

C A M P A I G N F O R

ACCOUNTABILITY

May 7, 2020

By First Class Mail

The Honorable Greg Hertz
Speaker
Montana State House of Representatives
PO Box 201706
Helena, MT 59620-1706

Re: Conflicts of Interest of Representative Kerry White

Dear Speaker Hertz:

Campaign for Accountability (“CfA”), a nonprofit watchdog organization, respectfully requests that you investigate Representative Kerry White for violating Montana conflict of interest provisions and take immediate action to ensure his recusal from matters pending before the State Legislature Environmental Quality Council interim committee. We also request that this matter be referred to the House ethics committee pursuant to MCA § 2-2-135.

As you know, Montana has established strict rules for conduct and ethical requirements for State legislators. These rules were put in place to ensure that legislators uphold their public duty and maintain public trust in the legislative office and legislature as a whole. As explained below, it appears Representative White has violated these rules of conduct and ethical requirements.

MCA § 2-2-111 provides that a legislator may not accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation.

Nevertheless, Representative White simultaneously serves as the executive director of a lobbying organization and a State legislator. His lobbying organization, Citizens for Balanced Use (“CBU”), touts as accomplishments the official acts carried out by Representative White as a State legislator. Representative White has received payments and other financial benefits from the organization in part because of his work as a legislator. These conflicts of interest not only violate State law and the rules of the Montana State Legislature, they also undermine the public confidence in Representative White and the legislature as a whole. When the head of a lobbying organization is also a State legislator, directly advancing the agenda of his lobbying organization without reporting any of his activities as required by law, the system of checks and balances has failed.

**REPRESENTATIVE WHITE HAS A CONFLICT OF INTEREST THAT PRECLUDES HIS
PARTICIPATION IN NATURAL RESOURCES LEGISLATION INCLUDING ISSUES CURRENTLY
PENDING BEFORE THE ENVIRONMENTAL QUALITY COUNCIL**

MCA § 2-2-112 establishes ethical requirements for State legislators and declares that violations of such rules “constitute a breach of the public trust of legislative office.” Among these is a requirement to disclose any conflict of interest “created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter.” Where such a conflict exists—or may potentially exist—the legislator *must* disclose the interest creating the conflict “prior to participating in the official action.” Disclosure is also required under the rules of the legislature, Section 10-60, which states, “A member who has a personal or private interest in any measure or bill proposed or pending before the legislature *shall* disclose the fact to the house to which the member belongs.” (emphasis added).

State law provides further guidance on factors a legislator must consider in determining whether to disclose a potential conflict of interest, including:

- (a) whether the conflict impedes the legislator's independence of judgment;
- (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
- (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
- (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

A legislator is further required to disclose an interest creating a conflict where the legislator is a member of a profession, occupation, or class affected by the legislation and the legislation “is so narrow that the vote will have a direct and personal impact on the legislator.”

*Representative White is the Executive Director of the
Lobbying Organization Citizens for Balanced Use*

Representative White is the Executive Director of CBU, a nonprofit lobbying organization that, according to its website, “engages with state and federal legislators to create and support policies beneficial to multiple use management of our public lands.”¹

The organization openly touts its lobbying of the Montana State Legislature in its annual reports:

The 2017 year was very busy for CBU. January 2nd began the 65th session of the Montana Legislature. Many members of CBU travel to Helena during the 90 day [*sic*] session to testify on specific bills that affect our state. From recreation to resources to private property rights, the members of CBU are very diverse and

¹ <https://balanceduse.org/>.

involved. CBU educates our members and supporters in how to testify and engage in the legislative process. We help people understand the complicated process of legislature [*sic*] from drafting, introduction, hearings, and passage or defeat of bills.

Here is a list of bills that the members and supporters testified at hearings during the session. House bills include 434, 498, 481, 97, 305, 311, 324, 454, 597, 240, and 38. Senate bills include 46, 342, 101, 342, 91, 218 and 281. Two House Joint Resolutions were also of interest to our members, HJ 9 and 15. Some of these bills were passed into law and benefited the multiple use recreation in Montana.²

Similarly, a recap of the organization's 2016 accomplishments details the organization's lobbying and highlights the role of its executive director as a State legislator:

We share information and facts with the public, we testify at meetings, write letters to legislators, and meet with our local, state, and federal agencies in an effort to educate the public on the importance of proper land management to provide a clean and healthy environment.³

CBU's Facebook page also has published several posts about the organization's work to lobby public officials.⁴ For instance, on March 5, 2019, CBU's Facebook page shared a post from the James Brown Law Office, LLC announcing a broadcast of a "mid-session legislative update" that was sponsored by CBU:

Austin Markus James will be going LIVE at 3:30 PM for the first of a four part live-stream series this week providing the mid-session legislative report on behalf of Citizens for Balanced Use. Today's broadcast will cover bills related to hunting, fishing, and wildlife.

Later this week: (2) ORV, Trail Riders, Snowmobile (3) General Outdoor Recreation and (4) Private Property and Natural Resources....⁵

On January 11, 2019, CBU's Facebook account published a post about the importance of lobbying state legislators:

Citizens for Balanced Use, Montana Snowmobile Association, and Montana Trail Vehicle Riders Association will be sponsoring the bi-annual luncheon for legislators at the Montana State Capitol Rotunda, January 15, 2019, from 11:00 am to 1:00 pm.

² <https://balanceduse.org/about>.

³ Citizens for Balanced Use, 2016 Accomplishments, available at https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

⁴ <https://www.facebook.com/balanceduse/>.

⁵ <https://www.facebook.com/JamesBrownLawOffice/posts/1882919851820420>.

This is a great time to have lunch and talk with Montana legislators, and representatives from the sponsoring organizations. Hope to see you there.⁶

The organization's filings show that CBU retained paid lobbyists in the 2013-2014 and 2015-2016 legislative sessions.⁷ A search of the Montana Commissioner of Political Practices Lobbyist and Principal website reveals that Representative White was CBU's named principal during the 2015-16 session.⁸ Among the issues on which CBU lobbied were two bills authored by Representative White, one involving a state snowmobile pass system, the other affecting Montana Fish, Wildlife, and Parks.⁹

**REPRESENTATIVE WHITE'S DUAL ROLES AS THE HEAD OF A LOBBYING ORGANIZATION
AND STATE LEGISLATOR CREATE A CONFLICT OF INTEREST THAT
GIVE RISE TO AN APPEARANCE OF IMPROPRIETY**

MCA § 2-2-112(3) specifies that a "personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter" constitutes a conflict of interest.

Here, there is little doubt that Representative White's dual roles as the head of an organization that extensively lobbies State legislators and as a State legislator himself presents a conflict of interest. Representative White leads an organization with a stated mission of influencing State legislation and the organization has hired lobbyists to support legislation that Representative White has sponsored. Clearly, Representative White's organization, and he as its executive director, benefit from the passage of legislation he sponsors.

Representative White's role as a head of a lobbying organization and State legislator clearly fulfill the criteria listed in State law for discerning a conflict of interest. These factors include:

(a) whether the conflict impedes the legislator's independence of judgment;

There can be no independence of judgment when Representative White serves as the head of a lobbying organization and a State legislator. Representative White's interests are inseparable from the interests of CBU. Representative White is paid by CBU, represents CBU's interests, hires lobbyists on behalf of CBU, and speaks for the organization.

(b) the effect of the legislator's participation on public confidence in the integrity of the legislature;

Representative White's continued participation in legislative issues—including the Environmental Quality Council's recommendations on wilderness study areas—undermines

⁶ <https://www.facebook.com/pg/balanceduse/posts/>.

⁷ Records available at <https://app.mt.gov/cgi-bin/camptrack/lobbysearch/lobbySearch.cgi>.

⁸ *Id.*

⁹ *Id.*

public confidence in the integrity of the legislature. On its web page, CBU boasts of the accomplishments of Representative White, as a member of the State legislator:

CBU founding member, Kerry White is a current Montana legislator. Representative White HD 64) [*sic*] introduced HJ 13 in the 2015 legislature. HJ 13 was the result of a focused study identifying the thousands of miles of roads closed by the Forest Service and BLM in Montana during the last 20 years. The study was assigned to the Montana legislative interim committee (EQC) of which Representative White is a member...¹⁰

(c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter;

Representative White's work advancing the agenda of the lobbying organization he leads has had a significant effect on the disposition of several matters. In 2017, for example, CBU sent a letter to U.S. Senator Steve Daines requesting legislation to eliminate certain wilderness study areas in Montana.¹¹ Later that year, Senator Daines introduced legislation stripping protections for wilderness study areas, citing CBU's support.¹²

That same year, Representative White introduced a resolution in the State Legislature calling for the removal of protections for wilderness study areas.¹³ The resolution, which passed in modified form, was touted by CBU as a win in its annual report.¹⁴ Senator Daines relied on Representative White's resolution to justify his wildly unpopular wilderness study areas legislation.¹⁵ Representative White's conflicted role is clearly influencing the disposition of wilderness study area legislation.

Representative White remains a member of the State Legislature Environmental Quality Council interim committee, where he continues to advocate for CBU's interests—and his own as CBU's executive director—in removing protections for wilderness study areas.¹⁶

¹⁰ Citizens for Balanced Use, 2016 Accomplishments, available at https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

¹¹ Letter from Kerry White, Executive Director of CBU, to U.S. Senator Steve Daines, available at <https://www.daines.senate.gov/download/tsriawsa>.

¹² Press Release, [Daines Introduces Legislation to Protect Public Use of Public Lands](https://www.daines.senate.gov/news/press-releases/daines-introduces-legislation-to-protect-public-use-of-public-lands), Office of U.S. Senator Steve Daines, Dec. 7, 2017, available at <https://www.daines.senate.gov/news/press-releases/daines-introduces-legislation-to-protect-public-use-of-public-lands>; Statements of Support, The Protect Public Use of Public Lands Act, Office of U.S. Senator Steve Daines, available at <https://www.daines.senate.gov/imo/media/doc/BD%20Wilderness%20Study%20Area%20Statements%20of%20Support%20.pdf>.

¹³ H.J. 9 of the 2017-2018 session, "Resolution supporting the release of certain wilderness study areas."

¹⁴ <https://balanceduse.org/about>.

¹⁵ Press Release, [Daines Introduces Legislation to Protect Public Use of Public Lands](https://www.daines.senate.gov/news/press-releases/daines-introduces-legislation-to-protect-public-use-of-public-lands), Office of U.S. Senator Steve Daines, Dec. 7, 2017, available at <https://www.daines.senate.gov/news/press-releases/daines-introduces-legislation-to-protect-public-use-of-public-lands>.

¹⁶ <https://leg.mt.gov/committees/interim/2019eqc/>.

(d) *whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.*

CBU and Representative White benefit tremendously from the increased publicity and financial support resulting from Representative White's advocacy. In effect, CBU has a State legislator on its payroll and the organization's materials and promotions create no separation between Representative White's advocacy as the head of the organization and his advocacy as a State legislator.

Representative White's dual roles with CBU and the State Legislature present a clear conflict of interest. Despite these clear conflicts of interest, Representative White has failed, on numerous occasions, to recuse himself from matters in which he has a conflict of interest.

REPRESENTATIVE WHITE HAS RECEIVED COMPENSATION FOR PROMOTING OR OPPOSING THE PASSAGE OF LEGISLATION

MCA § 2-2-11 prohibits any legislator from accepting "a fee, contingent fee, or any other compensation...for promoting or opposing the passage of legislation." The law further stipulates that proof of "commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty."

MCA § 2-2-104 prohibits legislators from accepting "a gift of substantial value or a substantial economic benefit tantamount to a gift" if such a gift or economic benefit would "tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties." A legislator is also prohibited from receiving a gift or economic benefit "that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken."

On tax returns from 2013-2017, Representative White is listed as CBU's executive director, spending 30 hours per week on behalf of the organization.¹⁷ In 2016, while serving as a State legislator, Representative White received \$24,000 in compensation from CBU.¹⁸ Representative White may have received additional compensation or other financial benefits from CBU that have not been reported on the organization's federal tax returns or are reported on the not-yet-available 2018 tax return.¹⁹

¹⁷ [Return of Organization Exempt From Income Tax](https://projects.propublica.org/nonprofits/), Form 990, Citizens for Balanced Use, available at <https://projects.propublica.org/nonprofits/>.

¹⁸ *Id.*

¹⁹ CfA recently filed a complaint against CBU for failing to properly report its lobbying activities to the Internal Revenue Service. See <https://campaignforaccountability.org/work/irs-complaint-against-citizens-for-balanced-use/>. See also "D.C. group asks I.R.S. to investigate Citizens for Balanced Use," *Bozeman Daily Chronicle*, Sep. 28,

In 2016, the same year that CBU paid Representative White \$24,000, the organization boasted of Representative White's efforts as a State legislator in its list of accomplishments for the year:

CBU founding member, Kerry White is a current Montana legislator. Representative White HD 64) [*sic*] introduced HJ 13 in the 2015 legislature. HJ 13 was the result of a focused study identifying the thousands of miles of roads closed by the Forest Service and BLM in Montana during the last 20 years. The study was assigned to the Montana legislative interim committee (EQC) of which Representative White is a member...²⁰

In 2015, CBU lists several "accomplishments" related to Representative White's role as a State legislator:

Jan. 5: Sworn in as Representative Montana House District 64 and served 90 days in the legislature.

...

Home from legislature on April 28th

...

June 3 and 4: attended the EQC as a legislator. The EQC has oversight of DNRC, DEQ, and FWP²¹

In 2017, CBU touted its work on numerous state bills on its website:

Here is a list of bills that the members and supporters testified at hearings during the session. House bills include 434, 498, 481, 97, 305, 311, 324, 454, 597, 240, and 38. Senate bills include 46, 342, 101, 342, 91, 218 and 281. Two House Joint Resolutions were also of interest to our members, HJ 9 and 15. Some of these bills were passed into law and benefited the multiple use recreation in Montana.²²

²³

Several of these bills, including HJ 9 and HB 240, were authored by Representative White at a time when he also was serving as CBU's executive director.

Clearly, CBU has benefited from the work of its executive director as a state legislator. Indeed, the organization touts the work of Representative White *as a State legislator* on its website.

2019, available at https://www.bozemandailychronicle.com/news/environment/d-c-group-asks-irs-to-investigate-citizens-for-balanced/article_e4ace350-14c3-5c71-a6ac-f5460c76ca25.html.

²⁰ Citizens for Balanced Use, 2016 Accomplishments, available at https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

²¹ Citizens for Balanced Use, CBU 2016 Accomplishments, available at https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

²² Citizens for Balanced Use, 2017 Accomplishments, available at <https://balanceduse.org/about>.

Such payments prevent Representative White from the “faithful and impartial discharge” of his public duties as a State legislator, in violation of MCA 2-204(b)(i). Further, a reasonable person in Representative White’s position should know that he has been receiving financial benefits from CBU at least in part because of the actions he has taken as a State legislator.

Representative White has not disclosed his compensation or other financial benefits received from CBU in 2019. Further, he continues his dual role as CBU executive director and state legislator. In addition, Representative White currently serves on the State Legislature Environmental Quality Council interim committee, where he continues to advocate for CBU’s interests—and his own as CBU’s executive director—in removing protections for wilderness study areas.²⁴ Such actions constitute a continued violation of MCA § 2-2-04.

CONCLUSION

Based on Representative White’s past and present violations of Montana State law, and the rules of the Montana State Legislature, CfA requests that the Montana House:

- (1) Require Representative White to recuse himself for matters pending before the State Legislature Environmental Quality Council interim committee where Representative White’s employer, the lobbying organization CBU, has taken a position, including implementation of SJ20, regarding management of wilderness study areas in Montana; and
- (2) Refer the matters raised in this complaint to the House ethics committee for action pursuant to the provisions of MCA § 2-2-135.

Sincerely,



Daniel E. Stevens
Executive Director

²⁴ <https://leg.mt.gov/committees/interim/2019eqc/>.