

TESTIMONY OF PAUL R. MOORE

**FORMER CHIEF INVESTIGATIVE COUNSEL
U.S. DEPARTMENT OF EDUCATION**

**BEFORE THE HOUSE SUBCOMMITTEE ON HIGHER EDUCATION AND
WORKFORCE DEVELOPMENT**

July 13, 2023

“Exposing the Dangers of the Influence of Foreign Adversaries on College Campuses”

Good morning Chairman Owens, Ranking Member Wilson, and members of the Committee. I am Paul Moore, Senior Counsel for the Defense of Freedom Institute for Policy Studies. I previously served as Chief Investigative Counsel for the U.S. Department of Education and, before that, I served for several years as an Assistant U.S. Attorney and in other roles at the U.S. Department of Justice.

Section 117’s Simple Disclosure Requirements

As Chief Investigative Counsel, much of my role involved investigating compliance by America’s colleges and universities with what is commonly referred to as “Section 117” – the statutory requirement that America’s colleges and universities, if they receive any federal funding, timely report qualifying foreign gifts and contracts to the Department of Education.¹

The reports are to occur twice a year and are to disclose any foreign gifts and contracts, for which the value – including the combined value – is \$250,000 or more in a year.

Section 117 reporting requirements are neither complicated nor burdensome. Section 117 does not bar or limit the amount of foreign gifts and contracts that our colleges and universities may accept. It merely requires that universities accurately and timely report those foreign gifts and contracts to the Department of Education twice a year.

The Department’s role is to enforce Section 117’s statutory disclosure requirements. With that information in hand, the American people and policy makers are equipped to protect against the potentially distorting influence of foreign money, including its threat to our national security.

Section 117 Enforcement Failures

Unfortunately, the Department’s enforcement efforts have, historically, been uneven at best.

¹ 20 U.S.C. 1011f (“Disclosure of Foreign Gifts”).

For example, in 2004, the Department began permitting colleges and universities to provide donor anonymity when reporting foreign gifts and contracts under Section 117. This practice, called “anonymizing,” directly undermined congressional intent that foreign donor identities be revealed.

This green light to friend and foe alike resulted in a dramatic increase in the flow of foreign money to higher education, beginning around 2009, particularly from China, Russia, Saudi Arabia, Qatar, and other countries.

Academia as a Soft Target

In 2011, the FBI issued white paper entitled “Higher Education and National Security: The Targeting of Sensitive, Proprietary, and Classified Information on Campuses of Higher Education.”² It warned that foreign adversaries and competitors seek to take advantage of the American higher education and research enterprise to improve their economies and militaries by stealing intellectual property to gain advantages over the U.S.

In February 2019, U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs issued a bipartisan report entitled “China’s Impact on the U.S. Education System.”³

That bipartisan Senate Report found that:

- *Foreign government spending at U.S. schools is “effectively a black hole” because up to 70% of all U.S. colleges and universities were failing to report foreign gifts and contracts as required by Sec. 117;*
- *Because U.S. colleges and universities routinely fail to report foreign gifts and contracts, the American people lack an accurate and complete picture of foreign influence, including from the Chinese govt;*
- *Academic freedom at U.S. colleges and universities may be compromised by undisclosed foreign gifts and contracts.*

² “Higher Education and National Security: The Targeting of Sensitive, Proprietary and Classified Information on Campuses of Higher Education,” Federal Bureau of Investigation (Apr. 2011), available at <https://www.fbi.gov/file-repository/higher-education-national-security.pdf/view>.

³ “China’s Impact on the U.S. Education System,” U.S. Senate Permanent Subcommittee on Investigations (Feb. 2019), available at <https://www.govinfo.gov/content/pkg/CHRG-116shrg36158/html/CHRG-116shrg36158.htm>.

The Senate Report found that China’s “soft power” operations deliberately encourage American “complacency towards China’s pervasive, long-term initiatives against critics in China and businesses and academic institutions abroad.”

2019: The Department’s Response

At the direction of Secretary Betsy DeVos, in November 2019 the Department’s Office of the General Counsel (“OGC”) initiated multiple civil investigations of non-compliance by some of America’s leading universities.

The Department’s general initial findings included that Section 117 “reporting ha[d] been generally underinclusive and inaccurate” and that, shockingly, many colleges and universities even appeared to conceal foreign funding “through financially opaque captive foundations, foreign campuses, and other structures to generate revenue, including from foreign sources.”⁴

These compliance failures occurred despite those same colleges and universities often having extremely sophisticated foreign financial tracking capabilities for soliciting, managing, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic.

Our investigations revealed that despite their sophisticated financial tracking systems, colleges and universities had largely chosen not to “deploy[] similar systems with respect to Sec. 117 reporting.”

Widespread Compliance Failures: The Department’s Institutional Compliance Report

Informed by the results of its intensive civil investigations, in October 2020, the Department published a report entitled “Institutional Compliance with Section 117 of the Higher Education Act of 1965” (“Compliance Report”).⁵

The Report revealed that the Department’s enhanced enforcement efforts, including the opening of its civil investigations, had produced dramatic results: disclosure of more than \$6.5 billion in previously undisclosed foreign gifts and contributions (\$3.8 billion of which foreign gifts were reported by IHEs via the Department’s new reporting portal between June and October 2020 [created under the direction of OGC]).⁶

The Report also found that since June 2020, approximately \$350 million in foreign gifts and contracts were disclosed to the Department by colleges and universities that had no prior history

⁴ See <https://www2.ed.gov/policy/highered/leg/psi-nov27-2019.pdf>.

⁵ “Institutional Compliance with Section 117 of the Higher Education Act of 1965,” U.S. Department of Education, Office of the General Counsel (Oct. 2020), available at <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf> (Compliance Report).

⁶ *Id.* at 1.

of submitting Sec. 117 transactions – indicating a tremendous *increase* in compliance following the Department’s enforcement efforts.⁷

The Department noted that “[h]istorically, fewer than 300 of the approximately 6,000 U.S. institutions self-report foreign money each year” and that the “risk to academic freedom, integrity, and independence posed [by] such contributions has been historically ignored by regulators and overlooked or downplayed by the beneficiaries of foreign largess.”⁸

China’s Undisclosed Access to Academia

The Department’s investigations also revealed that the “Chinese Communist Party sends students ‘under the guise of international scientific collaboration to systematically target critical technologies to advance China’s national security interests’[.]” and that it “also lures international scholars to advance its causes through the Thousand Talents Program designed to attract foreign scholarship by providing them research funding, salaries, and laboratory space, among other perks.”⁹

The Department’s findings regarding the vulnerability of research and development technologies at colleges and universities were alarming, noting that “foreign adversaries are likely targeting specific institutions for their [research and development] and technologies.”¹⁰

The Department noted that “robust enforcement” of Section 117’s disclosure requirements are “*essential because hostile governments and their instrumentalities have targeted the higher education sector for exploitation to infiltrate cutting-edge American research projects, influence curricula, and gain access to systems and information....*”¹¹

The Department cautioned that “America’s adversaries have long exploited the openness of American society, our deeply held belief in free inquiry and academic freedom, and the misjudgments of some higher education industry leaders to advance their institutional interests at the risk to American security.”¹²

One example of the success of the Department’s enhanced Section 117 enforcement efforts involved the University of Pennsylvania, which – like many other universities - was required to disclose its reportable foreign gifts and contracts. UPenn reported a stunning increase in its receipt of reportable foreign gifts and contracts – up 389% between 2018 and 2019 alone,¹³ although it

⁷ *Id.*

⁸ *Id.* at 7.

⁹ *Id.* at 11.

¹⁰ *Id.* at 27.

¹¹ *Id.* at 7 (emphasis added).

¹² *Id.* at 11.

¹³ On Feb. 1, 2017, the University of Pennsylvania announced the formation of the “Penn Biden Center for Diplomacy & Global Engagement (“Biden Center”), which subsequently opened a Washington, D.C. office in June 2018. *See* “Vice President Joe Biden to lead the Penn Biden Center for Diplomacy and Global Engagement,” *Penn Today* (Feb. 1, 2017),

failed to identify the donors for approximately \$27.1 million of those gifts and contracts.¹⁴ Foreign source gifts and contracts to UPenn amounted to at least \$258 million during the same period.¹⁵

This is only one of many of examples of proper Sec. 117 enforcement by the Department leading to transparency regarding foreign involvement in higher education for the consideration of the American people and policy makers.

FBI Director Wray’s Warnings on China’s Growing Threat to American Universities

In April 2021 testimony before the Senate Select Committee on Intelligence, after noting that the FBI opens a new investigation linked to China’s government “every 10 hours” and has more than 2,000 ongoing investigations related to China, FBI Director Wray warned that:

I don’t think there is any country that presents a more severe threat to our innovation, our economic security and our democratic ideas. And the tools in their toolbox to influence our businesses, *our academic institutions*, our governments at all levels are deep and wide and persistent.¹⁶

Dir. Wray spoke in further detail about the ominous foreign threat again in January 2022:

Much of the battleground we’re [the FBI] contesting lies outside government’s control: companies whose technology we’re helping protect, *universities whose students and research we’re helping protect*, local governments we’re warning about foreign threats. None of them are equipped to deal with a threat this complex alone...¹⁷

In the face of these ongoing threats to our national security by China and other adversaries, the Department’s enforcement of Section 117’s reporting requirements are, perhaps, more critical than ever. Unfortunately, the Biden Administration’s Section 117 enforcement efforts have taken a very different direction.

<https://penntoday.upenn.edu/spotlights/vice-president-joe-biden-lead-penn-biden-center-diplomacy-and-global-engagement>.

¹⁴ “Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds,” THE DAILY PENNSYLVANIAN (Apr. 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.

¹⁵ Catherine Dunn, “Penn got \$258 million in foreign money, and there may be more it hasn’t disclosed,” THE PHILADELPHIA INQUIRER (Feb. 24, 2020), <https://www.inquirer.com/business/university-pennsylvania-foreign-donations-china-saudi-arabia-20200224.html>.

¹⁶ See <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-1>; see also Patrick Tucker, “FBI Opens a Case on Chinese Activity ‘Every 10 Hours,’ Intel Chiefs Say,” DEFENSE ONE (Apr. 14, 2021), <https://www.defenseone.com/threats/2021/04/fbi-opens-case-chinese-activity-every-10-hours-intel-chiefs-say/173376/> (emphasis added).

¹⁷ See <https://www.fbi.gov/news/speeches/countering-threats-posed-by-the-chinese-government-inside-the-us-wray-013122> (emphasis added).

The Department's Section 117 Enforcement Retreat under Secretary Cardona

In the face of this perilous and growing threat and despite the FBI's clear warnings, the Department now appears to have largely ceded control over its Section 117 enforcement policies to a higher education industry group known as the American Council on Education – or ACE - which has long objected to nearly any efforts by the Department to enforce Section 117's simple reporting requirements.

On November 18, 2020, in a letter to President-elect Biden, ACE instructed the incoming administration act “quickly” to “[h]alt the expanded reporting requirements, including the new Information Collection Request (ICR) and Notice of Interpretation (NOI) on Section 117 imposed by the Department of Education in its effort to expand those reporting requirements...”¹⁸

On Dec. 14, 2020, in a fourteen-page letter to OGC, ACE complained bitterly of the Department's civil investigations and related enforcement efforts and informed it of its preferred return to reduced compliance enforcement efforts that would be far less burdensome to colleges and universities, notwithstanding Section 117's simple requirements.¹⁹

Following ACE's November and December 2020 post-election demands, the Department's enforcement of Sec. 117's disclosure requirements appeared to weaken,²⁰ with IHEs reporting barely more than \$4 million in foreign gifts and contracts during the first reporting period of 2021 – compared with over \$1.5 billion during the previous reporting period (July 2020-January 2021).²¹

In August 2022, the Department left it to ACE's Senior Vice President to announce *to the Department* the Department's cessation of its then-outstanding Section 117 investigations (to his member IHEs, including those under investigation) and that “Section 117 management will be transferred back to Federal Student Aid (“FSA”).”²² The Department's official Notice regarding moving enforcement responsibilities to FSA did not occur for another four months, on December 27, 2022.²³

FSA is clearly unsuited to the Section 117 enforcement task. FSA is no better able to lead the Department's Section 117 enforcement efforts than OGC is to administer student loans, grants,

¹⁸ Letter to Joe Biden, President-Elect and Kamala Harris, Vice President-Elect, from the American Council on Education (ACE), <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>.

¹⁹ See <https://www.acenet.edu/Documents/Comments-memo-ED-Section-117-121420.pdf>.

²⁰ Audrey Conklin, “US Colleges report fewer foreign gifts after Biden takes office, sparking concern from Rep. Gallagher,” *Fox News* (Nov. 5, 2021), <https://sites.ed.gov/foreigngifts/>.

²¹ See <https://sites.ed.gov/foreigngifts/>.

²² See <https://www.cogr.edu/sites/default/files/081622%20FINAL%20August%202022%20ED%20letter%20on%20117%20follow%20up.pdf>.

²³ 87 Fed. Reg. 247 (Dec. 27, 2022).

and work-study programs – which, I believe, explains why the Department has chosen to shift Section 117 enforcement responsibilities to FSA.

Only through careful examination of tax records, contracts, and other financial documents by OGC attorneys did the Department successfully force exponential increases in Section 117 compliance. The Department was wrong to transfer these important responsibilities to an agency component so utterly lacking in Section 117 expertise and enforcement capabilities.

Conclusion and Recommendations

As noted by Dir. Wray and determined by the Department’s own well-publicized findings, our adversaries – particularly China – are engaged in the targeting of American colleges and universities to access critical research and development products in development at our research institutions.

Section 117 is a very simple, straightforward statutory disclosure requirement that the Department must enforce.

The Department should immediately return enforcement obligations fully to the Office of the General Counsel and should clearly prohibit the practice of anonymizing donor information in Section 117 reports.

Congress should clearly ban the practice of anonymizing donors. The purpose of Section 117 is to disclose the qualifying foreign gifts and contracts. Only by knowing the identity of the foreign donor can the American people and government officials be sufficiently informed to address any commensurate threat to our national security or academic freedom. The Department’s current guidance and regulations should make the unacceptability of this practice clear, pending action by Congress.

Congress should tie Section 117 compliance by America’s colleges and universities with the eligibility of those colleges and universities to participate in Title IV federal student loan, grant, and work-study programs. The Department should be required to suspend a university’s eligibility to participate in those taxpayer-funded student financial aid programs if a university fails to timely and accurately provide its Section 117 disclosures to the Department.

Congress may wish to require that prominent college and university officials certify under penalty of perjury to the accuracy and completeness of their Section 117 disclosures to the Department. If, between 2010 and 2019, a president or other high-ranking administrative officer at Yale, Stanford, Case Western Reserve, or any other university had been required to certify his or her belief in the accuracy and completeness of his or her university’s Section 117 disclosures to the Department, those disclosures would likely have been far more reliable.

The American people, who generously fund significant portions of the operations of most of our colleges and universities, deserve earnest enforcement efforts by the Department.

The threat to America's national security interests is very real and growing. The Department's apparent decision to de-emphasize its Section 117 enforcement obligations is very troubling and is an inexplicable green light to our adversaries to resume efforts to access to America's critical research product at our colleges and universities, in defiance of the national security interests of the American people.

Thank you for the opportunity to appear before this Committee. I look forward to answering any questions you may have.
