

C A M P A I G N F O R

ACCOUNTABILITY

May 14, 2019

By First Class Mail

The Honorable Julie E. Adams
Secretary of the Senate
Room S-312
U.S. Capitol
Washington, D.C. 20510-7116

The Honorable Cheryl L. Johnson
Clerk of the U.S. House of Representatives
Room H154
U.S. Capitol
Washington, D.C. 20510-6601

Re: Lobbying Disclosure Act Violations

Dear Secretary Adams and Clerk Johnson:

Campaign for Accountability (“CfA”) respectfully requests that you open an investigation regarding possible violations of the Lobbying Disclosure Act (“LDA” or “the Act”) by the lobbying firm of Brownstein Hyatt Farber Schreck, LLP (“Brownstein”) and one of its lobbyists, Luke Johnson, in connection with their representation of Northeast Maglev, a company seeking to build a high-speed train along the Northeast Corridor. According to emails between Interior officials and Brownstein employees, Mr. Johnson appears to have met with Interior officials in December 2017, but Brownstein did not disclose Mr. Johnson’s representation or the lobbying contact on its Fourth Quarter 2017 Lobbying Disclosure Report filed on behalf of Northeast Maglev.

Background

On July 14, 2017, Brownstein filed a lobbying registration on behalf of Northeast Maglev.¹ Brownstein said the effective date of the registration was June 1, 2017 and included six lobbyists on its registration.² Brownstein subsequently filed quarterly reports on behalf of

¹ Brownstein Hyatt Farber Schreck, LLP, 2017 Lobbying Registration Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=0BF85E6E-1774-4DAF-AF33-67E7D54D1FDB&filingTypeID=1>.

² *Id.*

Northeast Maglev for the second, third, and fourth quarters of 2017.³ The Fourth Quarter 2017 Lobbying Disclosure Report lists four lobbyists, all of whom were included in Brownstein's registration on behalf of Northeast Maglev.⁴ Notably, the list does not include Luke Johnson, and Brownstein did not report any lobbying contacts with the Department of the Interior on any of its 2017 disclosure reports filed on behalf of Northeast Maglev.⁵

Mr. Johnson, the former deputy director of the Bureau of Land Management at the Department of the Interior, joined Brownstein in 2013, and he registered as a lobbyist for the firm in April 2013.⁶ On October 4, 2017, Brownstein announced that Mr. Johnson would be a co-leader of the firm's Energy, Environment & Resource Strategies Group.⁷ During the fourth quarter of 2017, Mr. Johnson was listed as a lobbyist for 14 different clients of Brownstein, though he is not included on the disclosure report filed on behalf of Northeast Maglev.⁸

Emails between Interior officials and Brownstein employees as well as official calendars indicate, however, that Mr. Johnson apparently lobbied the Department of the Interior on behalf of Northeast Maglev in the Fourth Quarter of 2017. The emails were obtained through a Freedom of Information Action ("FOIA") request submitted by Western Values Project, a government watchdog group.⁹ On December 5, 2017, Holly Noles, executive assistant at Brownstein, sent an email to Catherine Gulac, administrative assistant in the Office of the Deputy Secretary, requesting a meeting with Todd Willens, the Associate Deputy Secretary of the Interior.¹⁰ Ms. Noles wrote:

³ Brownstein Hyatt Farber Schreck, LLP, Second Quarter 2017 Lobbying Disclosure Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=286A69FF-6442-4C26-8C72-018D8A090235&filingTypeID=60>; Brownstein Hyatt Farber Schreck, LLP, Third Quarter 2017 Lobbying Disclosure Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2B5201AD-6966-4DA4-9E88-F9788698156B&filingTypeID=69>; Brownstein Hyatt Farber Schreck, LLP, Fourth Quarter 2017 Lobbying Disclosure Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=A1363522-076A-4FC6-BEC1-8357802B26F7&filingTypeID=78>.

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.linkedin.com/in/luke-johnson-4794a535>; Brownstein Hyatt Farber Schreck, LLP, First Quarter 2013 Lobbying Disclosure Report on behalf of WPX Energy, Inc., Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=56EC046F-DEF5-4C53-8B0D-A766040F79AA&filingTypeID=51>; <https://www.bhfs.com/people/policy/ldjohnson>.

⁷ <https://www.bhfs.com/news/2017/brownstein-announces-new-leadership-and-new-shareholder-to-its-energy-environment-resource-strategies-group>.

⁸ Lobbyist Search, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=selectfields>.

⁹ See <https://www.documentcloud.org/documents/5788119-001122ca-20190306-Redacted.html>.

¹⁰ Press Release, Secretary Ryan Zinke Appoints Veteran Interior Official Todd Willens as Assistant Deputy Secretary of the Interior, *Department of the Interior*, July 12, 2017, *available at* <https://www.doi.gov/pressreleases/secretary-ryan-zinke-appoints-veteran-interior-official-todd-willens-assistant-deputy>.

Hi Cathy- We spoke on the phone this morning about a meeting with Mr. Willens and The Northeast Maglev. If the 10-11AM spot next Thursday, December 14th is still available we will gladly take it. Attendees will include:

The Northeast Maglev

Jeffrey Hirschberg

Ian Rainey

David Henley

Brownstein Hyatt Farber Schreck

Luke Johnson

If you need any other information please let me know. Thank you for your help with this.¹¹

Ms. Gulac agreed to schedule the meeting for December 14, 2017 at 1:00.¹² Ms. Gulac also indicated that other Interior officials would attend the meeting including Principal Deputy Solicitor Daniel Jorjani and Principal Deputy Assistant Secretary Jason Larrabee.¹³ However, follow up emails indicate Ms. Gulac rescheduled the meeting to an earlier time. She wrote in an email on December 13, 2017: “Can your group come in earlier, at 10:30 -11:00 for their meeting? Please call me at 202-208-1739.”¹⁴ While CfA was unable to identify any other emails regarding the meeting, Mr. Willens’ calendar indicates he and other Interior officials met with Northeast Maglev officials and Mr. Johnson at 11:30 am on December 14, 2017.¹⁵

Although Mr. Johnson appears to have met with Interior officials, Brownstein did not disclose the lobbying contact with Interior or Mr. Johnson’s role on its Fourth Quarter 2017 Lobbying Disclosure Report filed on behalf of Northeast Maglev.¹⁶ The report for that period, however, discloses lobbying contacts by four other Brownstein lobbyists with several other agencies including the Department of Transportation and the White House.¹⁷

Ten months later, Brownstein finally disclosed Mr. Johnson’s work on behalf of Northeast Maglev on its Third Quarter 2018 Lobbying Disclosure Report.¹⁸ That report is also

¹¹ Email from Holly A. Noles to Catherine Gulac, Dec. 5, 2017, attached as Exhibit A.

¹² Email from Catherine Gulac to Holly A. Noles, Dec. 5, 2017, included with Exhibit A.

¹³ *Id.*

¹⁴ Email from Google Calendar to Catherine Gulac, Dec. 13, 2017, attached as Exhibit B.

¹⁵ Todd Willens, Calendar Entry, Dec. 14, 2017, Department of the Interior, pg. 219, *available at* https://www.doi.gov/sites/doi.gov/files/uploads/todd_willens_calendar_july_3_2017_-_may_3_2018.pdf.

¹⁶ Brownstein Hyatt Farber Schreck, LLP, Fourth Quarter 2017 Lobbying Disclosure Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=A1363522-076A-4FC6-BEC1-8357802B26F7&filingTypeID=78>.

¹⁷ *Id.*

¹⁸ Brownstein Hyatt Farber Schreck, LLP, Third Quarter 2018 Lobbying Disclosure Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=934078B1-C448-44B9-B5DF-CEDA8FB2591C&filingTypeID=69>.

the first time that Brownstein disclosed lobbying the Department of the Interior on behalf of Northeast Maglev.¹⁹

Violations of the Lobbying Disclosure Act

Mr. Johnson and Brownstein appear to be in violation of the Lobbying Disclosure Act. The firm appears to have filed an inaccurate Lobbying Disclosure Report for the fourth quarter of 2017 on behalf of Northeast Maglev.

As you know, the Lobbying Disclosure Act defines the term “lobbying contact” broadly to include “any oral or written communication . . . to a covered executive branch official . . . that is made on behalf of a client with regard to . . . the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government; the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license).”²⁰ Similarly, the definition of “covered executive branch official” is broadly defined to include, among others, “any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character...”²¹

On December 14, 2017, Mr. Johnson appears to have met with several covered executive branch officials at the Interior Department including Todd Willens, Associate Deputy Secretary, Daniel Jorjani, Principal Deputy Solicitor, Jason Larrabee, Principal Deputy Assistant Secretary, Ann Navaro, Counselor to the Solicitor, and Maureen Foster, Chief of Staff to the Assistant Secretary for Fish and Wildlife and Parks.²² This meeting clearly constituted a reportable lobbying contact under the Lobbying Disclosure Act. Mr. Johnson arranged the meeting on behalf of Northeast Maglev to educate Interior officials about the company’s high-speed rail project and discuss a forthcoming “preliminary alternatives report.”²³ Company officials had previously met with “local, on the ground National Park Service personnel.”²⁴

As you know, a lobbying firm registered with the Senate and the House of Representatives under the Lobbying Disclosure Act is required to file quarterly activity reports each of which must include “a list of the employees of the registrant who acted as lobbyists on

¹⁹ *Id.*

²⁰ 2 U.S.C. §§ 1602(8)(A)(ii)-(iii).

²¹ 2 U.S.C. § 1602(3)(F).

²² Todd Willens, Calendar Entry, Dec. 14, 2017, Department of the Interior, pg. 219, *available at* https://www.doi.gov/sites/doi.gov/files/uploads/todd_willens_calendar_july_3_2017_-_may_3_2018.pdf; <https://www.vnf.com/van-ness-feldman-welcomes-former-doi-principal-deputy>; Press Release, Interior Announces 19 New Hires, Department of the Interior, *Department of the Interior*, May 26, 2017, *available at* <https://www.doi.gov/pressreleases/interior-announces-19-new-hires>; <https://bracewell.com/people/ann-d-navaro>; https://www.fws.gov/irm/bpim/docs/lions/Lion_Part_12.pdf; Press Release, Secretary Ryan Zinke Appoints Veteran Interior Official Todd Willens as Assistant Deputy Secretary of the Interior, *Department of the Interior*, July 12, 2017, *available at* <https://www.doi.gov/pressreleases/secretary-ryan-zinke-appoints-veteran-interior-official-todd-willens-assistant-deputy>.

²³ Email from Holly A. Noles to Catherine Gulac, Dec. 5, 2017, include with Exhibit A.

²⁴ *Id.*

Ms. Julie E. Adams and Ms. Cheryl L. Johnson

May 14, 2019

Page 5

behalf of the client.”²⁵ In this case, it appears Mr. Johnson acted as a lobbyist on behalf of Northeast Maglev in December 2017, yet Brownstein filed an inaccurate Fourth Quarter 2017 Lobbying Disclosure Report by failing to disclose the lobbying contacts with Interior officials and failing to include Mr. Johnson’s lobbying activity in apparent violation of 2 U.S.C. § 1604(b)(2)(C).²⁶

Finally, Brownstein’s apparent inability to file accurate lobbying disclosure reports calls into question the firm’s commitment to the transparency required by the LDA. As CfA has explained in previous letters, Brownstein appears to have filed inaccurate lobbying disclosure reports regarding David Bernhardt’s representation of the Westlands Water District (“Westlands”).²⁷ Mr. Bernhardt, who is now the Secretary of the Interior, previously worked as a lobbyist for Brownstein where he lobbied on behalf of Westlands, an agricultural conglomerate in California. Brownstein appears to have filed inaccurate lobbying disclosure reports concerning Mr. Bernhardt’s representation of Westlands during the fourth quarter of 2016 and first quarter of 2017 when Mr. Bernhardt appears to have continued lobbying on behalf of Westlands despite having formally deregistered as a lobbyist.

Conclusion

Brownstein Hyatt Farber Schreck and Luke Johnson appear to have violated the Lobbying Disclosure Act by failing to disclose Mr. Johnson’s lobbying contacts with Interior officials. Therefore, CfA respectfully requests that you initiate an investigation and take all appropriate action to ensure compliance with the Act as required by 2 U.S.C. § 1605(a)(7)&(8).

Sincerely,



Daniel Stevens
Executive Director

²⁵ 2 U.S.C. § 1604(b)(2)(C).

²⁶ Brownstein Hyatt Farber Schreck, LLP, 2017 Lobbying Registration Report on behalf of The Northeast Maglev, LLC, Secretary of the Senate, Office of Public Records, *available at* <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=0BF85E6E-1774-4DAF-AF33-67E7D54D1FDB&filingTypeID=1>.

²⁷ Letter from Daniel Stevens, Executive Director of Campaign for Accountability, to Channing D. Phillips, U.S. Attorney for the District of Columbia, July 20, 2017, *available at* <https://campaignforaccountability.org/cfa-asks-doj-to-investigate-interior-department-nominee-for-lobbying-disclosure-violations/>; Letter from Daniel Stevens, Executive Director of Campaign for Accountability, to Julie E. Adams, Secretary of the Senate, Cheryl L. Johnson, Clerk of the House of Representatives, and Jessie K. Liu, U.S. Attorney for the District of Columbia, Apr. 5, 2019, *available at* <https://campaignforaccountability.org/work/second-letter-calling-for-investigation-of-interior-nominee-david-bernhardt-for-lobbying-disclosure-violations/>.

EXHIBIT A

To: 'Gulac, Catherine'[catherine_gulac@ios.doi.gov]
From: Noles, Holly A.
Sent: 2017-12-07T09:21:34-05:00
Importance: Normal
Subject: RE: Meeting Request for Mr. Todd Willens
Received: 2017-12-07T09:21:51-05:00

Hi Cathy- We will take 1PM. Thank you for your help in setting this up.

Holly Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1155 F Street N.W., Suite 1200

Washington, DC 20004

202.652.2352 tel

HNOLES@bhfs.com

From: Gulac, Catherine [mailto:catherine_gulac@ios.doi.gov]
Sent: Tuesday, December 05, 2017 4:34 PM
To: Noles, Holly A.
Subject: Re: Meeting Request for Mr. Todd Willens

Hi Holly,

Please let me know if your group can make a 1:00 p.m. meeting on Thursday, Dec 14. Todd would like to invite Dan Jorjani (SOL) and Jason Larrabee (AS/FWP) and this is the only block of time when all three are available.

Thanks!

Cathy

Catherine Gulac
U.S. Department of the Interior
Office of the Deputy Secretary
1849 C St, NW, MS 7328
Washington, D.C. 20240
202 208 6291 Office / 202 208 1739 Direct / 202 208 1873 Fax
Catherine_Gulac@ios.doi.gov

On Tue, Dec 5, 2017 at 3:32 PM, Noles, Holly A. <HNOLES@bhfs.com> wrote:

The purpose of the meeting is to discuss a superconducting magnetic levitation train in the Northeast Corridor, starting in DC. It would be an overview of the project as well as a discussion about a preliminary alternatives report that will be coming out soon. They have met with local, on the ground National Park Service personnel.

Holly Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1155 F Street N.W., Suite 1200

Washington, DC 20004

202.652.2352 tel

HNOLES@bhfs.com

From: Gulac, Catherine [mailto:catherine_gulac@ios.doi.gov]
Sent: Tuesday, December 05, 2017 3:19 PM
To: Noles, Holly A.
Subject: Re: Meeting Request for Mr. Todd Willens

Hi Holly,

What is the purpose of the meeting and have they worked with anyone else/bureau/office at DOI?

Thanks.

Cathy

Catherine Gulac
U.S. Department of the Interior
Office of the Deputy Secretary
1849 C St. NW, MS 7328
Washington, D.C. 20240
202 208 6291 Office / 202 208 1739 Direct / 202 208 1873 Fax
Catherine_Gulac@ios.doi.gov

On Tue, Dec 5, 2017 at 3:16 PM, Noles, Holly A. <HNOLES@bhfs.com> wrote:
Hi Cathy- We spoke on the phone this morning about a meeting with Mr. Willens and The Northeast Maglev. If the 10-11AM spot next Thursday, December 14th is still available we will gladly take it. Attendees will include:

The Northeast Maglev

Jeffrey Hirschberg

Ian Rainey

David Henley

Brownstein Hyatt Farber Schreck

Luke Johnson

If you need any other information please let me know. Thank you for your help with this.

-Holly

Holly Noles

Executive Assistant
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004
202.652.2352 tel
HNOLES@bhfs.com

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling

(303)-223-1300 and delete the message. Thank you.

EXHIBIT B

To: catherine_gulac@ios.doi.gov[catherine_gulac@ios.doi.gov];
hnoles@bhfs.com[hnoles@bhfs.com]
From: Google Calendar
Sent: 2017-12-13T12:25:39-05:00
Importance: Normal
Subject: [Update] External Meeting - The Northeast MAGLEV Co.
Received: 2017-12-13T12:25:45-05:00

Hi Holly,

I have a scheduling conflict on Todd's calendar. Can your group come in earlier, at 10:30 -11:00 for their meeting?

Please call me at 202-208-1739.

Thanks!

Cathy

External Meeting - The Northeast MAGLEV Co.

Attendees:

Luke Johnson
Jefferey Hirschberg
Ian Raimey
David Henley

The purpose of the meeting is to discuss a superconducting magnetic levitation train in the Northeast Corridor, starting in DC. It would be an overview of the project as well as a discussion about a preliminary alternatives report that will be coming out soon. They have met with local, on the ground National Park Service personnel.

Holly Noles
Executive Assistant
Brownstein Hyatt Farber Schreck, LLP
1155 F Street N.W., Suite 1200
Washington, DC 20004
202.652.2352 tel
HNOLES@bhfs.com

When Thu Dec 14, 2017 11:30am – 12pm Eastern Time

Where 6120 ([map](#))

Video call (b) (5), (b) (6)

Who

- catherine_gulac@ios.doi.gov organizer
- daniel.jorjani@sol.doi.gov
- jason_larrabee@ios.doi.gov
- todd_willens@ios.doi.gov
- tasha_l_robbins@ios.doi.gov optional
- maureen_foster@ios.doi.gov optional