



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

February 4, 2022

Senator Joseph D. Morrissey
Senate of Virginia
P. O. Box 396
Richmond, VA 23218

RE: Nomination of Andrew Wheeler to Serve as Secretary of Natural and Historic Resources

Dear Senator Morrissey:

Citizens for Responsibility and Ethics in Washington (“CREW”) is writing to express our concern about Andrew Wheeler’s qualifications and fitness to serve as Secretary of Natural and Historic Resources. Mr. Wheeler is a former coal lobbyist who served as head of the U.S. Environmental Protection Agency (“EPA”) during the Trump administration.¹ In addition to questions being raised by environmental experts about his efforts while at EPA to roll back important environmental protections,² CREW believes that given ethical failures in that role, Mr. Wheeler does not possess the requisite integrity, impartiality, and ethical qualifications for this position.

CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of those officials, protecting our political system against corruption, and reducing the influence of money in politics.

Governor Glenn Youngkin recently announced he would nominate Mr. Wheeler for Secretary of Natural and Historic Resources,³ which would make him responsible for overseeing five agencies that protect and restore the Commonwealth’s natural and historic resources.⁴ As a government ethics watchdog, CREW has significant concerns about confirming Mr. Wheeler for this position given ethics controversies that arose during his tenure at EPA. Mr. Wheeler was involved in multiple allegations of ethical misconduct, including his failure to recuse from EPA matters on which he lobbied; his role in undermining the integrity of the EPA Office of Inspector General; and questionable overseas travel he took in the final days of the administration, which resulted in unnecessary travel costs being incurred at the expense of the American taxpayer.

During his tenure as EPA Administrator, Mr. Wheeler failed to recuse from policy matters on which he previously lobbied on behalf of a former client, including coal producer Murray Energy, and

¹ Lisa Friedman, *Andrew Wheeler, New E.P.A. Chief, Details His Energy Lobbying Past*, *New York Times*, Aug. 1, 2018, <https://nyti.ms/3AhhpUG>; EPA website, *EPA Administrators*, last accessed Jan. 20, 2022, <https://www.epa.gov/history/chronology-epa-administrators>.

² Letter to All Members of the Senate of Virginia from EPA Alumni, Jan. 14, 2022, <https://bit.ly/35a8rUP>.

³ Governor-elect Glenn Youngkin, *Press Release Announcing Selection of Natural Resources Secretary*, Jan. 5, 2022, <https://www.governor.virginia.gov/news-releases/2022/january/name-917838-en.html>.

⁴ Va. Code § 2.2-215 (2021).

attended meetings that benefited other former lobbying clients.⁵ For example, in July 2018, Mr. Wheeler signed off on an EPA rule to relax standards for storing coal ash even though he participated in a March 2017 meeting at the Department of Energy, where Murray Energy's CEO presented an action plan to the then-Energy Secretary for rolling back regulations, which contained a specific recommendation calling for EPA's coal ash regulations to be suspended and rewritten.⁶ Prior to joining the EPA, Mr. Wheeler served as a registered lobbyist for Faegre Baker Daniels Consulting, where he represented clients before Congress, the EPA and the Departments of Energy and Transportation.⁷ During the two-year period prior to Mr. Wheeler joining the Trump administration, Faegre filed lobbying disclosure reports that covered Mr. Wheeler's lobbying activities for Murray Energy on "general energy and environmental issues."⁸ Under these circumstances, Mr. Wheeler's subsequent efforts at EPA to relax coal ash standards, as well as other actions he took to benefit his former lobbying clients, gave rise to the appearance of a lack of impartiality. They further raised serious questions about his compliance with President Donald J. Trump's ethics pledge, which all Trump administration political appointees were required to sign and included a specific provision applicable to former registered lobbyists like Mr. Wheeler that barred him for two years from participating in any particular matter on which he lobbied in the two-year period before his appointment.⁹

As EPA Administrator, Mr. Wheeler also undermined the efficacy, integrity and independence of the EPA Office of the Inspector General ("OIG") by failing to hold his chief of staff accountable when the staffer obstructed an OIG audit and investigation.¹⁰ Because the EPA chief of staff failed to comply with his legal obligations to provide the OIG with "timely access to all records ... or other materials,"¹¹ and personal interviews, the acting EPA Inspector General ("IG") took the rare step of sending to Mr. Wheeler a "Seven-Day Letter" to formally report on his chief of staff's "refusal to fully cooperate and provide information to the IG."¹² In his letter, the IG characterized the EPA chief of staff's lack of cooperation as a "particularly serious or flagrant problem," which triggered a special congressional oversight reporting obligation that required Mr. Wheeler, as head of the agency, to transmit the IG's letter to EPA's oversight committees within seven days.¹³

Mr. Wheeler's handling of these events represents a failure in ethical leadership. The Seven-Day Letter was the culmination of several weeks of unsuccessful efforts to obtain a follow-up interview with, and agency information from, Mr. Wheeler's chief of staff.¹⁴ Rather than promptly directing his chief of staff to fully cooperate, Mr. Wheeler and his staff allowed the matter to unnecessarily escalate over several weeks, leaving the IG with no viable option other than to notify Congress. A Seven-Day Letter like the one issued by the EPA OIG in this case is only used by the IG community in "compelling

⁵ See CREW's Letter to Charles J. Sheehan, EPA Acting Inspector General, Jan. 15, 2019 ("CREW's Jan. 15, 2019 Letter"), <https://bit.ly/33vpctd>; CREW's Letter to Charles J. Sheehan, EPA Acting Inspector General, Apr. 16, 2019 ("CREW's Apr. 16, 2019 Letter"), <https://bit.ly/3fHRAdT>.

⁶ CREW's Jan. 15, 2019 Letter, 4-6.

⁷ Faegre Baker Daniels website, Andrew R. Wheeler Principal - Faegre Baker Daniels Consulting, archived and available at <https://bit.ly/2GIPVvZ>.

⁸ FaegreBD Consulting, First Quarter 2016-Third Quarter 2017 Lobbying Disclosure Reports on behalf of Murray Energy.

⁹ CREW's Jan. 15, 2019 Letter; CREW's Apr. 16, 2019 Letter; Executive Order No. 13770. Ethics Commitments by Executive Branch Appointees, Jan. 28, 2017; 5 C.F.R. § 2635.101(b)(14); 5 C.F.R. § 2635.502(a)(2), (d).

¹⁰ Letter from EPA Acting Inspector General Charles J. Sheehan to EPA Administrator Andrew R. Wheeler, Oct. 29, 2019 ("EPA IG Letter"), <https://bit.ly/3Ai2gcz>.

¹¹ Inspector General Act of 1978, 5 U.S.C. App. 3, § 6 (a)(I)(A).

¹² EPA IG Letter.

¹³ *Id.*; Inspector General Act of 1978, § 5(d).

¹⁴ EPA IG Letter.

circumstances” to report “serious” or “flagrant” problems that require “immediate Congressional attention.”¹⁵ While the Seven-Day Letter appears to have finally motivated Mr. Wheeler to arrange for his staffer to submit to an interview, this gesture ultimately proved to be meaningless.¹⁶ The IG Report shows that Mr. Wheeler effectively blocked the inquiry by continuing to allow his staffer to refuse to answer relevant OIG questions. Mr. Wheeler and the staffer relied on a dubious legal opinion issued by the EPA General Counsel to provide cover for their recalcitrance.¹⁷ The OIG viewed that opinion as giving rise to “recklessness,” and believed it “could convert the IG Act into a no man’s land” if allowed to stand.¹⁸ Under these circumstances, Mr. Wheeler’s handling of the matter not only undermined the efficacy of the OIG but reveals an underlying contempt for that office’s integrity and independence.

In the final days of the Trump administration, while other Cabinet officials were resigning in protest following President Trump’s role in the January 6th storming of the Capitol, Mr. Wheeler was in Costa Rica to address a “roundtable” of representatives from the private sector on “ways to work together to protect the global food supply.”¹⁹ News reports about the Costa Rica trip indicate that his aides had been “instructed” to plan a series of taxpayer-funded trips for Mr. Wheeler to travel to “Panama, Costa Rica, Ecuador and the Dominican Republic,” even though there were no international environmental conferences or events slated in those countries in January.²⁰ With the administration ending in less than two weeks, Mr. Wheeler’s January 2021 Costa Rica trip lacked any reasonably discernable official purpose, and may have been contrived to serve his personal travel interests. He also tried to “squeeze in” a November 2020 trip to Taiwan before leaving office, but later scrapped it, after news reports indicated its expected cost would include a \$250,000 chartered aircraft.²¹

Mr. Wheeler’s actions as EPA Administrator, specifically rolling back environmental protections in ways that benefited his former clients, undermining the efficacy, integrity and independence of the EPA OIG and deploying taxpayer funds to support questionable travel abroad in the final days of the administration amidst a global pandemic, cast serious doubt regarding Mr. Wheeler’s impartiality, integrity, and ethical qualifications to serve as Virginia’s Secretary for Natural and Historic Resources.

Based in large part on his industry ties and potential conflicts of interest, Mr. Wheeler’s nomination to lead EPA was opposed by prominent Republicans such as former EPA Administrator Christine Todd Whitman and met with bi-partisan opposition in the Senate where he was narrowly confirmed and.²² Last month, a group of more than 150 former EPA employees who served in

¹⁵ *Id.*; Council of the Inspectors General on Integrity and Efficiency, *The Inspectors General*, July 14, 2014, <https://www.ignet.gov/sites/default/files/CIGIE%20Congressional%20Relations%20Handbook%20January%202015.pdf>

¹⁶ Memorandum from EPA Acting Inspector General Charles J. Sheehan to EPA Associate Deputy Administrator Douglas Benevento, Chief of Staff Refuses to Provide Agency Information for OIG Evaluation, Report No. 20-E-0053, Dec. 10, 2019 (“EPA IG Report”), https://www.epa.gov/sites/default/files/2019-12/documents/_epaig_20191210-20-e-0053.pdf; Letter from EPA Administrator Andrew R. Wheeler to Hon. Carolyn Maloney, Chair of House Committee on Oversight and Reform, Nov. 5, 2019, which is enclosed as Attachment 4 to the EPA IG Report.

¹⁷ *Id.*

¹⁸ EPA IG Report, at 4.

¹⁹ Juliet Eilperin and Brady Dennis, *Wheeler says he is not leaving his post after the attack on the Capitol by a pro-Trump mob*, *Washington Post*, Jan. 13, 2021, <https://www.washingtonpost.com/politics/2021/01/13/energy-202-trump-epa-chief-hopes-biden-doesnt-focus-solely-climate-change/>.

²⁰ Joseph Morton, *EPA chief to visit Costa Rica as administration winds down*, *Roll Call*, Jan. 7, 2021, <https://www.rollcall.com/2021/01/07/epa-chief-to-visit-costa-rica-as-administration-winds-down/>.

²¹ *Id.*; Lisa Friedman, *Trump’s EPA Chief Plans 2 Foreign Trips Before Leaving Office*, *New York Times*, Nov. 19, 2020, <https://www.nytimes.com/2020/11/19/climate/andrew-wheeler-epa.html>.

²² United States Senate, Roll Call Vote 116th Congress - 1st Session, Vote Summary,

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Republican and Democratic administrations wrote the Virginia Senate to oppose Mr. Wheeler's confirmation to Governor Youngkin's cabinet.²³ To date, Mr. Wheeler has not sufficiently taken responsibility or faced accountability for the ethical misconduct that occurred under his leadership. Instead, he now has an opportunity to be rewarded with another government role. As a result, the intense public scrutiny and outrage regarding Mr. Wheeler's policy and ethical failures during his tenure at EPA will likely continue if he is confirmed to serve as Virginia's Secretary of Natural and Historic Resources and will threaten his ability to effectively manage the agency.

Based on Mr. Wheeler's record of ethics and political controversy that defined his tenure as EPA Administrator, we strongly recommend that the Virginia Assembly oppose his confirmation.

Sincerely,



Noah Bookbinder
President

Question: On the Nomination (Confirmation Andrew Wheeler, of Virginia, to be Administrator of the Environmental Protection Agency), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1161/vote_116_1_00033.htm; Former EPA Officials, Open Letter to All Members of the Senate of Virginia, Jan. 14, 2022, <https://www.wavy.com/wp-content/uploads/sites/3/2022/01/1-14-2022-Wheeler-Letter-to-Virginia-Senators-from-EPA-Alumni-FINAL.pdf>.

²³ Former EPA Officials, Open Letter to All Members of the Senate of Virginia, Jan. 14, 2022, <https://www.wavy.com/wp-content/uploads/sites/3/2022/01/1-14-2022-Wheeler-Letter-to-Virginia-Senators-from-EPA-Alumni-FINAL.pdf>.