



December 19, 2018

Committee on Oversight and Government Reform  
United States House of Representatives  
Congress of the United States  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chair Gowdy and Ranking Member Cummings:

I write on behalf of the Campaign Legal Center (“CLC”) to raise concerns about potential undisclosed conflicts of interest on the part of Acting Attorney General Matthew Whitaker, who was paid \$1.2 million from a single, untraceable source in the three years before joining the Department of Justice (“DOJ”).

From October 2014 to September 2017, Whitaker was executive director of the Foundation for Accountability and Civic Trust (“FACT”), a nonprofit organization operating under Section 501(c)(3) of the Internal Revenue Code.<sup>1</sup> During that period, he was paid a total of \$1.2 million by the organization, according to reports filed with the Internal Revenue Service (“IRS”).<sup>2</sup> In each of those years, Whitaker’s salary was the group’s single largest expense, and in two of those years, 2015 and 2016, Whitaker was the organization’s only full-time employee.<sup>3</sup> This salary from FACT constituted the majority of Whitaker’s income in the years before he entered public office, according to Whitaker’s financial disclosure reports.<sup>4</sup>

<sup>1</sup> See Robert O’Harrow Jr., Shawn Boburg, & Aaron C. Davis, *Conservative Nonprofit With Obscure Roots and Undisclosed Funders Paid Matthew Whitaker \$1.2 Million*, WASH. POST (Nov. 20, 2018), [https://www.washingtonpost.com/investigations/conservative-nonprofit-with-obscure-roots-and-undisclosed-funders-paid-matthew-whitaker-12-million/2018/11/20/25ff987e-e9db-11e8-bd89-eecf3b178206\\_story.html](https://www.washingtonpost.com/investigations/conservative-nonprofit-with-obscure-roots-and-undisclosed-funders-paid-matthew-whitaker-12-million/2018/11/20/25ff987e-e9db-11e8-bd89-eecf3b178206_story.html).

<sup>2</sup> *Id.*; Foundation for Accountability and Civic Trust, 2015 Form 990 (Nov. 14, 2016), <https://bit.ly/2RywaST>; Foundation for Accountability and Civic Trust, 2016 Form 990 (Nov. 1, 2017), <https://bit.ly/2RuyhXM>; Foundation for Accountability and Civic Trust, 2017 Form 990 (Sept. 18, 2018), <https://bit.ly/2Pj6Jm9>.

<sup>3</sup> *Id.*

<sup>4</sup> Matthew Whitaker, OGE Form 278 New Entrant Form (revised Nov. 20, 2018), <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/11/20212624/Whitaker-New-Entrant-Form-278-certified.pdf>.

DonorsTrust provided the entirety of FACT’s funding during those years, and as a result, was the single source of Whitaker’s \$1.2 million in income from FACT.<sup>5</sup>

DonorsTrust is a donor-advised fund — an entity that makes charitable contributions with money that individuals deposit and direct the fund how to disburse.<sup>6</sup> DonorsTrust itself emphasizes that “[o]ur unique philosophical cornerstone is a commitment to preserving and defending donor intent.”<sup>7</sup>

DonorsTrust protects donors against having their names disclosed to the public, but not necessarily from being disclosed to grant recipients. Indeed, DonorsTrust explicitly promotes its services to donors by offering “to work with you to ensure accountability from a grant recipient.”<sup>8</sup> As the executive director (and generally the only full-time employee) of FACT, one of Whitaker’s responsibilities would have been engaging with donors and raising funds for the organization. As a result, it appears likely that he knows the true source of the funding that paid his \$1.2 million salary—but the public and Congress do not.

Federal ethics laws and regulations recognize that a public official’s impartiality can be influenced by the financial interests of a former employer or client—or, put another way, by the individuals or entities that previously paid an official’s salary.<sup>9</sup> Similarly, President Trump has issued an Executive Order to address the conflicts of interest executive branch officials face with respect to former employers and clients.<sup>10</sup>

Because of these concerns regarding impartiality, federal ethics laws and regulations generally require that a public official disclose their sources of income and other financial interests, and develop a plan to avoid even the appearance of a conflict of interest. However, there are gaps in those financial disclosure requirements. For example, an employee must disclose the identity of any client who paid over \$5,000 for their

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<sup>5</sup> See O’Harrow Jr., Boburg, & Davis, *supra* note 1.

<sup>6</sup> See Anna Massoglia, *Tax returns Reveal One Six-Figure Donor Accounts for Entirety of “Dark Money” Funding Whitaker’s Nonprofit*, CTR. FOR RESPONSIVE POLITICS (Nov. 21, 2018), <https://www.opensecrets.org/news/2018/11/one-donor-accounts-for-all-dark-money-funding-whitakers-nonprofit/>.

<sup>7</sup> DonorsTrust, *Mission & Principles*, <https://www.donorstrust.org/who-we-are/mission-principles/> (last visited Dec. 4, 2018).

<sup>8</sup> DonorsTrust, *Donor-Advised Funds*, <https://www.donorstrust.org/what-we-offer/donor-advised-funds/> (last visited Dec. 7, 2018).

<sup>9</sup> See, e.g., 5 C.F.R. § 2635.502(B)(1)(iv) (defining a “covered relationship” to include “[a]ny person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee”); see also *id.* § 2635.503 (requiring disqualification for two years from any particular matter in which a former employer is a party or represents a party if the employee received an extraordinary payment from that person prior to entering government service).

<sup>10</sup> See Executive Order 13770, *Ethics Commitments by Executive Branch Appointees*, 82 Fed. Reg. 9333 (Jan. 28, 2017) (imposing a two-year ban on covered appointees participating in matters directly and substantially related to their former client or employer, including regulations and contracts, when the former client or employer is, or represents, a party to that matter).

services,<sup>11</sup> so if Whitaker had worked at a law firm before joining DOJ, he would have been required to disclose the clients who had paid the firm over \$5,000 for his services.<sup>12</sup> Under President Trump's ethics pledge, he would then have had a two-year recusal obligation with respect to any particular matter involving specific parties directly and substantially related to those former clients.<sup>13</sup> But because an anonymous donor or anonymous donors funded FACT through a donor-advised fund, and FACT then paid Whitaker, he was not required to disclose the identity of the persons or entities who entirely funded his salary.

Not every nonprofit background is as concerning as Whitaker's. What sets Whitaker apart is that his salary was apparently funded by a single source disguising donors whose identities may be known to Whitaker, but are not known to the public. This gives Whitaker the unique ability to use the power of his office to benefit the person or people who ultimately paid his salary without the public oversight usually made possible by financial disclosure.

The public has a right to expect the highest standards of integrity, including full financial disclosure, from the person exercising the powers of Attorney General. The purpose of the financial disclosure system is to deter and identify potential conflicts through a systematic review of an employee's financial interests.<sup>14</sup> But in these unique circumstances, the minimum disclosure requirements and ethical standards are not serving that purpose.

A pattern of keeping the public in the dark about the depth of Whitaker's financial interests and loyalties is emerging. The required release of his public financial disclosure forms was significantly delayed, and the forms have been revised five times since he became Acting Attorney General.<sup>15</sup> These revisions, combined with the public's inability to assess the true source(s) of his income prior to public service, warrant a heightened level of scrutiny for Whitaker's financial ties.

In carrying out its oversight duties, it is necessary and appropriate for the Committee to demand answers about what the Acting Attorney General is doing to resolve the potential conflicts of interests that arise from an anonymous donor or a small number of anonymous donors funding his salary for the previous three years.

To protect the public's confidence in the decision-making process at the DOJ, CLC respectfully requests that you require Whitaker to make the identity of FACT's funder or

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<sup>11</sup> 5 U.S.C. § app 102(6)(B); *see also* Office of Government Ethics, *Your Sources of Compensation Exceeding \$5,000 in a year (Nominee and New Entrant Reports Only)*, <https://bit.ly/2SuzgHs> (last visited Dec. 4, 2018).

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

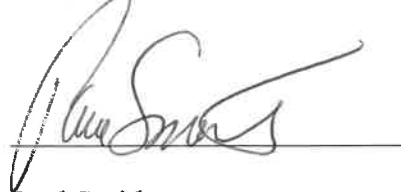
<sup>13</sup> Executive Order 13770, *supra* note 9.

<sup>14</sup> Office of Government Ethics, *Public Financial Disclosure*, <https://www.oge.gov/web/oge.nsf/Public%20Financial%20Disclosure>, (last visited Dec. 6, 2018).

<sup>15</sup> American Oversight, *Acting AG Whitaker's Financial Disclosure Forms Released*, (Nov. 20, 2018), <https://www.americanoversight.org/acting-ag-whitakers-financial-disclosure-forms-released> (last visited Dec. 6, 2018).

funders known to DOJ's Designated Agency Ethics Official or to the Office of Government Ethics, so that they can work to develop a comprehensive recusal plan. Whitaker should then amend his ethics agreement to include a recusal from participating in particular matters of general applicability that would affect his funders' financial interests.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Smith", is written over a horizontal line.

Paul Smith  
Vice President, Litigation and Strategy

CC:  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, DC 20005

Department of Justice Designated Ethics Agency Official  
Lee J. Lofthus  
Assistant Attorney General for Administration  
Room 1111  
950 Pennsylvania Avenue, NW.  
Washington, DC 20530

House Judiciary Committee (Majority)  
2138 Rayburn House Office Building  
Washington, DC 20515

House Judiciary Committee (Minority)  
2035 Rayburn House Office Building  
Washington, D.C. 20515