



U.S. Department of Justice

S. Amanda Marshall

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District of Oregon

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The Honorable Ellen F. Rosenblum
Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Re: Hayes/Kitzhaber Investigation

Dear Ellen:

Thank you for meeting with FBI Special Agent in Charge (SAC) Greg Bretzing and me last Thursday to discuss the potential state investigation into Cylvia Hayes' and former Governor John Kitzhaber's alleged misconduct. The purpose of this letter is to confirm the Oregon Department of Justice's (ODOJ) decision to discontinue its limited criminal investigation of Cylvia Hayes and former Governor John Kitzhaber and the circumstances leading up to this decision. Set forth below are some of the key reasons – previously expressed to you by both myself and FBI Special Agent in Charge Greg Bretzing – why ODOJ investigative activity would undermine our ability to conduct a full and fair criminal investigation of Ms. Hayes and former Governor Kitzhaber.

First, any state investigative action at this stage could significantly undermine any pending federal investigation. As I understand it, on February 9, 2015, following your receipt of the letter from Kitzhaber and some internal discussions, your office opened a criminal investigation in this matter. I also understand that to date, ODOJ has not yet taken any investigative steps, other than referring witnesses to the FBI and attending meetings.

Second, there are too many conflicts of interest for your organization to fully and fairly investigate the allegations or to be involved in any potential joint investigation. ODOJ represents the State of Oregon, state agencies, and, at times, the Governor's Office. Many of these state agencies and several state employees have been served with federal grand jury subpoenas for records and testimony related to the Hayes and Kitzhaber allegations. In its response to the federal grand jury subpoenas, ODOJ claimed it represented all state agencies and state employees, wanted to know the focus of any federal investigation, and wanted to participate in certain investigative steps. The ODOJ cannot investigate state agencies, including the Governor's Office, and state employees for alleged criminal conduct while also representing them for purposes of the federal grand jury subpoenas that seek records and testimony for the same alleged conduct. Any attempt to do so would undermine the integrity of any investigation.

Finally, as I noted above, the state agencies and employees, who ODOJ claims to represent and wants to investigate for criminal wrongdoing, are the sources behind the articles written about Hayes' and Kitzhaber's alleged conduct and are accused of stealing or leaking information under the custody of the state agencies to reporters. One of Kitzhaber's lawyers now claims that some of that information, including Kitzhaber's emails, was accessed in violation of federal law from Department of Administrative Services (DAS) computers and released to the press. DAS has requested an investigation by the Oregon State Police into the leaked emails. These alleged actions by state employees further undercut ODOJ's ability to fully and fairly investigate this matter.

Based on our discussion last Thursday, and follow up conversations this week, I understand that you agree ODOJ should not initiate its own investigation, nor be involved in a joint investigation. Unless I hear otherwise, I expect that ODOJ will defer any inquiry until the federal investigation is concluded or such other time that we agree to. At that time, we pledge to share any information, to the extent allowed by law, when doing so will no longer impact the ability to fairly and impartially investigate this very important matter. Please feel free to call me directly if you have any questions or concerns about anything in this letter. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Marshall', with a long horizontal flourish extending to the right.

S. AMANDA MARSHALL
United States Attorney

cc: Greg Bretzing, FBI Special Agent in Charge