

December 9, 2013

VIA CERTIFIED MAIL & EMAIL

The Honorable Darrell E. Issa
Chairman
U.S. House Committee on Oversight & Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Unfair: A billion-dollar corporation profits by buying influence over local politicians.

Unfair: The U.S. Department of Justice (DOJ) prosecutes and imprisons politicians who accept bribes but allows the corporate executives who orchestrated the bribery to go free.

Unfair: A federal agency violates clear regulations to allow a politically favored corporation to peddle U.S. visas in exchange for foreign investments.

Political profiteering is unfair; but it is the business model that has defined the success of a crony company named Forest City Enterprises.

Cause of Action, a government accountability organization, has conducted an 18-month investigation of Forest City Enterprises (FCE), a publicly-traded real estate development corporation, whose business model involves making huge profits through political influence bought via campaign contributions. Enclosed is the final of three reports based on Cause of Action's investigation. Entitled *Political Profiteering: How Forest City Enterprises Makes Private Profits at the Expense of America's Taxpayers*, the final report finds that the DOJ and the U.S. Citizenship and Immigration Services (USCIS) did not follow or failed to enforce federal laws and regulations:

The U.S. Citizenship & Immigration Services and Abuse of the EB-5 Program

The Immigrant Investor Program, or Employment-Based Preference Five ("EB-5"), allows foreigners to apply for a conditional U.S. visa by investing \$500,000 in an area of high unemployment under the Pilot Program.¹ Our report describes how the New York City Regional

¹ *EB-5 Immigrant Investor*, U.S. CITIZENSHIP & IMMIGRATION SERVS.,
<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fac83453d4a3>

Center (NYCRC) and the New York Department of Labor (NYDOL) violated USCIS regulations so that FCR could attract foreign investors for its \$4.9 billion Atlantic Yards development in Brooklyn, New York.

According to USCIS regulations, state agencies must designate regions of high unemployment,² or “targeted employment areas” (TEA), along the boundaries of existing “geographic or political subdivisions.”³ Under existing USCIS policy, however, U.S. Census tracts alone cannot constitute a “geographic or political subdivision.”⁴ Nevertheless, the TEA that NYDOL designed for FCR’s Atlantic Yards development crosses every existing geographical and political boundary in Brooklyn. It also violates federal law by using census tracts as the only basis for the TEA’s boundaries. In short, FCR’s Atlantic Yards project sits in a TEA that appears to have been gerrymandered to secure EB-5 investments.⁵

The rules and administration of the EB-5 program are problematic. For example, as *The Washington Post* reported on September 21, eight career employees at the U.S. Department of Homeland Security (where USCIS is a sub-agency) have claimed that “top managers have given . . . politically connected applicants special treatment [in awarding EB-5 visas].”⁶ Further fiscal

210VgnVCM100000b92ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD (last visited Sept. 4, 2013).

² *Id.* § 204.6(j)(6)(ii).

³ *Id.*

⁴ In December 2010, an EB-5 program “stakeholder” asked USCIS whether “it was acceptable, for purposes of defining a TEA, to link a high unemployment area with census tracts . . . with low unemployment in order to arrive at an aggregate finding of high unemployment when the intent is actually to invest in the low unemployment area.” Exec. Summary, U.S. Citizenship & Immigration Servs., USCIS EB-5 (Immigrant Investor) Stakeholder Quarterly Engagement 3 (Dec. 14, 2010), *available at* <http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2010%20Event%20October%202010/Executive%20Summary%20EB5%20October%2014%202010.pdf>. USCIS took no action and responded merely that TEA determinations must be “based upon valid statistics . . . and comply with [all] statutory requirement[s].” *Id.* In March 2011, USCIS provided more clarification, adding: “[S]tate issued TEA designation[s] must be supported by evidence, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained. PowerPoint Presentation, U.S. Citizenship & Immigration Servs., EB-5 Immigrant Investor Program Stakeholder Meeting, slide 42 (Mar. 17, 2011) (emphasis added), *available at* [http://www.uscis.gov/USCIS/Outreach/Notes from Previous Engagements/2011/March 2011/EB-5-presentation-March-2011.pdf](http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/March%202011/EB-5-presentation-March-2011.pdf). In clarifying “political subdivision,” USCIS defined it as a “division of the state that exists primarily to discharge some function of local government.” *Id.* at slide 48. It is unlikely that a census tract would qualify by itself as a political subdivision, let alone a geographic subdivision. *See* Notice of Intent to Deny, U.S. Citizenship & Immigration Servs. 8-9 (Mar. 11, 2011), *available at* <http://www.eb-5center.com/files/lbvdecisionredacted0002.pdf> (last visited Nov. 26, 2013) (“The plain language of the regulation indicates that TEA must be “a” single geographical or political subdivision . . . Nothing in the regulation suggests that a petitioner may qualify for the reduced investment amount by seeking government confirmation of the fact that adding several high unemployment census tracts to a low unemployment census tract produces a higher average unemployment rate.”).

⁵ Patrick McGeehan & Kirk Sample, *Rules Stretched as Green Cards Go to Investors*, N.Y. TIMES (Dec. 18, 2011), http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all&_r=0.

⁶ Tom Hamburger & Peter Wallsten, *GreenTech fits pattern of investment that has made big profits for Terry McAuliffe*, WASH. POST, (Sept. 21, 2013), *available at* http://www.washingtonpost.com/politics/greentech-formulahas-made-big-profits-for-mcauliffe/2013/09/21/3c6e332c-2136-11e3-b73c-aab60bf735d0_print.html.

misconduct associated with EB-5 is currently being reported at the South Dakota Governor's Office of Economic Development.⁷ These concerns, in addition to ones we raised in a September 24 letter⁸ to you, demonstrate the extent to which the EB-5 program can be abused. Moreover, the program can be used to finance local, state or federal elections. While Federal Election Campaign Act regulations typically prohibit foreign campaign contributions in any U.S. elections, the law makes an exception for contributions from those foreign nationals who have obtained a green card. As such, there is an incentive for local, state, or federal candidates to secure visas for foreign nationals, who can then make lawful campaign contributions back to the candidate. And these political candidates are just the types of individuals with whom a politically powerful company like Forest City Enterprises likes to do business.

The U.S. Department of Justice, Political Favoritism, and Selective Prosecution

In 2012, DOJ prosecuted Yonkers City Council Member Sandy Annabi and Yonkers Republican Party Chairman Zehy Jereis for their involvement in a bribery scheme involving a large commercial real estate development called Ridge Hill Village built by Forest City Ratner (FCR), a subsidiary of FCE, in Yonkers, New York. During the trial, two FCR executives admitted that FCR paid Jereis to bribe Annabi. Bruce Ratner, FCR's CEO, signed off on the contract directing payment to Jereis. Yet, no FCR executive was ever prosecuted for involvement in this scheme.

In 2010, both you and Congressman Lamar Smith (R-TX) noted FCR's political connections in a letter written to U.S. Attorney for the Southern District of New York Preet Bharara, wherein you requested additional information about the Annabi-Jereis case because of concerns that "political favoritism guided [Bharara's] decision not to pursue legal charges against Forest City Ratner and its employees."⁹ The risk that selective prosecution occurred is especially troubling given that both FCE and Bruce Ratner have been generous contributors to the Democratic Party and have numerous personal and political connections with DOJ. Bharara, the former chief counsel to U.S. Senator Charles Schumer (D-NY), was confirmed as U.S. Attorney in 2009.¹⁰ The following year, Senator Schumer received \$5,000 from Forest City Enterprises' Political Action Committee.¹¹ Moreover, Bruce Ratner's sister, Deborah Ratner Salzberg, formerly served on the board of the Meyer Foundation with Attorney General Eric Holder¹² and Bruce Ratner's nephew, Matthew Ratner, once held a political appointment in the

⁷ Dirk Lammers, *Legislator wants audit of EB-5 program in SD*, BUSINESSWEEK (Nov. 21, 2013), <http://www.businessweek.com/ap/2013-11-21/legislator-wants-audit-of-eb-5-program-in-sd>.

⁸ Letter from Cause of Action to Hon. Darrell Issa, U.S. House of Representatives (Sept. 24, 2013), *available at* <http://causeofaction.org/wp-content/uploads/2013/09/2013-9-24-Letter-to-Issa-w-Enclosures.pdf>.

⁹ Letter from Hon. Lamar Smith & Hon. Darrell Issa, U.S. House of Representatives, to Hon. Preet Bharara, U.S. Att'y, S. D. N.Y. (May 20, 2010).

¹⁰ Benjamin Weiser, *Schumer Aide Is Confirmed as United States Attorney*, N.Y. TIMES (Aug. 8, 2009), <http://www.nytimes.com/2009/08/08/nyregion/08bharara.html>.

¹¹ *Forest City Enterprises Contributions to Federal Candidates*, OPEN SECRETS, <http://www.opensecrets.org/pacs/pacgot.php?cmte=C00123513&cycle=2010> (last visited Sept. 18, 2013).

¹² *Board of Directors*, MEYER FOUND., *archived at* http://web.archive.org/web/20071013141432/http://www.meyerfoundation.org/about_meyer/board_of_directors/ (last visited Nov. 24, 2013).

National Security Division of DOJ.¹³ Our investigation lends credence to the concerns you raised in 2010; the enclosed report demonstrates the substantial likelihood that political favoritism informed Mr. Bharara's decision not to prosecute FCR executives for bribery.

Conclusion

Our report shows how crony companies can abuse the law to profit and avoid the rules everyone else must follow. We believe FCE and its subsidiaries' activities, as well as the decisions of DOJ and USCIS, are concerning. Therefore, we request that the Oversight Committee examine USCIS's treatment of regional centers' TEA designations and determine whether undue political influence affected DOJ's decision not to prosecute FCE. Thank you for your attention to this matter.

Sincerely,

DANIEL EPSTEIN
EXECUTIVE DIRECTOR

Encl.: Cause of Action, *Political Profiteering: How Forest City Enterprises Makes Private Profits at the Expense of America's Taxpayers* (Dec. 4, 2013), available at <http://causeofaction.org/our-work/forest-city-enterprises/>.

cc: Hon. Elijah Cummings, Ranking Member, U.S. House Committee on Oversight and Government Reform

Hon. Michael McCaul, Chairman, U.S. House Committee on Homeland Security

Hon. Bennie G. Thompson, Ranking Member, U.S. House Committee on Homeland Security

Hon. Tom Carper, Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

Hon. Tom Coburn, Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

Senator Patrick Leahy, Chairman, U.S. Senate Committee on the Judiciary

¹³ John M. O'Hara, *Ratner Family Ties: ACORN and Justice Department Plot Thickens*, BREITBART (Nov. 12, 2009), <http://www.breitbart.com/Big-Government/2009/11/12/Ratner-Family-Ties--ACORN-and-Justice-Department-Plot-Thickens>.

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Hon. Charles Grassley, Ranking Member, U.S. Senate Committee on the Judiciary

Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services

Sean McKessy, Chief, Office of the Whistleblower, U.S. Securities and Exchange Commission