

United States Senate

WASHINGTON, DC 20510

April 12, 2023

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland,

We write to urge the U.S. Department of Justice to use all available legal authorities to investigate the expulsions of Representatives Justin Jones and Justin Pearson from the Tennessee General Assembly, the state legislature of Tennessee, to determine whether any violations of the United States Constitution or federal civil rights laws have occurred, and to take all steps necessary to uphold the democratic integrity of our nation's legislative bodies.

On March 27, 2023, six people—three precious children and three adults charged with their care—were slaughtered in a horrific shooting at the Covenant School in Nashville, Tennessee. Their tragedy shattered hearts across our country and galvanized Americans—particularly young Americans in Tennessee—to peacefully demand their legislators act. These deeply moving expressions of democratic participation follow America's long tradition of peaceful, non-violent protest, perfected during the struggles and triumphs of the Civil Rights Movement.

On March 30, 2023, three legislators from Tennessee—Representatives Jones, Johnson, and Pearson—joined this growing chorus of Americans by protesting their colleagues' inaction on gun violence on the floor of the Tennessee House of Representatives.¹ There are no allegations that these democratically-elected officials engaged in any violent or illegal conduct. By courageously participating in nonviolent demonstrations, they challenged procedural rules governing decorum and good behavior. We believe the repeated and preventable slaughter of our children should frustrate and disrupt decorum because this horrifying pattern must never be accepted as business as usual. Moreover, we do not believe that breaking decorum is alone sufficient cause for employing the most draconian of consequences to duly-elected lawmakers.

Nonetheless, on April 7, 2023, the Tennessee House of Representatives expelled two of these Representatives, both of whom are Black: Representatives Jones and Pearson. Representatives Jones and Pearson were elected to represent Nashville and Memphis respectively, the state's two largest cities. The legislature allowed Representative Johnson, who was accused of the same procedural violation but is White, to retain her seat.

The Tennessee state legislature has reportedly never previously expelled a member over purely procedural violations.² Instead, previous expulsions have involved serious allegations of ethical or criminal misconduct. In taking this radical action, rather than responding to the intolerable

¹ <https://www.capitol.tn.gov/Bills/113/Bill/HR0063.pdf>

² <https://www.tennessean.com/story/news/politics/2023/04/05/tennessee-house-lawmaker-expulsion-vote-future-of-gop/70081721007/>

violence inflicted upon a Tennessee community, the Tennessee House of Representatives chose to silence Black members of their own body who were protesting *nonviolently, in response to violence*.

Our system of government sets out a role for the federal government to protect democratic institutions and to preserve the ability of legislators to debate on issues of public importance. As the U.S. Supreme Court noted in its unanimous opinion in *Bond v. Floyd* (1966), issued after the Georgia legislature refused to seat Julian Bond, a newly-elected Black man, to the Georgia General Assembly, “Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.”³

Silencing legislators on the basis of their views or their participation in protected speech or protest is antithetical to American democracy and values. We cannot allow states to cite minor procedural violations as pretextual excuses to remove democratically-elected representatives, especially when these expulsions may have been at least partially on the basis of race. Allowing such behavior sets a dangerous—and undemocratic—precedent. Indeed, although we are heartened to see the Nashville Metropolitan Council unanimously vote on Monday, April 10, 2023 to reappoint Representative Jones as the district’s interim representative and send him back to the Tennessee legislature, some emboldened Tennessee officials have reportedly threatened to withhold funding from Memphis if it honors the will of voters and sends Representative Pearson back to the legislature, a clear attempt to further disenfranchise voters and a blatant affront to our constitutional values.⁴

Regardless of where Americans fall in the debate over how to best respond to gun violence, our democracy only works when Americans can have that debate in our newspapers, town squares, and most important, our halls of government. Americans’ right to peaceful assembly and to petition their elected representatives for redress of grievances is at the bedrock of our Constitution, enshrined in its First Amendment, and at the core of our nation’s founding principles. It is the essential firmament upon which this country was founded, and through which our democracy survives. It is our origin story; it is who we are.

People of all goodwill in Tennessee and across America and are deeply disturbed by these counter-democratic expulsions because they overturn and subvert the will of Tennessee voters in Nashville and Memphis. Many in the Tennessee legislature appear to have convinced themselves that The People’s House is *their* house, and they have effectively evicted the districts’ voters out of their own house. This is un-democratic, un-American, and unacceptable, and the U.S. Department of Justice should investigate whether it was also unlawful or unconstitutional.

In light of this serious threat to our democracy, I urge you to prioritize all investigations into any violations of rights under federal law or the U.S. Constitution posed by the expulsions of the

³ *Bond v. Floyd*

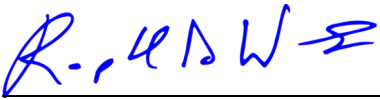
⁴ https://www.fox13memphis.com/news/memphis-could-lose-funding-for-major-projects-if-pearson-appointed-back-to-seat-commissioner-says/article_a314c216-d582-11ed-9766-8f4212e502ec.html

Tennessee legislators. In particular, I urge you to immediately investigate whether actions by the Tennessee state legislature violate any constitutional rights, including:

1. Any rights of tens of thousands of Tennessee citizens in Memphis and Nashville to be represented by the legislators of their choice, whether under Article IV, Section 4 (guaranteeing to the states a Republican form of government) or other authorities;⁵
2. Any rights of Representatives Jones and Pearson under the Fourteenth Amendment or its enforcing civil rights statutes prohibiting discrimination on the basis of race; and
3. Any rights of Representatives Jones and Pearson under the First Amendment protecting the right of speech and assembly.

We are deeply concerned that without immediate action by the U.S. Department of Justice, antidemocratic actors will only be emboldened, and we will see more troubling and more frequent incidents meant to unravel our democratic fabric. Thank you for your work to protect our democracy. We look forward to your prompt response by Friday, April 28, 2023.

Sincerely,



Raphael Warnock
United States Senator



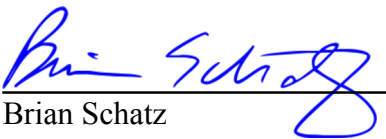
Charles E. Schumer
United States Senator



Christopher S. Murphy
United States Senator



Alex Padilla
United States Senator



Brian Schatz
United States Senator

⁵ The United States Constitution, Article IV, Section 4: “The United States shall guarantee to every State in this Union a Republican Form of Government...”