

November 21, 2018

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, D.C. 20036-4505
(by electronic mail)

Dear Mr. Kerner:

Pursuant to 5 U.S.C. § 1216, I submit the following as a complaint and respectfully request the Office of Special Counsel (OSC) investigate whether Matthew Whitaker, when serving as Chief of Staff and Senior Counsel at the Department of Justice, violated the Hatch Act when a campaign committee associated with his losing bid for the United States Senate in 2014 raised \$8,800 in 2018.

Matthew Whitaker was appointed Chief of Staff and Senior Counsel in the Office of Attorney General in the Department of Justice on October 4, 2017. Whitaker ran for United States Senate in 2014 and established Whitaker for U.S. Senate, Inc. as his principal campaign committee. The treasurer of Whitaker's campaign is William R. Gustoff, former law partner of Whitaker's who also served on the board of directors for the 501(c)(3) organization the Foundation for Accountability and Civic Trust (FACT).¹ Following his unsuccessful campaign, Whitaker became the executive director of FACT, for which he was reportedly paid a total of \$1.2 million.²

According to Federal Election Commission records, Whitaker's campaign committee raised \$8,880 in four contributions made between January 29, 2018 and February 2, 2018.³ The committee received no contributions and made no disbursements between 2015 and 2017.⁴

¹ Kenneth Vogel and Maggie Haberman, "Matthew Whitaker Earned \$1.2 Million From Group Backed by Undisclosed Donors," *New York Times*, Nov. 20, 2018, available at <https://www.nytimes.com/2018/11/20/us/politics/matthew-whitaker-finances.html>

² Id.

³ <https://www.fec.gov/data/committee/C00544924/>

⁴ https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00544924&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016

The Hatch Act places limitations on the ability of executive branch employees to participate in political activities. With limited exceptions not relevant here, federal employees may not “knowingly solicit, accept, or receive a political contribution from any person.” 5 U.S.C. §7323(a)(2). On their face, the political contributions to Whitaker’s campaign fund violate the Hatch Act. Whitaker had been in his position at DOJ three months before these contributions were made to his campaign committee and should be presumed to have been advised of his responsibilities under this law.

Two facts make this situation particularly suspicious. First, his committee was dormant for the three years prior to his appointment to federal service. This raises the concern that donations were solicited and/or made with intent to influence an official act. Second, Whitaker and campaign treasurer Gustoff apparently parlayed their failed partnership in Iowa politics into a political attack organization for conservative political interests. With Whitaker at the helm, FACT became an active functionary in attacks on Democratic officials and candidates, funded by and associated with leading players in this right-wing ecosystem, including DonorsTrust, Neil Corkery, and America Rising.⁵ That is just what is known through initial reporting.

If Whitaker has also continued his political activity through an ongoing association with FACT, the Hatch Act may be implicated. The Office of Special Counsel has opined that federal employees could violate the law by involvement with politically oriented 501(c)(4) organizations.⁶ The same should hold true for an organization that holds itself out as 501(c)(3) but is effectively engaged in political activity funded by political interests.

I urge you to conduct a full investigation into the facts and circumstances of this matter and take all appropriate action as warranted.

Sincerely,



Sheldon Whitehouse
United States Senator

cc: Ana Galindo-Marrone, Chief, Hatch Act Unit, Office of Special Counsel

⁵ Robert O’Harrow Jr., Shawn Boburg and Aaron C. Davis, “Conservative nonprofit with obscure roots and undisclosed funders paid Matthew Whitaker \$1.2 million,” *Washington Post*, Nov. 21, 2018, available at 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-eeef3b178206_story.html?utm_term=.4594e25f59c3

⁶ <https://osc.gov/Pages/HatchAct-FAQs.aspx>