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Via Online Portal and Email

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Freedom of Information Act Request: Merrick B. Garland, Alexander Tanner aka “Xan” Tanner, and Panorama Education, Inc.

Dear Mr. Hibbard:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Introduction

Panorama Education, Inc. (Panorama) is a closely held, self-described seller of software and services to K-12 schools.¹ It claims to help “state and district leaders build

¹ Compare Panorama Education, Inc., *Commonwealth of Massachusetts Annual Report* (3/26/2021) <https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearchViewPDF.aspx>; Panorama Education,

capacity within their systems to drive strategic initiatives on equity and inclusion and plan next steps to cultivate equitable, culturally responsive schools” and to “provide key insights into gaps between teacher groups by gender, race/ethnicity, and other key indicators to ensure that professional development opportunities are impacting all teacher and staff groups equitably.”² In simple terms, Panorama sells race-focused student and teacher surveys, data management tools, and training on systemic racism and oppression, white supremacy, implicit bias, and intersectionality, often under the rubric of “Social-Emotional Learning.” The business model depends on the credulous willingness of school districts to embrace extreme Critical Race Theory and gender ideology indoctrination of America’s K-12 schoolchildren, indoctrination paid for by unwitting local and federal taxpayers, all to generate return for Panorama’s leftist billionaire corporate investors.

For example, according to public data, Panorama has had eight funding rounds totaling approximately \$92.7 million since 2013.³ Investors reportedly include technology and financial sector oligarchs Laurene Powell Jobs (Apple/Emerson Collective), Priscilla Chan Zuckerberg (Facebook/Chan Zuckerberg Foundation), Nick Pritzker (Hyatt Development Corporation/Tao Capital Partners) and others.⁴ Notwithstanding these billionaire funding sources, Panorama promises school districts “most districts find funds for Panorama in the general budget” paid for by local taxpayers “or federal funding sources” paid for by federal taxpayers, while “several private, non-profit, and corporate grants align with the work that Panorama supports in schools.”⁵

Inc., *Commonwealth of Massachusetts Annual Report* (3/12/2020) <https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearchResults.aspx>. These summary reports show, among other things, the apparent disappearance of approximately 18,000,000 shares of stock between the 2020 and 2021 reporting years.

² Panorama Education, Inc., *Funding & Grants for Panorama* (accessed Oct. 11, 2021) <https://www.panoramaed.com/funding>.

³ Crunchbase, *Panorama Education* (accessed Oct. 11, 2021) https://www.crunchbase.com/organization/panorama-education/company_financials; Adam Andrzejewski, *Panorama Education, Owned by U.S. AG Merrick Garland’s Son-In-Law, Contracted with 23,000 Public Schools & Raised \$76M From Investors*, FORBES (Oct. 12, 2021) <https://www.forbes.com/sites/adamandrzejewski/2021/10/12/panorama-education-owned-by-us-ag-merrick-garlands-son-in-law-contracted-with-23000-public-schools-for-social--emotional-climate-surveys/?sh=35ece0314e60>.

⁴ *Id.*; see e.g. Emerson Collective XQ Institute, *Evolving the Common App: The First Step Toward Anti-Racist College Admissions* <https://xqsuperschool.org/rethinktogether/common-app-anti-racist-college-admissions/> (accessed Oct. 11, 2021); Claire Cain Miller, “Lauren Powell Jobs and Anonymous Giving in Silicon Valley”, THE NEW YORK TIMES (May 24, 2013) <https://bits.blogs.nytimes.com/2013/05/24/laurene-powell-jobs-and-anonymous-giving-in-silicon-valley/?r=0&mtrref=undefined&gwh=EEEBAF592664CAFD0853F049C9E86172&gwt=pay&assetType=PAYWALL>; General Atlantic, *About Us*, <https://www.generalatlantic.com/about-us/> (accessed Oct. 11, 2021). Notably, General Atlantic, a key Panorama investor that claims to invest responsibly, also invests in corporations tied to or instrumentalities of the Chinese Communist Party. See *id.*, <https://www.generalatlantic.com/portfolio/> (accessed Oct. 11, 2021).

⁵ Panorama Education, Inc., *Funding & Grants for Panorama* (last visited Oct. 11, 2021) <https://www.panoramaed.com/funding>.

Allegedly, Panorama’s corporate secretary is Alexander Tanner, Attorney General Merrick B. Garland’s son-in-law.⁶ Upon information and belief, Tanner currently has an equity stake in and is paid by Panorama.

Americans have a fundamental liberty interest in, and the Constitutional right to control and direct, the education of their own children.⁷ Accordingly, parents across the nation are speaking out against Critical Race Theory and other forms of anti-religious, anti-family public school indoctrination. And as prominent members of the Democrat party⁸ currently campaign on the platform that parents should not have a say over what is taught in schools,⁹ the President’s top attorney is activating law enforcement to ensure that they do not. On October 4, 2021, the Attorney General issued a Memorandum to the Federal Bureau of Investigation, the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and all

⁶ According to Panorama’s corporate filings, its officers and directors are Aaron Feuer, President, 24 School Street, 4th Floor, Boston, MA 02108; Alexander Tanner, Secretary (same address); Amit Patel, Director, 400 Pacific Avenue, 3d Floor, San Francisco, CA 94133; Ross Jensen, Director, 555 Bryant Street, #259 Palo Alto, CA 94301; and Alex Finkelstein, Director, 137 Newbury Street, 8th Floor, Boston, MA 02116.

⁷ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O’Connor, J.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

⁸ The Virginia gubernatorial race is considered a “bellwether” for upcoming Congressional elections. See, Zach Montellaro and Stephanie Murray, *It’s Go Time in Tight Virginia Race*, POLITICO (Oct. 11, 2021) <https://www.politico.com/newsletters/weekly-score/2021/10/11/its-go-time-in-tight-virginia-race-798136> (“We are just 22 days away from Election Day in the Virginia gubernatorial race, which has long been considered a political bellwether”); Christopher Cadelago, *‘People Are Going to Get Skit-tish.’ White House Sweats Over McAuliffe*, POLITICO (Sep. 28, 2021) <https://www.politico.com/news/2021/09/28/white-house-mcauliffe-514455> (“President Joe Biden can’t afford Terry McAuliffe to lose the governor’s race in Virginia – and the White House knows it”); Henry Gomez, *Obama to Campaign for McAuliffe in Tight Race for Virginia Governor*, NBC NEWS (Oct. 12, 2021) <https://www.nbcnews.com/politics/elections/obama-campaign-mcauliffe-tight-race-virginia-governor-n1281321> (“Virginia holds its election for governor every four years in the year after a presidential election, making the contest both a referendum on the party in the White House and a bellwether for the following year’s midterm races”). Moreover, the political importance of this election is demonstrated by the fact that the current President and most recent former president from the same party are campaigning for McAuliffe. See, Rachel Bade, *POLITICO Playbook PM*, POLITICO (Oct. 12, 2021) <https://www.politico.com/newsletters/playbook-pm/2021/10/12/pelosi-floats-a-debt-ceiling-plan-b-494667?tab=most-read> (“Former President Barack Obama is planning to rally for Terry McAuliffe next week ... And despite all that has been made of McAuliffe’s apparent distancing from President Joe Biden, the former governor said today that Biden will return to the campaign trail before voters go to the polls.”); Tara Palmeri, *POLITICO Playbook PM: Does McAuliffe Have a Biden Problem?*, Politico (Oct. 6, 2021) <https://www.politico.com/newsletters/playbook-pm/2021/10/06/does-mcauliffe-have-a-biden-problem-494600>.

⁹ See, Brittany Bernstein, *McAuliffe Argues Parents Shouldn’t Have Control over Public School Curriculum*, NATIONAL REVIEW (Sep. 29, 2021) <https://www.nationalreview.com/news/mcauliffe-argues-parents-shouldnt-have-control-over-public-school-curriculum/>; Michael Lee, *McAuliffe Says He Doesn’t Believe Parents Should Tell Schools What to Teach*, FOX NEWS (Sep. 28, 2021) <https://www.foxnews.com/politics/mcauliffe-says-he-doesnt-believe-parents-should-control-what-schools-teach>.

United States Attorneys apparently to chill parents from challenging both such indoctrination and the payments to firms such as Panorama needed to carry it out.¹⁰ Given that his son in law has a direct financial interest in this agenda item, it raises questions as to the propriety of the Attorney General's order, and whether he stands to gain financially from it.¹¹

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States. We are concerned the Attorney General may have violated applicable conflict of interest laws and regulations because the department's regulations prohibit an employee from participating, without authorization, in a particular matter having specific parties that could affect the financial interests of his household. Therefore, pursuant to the Freedom of Information Act (FOIA)¹² we request the records specified below.

II. Custodians

- A. The Office of the Attorney General
- B. The Office of Professional Responsibility
- C. The Office of Public Affairs
- D. The Office of Legislative Affairs
- E. The Office of the White House Liaison
- F. The Justice Management Division

III. Requested Records

A. All Public Financial Disclosure Reports (Forms SF-278 and Forms 278-T) for Merrick B. Garland and records related thereto. This includes any waivers, or requests for waivers, pursuant to the federal financial conflicts of interests statute,

¹⁰ <https://www.justice.gov/ag/page/file/1438986/download>; see also Sen. Ted Cruz, Sen. Mike Lee, and Sen. Marsha Blackburn, Letter to the Hon. Merrick Garland, Attorney General (Oct. 8, 2021) <https://www.cruz.senate.gov/imo/media/doc/202110.08crtlettertoaggarland.pdf>.

¹¹ Federal ethics regulations provide that, "where the employee determines that the circumstances would cause a reasonable person with knowledge of relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee...." 5 C.F.R. § 2635.502(a).

¹² 5 U.S.C. § 552(a).

18 U.S.C. § 208, or any authorizations, or requests for authorizations, pursuant to the federal impartiality regulations, 5 C.F.R. § 2635.502. The relevant time is January 1, 2017, to the date this Item is processed.

B. All records mentioning or referring to Alexander Tanner aka “Xan” Tanner. The relevant time is January 1, 2021, to the date this Item is processed.

C. All records mentioning or referring to Panorama. The relevant time is September 1, 2021, to the date this Item is processed.

D. All records of communications between the department and any person with an email address containing “eop.gov” regarding or referring to (1) Merrick B. Garland, or (2) Alexander Tanner aka “Xan” Tanner, and/or (3) Panorama. The relevant time is October 1, 2021, to the date this Item is processed.

IV. Redactions

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL’s requests and make a good faith effort to search for requested records using methods “which can be reasonably expected to produce the information requested.” At all times, FOIA must be construed to carry out Congress’s open government mandate according to the ordinary public meaning of its terms at the time of its enactment.¹³

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the department must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. Consequently, the department should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” broadly, giving full effect to applicable law, including 44 U.S.C. 3301(a).
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request,

¹³ 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

then our request includes all prior messages sent or received in that email chain, as well as any attachments.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold.

V. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the

requester.” AFL’s request concerns identifiable operations or activities of the government, and the information requested regarding the Attorney General’s compliance with department ethics regulations is likely to contribute significantly to the public understanding such activities.

AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL’s financial interest. Our status as a qualified non-commercial public education and news media requester previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

VI. Expedited Processing

The department must grant expedited processing to requests involving an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.¹⁴ By this test, AFL should be granted expedited processing on Items A, B, and C. First, the department and other federal agencies have acknowledged AFL is primarily engaged in disseminating information. Second, the Attorney General’s compliance with ethic rules is assuredly a matter of “actual or alleged Federal Government activity.” Third, the common public meaning of “urgency” at the time of § 552(a)(6)(E)(v)(II)’s enactment was “the quality or state of being urgent.” The common public meaning of “urgent”, in turn, was “requiring or compelling speedy action or attention.”¹⁵ The controversy regarding the Attorney General’s Memorandum of October 4, 2021, continues to metastasize. The public’s urgent interest in the Attorney General’s ethical compliance, or lapses, with respect to the deployment of federal law enforcement resources against American parents speaking out at school board meetings cannot be gainsaid.

In the alternative, the department should grant AFL expedited processing of Items A, B, and C under the department’s expanded regulatory test for matters of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence, even if it concludes AFL fails the statutory test. *See* 28 C.F.R. § 16.5(e)(1)(iv). The Attorney General’s October 4,

¹⁴ 5 U.S.C. §§ 552(a)(6)(E)(i)(I), 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. §§ 16.5(e)(ii).

¹⁵ The FOIA must be interpreted in accord with the ordinary public meaning of its terms at the time of enactment. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

2021, memorandum, and the issue of his family’s economic interest in its subject matter, have become one of the most pressing of the day.¹⁶ Accordingly, AFL’s expedited processing request should be granted.

Also in the alternative, the Circuit test for expedited processing requires the department to weigh three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.¹⁷ AFL meets this test as well. Respecting factor one, as noted above, the Attorney General’s October 4, 2021, memorandum and his possible ethical violations are assuredly matters of public concern and media interest and central to a pressing issue of the day. Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding Critical Race Theory, gender ideology, and federal abuse and overreach. Being closed off from the opportunity to debate the department’s conduct here, including its potential use of its various authorities against parents who speak out against racist propaganda and inappropriate sexual material itself is a harm in an open democracy.¹⁸

¹⁶ See, e.g., Brittany Bernstein, *Parents Group Sounds Alarm Over AG Garland’s Ties to Pro-CRT, Zuckerberg-Backed Consultancy*, NATIONAL REVIEW (Oct. 7, 2021) <https://www.nationalreview.com/news/parents-group-sounds-alarm-over-ag-garlands-ties-to-pro-crt-zuckerberg-backed-consultancy/>; Jerry Dunleavy, *GOP Senators Rise Conflict of Interest Concerns Over Garland’s Son-In-Law’s Education Company*, WASHINGTON EXAMINER (Oct. 10, 2021) <https://www.washingtonexaminer.com/news/gop-senators-raise-conflict-interest-concerns-garland-son-in-law-company-panorama-education>; Elizabeth Elkind, *Daughter of Attorney General Who Ordered DOJ to Probe Angry Parents for Domestic Terrorism is Married to Founder of Education Group that Promotes Critical Race Theory: Merrick Garland Accused of a Conflict of Interest*, DAILY MAIL (Oct. 7, 2021) <https://www.dailymail.co.uk/news/article-10069425/Garland-accused-conflict-ties-education-group-promoting-Critical-Race-Theory.html>.

¹⁷ *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

¹⁸ In *Protect Democracy Project*, the District Court reasoned:

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute “urgent” then certainly, then the Attorney General’s conduct here and his role in chilling parents’ speech do as well.

Disclosing relevant records months or even years from now will be of academic interest only, for any damage will have been done and stale information is of little value.¹⁹ Respecting factor three, AFL's Items certainly involve "federal government activity."

Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL's FOIA requests and the extremely limited time window.

Finally, by way of this letter, AFL certifies its compelling need for expedited processing of Items A, B, and C for the purposes of 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(3).

VII. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VIII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver and for expedited processing are not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein
Reed D. Rubinstein
America First Legal Foundation

¹⁹ See *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).