



October 25, 2016

Via Certified Mail

Inspector General Michael E. Horowitz
U.S. Department of Justice
Office of the Inspector General
Investigations Division
1425 New York Avenue, NW
Suite 7100
Washington, DC 20530

Re: Request for Investigation of Deputy Director Andrew McCabe's Involvement in the Investigations of Governor Terry McAuliffe and Former Secretary of State Hillary Clinton

Dear Inspector General Horowitz:

On behalf of Cause of Action Institute, a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair,¹ I am writing to request that the Department of Justice Office of the Inspector General initiate an investigation into Federal Bureau of Investigation ("FBI") Deputy Director Andrew McCabe's involvement in the FBI investigations of Virginia Governor Terry McAuliffe and former Secretary of State Hillary Clinton.

As recently reported in *The Wall Street Journal*, Governor McAuliffe's political action committee and the Virginia Democratic Party donated more than \$675,000 in money and in-kind contributions to the state senate campaign of Dr. Jill McCabe, Deputy Director McCabe's wife, a figure that represents "more than a third of the all the campaign funds Dr. McCabe raised in the effort."² Equally noteworthy, Governor McAuliffe met with Dr. McCabe to urge her to run for office as a Democrat on March 7, 2015,³ just five days after *The New York Times* broke the story on former Secretary Clinton's use of a private email system.⁴ From 2015 onward, the FBI has

¹ See CAUSE OF ACTION INSTITUTE, *About*, <http://causeofaction.org/about>.

² Develin Barrett, *Clinton Ally Aided Campaign of FBI Official's Wife*, *Wall St. J* (Oct. 23, 2016), <http://coainst.org/2f11kmT>.

³ *Id.*

⁴ See Michael S. Schmidt, *Hilary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, *N.Y. Times* (Mar. 2, 2015), <http://nyti.ms/2dytdjM>.

conducted investigations into possible campaign contribution violations by Governor McAuliffe⁵ and former Secretary Clinton's email practices.⁶

The significant campaign contributions to the wife of a senior FBI official from a prominent Democratic politician, a known close political ally of the current Democratic nominee for president, during a time in which that same politician and Democratic nominee for president were under official scrutiny for possible illegal activity raises serious questions as to the propriety of Deputy Director McCabe's involvement in and influence on those investigations. These revelations test the public's perception of the FBI's credibility, objectivity, and impartiality. An immediate and thorough investigation by the Department of Justice Office of the Inspector General is therefore warranted.⁷

Background

Beginning in 2015 and continuing to the present, the FBI and the Department of Justice's Public Integrity Section have been investigating whether Governor McAuliffe received illegal campaign donations.⁸ The investigation reportedly focuses on a contribution from a Chinese businessman, Wang Wenliang, to Governor McAuliffe's campaign.⁹ Mr. Wenliang also has donated millions of dollars to the Clinton Global Initiative,¹⁰ and the FBI investigation includes an inquiry into Governor McAuliffe's involvement with the Clinton Foundation.¹¹

Governor McAuliffe's political action committee, Common Good VA, donated \$467,500 to Dr. McCabe's campaign, with the bulk of that amount coming in October 2015.¹² These donations were authorized by Chris Petersen, a longtime friend of Governor McAuliffe's who started lobbying in Virginia shortly following the Governor's election, coming under criticism from some Republican Delegates.¹³ Mr. Petersen also was nominated by Governor McAuliffe to the Board of Visitors at Virginia Tech.¹⁴ In addition to the above donations, the Virginia Democratic Party contributed \$207,788 to Dr. McCabe's campaign in the form of mailers.¹⁵ As *The Wall Street Journal* reported, the contributions amount to "slightly more than \$675,000 to

⁵ See, e.g., Evan Perez, *First on CNN: Virginia Gov. Terry McAuliffe under federal investigation for campaign contributions*, CNN.com (May 24, 2016), <http://coainst.org/2eyDSOp>.

⁶ See, e.g., Lauren Carroll, *What we know about the FBI's investigation into Hillary Clinton's emails*, Politifact (May 12, 2016), <http://coainst.org/2dFdHEo>.

⁷ Even if Deputy Director McCabe did not engage in any unethical or illegal conduct, an investigation would still be valuable under the circumstances. Government ethics rules require that "[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." 5 C.F.R. § 2635.101(b)(14). Given the appearance of impropriety in this case, the Inspector General must ensure that the FBI did not violate the public trust, and the investigation would be useful in this goal whatever its outcome.

⁸ Perez, *supra* note 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Barrett, *supra* note 2; Virginia Dep't of Elections, Campaign Finance Report: Common Good VA, Report Range: 10/01/2015 to 12/31/2015, <http://cfreports.sbe.virginia.gov/Report/Index/86997>.

¹³ See Alan Suderman, *With McAuliffe in office, old friends find new opportunities*, Daily Press (June 26, 2015), <http://coainst.org/2eLwefq> ("Republican Del. Todd Gilbert said Petersen's dual roles as PAC treasurer and lobbyist is 'reckless' and presents a clear conflict of interest.")

¹⁴ Governor Terry McAuliffe, Governor McAuliffe Announces Administrative Appointments (June 13, 2016), <https://governor.virginia.gov/newsroom/newsarticle?articleId=15623>.

¹⁵ Barrett, *supra* note 2.

her candidacy from entities either directly under Mr. McAuliffe's control or strongly influenced by him."¹⁶

The investigation into former Secretary Clinton's private email system began in July 2015.¹⁷ At that time, Deputy Director McCabe ran the FBI's Washington, D.C. field office, which provided personnel and resources to the Clinton email investigation.¹⁸ Deputy Director McCabe assumed his current position in February 2016 and became part of the executive leadership team that oversaw the Clinton email investigation.¹⁹

Discussion

The timing of the campaign contributions to Deputy Director McCabe's wife from Governor McAuliffe's political action committee and the Virginia Democratic Party raises serious conflict of interest concerns. Deputy Director McCabe, first as head of the FBI's Washington, D.C. field office and then in his current position as second-in-command of the FBI, was directly involved in the Secretary Clinton email investigation, which overlapped with the time his wife received the campaign contributions. As the second-in-command at the FBI, Deputy Director McCabe also is in position to influence the ongoing investigation of Governor McAuliffe.

Unfortunately, the FBI does not seem to be taking the potential conflict of interest seriously. As *The Wall Street Journal* reports, "Mr. McCabe's supervision of the Clinton email case in 2016 wasn't seen as a conflict or an ethics issue because his wife's campaign was over by then and Mr. McAuliffe wasn't part of the email probe, officials said."²⁰ The cessation of Dr. McCabe's campaign, however, does not dissolve the ethics issue. Governor McAuliffe, a top Hillary Clinton supporter, directed significant campaign contributions to an FBI official's wife during the time that FBI investigations into both Governor McAuliffe and former Secretary Clinton were in progress. Just a few months after those contributions, the same FBI official was elevated to second-in-command, where he played a role in the leadership decision not to recommend prosecution of Secretary Clinton and is in a similar position with respect to Governor McAuliffe. This has all the trappings of a classic *quid pro quo*, where one individual grants a favor now in return for a favor to be granted at a later date.

Cause of Action Institute respectfully requests that the Office of the Inspector General initiate an immediate investigation into the influence that campaign contributions to Deputy Director McCabe's wife may have had on Deputy Director McCabe's oversight of and involvement in the Secretary Clinton email investigation and on the ongoing investigation of Governor McAuliffe. At the very least, the Inspector General should seek to ensure that Deputy Director McCabe recuses himself from any current and future investigations involving Governor McAuliffe, Secretary Clinton, the Democratic National Committee, and any other politician or political committee associated with the Democratic Party.

¹⁶ *Id.*

¹⁷ Carroll, *supra* note 6.

¹⁸ Barrett, *supra* note 2.

¹⁹ *Id.*

²⁰ *Id.*

Inspector General Michael E. Horowitz
October 25, 2016

Thank you for your prompt attention to this matter.

Sincerely,



Eric R. Bolinder
COUNSEL

cc:

Ron Johnson, Chairman
Thomas Carper, Ranking Member
United States Senate Committee on Homeland Security and Governmental Affairs

Chuck Grassley, Chairman
Patrick Leahy, Ranking Member
United States Senate Committee on the Judiciary

Jason Chaffetz, Chairman
Elijah Cummings, Ranking Member
United States House Committee on Oversight and Government Reform