

**Congress of the United States**  
Washington, DC 20510

March 10, 2022

The Honorable John G. Roberts  
Chief Justice  
Supreme Court of the United States  
One First St. NE  
Washington, D.C. 20543

The Honorable Roslynn R. Mauskopf  
Director  
Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington, D.C. 20544

Dear Chief Justice Roberts and Judge Mauskopf:

On March 13-18, 2022, the Global Antitrust Institute (GAI)—an advocacy organization housed at George Mason University and funded by corporations facing substantial antitrust liability, including Amazon, Facebook, and Google—will host a group of federal judges for an off-the-record, all-expenses-paid seminar on antitrust in Austin, Texas.<sup>1</sup> The invitation to the seminar explains that the judges’ participation generates “significant and tangible value” for GAI in the form of “competition advocacy.”<sup>2</sup> We write to you because we are concerned about the independence and impartiality, both actual and perceived, of federal judges who attend GAI’s seminars, especially if they preside over antitrust cases, and because the Judicial Conference’s current policies do not adequately address these concerns.

All of GAI’s disclosed corporate donors—Allergan (which has merged with AbbVie),<sup>3</sup>

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<sup>1</sup> Benjamin Din, *Senate Finance to Scrutinize Amazon, Data Brokers*, POLITICO MORNING TECH (Dec 7, 2021), <https://sen.gov/8OLV>. For a list of GAI’s disclosed major donors, see *Support the GAI*, Global Antitrust Institute, Antonin Scalia Law School [hereinafter Disclosures], <https://sen.gov/J850> (last visited Mar. 1, 2022). See also Daisuke Wakabayashi, *Big Tech Funds a Think Tank Pushing for Fewer Rules. For Big Tech.*, N.Y. TIMES (July 24, 2020) [hereinafter NYT Article], <https://sen.gov/9PMR>.

<sup>2</sup> The invitation for the upcoming seminar is on file with the authors.

<sup>3</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Imposes Conditions on AbbVie Inc.’s Acquisition of Allergan plc (May 5, 2020), <https://sen.gov/01ZN>. Allergan’s donations to GAI were made through its foundation, the Allergan Foundation. See Disclosures, *supra* note 1.

Amazon.com, Inc.,<sup>4</sup> Facebook, Inc.,<sup>5</sup> Google LLC,<sup>6</sup> Qualcomm,<sup>7</sup> and Visa, Inc.<sup>8</sup>—have been the subject of major, repeated antitrust lawsuits, investigations, and enforcement actions. In many cases, those lawsuits and investigations are ongoing.<sup>9</sup> Congress has also investigated the anticompetitive conduct of Google, Amazon, and Facebook.<sup>10</sup>

This seminar will be the latest in a series of similar events that GAI has hosted for judges and regulators from around the world: luxurious multi-day junkets that urge lax regulation of the big technology, pharmaceutical, and financial-services companies that fund the organization. According to the New York Times, GAI has held seminars for foreign judges and regulators in Huntington Beach, Santa Monica, Oahu, Lisbon, Tokyo, and Dubai since its founding in 2014.<sup>11</sup> The Judiciary’s own records show that GAI has also offered at least three such seminars to U.S. judges starting in 2020.<sup>12</sup> Participants in GAI’s seminars receive all-expenses-paid luxury accommodations, meals, and flights.<sup>13</sup>

An economics professor interviewed by the Times noted that “nobody would be paying for this stuff if they didn’t think it had an effect.”<sup>14</sup> The gratuities described above give GAI unparalleled access to the officials who accept them. The seminars, as another economist has explained, advance GAI’s “long-term agenda of weakening antitrust laws.”<sup>15</sup> The former chief competition economist for the European Commission, who attended one of the seminars,

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<sup>4</sup> See Press Release, Office of the Att’y Gen. for the Dist. of Columbia, AG Racine Files Antitrust Lawsuit Against Amazon to End Its Illegal Control of Prices Across Online Retail Market (May 25, 2021), <https://sen.gov/K86X>.

<sup>5</sup> See Press Release, Fed. Trade Comm’n, FTC Sues Facebook for Illegal Monopolization (Dec. 9, 2020), <https://sen.gov/L8RL>; Cecilia Kang, *A Facebook Antitrust Suit Can Move Forward, a Judge Says, in a Win for the F.T.C.*, N.Y. TIMES (Jan. 11, 2022), <https://sen.gov/L8JY>.

<sup>6</sup> See, e.g., Press Release, U.S. Dep’t of Just., Justice Department Sues Monopolist Google for Violating Antitrust Laws: Department Files Complaint Against Google to Restore Competition in Search and Search Advertising Markets (Oct. 20, 2020), <https://sen.gov/M8K4>; Leah Nylén, *36 States, D.C. Sue Google for Alleged Antitrust Violations in Its Android App Store*, POLITICO, <https://sen.gov/N8L1>; Tony Room, *Texas Leads Republican Attorneys General in New Antitrust Lawsuit Against Google, Targeting Its Advertising Empire*, WASH. POST (Dec. 16, 2020), <https://sen.gov/O8MW>.

<sup>7</sup> See Press Release, Fed. Trade Comm’n, Statement by Acting Chairwoman Rebecca Kelly Slaughter on Agency’s Decision Not to Petition Supreme Court for Review of Qualcomm Case (Mar. 29, 2021), <https://sen.gov/P8NJ>.

<sup>8</sup> Tiyashi Datta, *Justice Department Probes Visa’s Relationships with Fintech Companies* – WSJ, REUTERS (Oct. 27, 2021), <https://sen.gov/Q8OL>; Press Release, U.S. Dep’t of Just., Visa and Plaid Abandon Merger After Antitrust Division’s Suit to Block (Jan. 12, 2021), <https://sen.gov/R8PY>.

<sup>9</sup> See, e.g., *supra* notes 4-6.

<sup>10</sup> See generally, e.g., STAFF OF SUBCOMM. ON ANTITRUST, COM., & ADMIN. LAW OF THE H. COMM. ON THE JUDICIARY, 116TH CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND RECOMMENDATIONS (2020).

<sup>11</sup> NYT Article, *supra* note 1.

<sup>12</sup> *Report of Privately Funded Seminars (with starting dates on or after 03/03/2019)*, U.S. COURTS (last visited Mar. 6, 2022), <https://sen.gov/VKW7>.

<sup>13</sup> NYT Article, *supra* note 1.

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

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

likewise told the Times that the seminars give a one-sided perspective on antitrust enforcement that favor the interests of entrenched tech companies.<sup>16</sup> Each judge is also expected, as the invitation to the upcoming seminar explains, to “share experiences and viewpoints from his or her own jurisdiction”—valuable information for any litigant or lobbyist. It is this “collaboration with the GAI faculty,” the invitation explains, that “generates significant and tangible benefits and value” for the institute.

Judges who attend these junkets pay for the privilege not only by providing access and information, but also by lending GAI the prestige of their office. The invitation to the upcoming seminar prominently features a named senior federal judge. That judge has reportedly also recruited foreign judges and regulators to attend GAI’s seminars.<sup>17</sup> The judge has regularly received more than \$350,000 each year from the George Mason University Foundation, which channels corporate donations to GAI.<sup>18</sup> The invitation to the upcoming seminar also includes an endorsement from an anonymous federal judge who states that s/he wanted to bring what s/he had been taught at a GAI seminar “into my judicial decisions.”

The GAI employees with whom the judges “collaborat[e]” also have close personal and business connections to the institute’s corporate funders. For example, the institute’s executive director has a longstanding and close working relationship with Google.<sup>19</sup> His ties to Google are so close that he was recused from all matters involving Google for two years of his tenure as FTC Commissioner.<sup>20</sup> In addition to leading GAI, he concurrently worked until recently for a law firm that has defended GAI’s biggest corporate donors such as Qualcomm and Google against government enforcement actions for those firms’ anticompetitive conduct.<sup>21</sup> In 2019, he disclosed that he had provided “counseling advice” to Qualcomm on regulatory and antitrust matters.<sup>22</sup> One GAI director, who reportedly promised a Qualcomm executive that GAI would organize a congressional briefing to “counter” criticism of the company, subsequently left GAI to direct antitrust policy and litigation at Qualcomm.<sup>23</sup> Other GAI staff and contributors have similar connections to the companies that benefit from GAI’s advocacy.<sup>24</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See, e.g., Financial Disclosures for J. Douglas Howard Ginsburg*, COURT LISTENER (last visited Mar. 3, 2022), <https://sen.gov/WLX2>.

<sup>19</sup> NYT Article, *supra* note 1.

<sup>20</sup> Diane Bartz, *FTC Nominee Says to Recuse Himself on Google Issues for Two Years*, REUTERS (Dec. 4, 2012), <https://sen.gov/XMYQ>.

<sup>21</sup> *See, e.g., Does America Have a Monopoly Problem? Examining Concentration and Competition in the U.S. Economy: Hearing Before the Subcomm. On Antitrust, Competition Pol’y, & Consumer Rts. of the S. Comm. on the Judiciary, 116th Cong. (2019) (statement of Joshua D. Wright, Senior Couns., Wilson Sonsini Goodrich & Rosati PC)*, <https://sen.gov/YNZP>.

<sup>22</sup> Douglas H. Ginsburg & Joshua D. Wright, *Use and Abuse of Bargaining Models in Antitrust: AT&T/Time-Warner and FTC v. Qualcomm*, TRUTH ON THE MARKET (Mar. 14, 2019), <https://sen.gov/ZO13>.

<sup>23</sup> NYT Article, *supra* note 1.

<sup>24</sup> *See generally Big Tech’s Backdoor to the FTC*, TECH TRANSPARENCY PROJECT (2021) [hereinafter Tech Transparency Project Report], <https://sen.gov/12Z8>; David McLaughlin, *One Tech-Funded University Helped Shape*

This situation raises particularly acute concerns about judges’ conflicts of interest because the corporations that fund GAI spend millions of dollars lobbying against legislation designed to ensure America’s digital markets are open to competition and innovation. As one of our congressional committees has found, the donations to GAI are a way in which these corporations use their monopoly profits “[o]utside of traditionally reported and regulated lobbying” to “shap[e] how they are governed and regulated.”<sup>25</sup> In this context, GAI’s “seminars” look worse than mere junkets—they look like judicial lobbying.

GAI and its staff also frequently lobby the federal government to benefit its corporate funders. In recent years, for example, GAI and its staff (including the federal judge who chairs the institute’s board of advisors) have lobbied the head of the Justice Department’s Antitrust Division, the Secretary of Commerce, the Director of the Patent and Trademark Office, the FTC, and Congress to promote or defend policies that protect entrenched tech companies like Qualcomm and Google from liability.<sup>26</sup>

GAI, its staff, and its funders have also directly intervened to influence antitrust litigation and investigations that affect the institute’s corporate donors. In some cases, GAI has filed *amicus* briefs seeking to weaken antitrust law.<sup>27</sup> But in at least one instance, GAI staff directly lobbied an antitrust enforcer to end its lawsuit against a GAI donor. The FTC’s inspector general found that in 2017 GAI’s executive director had illegally lobbied his former colleagues at the FTC to settle its antitrust case against Qualcomm, even though he had been personally and substantially involved in the case when he was FTC Commissioner.<sup>28</sup> His unlawful conduct occurred after he had assumed his role as GAI’s executive director (and while he was simultaneously working for

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*FTC’s Hands-Off Approach*, BLOOMBERG BUSINESSWEEK (Mar. 12, 2021) [hereinafter Bloomberg Article], <https://sen.gov/2315>.

<sup>25</sup> STAFF OF SUBCOMM. ON ANTITRUST, COM., & ADMIN. LAW OF THE H. COMM. ON THE JUDICIARY, 116TH CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND RECOMMENDATIONS 76 (2020), <https://sen.gov/3J2O>.

<sup>26</sup> See, e.g., Letter from Exec. Dir., Glob. Antitrust Inst., to Wilbur Ross, Sec’y of Com. & Andrei Iancu, Under Sec’y of Com. for Intell. Prop. & Dir. of the U.S. Pat. & Trademark Off. (Feb. 12, 2019), <https://sen.gov/4K3K>; Tad Lipsky, Joshua D. Wright, Douglas H. Ginsburg & John M. Yun, *The F.T.C. Hearings on Competition & Consumer Protection in the 21<sup>st</sup> Century: Consumer Privacy, Comment of the Global Antitrust Institute* (Feb. 19, 2019), <https://sen.gov/5L4Y>; Fed. Trade Comm’n, Analysis of Proposed Consent Order to Aid Public Comment, In the Matter of Motorola Mobility, LLC and Google, Inc., 121-0120, <https://sen.gov/6M5J>; Bloomberg Article, *supra* note 24; Glob. Antitrust Inst., Comment Letter on Proposed Update of the Antitrust Guidelines for the Licensing of Intellectual Property (Sept. 2016), <https://sen.gov/8OJV>; Abbott B. Lipsky, Joshua D. Wright, Douglas H. Ginsburg & John M. Yun, *DOJ/FTC Draft 2020 Vertical Merger Guidelines Comment of the Global Antitrust Institute* (Feb. 8, 2020), <https://sen.gov/9PKR>; Jonathan Barnett et al., *Joint Submission of Antitrust Economists, Legal Scholars, and Practitioners to the House Judiciary Committee on the State of Antitrust Law and Implications for Protecting Competition in Digital Markets*, INT’L CTR. FOR L. & ECON. (May 15, 2020), <https://sen.gov/01YN>.

<sup>27</sup> See, e.g., Brief for Babette E. Boliek et al. as *Amici Curiae* Supporting Respondents, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018) (No. 16-1454), <https://sen.gov/J8P0> (listing Abbott Lipsky, Joshua D. Wright, and John M. Yun as *amici curiae* who are affiliated with GAI).

<sup>28</sup> FED. TRADE COMM’N., OFF. OF INSPECTOR GEN., REPORT OF INVESTIGATION: ALLEGED VIOLATIONS OF POST-EMPLOYMENT RESTRICTIONS BY A FORMER SENIOR FTC OFFICIAL 3 (2019), <https://sen.gov/K8QX>; Tech Transparency Project Report, *supra* note 24, at 2-7; Bloomberg Article, *supra* note 24.

a law firm that represented Qualcomm).<sup>29</sup> One of the FTC officials whom he unlawfully lobbied abruptly resigned in the midst of the inspector general’s investigation, only to be hired by the executive director to work at GAI.<sup>30</sup> In addition, one GAI donor, the Charles Koch Foundation, funds the Americans for Prosperity Foundation, which is suing the FTC “to obtain documents related to a series of policy changes that have been criticized by the country’s biggest business lobbying group as an attack on American companies.”<sup>31</sup>

Given the obvious conflicts of interest that judicial participation in GAI seminars present, we doubt that judges can attend GAI’s seminars without violating their ethical obligations. That should be clear enough under the Code of Conduct for United States Judges, which obligates every lower-court federal judge to “uphold the integrity and independence of the judiciary,” “avoid impropriety and the appearance of impropriety in all activities,” “perform the duties of the office fairly[ and] impartially,” and avoid “extrajudicial activities that . . . reflect adversely on the judge’s impartiality” or are otherwise inconsistent with these obligations.<sup>32</sup> Attendance at GAI seminars conflicts with any reasonable application of the Code’s commonsense canons.

Although the Code’s broad canons are meant to provide reasonable standards, the Judicial Conference’s Committee on Codes of Conduct appears to have adopted a set of hollow and conflicting interpretations that might lead judges to believe that attending GAI’s junkets does not violate their ethical obligations. One of the Committee’s advisory opinions, for example, could be read to suggest that a judge’s participation in a GAI seminar does not trigger recusal in litigation involving Google, Amazon, and Qualcomm because, as a technical matter, those companies did not earmark money for the specific seminar the judge plans to attend.<sup>33</sup>

A more recent advisory opinion, however, offers a broader array of factors that should make clear that, for example, GAI’s advocacy efforts, alignment with the policy and litigation positions of its funders, record of improper conduct, and public image are major red flags under the Code of Conduct.<sup>34</sup> But that advisory opinion has not, apparently, deterred judges from attending GAI’s seminars.

The Judicial Conference’s current disclosure policy is just as toothless.<sup>35</sup> The judiciary’s policy does not require a host organization to disclose the roster of attending judges or the dollar

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<sup>29</sup> Tech Transparency Project Report, *supra* note 24, at 4, 6.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> David McLaughlin, *Billionaire Koch-Backed Group Sues FTC over Antitrust Enforcement*, BLOOMBERG (Dec. 8, 2021), <https://sen.gov/K8Q0>.

<sup>32</sup> *Code of Conduct for United States Judges (effective March 12, 2019)*, U.S. COURTS (last visited Mar. 6, 2022), <https://sen.gov/L8RY>.

<sup>33</sup> Comm. on Codes of Conduct, Advisory Op. No. 67, Attendance at Independent Educational Seminars 96-99 (June 2019), <https://sen.gov/M8V4>.

<sup>34</sup> Comm. on Codes of Conduct, Advisory Op. No. 116, Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates 245-255 (Feb. 2019), <https://sen.gov/M8V4>.

<sup>35</sup> Advisory Op. No. 67, *supra* note 33.

amounts of the services they receive. Nor does it specify that a host organization's disclosure of its funding sources must include all major donors, even those that fund the seminars or host organization indirectly.

Here, these policy omissions mean that, without reviewing each federal judge's individual disclosures, the public cannot know which federal judges attend GAI's seminars. It also means that GAI apparently thought it could simply list "George Mason University Foundation" as the funding source of its seminars and not mention the tech companies that donated to the Foundation.<sup>36</sup> It should not take investigative journalists to uncover which companies seek to influence the federal judiciary with their monopoly profits. The public deserves to know.

In light of these concerns, we respectfully request responses to the following questions:

1. Please confirm that the Code of Conduct for United States Judges prohibits a federal judge from participating in GAI's seminars or otherwise accepting gifts from GAI.
2. Which federal judges, if any, have attended GAI's seminars in the past?
3. Please list the federal judges who have been invited to attend each GAI seminar, including the upcoming seminar.
4. Please provide the dollar amount of transportation, lodging, and meal expense reimbursements and gifts received by each federal judge who participated in GAI's seminars.
5. Has the Committee on Codes of Conduct of the Judicial Conference advised any judge that the Code of Conduct does not prohibit judges from participating in GAI's seminars?
6. Has the Committee on Codes of Conduct advised any judge that GAI may use his or her name, picture, or words in its promotional materials?
7. Have any judges who attended GAI's seminars in the past heard cases involving Google, Facebook, Amazon, Qualcomm, Visa, Allergan, the Charles Koch Foundation, Americans for Prosperity Fund, or any of GAI's other major donors? If so, did those judges disclose their connections to GAI to the parties in the case?
8. Do you commit to adopting policies requiring privately funded organizations that host judicial seminars, at minimum, to disclose the names of all federal judges who attend their seminars; the dollar amount of transportation, lodging, and meal expense reimbursements and gifts that federal judges who participate in the seminars receive; and the names of all the organization's donors, be they sponsoring entities or major underlying contributors?

We believe deeply in the importance of an impartial judiciary. All litigants who enter a federal court are entitled to have confidence that they will be treated fairly, regardless of the judge or

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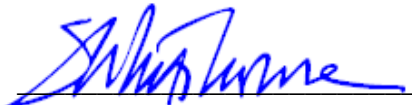
<sup>36</sup> *Report of Privately Funded Seminars, supra* note 12.

judges hearing the case. This principle is a bedrock of the American legal system and the Code of Judicial Conduct.

We hope you will take decisive action and offer clear responses that will help insulate the courts from outside corporate influence and the perception thereof.

Thank you for your consideration of our views and your attention to this matter.

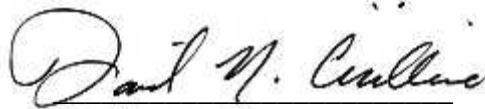
Sincerely,



Sheldon Whitehouse  
United States Senator



Henry C. "Hank" Johnson, Jr.  
Member of Congress



David M. Cicilline  
Member of Congress