



May 17, 2021

The Honorable Charles Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Majority Leader Schumer, Minority Leader McConnell, and members of the U.S. Senate:

The United States Department of Justice (“DOJ” or “the Department”) should be guided by the principle that Thomas Jefferson believed was the “most sacred of the duties of government”: “to do equal and impartial justice” to all.<sup>1</sup> The Department plays a critical role in our country’s noble pursuit of equal and impartial justice, helping to realize values embedded in the Constitution and codified in a long list of federal statutes that help implement constitutional guarantees.

At the heart of the Department’s mission to provide and promote justice lies the Civil Rights Division. Created in 1957, the Civil Rights Division (“Division”) “works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex (including pregnancy, sexual orientation, and gender identity), disability, religion, familial status, national origin, and citizenship status;”<sup>2</sup> challenges discriminatory laws and policies in court;<sup>3</sup> and proactively develops policy and legislative proposals.<sup>4</sup> Therefore, to help move DOJ closer to the promise of equal justice under law for all, the Assistant Attorney General who leads the Division must have a certain set of qualifications: a deep commitment to the core constitutional principles of liberty, equality, and fairness; a history of defending and/or advancing substantive fundamental rights; and a demonstrated willingness to respect the whole Constitution and the values therein, whatever their own policy preferences, or those of the President.

Kristen Clarke, President Joe Biden’s nominee for Assistant Attorney General of the Civil Rights Division, has had a career that exemplifies the qualities necessary for the job for which she has been nominated. From a young age she committed herself to being “a person who could use the power of the law to stand up for vulnerable communities.”<sup>5</sup> And when speaking of the Department of Justice, she noted that it “is to stand above the political fray and ensure that its work is carried out with faithfulness to the rule of law.”<sup>6</sup>

Ms. Clarke would bring a breadth of experience and civil rights leadership to the Division. After graduating from Columbia Law School, Ms. Clarke began her career in the prestigious Honors Program at DOJ.<sup>7</sup> She then served for six years as a career attorney in the Civil Rights Division—the same office she has now been nominated to lead. There she worked in the Division’s Voting Section and handled voting rights and redistricting cases.<sup>8</sup> She also served in the division’s Criminal Section, where she prosecuted police misconduct cases, hate crimes, and human trafficking cases.<sup>9</sup> Having been a career attorney in the

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Division, Ms. Clarke would bring to the post a deep knowledge of the office's mission and the urgency of aggressively enforcing our nation's federal civil rights laws.

Ms. Clarke went on to co-direct the voting rights work of the NAACP Legal Defense and Educational Fund where she litigated voting rights cases under laws including the Voting Rights Act and National Voter Registration Act.<sup>10</sup> She also served as the Co-Director of the NAACP's Political Participation Group between July 2010 and August 2011,<sup>11</sup> and provided testimony to Congress, the U.S. Election Assistance Commission, and state legislatures on redistricting, voting rights, and election reform.<sup>12</sup>

For four years, she led the Civil Rights Bureau in the New York State Attorney General's Office where she was responsible for civil rights enforcement over a broad range of areas, including voting rights, fair housing, equal educational opportunity, disability rights, religious rights, LGBTQ+ rights, and hate crimes—much like she would be if confirmed to lead the Civil Rights Division at DOJ. While in office, she demonstrated effective leadership by establishing the Religious Rights Unit, which helps to combat religious discrimination and promotes tolerance. Notably, she secured major settlements with employers to safeguard the rights of Shabbat-observing employees.

Since January 2016, Ms. Clarke has served as President and Executive Director of the Lawyers' Committee for Civil Rights Under Law, which was founded at the request of President John F. Kennedy in 1963 to mobilize the legal profession to defend civil rights.<sup>13</sup> In this role, Ms. Clarke is responsible for determining the organization's strategy on voting rights, fair housing, criminal justice, educational opportunity, economic justice, hate crimes, and digital justice.<sup>14</sup> Under her leadership, the organization participated in approximately 200 cases representing parties or filing amicus curiae briefs.<sup>15</sup>

Ms. Clarke has an extensive civil rights record rooted in defending the text, history, and values of the whole Constitution. She has been a voting rights champion, a bulwark against hate and violent extremism, and a defender of civil rights for all.

At the root of the text, history, and values of the whole Constitution is the creation of a representative democracy where each person is counted and each adult citizen has the right to participate fully in it by exercising their right to vote, free from discrimination. Ms. Clarke has demonstrated through her career that she is committed not only to preserving our representative democracy but also to making it accessible for all citizens. She has litigated several cases on the Voting Rights Act, including *Northwest Austin Municipal Utility District Number One v. Holder* and *Shelby County v. Holder*, in order to protect the right to vote for all people, focusing on barriers that Black voters in particular face.<sup>16</sup> Her work in those and other cases demonstrated that racial discrimination persists in the communities that had been covered by the preclearance provision of the Voting Rights Act of 1965. Ms. Clarke understands the vital importance of the right to vote, calling it “[a] bedrock principle of our democracy” and saying that our “democracy benefits when government takes action to ensure that all eligible Americans can exercise the sacred right to vote.”<sup>17</sup> In the face of new discriminatory state voting laws, it is imperative to have a leader like Ms. Clarke at the helm of the Civil Rights Division who believes in the federal government taking action to protect and enforce this “sacred right.”

Our Constitution was amended over time to make our nation more equal and more free, but the promise of our Constitution has failed to be a reality for far too many because of pervasive systemic racism,

sexism, and hate. Perhaps the most critical aspect of Ms. Clarke's career is her dedication to racial justice, particularly as her appointment comes at a time when our nation is reckoning with its history of white supremacy and racial oppression. Hate crimes are on the rise,<sup>18</sup> there is a surge of attacks targeting Asian Americans and Pacific Islanders,<sup>19</sup> and transgender women of color continue to have tragically low life expectancy because of hate-fueled violence.<sup>20</sup> We need leadership at DOJ that takes seriously the corrosive and unconstitutional nature of hate crimes, which threaten our national security as well as individual life and liberty, and Ms. Clarke has proven she is the right person for this task. Under her leadership, the Lawyers' Committee launched the James Byrd, Jr. Center to Stop Hate and has worked tirelessly to combat hate crimes, neo-Nazis, and white supremacist groups.<sup>21</sup> And Ms. Clarke has spoken in defense of transgender women of color, stating, "policymakers and the public should treat the recent wave of hate-motivated violence toward trans women of color as the national crisis it is. It is an epidemic that strikes at the heart of the freedoms we share, and it is getting worse."<sup>22</sup>

Through the Equal Protection Clause of the Fourteenth Amendment, "We the People" rewrote the Constitution to provide a universal guarantee of equality to all persons—regardless of factors such as race, sex, sexual orientation, gender identity or expression, ability, age, income, or citizenship status. The text and history of the Equal Protection Clause make clear that *all* persons in the United States are afforded equal protection under law.<sup>23</sup> Ms. Clarke has a track record that demonstrates a respect for the text and history of the Fourteenth Amendment, as she has worked diligently to secure equal justice for all, including the most marginalized among us. As Chief of the Civil Rights Bureau in the New York Office of the Attorney General, Ms. Clarke led the establishment of the Religious Rights Unit, as noted above, to combat religious discrimination and promote tolerance.<sup>24</sup> She also has fought to protect the rights of people with disabilities in areas such as transportation,<sup>25</sup> public accommodations,<sup>26</sup> communications accessibility,<sup>27</sup> and voting.<sup>28</sup> She has worked to stop discrimination in hiring and employment for people with felony<sup>29</sup> and other criminal convictions,<sup>30</sup> victims of domestic violence,<sup>31</sup> and LGBTQ+ people.<sup>32</sup> She has fought for equality in education by addressing the school-to-prison pipeline,<sup>33</sup> speaking to the relationship between public education and democracy,<sup>34</sup> working on cases related to racial discrimination in access to higher education,<sup>35</sup> and advocating for access to education for students who have had contact with the criminal justice system.<sup>36</sup> Ms. Clarke has worked to secure the civil rights of those who have been discriminated against in the housing market, including tenants attempting to organize,<sup>37</sup> victims of redlining,<sup>38</sup> tenants who receive government assistance,<sup>39</sup> tenants facing harassment<sup>40</sup> and racial discrimination,<sup>41</sup> tenants who are the victims of race-motivated violence,<sup>42</sup> and individuals with a criminal history who are applying for housing.<sup>43</sup> She has fought to protect the rights of immigrants on issues including fraud,<sup>44</sup> education,<sup>45</sup> the right to be counted in the decennial Census,<sup>46</sup> and the ability to reside and work in the United States.<sup>47</sup> She has fought to protect individuals from sexual orientation discrimination in professional sports<sup>48</sup> and openly gay leaders from discrimination in community organizations.<sup>49</sup> Clarke has also worked to ensure equal access to medical care for the transgender community<sup>50</sup> and to stop LGBTQ+ discrimination in employment.<sup>51</sup> And Ms. Clarke has worked on cases related to sexual harassment and gender discrimination<sup>52</sup> and has spoken out about the importance of equal access to abortion care.<sup>53</sup>

Finally, she is uniquely qualified to lead the Division, as her lived experiences and deep commitment to civil rights would bring a much-needed new perspective to the position. Ms. Clarke, a daughter of Jamaican immigrants, would be the first woman confirmed by the Senate to lead the Division and the first Black woman to hold the post in any capacity.<sup>54</sup> As Ms. Clarke said herself, "I know what it's like to struggle, I know what it's like for communities that are suffering, especially in the wake of the pandemic. I

think that having that lens is something that has animated my work throughout my career—kind of understanding what it's like to be on the other side.”<sup>55</sup>

We at CAC have had the privilege of working closely with Ms. Clarke during her tenure at the Lawyers' Committee, witnessing up close her genuine dedication to honoring and advancing core protections of the Constitution, furthering racial and social justice, and fighting for the most marginalized among us. **CAC enthusiastically supports Kristen Clarke's confirmation to be the next Assistant Attorney General of the Civil Rights Division of the Department of Justice and urges you to vote yes on her confirmation.**

If you have any questions or would like any additional information, please contact Kristine Kippins, CAC's Director of Policy, at [kristine@theusconstitution.org](mailto:kristine@theusconstitution.org) or (202) 296-6889 x313.

Sincerely,



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## Endnotes

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<sup>7</sup> United States Senate Committee on the Judiciary: Questionnaire for Non-Judicial Nominee Kristen Clarke 1 [hereinafter “SJQ”]; *Hearing on “The Impact of COVID-19 on Voting Rights and Election Administration: Ensuring Safe and Fair Elections” Before the H. Comm. On Administration*, 116 Cong.

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<sup>8</sup> SJQ at 39-40.

<sup>9</sup> *Id.* at 39.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 39.

<sup>13</sup> *Id.* at 2, 42.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 17, 19-20.

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<sup>24</sup> SJQ at 39.

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<sup>43</sup> Press Release, Lawyers' Committee for Civil Rights Under Law, Lawyers' Committee Opens Nationwide Inquiry Into Housing Providers That Impose "Blanket Bans" Upon Applicants Who Have Had Contact with the Criminal Justice System (Apr. 4, 2016), <https://lawyerscommittee.org/lawyers-committee-opens-nationwide-inquiry-housing-providers-impose-blanket-bans-upon-applicants-contact-criminal-justice-system/>.

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<sup>55</sup> Harper, *supra* note 54.