevant litigation—cast significant doubt on Mr. Gore's truthfulness in these matters. This may implicate not only his professional conduct, but the conduct of other attorneys representing DOJ in matters involving Mr. Gore.

We have obtained documents that raise questions about Mr. Gore's compliance with federal records laws and about the truthfulness of testimony he gave in a sworn declaration in litigation. We believe these documents provide evidence that Mr. Gore either knowingly made misrepresentations in a court filing about the nature of his personal email communications with Republican Party election officials concerning voting issues, or that he acted in reckless disregard of his duty of candor to the court. Mr. Gore's statements could constitute professional misconduct under OPR's framework.² Moreover, to the extent other Department attorneys have relied in court on testimony they may have known to be untruthful, that raises separate and equally important legal ethical questions for your office to resolve.

Mr. Gore's credibility is already under scrutiny in litigation regarding the addition of a question about citizenship to the Census. In that case, the government is now facing a sanctions motion based on questions about Mr. Gore's testimony on the origins of a letter from DOJ to the Department of Commerce requesting the addition of that question.³ This new evidence suggests a pattern of possible misconduct that should be thoroughly and promptly investigated by OPR.

¹ See State of New York v. U.S. Dep't of Commerce, No. 18-cv-02921 (S.D.N.Y.); Brennan Center for Justice v. U.S. Dep't of Justice, No. 17-cv-6335 (S.D.N.Y.).

² See U.S. Dep't of Justice Office of Prof. Resp., Analytical Framework (2005), https://www.justice.gov/sites/default/files/opr/legacy/2006/03/15/framework.pdf

³ See Motion for Sanctions, State of New York v. U.S. Dep't of Commerce, No. 18-cv-02921 (S.D.N.Y. July 16, 2019), ECF No. 635.

To our knowledge, DOJ attorneys in these lawsuits have not identified the documents discussed in this letter that cast doubt on the veracity of Mr. Gore's testimony, or otherwise updated relevant court filings. This raises separate and ongoing legal ethical questions for OPR to investigate under its analytical framework. It therefore remains critical that OPR investigate the truthfulness of Mr. Gore's testimony, as well as the knowledge of other Department attorneys with respect to the truthfulness of that testimony.

Background

In August 2017, the Brennan Center for Justice and The Protect Democracy Project initiated FOIA litigation against DOJ in the U.S. District Court for the Southern District of New York (S.D.N.Y.) to obtain documents related to President Trump's Presidential Advisory Commission on Election Interference (PACEI).⁴ DOJ initially provided plaintiffs with records resulting from a search of official DOJ employee emails. This initial search identified two September 2017 email threads that had been forwarded to the official DOJ email account of then-Acting CRT AAG John Gore from Mr. Gore's personal email account. These records included several emails from Mr. Gore's personal email account showing communications from May to September 2017 among Mr. Gore, Chicago Republican Party Chairman Chris Cleveland, and PACEI member Christy McCormick. The communications concerned Mr. Cleveland's complaints that Chicago allegedly had a 16,000-vote discrepancy in the 2016 election (i.e., that Chicago had reported more votes than voters).⁶

In April 2019, in light of these emails, and because Mr. Gore had been delinquent in forwarding these emails to his official account as required by 44 U.S.C. § 2911(a), the court granted plaintiffs' motion to search Mr. Gore's personal email records for any additional documents relevant to the plaintiffs' inquiry.⁷

Mr. Gore's Declaration

In May 2019, the government moved—ultimately unsuccessfully—for a reconsideration of the court's order to search Mr. Gore's personal emails. The government's motion relied on a May 28 declaration from Mr. Gore, signed under penalty of perjury, attesting that he had not used his personal email for agency business. With respect to the previously disclosed emails from his personal account, Mr. Gore stated:

⁴ Complaint, Brennan Center for Justice v. U.S. Dep't of Justice, No. 17-cv-6335 (S.D.N.Y. Aug. 21, 2017), ECF No. 1.

⁵ See Exhibit 1.

⁶ Ibid.

¹ Brennan Center for Justice v. U.S. Dep't of Justice, 377 F. Supp. 3d 428, 435 (S.D.N.Y. 2019) ("The record is clear that Acting Assistant Attorney Gore sent and received emails relating to voter fraud... on [his] private email account[]. Moreover, Gore was substantially late in forwarding emails from his private account to official accounts, beyond the twenty-day period required by 44 U.S.C. § 2911(a), for example, an email of July 5, 2017 that was not forwarded until September 27, 2017, eighty-four days later").

⁸ Brennan Center for Justice v. U.S. Dep't of Justice, No. 17-cv-6335 (S.D.N.Y. Jun. 28, 2019), ECF No. 111.

⁹ See Exhibit 2.

In May 2017, an individual [Chris Cleveland] whom I knew from outside my work for the Division emailed my personal email account to ask if I 'had a relationship' with the PACEI. I informed this individual that 'I dfidn't] have any relationship with the task force.' I offered to help put the individual in contact with 'someone who does.' I later put this individual in contact with Christy McCormick, a member of the PACEI. I did not understand or interpret [Mr. Cleveland]'s inquiry to be asking about the work of the Division, or to constitute an official-capacity communication by me. Neither I, nor the Division, had any relationship with the PACEI. Therefore, I believed that my communications with [Mr. Cleveland] were in my personal capacity . . . [I]n my view, the communications were not official-capacity communications, nor were they sent or received in the course of my employment with the Department of Justice. ¹⁰

The same month Mr. Gore submitted this sworn declaration, the watchdog group American Oversight obtained, through a separate FOIA suit, additional email records sent to and from Mr. Gore's official DOJ account in March 2017. These March 2017 emails contradict Mr. Gore's declaration in two ways: (1) upon receiving information from Mr. Cleveland about the Chicago vote discrepancy, Mr. Gore acted on that issue in his official DOJ capacity; and (2) Mr. Gore was dishonest, or at least not wholly truthful, about the nature of his relationship with Mr. Cleveland.

1. Personal vs. official capacity

Mr. Gore's declaration that his May-September 2017 personal email communications were "in [his] personal capacity" and were "not official-capacity communications" omits other communications that would show this to be untrue. In a March 24, 2017, email—two months earlier—Mr. Cleveland emailed Mr. Gore's superior, then-Acting CRT AAG Tom Wheeler, to request DOJ action on alleged vote discrepancies in Chicago, the same topic Mr. Cleveland and Mr. Gore subsequently discussed. Mr. Wheeler acknowledged that Mr. Cleveland's complaint fell within CRT's purview and directed Mr. Gore to assist Mr. Cleveland in Mr. Gore's capacity as Deputy Assistant Attorney General (DAAG) of CRT. Specifically, Mr. Wheeler wrote to Mr. Cleveland that his complaint "fall[s] within our voting section," and added that he was "CC'ing John Gore, my DAAG who oversees voting to follow up." Mr. Gore replied to both men by stating that the issue might be more appropriate for the DOJ's Public Integrity Division, but assured Mr. Cleveland that "we'll chase it down and figure it out." The email exchange suggests that on March 28, 2017, Mr. Gore spoke with Mr. Cleveland on the phone and then emailed White House staff on his behalf. Mr. Gore's email to the White House stated that he "spoke with Mr. Cleveland this afternoon," that "[Mr. Cleveland] would be reaching back out"

¹⁰ See Exhibit 2 at 7-9.

¹¹ Letter from U.S. Dep't of Justice Civil Right Division's Freedom of Information/Privacy Acts Branch to American Oversight in response to October 2018 Freedom of Information Act Request (May 23, 2019) (on file with author).

¹² See Exhibit 3.

¹³ Ibid.

¹⁴ Id.

about the vote discrepancy issue, and also asked "if anyone [at the White House] is interested in discussing this." ¹⁵

2. Relationship with Mr. Cleveland

Mr. Gore states in his declaration about the May through September emails that Mr. Cleveland was an individual he knew from "outside [his] work for the [Civil Rights] Division." While that may be true, it is misleading. The March 24 to March 28, 2017 emails show that Mr. Gore and Mr. Cleveland interacted through Mr. Gore's official DOJ email account about this same topic. Mr. Gore's declaration to the federal court leaves the clear impression that he and Mr. Cleveland had not spoken about the alleged voting discrepancies in Chicago before May 2017. In fact, they had, and they had done so in Mr. Gore's official capacity, with Mr. Gore offering to "chase...down and figure...out" which DOJ component should review the allegations, then elevating the issue to the White House. This likely explains Mr. Cleveland's May 11, 2017, email to Mr. Gore's personal account, where Mr. Cleveland opened by saying: "[t]hanks for speaking with me a few weeks back about the discrepancies in Chicago's vote." "16"

Request for OPR Investigation

Mr. Gore may have violated at least three standards or obligations which applied to his professional conduct: (1) making a declaration under oath that he knew not to be true; ¹⁷ (2) "mak[ing] a false statement of fact or law to a tribunal;" and (3) "engag[ing] in conduct that seriously interferes with the administration of justice," The facts at issue were entirely within Mr. Gore's knowledge and control, specifically the existence of emails and communications involving him during his employment at CRT. Mr. Gore failed to provide a full accounting of his prior relationship with Mr. Cleveland and related official actions to a federal court, focusing only on the relationship and actions reflected in emails that had been produced in discovery. That could have been calculated to limit further examination of his personal email. This came at a time when Mr. Gore's truthfulness about communications with individuals outside DOJ about official business was being questioned by yet another federal court, and is currently the subject of a sanctions motion against DOJ.

These facts suggest conduct which falls below the standards for candor and integrity expected of a senior official at the Department of Justice. As noted above, Mr. Gore's conduct remains at issue in at least two ongoing lawsuits.²⁰ To our knowledge, DOJ attorneys in these lawsuits have not identified the documents disclosed to American Oversight, or otherwise updated relevant court filings. Even though Mr. Gore has left DOJ, his conduct raises separate and ongoing legal ethical questions for OPR to investigate under its analytical framework.

¹⁵ See Exhibit 3.

¹⁶ See Exhibit 2.

¹⁷ See 18 U.S.C.A. § 1621 (2019) (describing "perjury generally").

¹⁸ Rules of Professional Conduct R. 3.3(a)(1) (D.C. Bar 2019) (Duty of Candor).

¹⁹ Rules of Professional Conduct R. 8.4 (D.C. Bar 2019) (Misconduct).

²⁰ See State of New York v. U.S. Dep't of Commerce, No. 18-cv-02921 (S.D.N.Y.); Brennan Center for Justice v. U.S. Dep't of Justice, No. 17-cv-6335 (S.D.N.Y.).

Thank you for your prompt attention to this matter.

Sincerely,

Sheldon Whitehouse

United States Senator

Patrick Leahy

United States Senator

Cc: Eric Dreiband, Assistant Attorney General for the Civil Rights Division

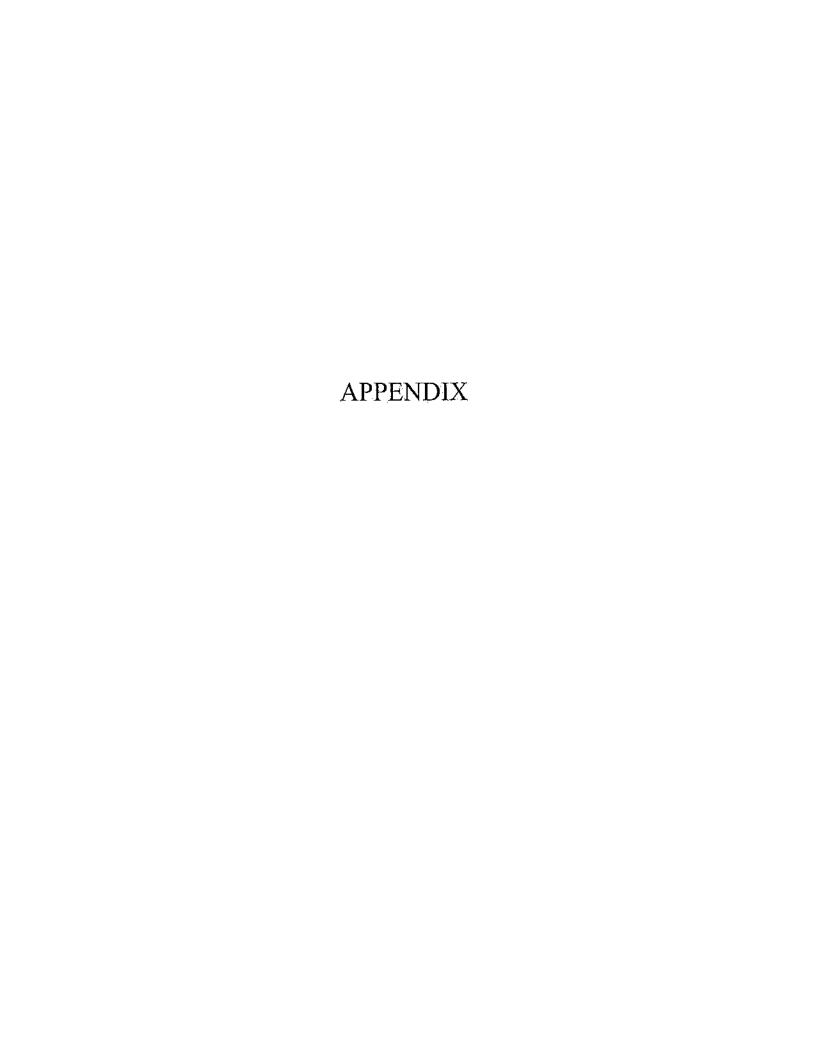


Exhibit 1:

John Gore's Personal Emails from May – September 2017

Sent: 9/12/2017 11:22:24 PM To: Gore, John (CRI) [John Gore@crt.usdoj.gov] Subject: Fivd: Chicago vote problems	Érom:	John Gore (b)(6)	gmail.com]
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Thanks. Forwarded message From: Chris Cleveland <chris.cleveland@chicagogop.com> Date: Tue, Sep 5, 2017 at 3:48 PM Subject: Re: Chicago vote problems To: John Gore (6)(6) pgmail.com> John, We finally got some national attention on the problem: http://www.foxnews.com/politics/2017/09/05/chicago-reported-thousands-more votes-than-vaters-in-2016-gop-official-says.html Can you get this story in front of your friend at the Commission? Can you put me in touch with them? Chris On Wed, Jul S, 2017 at 6:49 PM, John Gore (6)(6) pgmail.com> wrote: Chris: Idid pass this along to someone close to the Commission. I just sent a reminder so it would be back on their radar screen. Thanks.</chris.cleveland@chicagogop.com>	Christy:		
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	On Ericher	30 2017 at 3-36 DM	Chris Cleveland <chris.cleveland@chicagogop.com> wrote:</chris.cleveland@chicagogop.com>

John,

It appears that the Election Integrity Commission is finally gearing up. They're in the press today.

Did you succeed in passing this matter on to anyone on the Commission? This might be a good time to ping them again.

Chris

On Mon, May 15, 2017 at 3:03 PM, Chris Cleveland chris Cleveland@chicagogop.com wrote: Thanks, John, Will do.

On Mon, May 15, 2017 at 2:44 PM, John Gore gmail.com> wrote:

Thanks, Chris. Thave sent this along to someone I know who may be closer to the task force than I am. If you come across any more info, please feel free to send it along.

On Fri, May 12, 2017 at 10:34 AM, Chris Cleveland com wrote: Here it is:

In January the Chicago Republican Party filed a FOIA request with the Chicago Board of Elections for the list of voters who had voted in the November 2016 general elections.

The board responded with a list of 1,101,178 individuals. A quick check of the elections returns published on the Chicago Board of Elections website showed that 1,115,664 votes had been cast. The difference between the number of voters in the file and the number of votes cast was 14,000, or about 1.3%.

There should be never be more votes than voters; every ballot cast should be recorded against a registered voter.

A breakdown of the votes by precinct shows that the discrepancies are not evenly distributed. Fifteen precincts show 100 more ballots cast than voters. One precinct shows more ballots cast than registered voters. Some precincts show a negative discrepancy, that is, more voters than votes cast. Subtracting out those precincts, the total discrepancy is about 16,000 votes or 1.4%.

The Chicago Republican Party made an inquiry, pursuant to FOIA, as to the source of the discrepancies. Despite repeated followups, the board has failed to respond except to say that they have been "reviewing all discrepancies" and that there will be a "final report". It's been more than three months since the first inquiry and more than six weeks since the report was due. At this point it seems to be more than a simple clerical error.

Given the history of voter fraud in Chicago, the magnitude of the problem, and the Chicago Board of Election's history of favoring the Democrats, the problem warrants external scrutiny.

A spreadsheet is attached. Tab one shows the discrepancies by precinct. Tab two shows the same data sorted with the largest discrepancies first.

On Fri, May 12, 2017 at 9:17 AM, John Gore (b)(6) pgmail.com> wrote: Chris:

Case 1:17-cv-06335-AKH Document 77-23 Filed 10/26/18 Page 3 of 4

Good to hear from you. I don't have any relationship with the task force, but if you'd like to send me a write-up, i'll	:ee
if 1 can get it to someone who does.	

Thanks.

On Thu, May 11, 2017 at 4:39 PM, Chris Cleveland < chris.cleveland@chicagogop.com wrote: John,

Thanks for speaking with me a few weeks back about the discrepancies in Chicago's vote.

I saw this today:

http://www.foxnews.com/politics/2017/05/11/trump-to-sign-order-launching-voter-fraud-commission.html

Do you have any relationship with this group? Do you know anyone in charge there? I'd like to get a brief writeup on the problem into someone's hands.

Chris

Chris Cleveland Chairman, Chicago Republican Party 312:339-2677

Chris Cleveland Chairman, Chicago Republican Party 312-339-2677

Chris Cleveland Chairman, Chicago Republican Party 312-339-2677 Chris Cleveland Chairman, Chicago Republican Party. 312-339-2677

Chris Cleveland Chairman, Chicago Républican Party 312-339-2677

Exhibit 2:

John Gore's Declaration Under Penalty of Perjury



U.S. Department of Justice Civil Rights Division

TC:ANF:RG3 19-00236-F Preedom of Information/Privacy Acts Branch - PHB 950 Pennsylvania Ave., NW Washington, DC 20530

7/29/2019

Via Electronic Mail Only
Mr. Austin Evers
American Oversight
1030 15th Street, N.W.
Suite B255
Washington, DC 20005
foia@americanoversight.org

Dear Mr. Evers:

This is in further response to your July 10, 2019 Freedom of Information Act request seeking access to records pertaining to the "declaration of John Gore relied on by DOJ in support of its May 28, 2019, Motion for Reconsideration in Brennan Center for Justice et al. v. U.S. Department of Justice et al., Case No. 17 Civ. 6335 (AKH) (S.D.N.Y.), ECF No. 105 at 8."

After review of the responsive Civil Rights Division documents, I have determined that the enclosed document may be released to you in its entirety.

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,

Tink Cooper, Acting Chief Freedom of Information/Privacy Acts Branch Civil Rights Division

Tink Cooper



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

BRENNAN CENTER FOR JUSTICE, and THE PROTECT DEMOCRACY PROJECT,

Plaintiffs,

v,

17 Civ. 6335 (AKH)

U.S. DEPARTMENT OF JUSTICE,
U.S. DEPARTMENT OF HOMELAND SECURITY,
U.S. GENERAL SERVICES ADMINISTRATION,
OFFICE OF MANAGEMENT AND BUDGET, and U.S.
SOCIAL SECURITY ADMINISTRATION,

Defendants.

DECLARATION OF JOHN GORE

JOHN GORE, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am the Principal Deputy Assistant Attorney General in the United States
Department of Justice's Civil Rights Division (the "Division"). I have held that position since
July 2017. In that capacity, I report directly to the Assistant Attorney General for Civil Rights. I
joined the Division in January 2017. From January through late July 2017, I was a Deputy
Assistant Attorney General in the Division. From late July 2017 through early November 2018,
I served as the Division's Acting Assistant Attorney General while the nomination of Eric
Dreiband to be Assistant Attorney General was pending before the Senate. In each position that
I have held with the Division, I have served as part of the Division's senior management team,
which has responsibility for the overall supervision of the Division's enforcement of the federal
statutes and regulations that fall within the Division's mission, including the Voting Rights Act
of 1965.



- 2. As the Principal Deputy Assistant Attorney General, I assist in the general supervision of the activities of the Division. I advise the Assistant Attorney General on major policy decisions requiring his personal attention. I advise on and decide questions of policy and procedure arising in connection with the initiation, conduct, and termination of civil and criminal civil rights litigation, subject to review by the Assistant Attorney General. I also confer with, advise, and instruct senior members of the Division, and other Division and Department attorneys on matters relating to the enforcement of statutes, executive orders, and regulations assigned to the Division.
- 3. As Acting Assistant Attorney General, I was responsible for general supervision of the activities of the Division. I set policy and procedures arising in connection with the initiation, conduct, and termination of civil rights litigation, both civil and criminal. I advised and instructed senior members of the Division and Department leadership on matters relating to the enforcement of statutes, executive orders, and regulations assigned to the Division.
- 4. I submit this declaration in support of what I understand will be a motion to reconsider aspects of the Court's Opinion and Order dated April 30, 2019, which among other things directed a search of my personal emails. The following statements are based upon my personal knowledge.
- 5. Since I joined the Division in January 2017, I have not used personal email to conduct any Division business related to the Presidential Advisory Commission on Election Integrity ("PACEI" or "task force"). In fact, neither I, nor the Division, had any relationship with the PACEI. Moreover, to my best recollection and in accordance with my intention and practice, I have not used personal email to conduct any other Division business.



- 6. I have received training on the Department of Justice's rules regarding use of personal email for work. I understand that, absent exigent circumstances, I am required to use official email to conduct Division business. In addition, I understand that if I receive an email used to conduct Division business in my personal email account, I must forward it to my official email address within 20 days. I have complied with these requirements.
- 7. In May 2017, an individual whom I knew from outside my work for the Division emailed my personal email account to ask if I "had a relationship" with the PACEI. I informed this individual that "I d[idn't] have any relationship with the task force." I offered to help put the individual in contact with "someone who does." I later put this individual in contact with Christy McCormick, a member of the PACEI.
- 8. I did not understand or interpret the individual's inquiry to be asking about the work of the Division, or to constitute an official-capacity communication by me. Neither I, nor the Division, had any relationship with the PACEI. Therefore, I believed that my communications with this individual were in my personal capacity, not my official capacity.
- 9. In September 2017, in an abundance of caution and to ensure that agency records were complete in the event anyone viewed this communication as work-related notwithstanding my understanding that it was not, I forwarded the email exchange described herein to my official email account. That is the email exchange that is referenced in the Court's April 30 Opinion and Order. Despite my having done so, in my view, the communications were not official-capacity communications, nor were they sent or received in the course of my employment with the Department of Justice.
- 10. I am unaware of having any official-capacity emails on my personal account and, based on my usual and consistent practice, I am confident that no such emails exist within my



personal email account. At all times that I have been employed by the Department of Justice, it has been my practice to engage in email communications to conduct official agency business only on my official Department of Justice email account, using the agency's email system.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Washington, DC

May 28, 2019

John M. Gore

Principal Deputy Assistant Attorney General

United States Department of Justice



Exhibit 3: John Gore's Official DOJ Emails from March 2019

From:	@crt.usdoj.gov
Sent: To:	Wheeler, Tom (CRT) [/O=USDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP
CC:	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Twheelere0b] EOP/WHO (174
Subject:	@who.eop.gov]; @gmail.com Re: Chicago voting problems — need referral
I'm available	to meet any time as well. As I understand it, you may need to loop in counsel's office.
Sent from my	iPhone
On Mar 28, 2	2017, at 4:50 PM, Wheeler, Tom (CRT) Crt. usdoj.gov> wrote:
Sure, let me k	now when you want to get together.
Civil Rights Div United States	nt Attorney General vision Department of Justice Ousdoi-gov
To: Gore, John Cc: Bash, Zina	
Thanks	
	Fom). Happy to talk with Mr. Cleveland or anyone else about election concerns. We have had a few private proach us with reports of state and local voting concerns, and possible legislative ideas.
applications of	note: this is not urgent, but is there any chance we could get CRT's perspective at some point in April on f the Voting Rights Act going forward? I can refine this request, if necessary. We're happy to come to DOJ re convenient.
econs that	
To: Gore, John Cc: Wheeler, 1 EOP/V	



I'm adding my colleague on the DPC who has worked on similar issues. Thanks.
Sent from my iPhone
On Mar 28, 2017, at 3:09 PM, Gore, John (CRT) @usdoj.gov> wrote:
I spoke with Mr. Cleveland this afternoon. He said he would be reaching back out to about this issue as well. Let me know if anyone is interested in discussing this. Thanks.
From: Wheeler, Tom (CRT) Sent: Saturday, March 25, 2017 5:35 PM To: Gore, John (CRT) (SS) (Oct. usdoi.gov) Cc: Demail.com Subject: Re: Chicago voting problems — need referral
Thx
Sent from my iPhone
On Mar 25, 2017, at 12:23 PM, Gore, John (CRT) (CRT) (@crt.usdoj.gov) wrote:
This may actually be an issue for Public Integrity (Criminal Division), but we'll chase it down and figure it out.
Sent from my iPhone
On Mar 25, 2017, at 12:11 PM, Wheeler, Tom (CRT) decreased wrote:
This fall within our voting section. I am CC'ing John Gore, my DAAAG who oversees voting to follow up.
Sent from my iPhone
On Mar 24, 2017, at 7:39 PM, '@gmail.com' @gmail.com' wrote:
Let me know if this is something you're interested in.
Sent from my iPhone
Begin forwarded message:
From: Chris Cleveland chicagogop.com Date: March 24, 2017 at 2:43:12 PM EDT To: @gmail.com Subject: Chicago voting problems need referral

We've discovered a potentially serious problem with the 2016 election returns in Chicago. There's a 16,000 vote discrepancy in the data, which is possibly tied to the new same-day registration system.

You're one of the few people I know at the USDOJ. Can you refer me to the person there who have the power to look into the problem, and, if warranted, start an investigation?



I'll be happy to share all the details if you're interested.

Chris

Chris Cleveland Chairman, Chicago Republican Party 43rd Ward Republican Committeeman 312-339-2677

