May 24, 2022

Mr. Chris Toth
Executive Director
National Association of Attorneys General
1850 M Street NW, 12th floor
Washington, DC 20036
Ctoth@naag.org

Dear Mr. Toth:

The National Association of Attorneys General ("NAAG") is billed as "the nonpartisan national forum for America's state and territory attorneys general," and its mission is to "foster[] bipartisan engagement and cooperation among attorneys general and their staffs on legal and law enforcement issues." In fulfillment of this mission, NAAG offers training, litigation support, and other such services to its members. As members of NAAG, we write to express concerns and to invite further discussion on how to address them.

First, we believe NAAG needs structural reform. To avoid partisanship, NAAG's presidency should rotate annually, with the president and president-elect being of different political parties. The executive committee should be comprised of a majority of members of a political party different from the president. The National Governors Association has these two features, and they would serve NAAG well. Because the overwhelming majority of attorneys general are elected, no more than two appointed attorneys general should serve on the executive committee. Members should be given reasonable notice of executive committee meetings with copies of the agenda. Approved minutes should be proactively sent to members. The finance committee should be chaired by a member of a different political party than the president and should be of bipartisan composition. The president-elect's role should be retooled and expanded to help ensure balance. The president and the president-elect should work collaboratively on programming. Presidential initiatives should be subject to executive committee approval. NAAG events conducted in an attorney general's state should be coordinated with that state's attorney general. The regional governance and programming structure should be completely reevaluated.

Second, there needs to be greater transparency prior to NAAG receiving, holding, and expending certain kinds of funds. As you know, some multi-state settlement agreements, including the McKinsey opioid settlement, provide monies directly to NAAG, often to reimburse for advanced investigative costs. The McKinsey settlement provides:

> McKinsey shall pay the $15,000,000 balance of the Settlement Amount to the National Association of Attorneys General ("NAAG Fund"). The NAAG Fund shall be used: first, to reimburse NAAG for the costs and expenses of the States' opioid investigations in the amount of $7,000,000 and second to reimburse participating States for documented costs and expenses associated with the investigation of McKinsey submitted by or before March 1, 2021, subject to reasonable parameters to be set by NAAG. The remaining balance of the NAAG Fund shall be used to fund the establishment of an online repository of opioid industry documents for the benefit of the public.

Commonwealth of Kentucky v. McKinsey & Company, Inc., 21-CI-00102, S03l 040-169 (entered Aug. 2, 2021) (detailing terms of final consent judgment). NAAG's $15 million McKinsey settlement is nearly double the amounts received by some states and nearly 40% more than Kentucky received. These states have lost thousands of their citizens to the opioid epidemic and represent thousands more who still struggle. Yet NAAG, an entity with no such constituency, collected $15 million.[1]

On February 8, 2022, you wrote to Utah Attorney General Sean Reyes to explain that NAAG administers millions of dollars "on [states'] behalf . . . . The money in these accounts belongs to you, our members, and NAAG staff does not control how the money is spent." According to its 2021 Annual Report, NAAG boasts more than $164 million in assets. That number grows to over $280 million when considering the assets of NAAG's Mission Foundation. As you noted, these are monies, at least in part, that NAAG holds on behalf of states.

Like many other states, Kentucky's Constitution vests our General Assembly with all "legislative power," including the power of the purse. Ky. Const. § 29; *id.* at § 230 ("No money shall be drawn from the State Treasury, except in pursuance of appropriations made by law."). For that reason, Kentucky state law requires that "[a]ll receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available." KRS 41.070. The Kentucky Constitution places further restrictions on such funds, requiring that they be used for

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[1] The most problematic part of the McKinsey settlement is the $8 million directed to NAAG for the online repository and the reimbursements to states. When thousands of people are dying annually from opioid abuse, an online repository is of little value. At the very least, allocating that kind of money for an online repository should have been a decision for all the states, not just those on a particular committee. Similarly, NAAG has not been transparent regarding how much and what has been reimbursed as costs and expenses by other states.

"public purposes only." Ky. Const. § 171; *see also McGuffey v. Hall*, 557 S.W.2d 401, 416 (Ky. 1977) (interpreting § 171 to mean "that public funds be used only for public purposes").

Therefore, I ask that you clarify the manner in which NAAG holds settlement dollars that "belong" to its members and, more specifically, how the McKinsey settlement funds are held, managed, and disbursed.

Third, we write to bring to your attention a trend that is antithetical to NAAG's mission as a bipartisan organization: increasingly partisan programming and the seeming exclusion of conservative members in favor of more liberal ones. This concern directly ties to the above concerns, as NAAG operates three "fund committees" that administer millions of dollars of settlement proceeds.[2] To access these monies, state attorneys general must submit grant applications to the fund committees, which the committees then review. Republican attorneys general serve on these committees but are in the minority on two of the three committees, both of which control vast amounts of settlement dollars.[3] That partisan divide has had real and serious consequences for our states.

As you know, there are reports of fund committees constructively barring Republicans from the application processes, while these same committees appropriate settlement dollars to fund left-wing programming.[4] Furthermore, fund committees are now issuing grants that are more like loans than grants.[5] Of course, loans must be repaid, which incentivizes states to pursue litigation for a financial return, regardless of whether such litigation is justified. The result is NAAG's promotion of "entrepreneurial litigation" and "suing businesses for profit," all of which is "more in line with the plaintiffs' bar" than making whole those who have been harmed.[6]

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[2] *Committees,* NAAG.ORG, https://www.naag.org/our-work/committees/.

[3] *Id.* Similarly, of the 50 state attorneys general, 27 are Republicans and 23 are Democrats, but of the twelve members of NAAG's 2021 Executive Committee, just three were Republicans.

[4] *See*, *e.g.*, Toth Letter to Attorney General Reyes (Feb. 8, 2022); *The People v. Hate*, NAAG.ORG, https://www.naag.org/our-work/initiatives/presidential-initiative/the-people-v-hate/ (suggesting in the "Algorithmic Amplification of Online Hate, Extremism, and Misinformation" webinar that Republican campaign ads comparing the Democrat presidential ticket with socialist regimes amounted to disinformation).

[5] Jeffrey Stinson, *When states win lawsuits, where does money go?*, USA TODAY (Feb. 19, 2015), https://www.usatoday.com/story/money/business/2015/02/19/stateline-states-lawsuits/23675241/ ("'The idea is that when attorneys general tap the fund, they commit to paying it back if their cases are successful and they can,' said Chris Toth, NAAG's deputy executive director.").

[6] Juliette Fairley, *ATRA: 'Plaintiffs' bar infiltrated the National Association of Attorneys General and pushed it to the left'* (Apr. 6, 2022), https://legalnewsline.com/stories/622521790-atra-plaintiffs-bar-infiltrated-the-national-association-of-attorneys-general-and-pushed-it-to-the-left.

Consequently, NAAG should change how it administers its fund committees. All attorneys general should have adequate notice in advance of grants and training being considered for approval by fund committees. All attorneys general should be encouraged to comment on grant requests and should receive a report on how much money has been granted to what states, on what matters, and for what purposes. Fund committees should never finance an individual state's investigations or litigation. Rather, the funds in these accounts should be limited to investigations or litigation pursued by a large, bipartisan group of states, like the Generics litigation or the Purdue bankruptcy claim preparation. Furthermore, grants should be subject to discussion at subsequent meetings, and, whenever a substantial number of attorneys general object to a grant, it should be subject to suspension.

Like many others, the Kentucky Attorney General's Office has been a member of NAAG throughout multiple administrations of both parties. This is because our office values its relationships with attorneys general across the country and the bipartisan goals that we all share. In consideration of the substantial membership dues paid by our offices, we ask that you respond to the above concerns as well as the following questions:

- What steps is NAAG considering to ensure bipartisan leadership in each of its fund committees?
- What steps is NAAG considering to ensure the bipartisan nature of activities (*e.g.*, NAAG-sponsored training, litigation support, etc.) financed by fund committees?
- What steps is NAAG considering to ensure that fund committees review applications in a fair, bipartisan manner?
- When will NAAG make public the reports of its fund committees?
- In multi-state settlements, why is it appropriate for NAAG to receive more settlement dollars than an individual state, when states represent constituents who actually have been harmed by the respective defendants?[7]
- Will NAAG commit to the structural reforms necessary to ensure NAAG meets its objectives in a bipartisan manner?

We look forward to your response by June 6, 2022.

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[7] *See* Amy Yurkanin, *Alabama to get $276 million settlement over opioid epidemic*, AL.COM (April 19, 2022), https://www.al.com/news/2022/04/alabama-to-get-276-million-settlement-over-opioid-epidemic.html#:~:text=The%20state%20also%20settled%20with,agencies%20affected%20by%20substance%20use (noting Alabama received $9 million from the McKinsey settlement); *see also* note 2.

Sincerely,

DANIEL CAMERON
Attorney General of Kentucky

The following states agree with the concerns and solutions raised:

TREG R. TAYLOR
Attorney General of Alaska

ASHLEY MOODY
Attorney General of Florida

JEFF LANDRY
Attorney General of Louisiana

JOHN M. O'CONNOR
Attorney General of Oklahoma

ALAN WILSON
Attorney General of South Carolina

SEAN D. REYES
Attorney General of Utah

JASON S. MIYARES
Attorney General of Virginia