



THE MOST UNETHICAL PRESIDENCY: YEAR ONE

**A REPORT BY
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**FIGHTING THE INFLUENCE OF MONEY
ON OUR POLITICAL SYSTEM**

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CREW uses aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable. We highlight abuses, change behavior, and lay the groundwork for new policies and approaches that encourage public officials to work for the benefit of the people, not powerful interests.

INTRODUCTION

In the lead-up to President Trump's inauguration, we at Citizens for Responsibility and Ethics in Washington and concerned people across the United States urged the president to take key steps to avoid corruption and conflicts of interest and demonstrate a commitment to ethical government. The most notable of these demands was that he follow the example of all presidents of both parties for decades and sell his businesses. By the time he placed his hand on the Bible at noon on January 20, 2017, it was evident that he had not done so, and an ethics crisis was brewing. That's why we filed our first conflicts complaint concerning the president at 12:01 PM that day, and a groundbreaking conflicts lawsuit on constitutional grounds shortly thereafter. We hoped President Trump would correct his course, and we worried for the impact on our democracy if he did not.

A year later, we at CREW have initiated 180 other legal matters against the president and his administration. It has long since become clear that our initial concerns—and those of so many Americans—were well founded. Indeed, in retrospect they were understated. The Trump administration is confronted by an extraordinary scale and scope of legal and ethics scandals. It is unrivaled in the modern era, and perhaps in the history of the nation, for a first-year administration. The conduct of this administration, from the president on down, threatens our centuries-old tradition of a government that functions to serve the interests of the American people, rather than to serve the interests of those in power. A year in, it is clear that a failure to address this crisis, or a normalization of the corrupt conduct of this administration, risks lasting harm to the country.

The problems begin at the top. Indeed, the original sin of the Trump administration was the president's decision to retain ownership of his businesses. While he has apparently transferred day-to-day management of his businesses to his sons, he continues to own his vast global empire of hotels, golf courses, office buildings, and other businesses; he knows what the companies are, he monitors their activities, he profits when the companies do, and the trust he formed allows him to access those profits at any time. That creates a massive web of conflicts of interest. For virtually every decision President Trump makes, from taxes to environmental regulations to foreign policy, the American people cannot be sure whether he made his decision in the public interest or to benefit his bottom line.

President Trump's conduct in the past year has made clear that the conflicts of interest problem is not just theoretical; it is real. Countries from Saudi Arabia to Malaysia to China have provided business to the president in the form of hotel stays, special events, rental of office space, and the provision of valuable trademarks, among many other transactions that represent not only conflicts of interest but violations of the constitution's prohibition on emoluments, meaning profit or gain, from foreign governments. The federal government, by allowing President Trump to hold an illegal lease for his Washington, D.C. hotel, and states like Maine, which paid for officials to stay in the president's hotel, have also provided him with constitutionally prohibited benefits.

Meanwhile, President Trump has again and again used his office personally profit, most prominently by spending roughly a third of his days as president at his resorts, but also by constantly promoting his businesses, as he did when he wore hats sold by his campaign to hurricane relief photo opportunities. Those who pay to be members of his club or guests at his hotel obtain access to the president, and the possibility of influencing him, not available to regular Americans. No president in the history of our nation has held businesses creating the kinds of conflicts, constitutional violations, and self-dealing we see with this one.

But it does not stop there. A disregard for ethics at the highest levels often leads to mushrooming scandal and that is just what happened here. Beginning in January 2017 and continuing through the year, President Trump's conduct toward the investigation into Russian interference into the 2016 election has been increasingly troubling. Indeed, there is now significant evidence that President Trump may have obstructed justice. That began with his attempts to influence former FBI Director James Comey, demanding Comey's loyalty and then asking him to back off of the

investigation of National Security Advisor Michael Flynn, and continued through his decision to fire Comey and his efforts to discredit the investigation of Special Counsel Robert Mueller, among other problematic actions. While special prosecutors have investigated past presidents, and specifically have investigated them for obstruction, no past president has faced a special prosecutor so early in his term.

A president sets the tone for an administration, and when President Trump made clear that he was not concerned with ethics rules, corruption laws, or democratic norms, the message spread like a cancer throughout the executive branch. The result is a vast array of ethics problems and improper influence among White House staff, cabinet officials, and senior agency officials.

The broader problems began in the administration's first days. The appointments of Ivanka Trump and Jared Kushner, President Trump's daughter and son-in-law, to senior White House positions violated at least the spirit and purpose of the federal anti-nepotism law, and each of them brought a raft of potential conflicts of interest of their own into their jobs. Both Ms. Trump and Mr. Kushner have business interests that present continuing conflicts, most visibly when the two of them attended a dinner with the Chinese president on the same day that the Chinese government provisionally approved new trademarks for Ms. Trump's brand. Mr. Kushner's dozens of amendments to his financial disclosure forms as more and more errors have been discovered, and his omission of significant information on his national security questionnaire, raise additional questions about his forthrightness and about whether he has sought to hide potential conflicts. CREW was among the first to call attention to these issues.

Similarly, several of President Trump's cabinet members have been plagued by conflicts of interest stemming from massive financial holdings or prior positions that conflict with their job responsibilities. Commerce Secretary Wilbur Ross has held on to massive interests in global shipping and natural gas companies, and he appears to have acted on matters that could affect these interests. He also appears to have failed to fully disclose his net worth and his ownership interest in problematic entities including the Bank of Cyprus. Education Secretary Betsy DeVos has similarly continued to hold a significant interest in an education-related company that could present a significant conflict. Environmental Protection Agency Administrator Scott Pruitt attempted to get clearance to participate in cases and matters upon which he had worked, often in direct opposition to the EPA, while serving as Oklahoma Attorney General; ultimately, he partly but not fully backed down. CREW was active in uncovering the problems and demanding real remedies.

Ethics rules violations have also been rampant in the administration's first year. Two senior officials, United Nations Ambassador Nikki Haley and White House Social Media Director Dan Scavino Jr., were both found by the Office of Special Counsel to have violated federal law by using official Twitter accounts to post messages in favor of or against candidates for office, and two other officials are under investigation for similar political law violations. Perhaps even more troubling, multiple cabinet officials are under investigation for potential misuse of government resources for travel, with Health and Human Services Secretary Tom Price resigning after incurring more than \$1 million in travel costs. Counselor to the President Kellyanne Conway misused her office to promote Ivanka Trump's clothing brand, and EPA Administrator Pruitt has spent taxpayer money extravagantly, including on a \$25,000 telephone booth.

While the president's executive order on ethics purported to curtail the revolving door between the White House and lobbying in order to "drain the swamp," in fact it contained significant loopholes, and the administration's approach in practice has been much worse still. The administration hired multiple lobbyists, waived ethics and conflicts requirements for 17 officials, initially secretly, and worse still, has filled its ranks with numerous senior officials pulled from the industries they are now tasked with regulating.

Even as ethics violations and improper influence have become rampant throughout the executive branch, the administration and federal agencies have worked to keep their activities secret, blocking the transparency that allows

Americans to uncover abuses and understand who is influencing decision-making. Agencies have been resisting obligations to disclose information under the Freedom of Information Act, and the White House has cut off access to visitor logs, which the Obama administration had made public. EPA Administrator Pruitt even instructed agency employees to avoid making records, in violation of the Federal Records Act, and the White House has appeared to violate the Presidential Records Act including by using messaging applications that do not preserve messages.

This report lays out all of these violations of law, ethics rules, and norms and many more, setting out an issue-by-issue accounting of a year characterized by contempt for ethical and legal obligations. Still, it only provides an overview of the administration's ethics problems—so much is still unknown that we are only beginning to understand the scope of the problem. Nonetheless, looking back on the first year of the Trump administration, it is now clear that the president has operated with a clear disregard for ethics and the rule of law, and this attitude has infected his administration. From the smallest incidents of using official positions to promote hats or clothing to the most damning examples of business conflicts that could influence American foreign policy and systematic obstruction of justice, President Trump and his administration are sending a signal that they view the government as working for them, rather than for the American people. If we want government of the people, by the people, and for the people to continue, it is time for Congress, enforcement agencies, and most importantly the American people to demand an end to the violations and a return to an ethical and lawful government.

INVESTIGATIONS OF THE PRESIDENT

PRESIDENT TRUMP'S POSSIBLE OBSTRUCTION OF JUSTICE

We begin with perhaps the single most disturbing legal and ethical issue of the first year of the Trump administration: the substantial evidence that has emerged that President Trump engaged in a pattern of conduct aimed at obstructing the investigation of Russian interference in the 2016 election, possible cooperation between the Trump campaign and Russia, and related matters.¹ These issues are reportedly being investigated by Special Counsel Robert Mueller, who was appointed by Deputy Attorney General Rod Rosenstein in May.²

The case that the president obstructed justice rests on a large amount of evidence, including the president's own tweets and statements as well as other evidence that corroborates key testimony. While the special counsel has not, of course, completed his review, the following six episodes are particularly incriminating:

- **Demanding loyalty.** According to then-FBI Director James Comey's testimony before the Senate Intelligence Committee, on January 27, 2017, President Trump arranged for a private dinner with Director Comey at the White House during which he made repeated demands for Director Comey's loyalty.³
- **Requesting to "let this go."** Several weeks later, on February 14, President Trump asked Director Comey to remain alone with him in the Oval Office after a counter-terrorism briefing. According to Director Comey's testimony, President Trump told him that National Security Advisor Michael Flynn, who had resigned the day before, had done nothing wrong in speaking with the Russians.⁴ Director Comey testified that President Trump said, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go."⁵ At the time of this request, President Trump and White House staff likely knew that Flynn had lied to FBI investigators about the nature of contacts with two Russians during the transition—a felony to which Flynn later pled guilty.⁶
- **Fighting Sessions recusal.** President Trump further reportedly instructed the top White House lawyer and other staff members to stop Attorney General Jeff Sessions from recusing himself from the investigation into

1 Barry H. Berke, Noah Bookbinder, and Norman L. Eisen, *Presidential Obstruction of Justice: The Case of Donald J. Trump*, Brookings, Oct. 10, 2017, available at <https://www.brookings.edu/wp-content/uploads/2017/10/presidential-obstruction-of-justice-the-case-of-donald-j-trump-final.pdf>; Barry H. Berke, Noah Bookbinder, and Norman L. Eisen, *Did Trump Obstruct Justice?*, New York Times, Jan. 5, 2018, available at <https://www.nytimes.com/2018/01/05/opinion/trump-mueller-woff-obstruction.html>.

2 Rod Rosenstein, Order No. 3915-2017, *Office of the Deputy Attorney General*, May 17, 2017, available at <https://www.justice.gov/opa/press-release/file/967231/download>. See also Devlin Barrett, Adam Entous, Ellen Nakashima, & Sari Horwitz, *Special Counsel Is Investigating Trump for Possible Obstruction of Justice, Officials Say*, *Washington Post*, Jun. 14, 2017, available at https://www.washingtonpost.com/world/national-security/special-counsel-is-investigating-trump-for-possible-obstruction-of-justice/2017/06/14/9ce02506-5131-11e7-b064-828ba60fbb98_story.html?utm_term=.feb5710f03ec.

3 James B. Comey, *Statement for the Record, Senate Select Committee on Intelligence*, June 8, 2017 (June 8, 2017 Statement for the Record), available at <https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf>; Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred*, *New York Times*, May 11, 2017, available at <https://www.nytimes.com/2017/05/11/us/politics/trump-comey-firing.html>.

4 Comey, *June 8, 2017 Statement for the Record*; Maggie Haberman, Matthew Rosenberg, Matt Apuzzo, and Glenn Thrush, *Michael Flynn Resigns as National Security Adviser*, *New York Times*, Feb. 13, 2017, available at <https://www.nytimes.com/2017/02/13/us/politics/donald-trump-national-security-adviser-michael-flynn.html>.

5 Comey, *June 8, 2017 Statement for the Record*.

6 Michael D. Shear and Adam Goldman, *Michael Flynn Pleads Guilty to Lying to the F.B.I. and Will Cooperate With Russia Inquiry*, *New York Times*, Dec. 1, 2017, available at <https://www.nytimes.com/2017/12/01/us/politics/michael-flynn-guilty-russia-investigation.html>. See also <https://twitter.com/realDonaldTrump/status/937007006526959618> ("I had to fire General Flynn because he lied to the Vice President and the FBI. . . .").

possible coordination between the Trump campaign and Russia.⁷ Attorney General Sessions nevertheless announced his recusal from “any existing or future investigations of any matters related in any way to the campaigns for President of the United States” on March 2, 2017.⁸

- **Seeking Coats intervention.** In March 2017, days after Director Comey confirmed the existence of the FBI’s investigation into Russian interference in the presidential election as well as possible contact and coordination with the Trump Campaign,⁹ President Trump reportedly complained to CIA Director Mike Pompeo and Director of National Intelligence Daniel Coats about the FBI investigation and asked if Coats could intervene with Director Comey.¹⁰
- **Firing Comey and contradictory explanations for the firing.** President Trump fired Director Comey on May 9, 2017, and in announcing the decision, President Trump and the White House unveiled documents suggesting that Director Comey was fired for his mismanagement of the investigation into Hillary Clinton’s emails.¹¹ Nonetheless, the next day, President Trump met with Sergey Lavrov, Russia’s foreign minister, and Russian ambassador to the United States Sergey Kislyak in the White House and told them, “I just fired the head of the F.B.I.. He was crazy, a real nut job. . . . I faced great pressure because of Russia. That’s taken off.”¹² Two days after Director Comey’s firing, President Trump stated during an interview with NBC’s Lester Holt that “regardless of recommendation I was going to fire Comey knowing, there was no good time to do it. And in fact when I decided to just do it, I said to myself, I said you know, this Russia thing with Trump and Russia is a made up story, it’s an excuse by the Democrats for having lost an election that they should have won.”¹³ It was also later revealed that President Trump and senior White House aide Stephen Miller drafted an earlier and never-released letter to Director Comey explaining his firing that reportedly described the Russia investigation as “fabricated and politically motivated.”¹⁴
- **Fabricating a cover story for Trump Tower meeting.** On July 8, 2017, in response to reporting by *The New York Times* that revealed that Donald Trump Jr., Jared Kushner, and Paul Manafort met with individuals

7 Michael S. Schmidt, *Obstruction Inquiry Shows Trump’s Struggle to Keep Grip on Russia Investigation*, *New York Times*, Jan. 4, 2018, available at https://www.nytimes.com/2018/01/04/us/politics/trump-sessions-russia-mcgrah.html?_r=0.

8 Jody Hunt, *Email re: Recusal*, Mar. 2, 2017, available at <http://www.politico.com/f/?id=0000015c-ffc1-d1e3-a97d-ffd540770001>.

9 Matthew Rosenberg, Emmarie Huetteman, and Michael S. Schmidt, *Comey Confirms F.B.I. Inquiry on Russia; Sees No Evidence of Wiretapping*, *New York Times*, Mar. 20, 2017, available at <https://www.nytimes.com/2017/03/20/us/politics/intelligence-committee-russia-donald-trump.html>.

10 Adam Entous, *Top intelligence official told associates Trump asked him if he could intervene with Comey on FBI Russia Probe*, *Washington Post*, Jun. 6, 2017, available at https://www.washingtonpost.com/world/national-security/top-intelligence-official-told-associates-trump-asked-him-if-he-could-intervene-with-comey-to-get-fbi-to-back-off-flynn/2017/06/06/cc879f14-4ace-11e7-9669-250d0b15f83b_story.html?tid=a_breakingnews&utm_term=.8e5155a2a868.

11 CNN, *Trump’s Letter Firing FBI Director James Comey*, May 10, 2017, available at <http://www.cnn.com/2017/05/09/politics/fbi-james-comey-fired-letter/index.html>.

12 Matt Apuzzo, Maggie Haberman, and Matthew Rosenberg, *Trump Told Russians that Firing ‘Nut Job’ Comey Eased Pressure from Investigation*, *New York Times*, May 19, 2017, available at <https://www.nytimes.com/2017/05/19/us/politics/trump-russia-comey.html>.

13 CNN, *Partial Transcript: NBC News Interview with Donald Trump*, May 11, 2017, available at <http://www.cnn.com/2017/05/11/politics/transcript-donald-trump-nbc-news/index.html>.

14 Schmidt, *New York Times*, Jan. 4, 2018; Natasha Bertrand, *Mueller Has Trump’s Original Letter Firing Comey – and His Own White House Stopped Him from Sending It*, *Business Insider*, Sept. 1, 2017, available at <http://www.businessinsider.com/stephen-miller-comey-letter-trump-draft-2017-9>; Peter Nicholas and Michael C. Bender, *Trump Drafted Letter on Why He Wanted Comey Out*, *Wall Street Journal*, Sept. 1, 2017, available at <https://www.wsj.com/articles/trump-drafted-letter-on-why-he-wanted-comey-out-1504303851>.

with ties to the Russian government in Trump Tower on June 9, 2016 in a possible effort to obtain “dirt” on Hillary Clinton,¹⁵ President Trump reportedly “personally dictated” a misleading statement for his son.¹⁶

While these episodes and other publicly known facts provide significant evidence that the president obstructed justice, whether the evidence before the Special Counsel is sufficient to meet the criminal burden of proof and whether a sitting president can face criminal prosecution are open questions.

RECUSAL OF ATTORNEY GENERAL SESSIONS FROM THE RUSSIA INVESTIGATION

Another aspect of the Russia investigation – Attorney General Sessions’ recusal from it—is also a cause for concern, separate and apart from President Trump’s apparent attempts to prevent it. Attorney General Sessions’ recusal came only after significant outside pressure and damning revelations in the press. CREW joined Democracy 21 and two dozen distinguished outside organizations and individuals on February 17, 2017 in calling for Attorney General Sessions to recuse from the investigation because of his extensive ties with the Trump campaign and transition.¹⁷ Attorney General Sessions’ recusal came on March 2, 2017, one day after *The Washington Post* reported that he had failed to report at least two contacts he had with the Russian ambassador while he served as chairman of the Trump campaign’s national security advisory committee.¹⁸ The existence of those contacts contradicted statements that then-Senator Sessions made to the Senate Judiciary Committee during the confirmation process.¹⁹ Furthermore, the Department of Justice and Attorney General Sessions have been murky about when the decision to recuse was made. Despite representations from the Department of Justice that the Attorney General had been planning to recuse himself before *The Post* published its story, documents produced to CREW in response to a FOIA request showed that while a discussion of recusal issues was on Attorney General Sessions calendar for 5:15 pm on March 2, he announced his recusal at 4 pm.²⁰ To date, the Department of Justice also not disclosed any records pertaining to the advice Attorney General Sessions received regarding his need to recuse. The day after Sessions’ recusal, CREW Chair Norman Eisen and Executive Director Noah Bookbinder called for a special counsel to be appointed;²¹ Robert Mueller was ultimately named special counsel in May.

15 Jo Becker, Matt Apuzzo, and Adam Goldman, *Trump Team Met with Lawyer Linked to Kremlin Campaign*, *New York Times*, July 8, 2017, available at <https://www.nytimes.com/2017/07/08/us/politics/trump-russia-kushner-manafort.html>.

16 Ashley Parker, Carol D. Leonnig, Philip Rucker, and Tom Hamburger, *Trump Dictated Son’s Misleading Statement on Meeting with Russian Lawyer*, *Washington Post*, Jul. 31, 2017, available at https://www.washingtonpost.com/politics/trump-dictated-sons-misleading-statement-on-meeting-with-russian-lawyer/2017/07/31/04c94f96-73ae-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.5f282e9f1b34.

17 Letter from outside organizations to Attorney General Jeff Sessions, February 17, 2017, available at <http://www.democracy21.org/wp-content/uploads/2017/02/Groups-letter-to-AG-Sessions-2-17-17.pdf>.

18 Adam Entous, Ellen Nakashima and Greg Miller, *Sessions Met with Russian Envoy Twice Last Year. Encounters He Later Did Not Disclose*, *Washington Post*, Mar. 1, 2017, available at https://www.washingtonpost.com/world/national-security/sessions-spoke-twice-with-russian-ambassador-during-trumps-presidential-campaign-justice-officials-say/2017/03/01/77205eda-feac-11e6-99b4-9e613afeb09f_story.html?utm_term=.731918865467. See also Nick Gass, *Trump Names Sessions Chairman of National Security Committee*, *Politico*, Mar. 3, 2016, available at <https://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-jeff-sessions-chairman-of-national-security-committee-220220>.

19 See Jessica Estepa, *What did Al Franken Ask Jeff Sessions During his Confirmation Hearing?*, *USA Today*, June 13, 2017, available at <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/13/what-did-al-franken-ask-jeff-sessions-during-his-confirmation-hearing/102819246/>; Jeff Sessions, *Questions from Senator Leahy*, Jan. 17, 2017, available at <https://www.judiciary.senate.gov/imo/media/doc/Sessions%20Responses%20to%20Leahy%20QFRs.pdf>.

20 Betsy Woodruff, *An Inside Look at the Day Jeff Sessions Recused Himself From the Russia Probe*, *Daily Beast*, July 25, 2017, available at <https://www.thedailybeast.com/an-inside-look-at-the-day-jeff-sessions-recused-himself-from-the-russia-probe>.

21 Norman Eisen and Noah Bookbinder, *Time for a Special Counsel in the Russiagate Scandal*, *Politico*, March 3, 2017, available at <https://www.politico.com/magazine/story/2017/03/donald-trump-russia-contacts-special-counsel-214859>.

Even more troubling than the issues surrounding Attorney General Sessions' decision to recuse is the failure of the Department of Justice to reconcile Attorney General Sessions' involvement in the termination of Director Comey with recusal from the Russia investigation that Director Comey was managing. Although Attorney General Sessions might have had legitimate reasons to advocate for Director Comey's removal based on a rationale initially put forth by the Department of Justice and the White House, President Trump's public statements in the days following Director Comey's firing raise the question of whether the initial rationale was pretext. Indeed, *The New York Times* has reported that four days prior to Director Comey's firing, an aide to Attorney General Sessions asked a congressional staff member for damaging information about Director Comey.²²

Finally, Attorney General Sessions has refused to respond to questions about his conversations with President Trump about Director Comey because, according to the Attorney General, doing so would deny the president an opportunity to assert executive privilege.²³ This dubious invocation of the possibility of privilege as a justification for refusing to answer oversight queries adds to the impression that the Attorney General is trying to avoid scrutiny of his involvement in the decision to fire Director Comey.

THE PERSONALIZATION AND POLITICIZATION OF THE DEPARTMENT OF JUSTICE

President Trump's foregoing interactions with then-Director Comey and Attorney General Sessions about the Russia investigation also are part of a broader, troubling shift in the relationship between the White House and the Department of Justice under the Trump administration. President Trump's personal involvement in the appointment of United States Attorneys, his highly unusual public calls for the investigation of his former political opponent Hillary Clinton and his attacks on possible witnesses against him—including former Director Comey—have raised the prospect that the president expects the Department of Justice to serve his personal and political ends.²⁴ For instance, after Attorney General Sessions announced his recusal, President Trump reportedly erupted in anger, expressed the view that his top law enforcement official should protect him, and asked “Where’s my Roy Cohn?”—a reference to the man who served as a top aide to Senator Joseph McCarthy when the Senator led investigations into purported communist activities in the 1950s.²⁵

President Trump has also attacked the credibility of the investigations into possible coordination between his campaign and Russia as a “witch hunt” and at various points has leveled attacks on former FBI Director Comey, Deputy Attorney General Rosenstein, and Deputy FBI Director Andrew McCabe.²⁶ Many of these attacks have been

22 Schmidt, *New York Times*, Jan. 4, 2018.

23 Charlie Savage, *Explaining Executive Privilege and Sessions's Refusal to Answer Questions*, *New York Times*, Jun. 15, 2017, available at <https://www.nytimes.com/2017/06/15/us/politics/executive-privilege-sessions-trump.html>.

24 See, e.g., <https://twitter.com/realDonaldTrump/status/865207118785372160> (“With all of the illegal acts that took place in the Clinton campaign & Obama Administration, there was never a special counsel appointed!”); <https://twitter.com/realDonaldTrump/status/875438639823675392> (“Why is that [sic] Hillary Clintons [sic] family and Dems [sic] dealings with Russia are not looked at, but my non-dealings are?”); <https://twitter.com/realDonaldTrump/status/875441788110110727> (“Crooked H destroyed phones w/ hammer, ‘bleached’ emails, & had husband meet w/AG days before she was cleared- & they talk about obstruction?”); <https://twitter.com/realDonaldTrump/status/948174033882927104> (Crooked Hillary Clinton’s top aid, Huma Abedin, has been accused of disregarding basic security protocols. She put Classified Passwords into the hands of foreign agents. Remember sailors pictures on submarine? Jail! Deep State Justice Dept must finally act? Also on Comey & others”); <https://twitter.com/realdonaldtrump/status/903587428488839170?lang=en> (“Wow, looks like James Comey exonerated Hillary Clinton long before the investigation was over...and so much more. A rigged system!”); <https://twitter.com/realdonaldtrump/status/863007411132649473?lang=en> (“James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!”).

25 Schmidt, *New York Times*, Jan. 4, 2018.

26 See, e.g., Julie Hirschfeld Davis and Glenn Thrush, *Calling Comey a Liar, Trump Says He Will Testify Under Oath*, *New York Times*, June 9, 2017, avail-

picked up and repeated by congressional allies of the president, who have engaged in their own campaign to discredit the Russia investigation and those working on it.²⁷

Finally, President Trump has taken an active, personal role in the selection of United States Attorneys appointed to offices that have jurisdiction over him and his businesses. For instance, President Trump personally interviewed candidates for these lead prosecutor jobs in the Southern and Eastern Districts of New York.²⁸ Coupled with the failure of the president, his daughter Ivanka Trump, and his son-in-law Jared Kushner to divest from their business interests, President Trump's personal involvement in these hiring decisions raises the troubling possibility that he is trying to screen out individuals who would investigate his businesses or those of his closest associates.

able at <https://www.nytimes.com/2017/06/09/us/politics/trump-comey.html>; <https://twitter.com/realDonaldTrump/status/875701471999864833> ("I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director! Witch Hunt"); <https://twitter.com/realDonaldTrump/status/944665687292817415> ("How can FBI Deputy Director Andrew McCabe, the man in charge, along with leakin' James Comey, of the Phony Hillary Clinton investigation (including her 33,000 illegally deleted emails) be given \$700,000 for wife's campaign by Clinton Puppets during investigation?")

27 See, e.g., Ken Dilanian, *Republicans step up attacks on special counsel Robert Mueller*, *NBC News*, Dec. 13, 2017, available at <https://www.nbcnews.com/politics/justice-department/republicans-step-attacks-special-counsel-robert-mueller-n829306>.

28 Seung Min Kim and John Bresnahan, *Trump Personally Interviewed U.S. Attorney Candidates*, *Politico*, Oct. 19, 2017, available at <https://www.politico.com/story/2017/10/19/trump-us-attorney-interviews-243962>.

PRESIDENT TRUMP: FAILURE TO DIVEST RESULTS IN PERSONAL ENRICHMENT, CONFLICTS OF INTEREST, AND VIOLATIONS OF THE EMOLUMENTS CLAUSES

In addition to the many troubling legal issues stemming from the investigation of Russian election interference, President Trump's first year in office has been marked by business conflicts of interest and ethical problems on a scale never before seen for a president of this country. The root of those problems is his failure to divest from his vast business empire. The Trump Organization—from which President Trump continues to benefit through a trust that is operated in his financial interest—operates hotels, buildings, golf courses, and other businesses, and sells the right to use the Trump name to brand properties and other businesses. Despite numerous calls to sell his business interests and warnings that continuing to own them would lead to conflicts of interest and other problems, President Trump has refused to do so. As a result, President Trump has been personally enriched through his presidency, the public does not know if policies are made in the best interest of the country or in his financial interest, and the fundamental anti-corruption provisions of the Constitution and ethical norms are being routinely violated.

The Trump International Hotel in Washington, D.C. has become the central location for currying favor with President Trump. The hotel provides special interests the opportunity to spend money on events, rooms, food, drink, and more that ends up in President Trump's pocket, and at the same time gain access to administration officials and sometimes the president himself.²⁹ The National Mining Association, for instance, held a two-day meeting at the hotel in October where at least three cabinet secretaries spoke to the lobbying group.³⁰ Groups promoting U.S.-Turkey relations held a three-day conference at the hotel in May,³¹ and organizations ranging from the controversial American Legislative Exchange Council (ALEC) to a commercial real estate development trade association have held or will hold events there.³² All this has been good for the hotel's—and thus President Trump's—bottom line. The hotel was expected to lose \$2.1 million in the first four months of 2017, but instead turned a \$1.97 million profit.³³ And while room rates around the country stagnated, the Trump hotel raised its rates this year, reaching levels higher than comparable local hotels.³⁴

Foreign governments similarly understand that the hotel provides them a means to influence President Trump and have taken their business there, raising questions about whether these countries are receiving special treatment. The Embassy of Kuwait moved its National Day celebration to the Trump hotel from another venue, the prime

29 Jonathan O'Connell, *How the Trump hotel changed Washington's culture of influence*, *Washington Post*, Aug. 7, 2017, available at https://www.washingtonpost.com/graphics/2017/politics/trump-hotel-business/?utm_term=.26310ecf5032.

30 Juliet Eilperin and Dino Grandoni, *Three Trump Cabinet members attended mining lobbyist meeting at Trump International Hotel*, *Washington Post*, Oct. 5, 2017, available at https://www.washingtonpost.com/news/energy-environment/wp/2017/10/05/three-trump-cabinet-members-attended-mining-lobbyist-meeting-at-trump-international-hotel/?utm_term=.0daf9614d257.

31 O'Connell, *Washington Post*, Aug. 7, 2017.

32 Lee Fang and Nick Surgey, *This Group Helps Lobbyists Influence Public Officials. The Trump Hotel Is Hosting Its 2018 Gala*, *The Intercept*, Oct. 11, 2017, available at <https://theintercept.com/2017/10/11/alec-conference-trump-hotel/>; <https://www.citizensforethics.org/timeline/154449-2/>.

33 Jonathan O'Connell, *Trump D.C. hotel turns \$2 million profit in four months*, *Washington Post*, Aug. 10, 2017, available at https://www.washingtonpost.com/politics/trump-dc-hotel-turns-2-million-profit-in-four-months/2017/08/10/23bd97f0-7e02-11e7-9d08-b79f191668ed_story.html?utm_term=.932c16307b9e.

34 Betsy Woodruff, *Trump Inc. Had a Rough Year, But His D.C. Hotel Is Killing It*, *Daily Beast*, Dec. 28, 2017, available at <https://www.thedailybeast.com/trump-inc-had-a-rough-year-but-his-dc-hotel-is-killing-it>; Alexandra Berzon, *Trump Hotel in Washington Saw Strong Profit in First Four Months of 2017*, *Wall Street Journal*, Aug. 11, 2017, available at <https://www.wsj.com/articles/trump-hotel-in-washington-saw-strong-profit-in-first-four-months-of-2017-1502424589?mod=e2tw>.

minister of Malaysia and his entourage stayed at the hotel during an official visit to the United States, and lobbyists for Saudi Arabia spent thousands of dollars on rooms and catering there after the election.³⁵ The hotel even has a salesperson dedicated to seeking business from foreign diplomats.³⁶ Foreign governments also found other ways to benefit President Trump. The Chinese government, after repeated rejections, granted valuable trademarks to President Trump last year, and a large Chinese state-owned bank continues to be the biggest tenant in New York's Trump Tower.³⁷ The trademark decisions took place at a time when the administration was developing and implementing its approach on policies related to China, including areas such as trade, North Korea, human rights, and climate change, leaving the public unsure whether the benefits President Trump received influenced policymaking.

All of this foreign government spending and other benefits going to President Trump violates the Foreign Emoluments Clause of the Constitution, which was designed to broadly protect against foreign influence of any kind. The clause prohibits any federal official, including the president, from "accept[ing] of any present, Emolument, Office or Title, of any kind whatever" from any foreign government.³⁸ An "emolument" clearly includes a profit from business transactions—every dictionary from when the Constitution was drafted defined it to mean profit or gain.

President Trump's refusal to divest from his hotel also resulted in violations of a second conflict of interest provision of the Constitution, the Domestic Emoluments Clause. That clause prohibits the president from receiving any "Emolument" other than a salary "from the United States, or any of them."³⁹ President Trump, however, has received benefits from the federal and state governments. The Trump entity that runs the hotel is in violation of a conflict of interest provision of its lease with the General Services Administration (GSA) that prohibits any elected official from deriving benefits from it.⁴⁰ Yet one week after the Trump administration released a budget that increased GSA's funding while cutting most other non-defense spending, GSA provided President Trump a valuable benefit, declaring that the Trump company was in compliance with the lease in a letter that lacked any legal or rational basis.⁴¹ In addition, state government officials, like foreign ones, have stayed at the hotel when visiting Washington. Maine Governor Paul LePage, for instance, spent thousands of dollars on rooms and services at the hotel this year.⁴² The repeated and serious violations of the constitution's two emoluments clauses formed the basis of a groundbreaking lawsuit

35 Jackie Northam, *Kuwait Celebration At Trump Hotel Raises Conflict of Interest Questions*, NPR, Feb. 25, 2017, available at <https://www.npr.org/sections/parallels/2017/02/25/517039323/kuwait-celebration-at-trump-hotel-raises-conflict-of-interest-questions>; Jonathan O'Connell, *From Trump hotel lobby to White House, Malaysian prime minister gets VIP treatment*, *Washington Post*, Sept. 12, 2017, available at https://www.washingtonpost.com/politics/from-trump-hotel-lobby-to-white-house-malaysian-prime-minister-gets-vip-treatment/2017/09/12/1b296f54-97d1-11e7-87fc-c3f7ee4035c9_story.html?utm_term=.56b29371f695; Byron Tau and Rebecca Ballhaus, *Trump Hotel Received \$270,000 From Lobbying Campaign Tied to Saudis*, *Wall Street Journal*, June 6, 2017, available at <https://www.wsj.com/articles/trump-hotel-received-270-000-from-lobbying-campaign-tied-to-saudis-1496700739>.

36 Jonathan O'Connell and Mary Jordan, *For foreign diplomats, Trump hotel is place to be*, *Washington Post*, Nov. 18, 2016, available at https://www.washingtonpost.com/business/capitalbusiness/2016/11/18/9da9c572-ad18-11e6-977a-1030f822fc35_story.html?utm_term=.459160b90b39.

37 Erika Kinetz, *China approves 9 trademarks previously rejected*, *Associated Press*, June 14, 2017, available at <https://apnews.com/a891967cfe12428cb-2f7ad05f8fcf594>; Caleb Melby, Stephanie Baker, and Ben Brody, *When Chinese Bank's Lease Ends, Potential Conflict Begins*, *Bloomberg*, Nov. 28, 2016, available at <https://www.bloomberg.com/news/articles/2016-11-28/trump-s-chinese-bank-tenant-may-negotiate-lease-during-his-term>.

38 U.S. Const., art. I, § 9, cl. 8.

39 U.S. Const., art. II, § 1, cl. 7.

40 See <https://www.citizensforethics.org/legal-filing/crew-sends-letter-gsa-inspector-general/>.

41 Eric Lipton, *Trump Hotel in Washington Does Not Violate Lease, US Says*, *New York Times*, Mar. 23, 2017, available at https://www.nytimes.com/2017/03/23/us/politics/trump-hotel-washington-lease.html?_r=0.

42 Kevin Miller, *Luxury hotels, fine dining for LePage on taxpayers' dime*, *Portland Press Herald*, July 23, 2017, available at <http://www.pressherald.com/2017/07/23/luxury-hotels-fine-dining-for-lepage-on-taxpayers-dime-records-review-show-lepage-administration-spent-35000-on-d-c-trips/>.

that CREW brought on January 23, 2017.⁴³ That case was dismissed in December on standing and justiciability grounds,⁴⁴ but an appeal will be filed in coming months. The same pattern of violations also fueled two subsequent lawsuits, one brought by the Attorneys General of Maryland and the District of Columbia with CREW serving on the outside counsel team⁴⁵ and another brought by more than 200 members of Congress.⁴⁶ Both are moving through the courts, with a hearing on the Maryland and D.C. case scheduled for later this month.⁴⁷

Another source of personal enrichment and potential conflicts of interest for President Trump is Mar-a-Lago, the private Florida club he owns and has dubbed the Winter White House. In many ways, Mar-a-Lago reflects what might typically be seen in corrupt regimes, where a leader cashes in by using a family business as an avenue to access or influence. Perhaps then it is not surprising that the club doubled its initiation fee to \$200,000 shortly after the election, suggesting that President Trump is exploiting the presidency for personal gain while at the same time providing the wealthy and well-connected access to him.⁴⁸ Business leaders and others who are members of Mar-a-Lago are able to talk directly with the president and try to influence him on policy and other matters.⁴⁹ According to one former White House official, “everyone who is angling for something knows to be there.”⁵⁰ Also, as with the Trump hotel in Washington, D.C., even if these payments that seem to be efforts to be near President Trump are not illegal, they signal that access to the president is for sale.

President Trump rarely misses as an opportunity to promote his businesses, making his presidency seem more like a long-running advertisement than a public office. He visits Trump-branded golf clubs and properties he owns at every turn, spending at least 116 days during his first year in office at one.⁵¹ He also regularly plugs his properties and products in speeches and tweets. President Trump made sure to mention his nearby residential tower in a speech to the United Nations, praised his New Jersey golf club in a speech to the South Korean national assembly, and plugged his winery during a press conference on the violence in Charlottesville.⁵² President Trump even frequently wears his

43 *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, No. 1:17-cv-00458 (GBD) (S.D.N.Y. filed Jan. 23, 2017).

44 Mem. Op., No. 17-cv-458 (S.D.N.Y. Dec. 21, 2017), ECF No. 103.

45 *The District of Columbia and the State of Maryland v. Trump*, No. 8:17-cv-01596 (PJM) (D. Md. filed June 12, 2017).

46 *Blumenthal, et al. v. Trump*, No. 1:17-cv-01154 (EGS) (D.D.C. filed June 14, 2017).

47 Notice of Scheduling of Motions Hearing, *The District of Columbia et al v. Trump*, No. 8:17-cv-01596-PMJ (D. Md. Oct. 16, 2017), ECF No. 34.

48 Drew Harwell, *At Trump's Mar-a-Lago, the price for joining the 'winter White House' has doubled*, *Washington Post*, Jan. 25, 2017, available at https://www.washingtonpost.com/politics/at-trumps-mar-a-lago-club-the-price-for-joining-winter-white-house-just-doubled/2017/01/25/b0ad2f6c-e33f-11e6-a453-19ec4b3d09ba_story.html?utm_term=.b7f3a06609bf.

49 Ashley Parker and Josh Dawsey, *Time at Mar-a-Lago is a respite for Trump – and a headache for his staff*, *Washington Post*, Dec. 30, 2017, available at https://www.washingtonpost.com/politics/time-at-mar-a-lago-is-a-respite-for-trump--and-a-headache-for-his-staff/2017/12/29/c1c3764a-ecb1-11e7-b698-91d4e35920a3_story.html?utm_term=.8b90332d5fdf.

50 *Id.*

51 See <https://twitter.com/CREWcrew/status/950532755162415106>; Philip Bump, *Trump's year at Trump-branded properties*, *Washington Post*, Dec. 31, 2017, available at https://www.washingtonpost.com/news/politics/wp/2017/12/27/trumps-year-at-trump-brand-properties/?utm_term=.58f159ad009c.

52 Jessica Estepa, *President Trump makes a plug for his tower during UN speech*, *USA Today*, Sept. 18, 2017, available at <https://www.usatoday.com/story/news/politics/onpolitics/2017/09/18/president-trump-makes-plug-his-tower-during-un-speech/676602001/>; David Nakamura, *Trump promotes his New Jersey golf course during speech to South Korea parliament*, *Washington Post*, Nov. 8, 2017, available at https://www.washingtonpost.com/news/post-politics/wp/2017/11/08/trump-promotes-his-new-jersey-golf-course-during-speech-to-south-korea-parliament/?utm_term=.e9a4c27d2f0e; Dana Farrington and Barbara Sprunt, *Transcript: Trump Shifts Tone Again On White Nationalist Rally In Charlottesville*, *NPR*, Aug. 15, 2017, available at <https://www.npr.org/2017/08/15/543769884/transcript-trump-shifts-tone-again-on-white-nationalist-rally-in-charlottesville>.

reelection campaign hats—available for purchase on the campaign’s website—in public appearances, including when he visited Hurricane Harvey victims.⁵³

Beyond the unseemliness of the president’s constant promotion of his businesses, his visits to his properties have a real cost to taxpayers. The security expenses for his visits were so high that they were a factor in the Secret Service’s beginning to run out of money in August to pay its agents to protect him.⁵⁴ Each trip to Mar-a-Lago alone costs taxpayers at least \$1 million,⁵⁵ and the Secret Service paid at least \$145,000 for the use of golf carts in his first year in office.⁵⁶

After one year, the predicted consequences of President Trump’s decision to hold on to his vast business interests have come to pass. The American public deserves better than a president who enriches himself through his office, and should not be left to wonder whose best interests are behind the government’s policies.

53 Jamie Friedman, *Donald Trump Keeps Plugging His Own Merchandise During Hurricane Harvey*, *Huffpost*, Aug. 29, 2017, available at https://www.huffingtonpost.com/entry/melania-flotus-hat_us_59a59e1ce4b084581a1395a1.

54 Kevin Johnson, *Exclusive: Secret Service depletes funds to pay agents because of Trump’s frequent travel, large family*, *USA Today*, Aug. 21, 2017, available at <https://www.usatoday.com/story/news/politics/2017/08/21/secret-service-cant-pay-agents-because-trumps-frequent-travel-large-family/529075001/>.

55 Julie Bykowicz, *Do Trump’s Mar-a-Lago trips cost \$3 million*, *Associated Press*, Apr. 12, 2017, available at <https://apnews.com/b267aabaa2094c46a97e0ace4a2e491f>.

56 Jessica Estepa, *Secret Service spent \$7,500 on golf carts during Trump’s Thanksgiving Mar-a-Lago trip*, *USA Today*, Nov. 29, 2017, available at <https://www.usatoday.com/story/news/politics/onpolitics/2017/11/29/secret-service-spent-7-500-golf-carts-during-trumps-thanksgiving-mar-a-lago-trip/906074001/>.

JARED KUSHNER AND IVANKA TRUMP: NEPOTISM, CONFLICTS OF INTEREST, AND OTHER ETHICS ISSUES

The ethics problems in the White House begin with the president, but extend throughout the administration. That starts with those closest to him. The appointments of Jared Kushner and Ivanka Trump as senior advisors to the president with broad-ranging portfolios raise numerous ethics issues.⁵⁷ In addition to obvious nepotism concerns, their ethics issues include potential conflicts of interest arising from their business interests, irregularities with Mr. Kushner's financial disclosure reports and application for a certificate of divestiture, and his initial failure to report multiple foreign contacts on his national security form.

At the outset, President Trump's appointment of his son-in-law and daughter to senior advisor positions in the White House appeared to be a clear violation of the federal anti-nepotism statute.⁵⁸ Shortly after President Trump appointed his son-in-law, however, the Department of Justice's Office of Legal Counsel (OLC) came to his aid with an opinion overturning decades of precedent to conclude that the president is exempt from the anti-nepotism statute when hiring White House employees.⁵⁹ Although the OLC opinion paved the way for the White House appointments of Mr. Kushner and Ms. Trump, their hiring undoubtedly violates the intended purpose of the anti-nepotism statute and it has become apparent that the White House lacks any real mechanism for holding the president's family members accountable for their ethical transgressions.

Mr. Kushner and Ms. Trump took some initial steps to reduce possible conflicts of interest, but both followed President Trump's lead by retaining significant financial interests in their respective businesses. Mr. Kushner continues to own extensive real estate properties in multiple American cities, and has reported large lines of credit with several major banks for which he has personal liability.⁶⁰ While Ms. Trump stepped down from management of her international fashion enterprise, she retains sole ownership interest and veto power over her business interests through a trust overseen by her brother-in-law and sister-in-law as trustees.⁶¹ She also continues to have an individual ownership interest in the Trump Washington D.C. hotel.⁶² Their failure to completely divest of their outside business interests has presented numerous and continuing conflicts of interest.⁶³

Without a complete divestiture of their outside business interests, Mr. Kushner and Ms. Trump must recuse on a case-by-case basis from particular matters that would have a direct and predictable effect on their financial interests under the criminal statute, 18 U.S.C. § 208, and from certain other matters that would cause a reasonable person

57 See e.g., Richard Painter, Norman Eisen, and Virginia Canter, *Ethics laws will sideline Jared and Ivanka: Experts*, *USA Today*, Apr. 3, 2017, available at <https://www.usatoday.com/story/opinion/2017/04/03/ethics-laws-will-sideline-jared-kushner-ivanka-trump-painter-eisen-canter-column/99955864/#>.

58 5 U.S.C. § 3110.

59 Memorandum for the Counsel to the President from Daniel L. Koffsky, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Anti-Nepotism Statute to a Presidential Appointment in White House Office* (Jan. 20, 2017), available at <https://www.justice.gov/opinion/file/930116/download>.

60 Painter, Eisen, and Canter, *USA Today*, Apr. 3, 2017.

61 Rachel Abrams, *Despite a Trust, Ivanka Trump Still Wields Power Over Her Brand*, *New York Times*, Mar. 20, 2017, available at <https://www.nytimes.com/2017/03/20/business/despite-trust-ivanka-trump-still-wields-power-over-her-brand.html>; Erika Kinetz and Anne D'Innocenzio, *Ivanka's biz pros-ers as politics mixes with business*, *Associated Press*, Apr. 19, 2017, available at <https://apnews.com/d9e34f23a64947d99e4a7d757012c509>.

62 Painter, Eisen, and Canter, *USA Today*, Apr. 3, 2017.

63 Those interests are further exacerbated by the application of 18 U.S.C. § 208, which imputes to a federal employee the financial interests of a spouse and minor children.

to question their impartiality under the applicable standard of conduct.⁶⁴ This approach presents more risks than divestiture, as it requires vigilant monitoring and poses an unending opportunity for conflicts of interest. It also fails to address circumstances where their participation, though not technically barred by law, presents an opportunity for them to personally benefit because of their various outside business entanglements.

The clearest example of their financial interests intersecting directly with their official positions is a dinner Ms. Trump and Mr. Kushner attended with the Chinese president and his wife that the president and first lady hosted at Mar-a-Lago. On that same day, the Chinese government provisionally approved three new trademarks for the Ivanka Trump brand,⁶⁵ sending a clear message that it intended to curry favor with President Trump through his daughter and son-in-law. Their failure to recuse themselves from U.S. foreign policy and trade matters involving China, a country where Ms. Trump has ongoing business interests, created a clear conflict of interest.

With respect to Ms. Trump's business interests, although she committed to step aside and relinquish management of her company, she has engaged in a social media blitz in which she essentially is a "walking billboard" for her brand.⁶⁶ A *Wall Street Journal* article analyzing Ms. Trump's social media postings over a seven-month period in 2017 reported that she wore her brand's dresses, shoes, bags, or jewelry 68 percent of the time in photographs she posted about her official appearances.⁶⁷ These circumstances indicate an obvious effort to promote her brand for her own personal enrichment while engaged in official duties, in apparent violation of a basic ethics tenet prohibiting use of public office for private gain.⁶⁸

Mr. Kushner's family business has created unique conflicts of interest because of its debt obligations. When Mr. Kushner stepped away from management of his family business and its stake in 666 Fifth Avenue in New York, the Kushner company reportedly was saddled with half a \$1.2 billion mortgage for that property, which is due to be refinanced in February 2019.⁶⁹ With limited resources available domestically for the project, the family has sought substantial investment from a variety of overseas investors over the past two years, including "South Korea's sovereign-wealth fund, France's richest man, Israeli banks and insurance companies, and exploratory talks with a Saudi developer."⁷⁰ These attempts to obtain funding for the project apparently were unsuccessful, as were potential deals with China's Anbang Insurance Group and a Qatari sheikh, which ultimately "fell apart."⁷¹

Further, although he failed at first to disclose it on his national security clearance form, Mr. Kushner in his capacity as "head of his family's real estate business" met during the transition with the head of the Kremlin-controlled VEB bank.⁷² After those meetings became public, Mr. Kushner contended that the contacts with the Russian state-owned

64 5 C.F.R. § 2635.502.

65 Kinetz and D'Innocenzio, April 19, 2017.

66 Jean Eaglesham and Lisa Schwartz, *How Ivanka Trump Is a Walking Billboard for Her Namesake Fashion Business*, *Wall Street Journal*, Dec. 27, 2017, available at <https://www.wsj.com/articles/how-ivanka-trump-is-a-walking-billboard-for-her-namesake-fashion-business-1514389465>.

67 *Id.*

68 5 C.F.R. §§ 2635.101(b)(7) and 2635.702.

69 David Kocieniewski and Caleb Melby, *Kushners' China Deal Flop Was Part of Much Bigger Hunt for Cash*, *Bloomberg*, Aug. 31, 2017, available at <https://www.bloomberg.com/graphics/2017-kushners-china-deal-flop-was-part-of-much-bigger-hunt-for-cash/>.

70 *Id.*

71 *Id.*

72 *Id.*

bank were “made in his role as a Trump adviser” and “didn’t involve discussion of his family business,” according to *Bloomberg*.⁷³ With the family business in apparent dire need of funding, even Mr. Kushner’s resignation from the family business would be unlikely to eliminate the significant conflict of interest and possible national security concerns that arise from his official dealings with foreign governments that are potential sources of future funding for the Kushner real estate business. Under these circumstances, Mr. Kushner should not be engaging in any U.S. foreign policy matters dealing with these governments.

Mr. Kushner’s financial disclosure report contained numerous irregularities when it was initially filed in March 2017, which required that it be amended at least 39 times.⁷⁴ By the time the Office of Government Ethics (OGE) certified the report, Mr. Kushner had added more than 70 additional assets estimated to be worth at least \$10.6 million.⁷⁵

One of the assets Mr. Kushner initially failed to disclose on his public financial disclosure report is Cadre, an online technology real estate investment company he co-founded with his brother and his brother’s college friend. Mr. Kushner served on Cadre’s board until he joined the administration,⁷⁶ and its value appears to have substantially increased during his time as a White House advisor, due in part to \$65 million Cadre received in a June 2017 round of funding.⁷⁷ When Mr. Kushner ultimately amended his financial disclosure report to include Cadre, he reported its value as between \$5 million and \$25 million.⁷⁸ As CREW pointed out in a complaint to OGE,⁷⁹ Mr. Kushner’s initial omission of Cadre—the only technology-related company from which he did not divest—raises a question of whether he complied with OGE requirements when he sought a certificate of divestiture from OGE upon joining the administration.⁸⁰

In addition to the numerous omissions in his initial financial disclosure report, Mr. Kushner failed to report multiple foreign government contacts on his national security questionnaire filed in January 2017, which raises separate national security and conflict of interest concerns. These omissions include his meetings with Russian Ambassador Sergey Kislyak and the head of a U.S. sanctioned Russian state-owned bank during the transition period.⁸¹ Mr. Kushner’s attorney called the omissions an error, and informed the FBI that he would be providing supplemental information.⁸² Ultimately, Mr. Kushner “supplemented the list of foreign contacts three times, adding more than 100 names,”⁸³ and

73 *Id.*

74 Anita Kumar and Ben Wieder, *Jared Kushner fined again for late ethics form, Ivanka Trump fined too*, *McClatchy*, Oct. 3, 2017, available at <http://www.mcclatchydc.com/news/politics-government/white-house/article176849096.html>.

75 Garance Burke, Bernard Condon, and Chad Day, *Kushner adds at least \$10 million in assets he ‘inadvertently omitted’ to disclose*, *Associated Press*, July 21, 2017, available at <https://www.apnews.com/a660e3d56748461bb97f7a101db7709e>.

76 Letter from Noah Bookbinder, Executive Director for Citizens for Responsibility and Ethics in Washington, to Walter M. Shaub, Jr., Director, Office of Government Ethics, July 6, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/07/07151930/OGE-Letter-Kushner-7-6-171.pdf>.

77 *Id.*

78 Burke, Condon and Day, *Associated Press*, July 21, 2017.

79 Letter from Noah Bookbinder to Walter Shaub, July 6, 2017.

80 Nicholas Confessore, *Too Rich for Conflicts? Trump Appointees May Have Many, Seen and Unseen*, *New York Times*, Nov. 10, 2017, available at <https://www.nytimes.com/2017/11/10/us/politics/trump-appointees-conflicts-of-interest.html>.

81 Jo Becker and Matthew Rosenberg, *Kushner Omitted Meeting With Russians on Security Clearance Forms*, *New York Times*, April 6, 2017, available at <https://www.nytimes.com/2017/04/06/us/politics/jared-kushner-russians-security-clearance.html>.

82 *Id.*

83 Mark Landler and Maggie Haberman, *With Glare on Trump Children, Political Gets Personal for President*, *New York Times*, July 12, 2017, available at

detailing calls or meetings with representatives of more than 20 countries.⁸⁴ The number of mistakes on Mr. Kushner's security form prompted the director of the National Background Investigations Bureau to say in response to a question posed by a House member at a congressional hearing that he has "never seen that level of mistakes."⁸⁵

The multiple ethical lapses and disclosure omissions of both Mr. Kushner and Ms. Trump raise national security concerns and paint a picture of senior White House officials who seek to evade the requirements imposed on all other public servants. As senior administration officials with responsibilities ranging from negotiating peace in the Middle East to launching a World Bank loan program, Mr. Kushner and Ms. Trump are expected to adhere to the highest standards of ethical conduct and avoid even the appearance of a conflict of interest. Their apparent failure to comply with some of the most basic ethical principles undermines public confidence in the integrity of this administration.

<https://www.nytimes.com/2017/07/12/us/politics/trump-says-son-is-innocent-amid-reports-of-russia-meeting.html>.

84 Matt Zapotosky, *Why Jared Kushner has had to update his disclosure of foreign contacts more than once*, *Washington Post*, July 17, 2017, available at https://www.washingtonpost.com/world/national-security/why-jared-kushner-has-had-to-update-his-disclosure-of-foreign-contacts-more-than-once/2017/07/17/b04e8158-6b05-11e7-96ab-5f38140b38cc_story.html?utm_term=.cf3cc3f3a41a.

85 Kara Scannell, *Background check chief has 'never seen' mistakes and omissions at level of Jared Kushner forms*, *CNN*, Oct. 13, 2017, available at <http://www.cnn.com/2017/10/12/politics/jared-kushner-background-check-form/index.html>.

CONFLICTS OF INTEREST: CABINET MEMBERS

Conflicts of interest and other ethical issues have plagued a number of President Trump's cabinet members. In some cases that is because of their vast and controversial financial holdings. In at least one other case, prior work placed a cabinet member at odds with the agency he now heads. In certain instances, the conduct of cabinet members has raised additional questions about whether they are in complete compliance with their ethics commitments and financial reporting obligations. Several of the most egregious examples are discussed in more detail below.

COMMERCE SECRETARY WILBUR ROSS

Secretary of Commerce Wilbur Ross' ethical challenges stem from his extensive business holdings, particularly those involving shipping and natural gas exploration. Federal law and standards of conduct prohibit an executive branch employee from personally participating in a particular government matter that will directly and predictably affect his financial interest.⁸⁶ As part of the confirmation process, Secretary Ross was permitted to retain his interest in several shipping assets with the understanding that he would recuse on a case-by-case basis, and he was supposed to divest from problematic natural gas exploration holdings.⁸⁷ Secretary Ross' duties, however, involve facilitating U.S. trade and economic relationships with foreign countries, making it difficult for him fully to comply with those obligations.

In one case, Secretary Ross appears to have negotiated a plan to increase natural gas exports from the U.S. to China both before he had divested from his natural gas exploration holdings and while he held investments in a shipping company, Navigator Holdings Ltd., that operates liquefied gas carriers.⁸⁸ As his holdings may have been directly and predictably affected by that trade deal, participating in that matter may have violated the law. Secretary Ross' Navigator investments and his prior service on the company's board of directors raised additional concerns because one of Navigator's biggest customers had close ties to Russian oligarchs subject to U.S. sanctions and to the son-in-law of Russian President Vladimir Putin.⁸⁹ Those connections have prompted some members of the Senate to call for new hearings and an inspector general investigation.⁹⁰

Secretary Ross also participated in another meeting involving U.S. and Chinese trade issues while he retained his interest in a shipping company, Diamond S Shipping, in which both his former company and a Chinese state-owned investment company are major shareholders.⁹¹ Yet in July 2017, Secretary Ross hosted a meeting that was

86 18 U.S.C. § 208; 5 C.F.R. § 2635.502.

87 Letter from Wilbur L. Ross to David Maggi, Alternate Designated Agency Ethics Official, U.S. Department of Commerce ("Ross Ethics Agreement"), available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/\\$FILE/Ross.%20Wilbur%20L.%20FinalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C4D33DB26307189E852580C8002C7A72/$FILE/Ross.%20Wilbur%20L.%20FinalAmendedEA.pdf).

88 Commerce Secretary Ross Calls the New U.S.-China Trade Deal a "Herculean Accomplishment", *Associated Press*, May 12, 2017, available at <http://fortune.com/2017/05/12/china-us-poultry-trade-deal/>; Wilbur L. Ross Public Financial Disclosure Report ("Ross Public Financial Disclosure Report"), part 2, line items 10.6, 10.14.1.3; 10.15.1.3 and 24.1.4.2, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/\\$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/88642A2CA81AA6C2852580AB00618C8C/$FILE/Ross%20Wilbur%20L.%20Final%20278.pdf); Navigator Gas website, available at <https://www.navigatorgas.com/about/>; SEC Filing for Navigator Holdings, Form 6-K Report of Foreign Private Issuer, Mar. 31, 2017, available at <https://www.navigatorgas.com/wp-content/uploads/2015/12/Navigator-Holdings-2017-Q1-6K-Earnings-Release.pdf>.

89 Mike McIntire, Sasha Chavkin and Martha M. Hamilton, Commerce Secretary's Offshore Ties to Putin 'Cronies', *New York Times*, Nov. 5, 2017, available at <https://www.nytimes.com/2017/11/05/world/wilbur-ross-russia.html>; Jennifer Rubin, We need answers from Wilbur Ross, *Washington Post*, Nov. 7, 2017, available at https://www.washingtonpost.com/blogs/right-turn/wp/2017/11/07/we-need-answers-from-wilbur-ross/?utm_term=.9faa08428f6c.

90 Karoun Demirjian, Democrats want investigation into reports that Commerce secretary has Russian business ties, *Washington Post*, Nov. 6, 2017, available at https://www.washingtonpost.com/powerpost/democrats-want-investigation-into-reports-commerce-secretary-ross-has-russian-business-ties/2017/11/06/c4f50a32-c32a-11e7-aae0-cb18a8c29c65_story.html?utm_term=.232fc5b95317.

91 James Fontanella-Khan, Shawn Donnan and Robert Wright, Trump's commerce pick faces questions over China ties, *Financial Times*, Feb. 13, 2017, available at <https://www.ft.com/content/f6800962-f201-11e6-8758-6876151821a6>.

attended by the president of the Chinese company and approximately 20 other top U.S. and Chinese business leaders at Commerce Department headquarters.⁹² If he participated in the meeting without authorization from an ethics official, Secretary Ross violated federal conflict of interest standards of conduct.⁹³

Secretary Ross also may have failed to properly disclose all of his assets and accurately report the value of certain assets on his public financial disclosure report. While Secretary Ross told *Forbes* in October he had assets worth more than \$3 billion, his financial disclosure report shows assets of only about \$700 million.⁹⁴ This discrepancy alone raises a question of whether he accurately disclosed all of his reportable assets and income.⁹⁵ Secretary Ross's disclosure report also showed apparent omissions and irregularities in his reporting of problematic assets, including the Bank of Cyprus, where he served as director and vice chairman until he joined the Trump administration.⁹⁶ Secretary Ross has yet to fully account for the extent and value of his shares in the bank, and he failed to file periodic transaction reports for the sale of his Bank of Cyprus shares and approximately 40 other assets.⁹⁷ The Commerce Department also has made press statements representing that Secretary Ross has completed the divestiture of his holdings in the funds which own Bank of Cyprus, Navigator and Diamond S, yet no transaction reports for these reports have been made publicly available to date.⁹⁸

Taken as a whole, Secretary Ross's conduct suggests a pattern and practice of ignoring, if not flouting, his legal and ethical obligations to disclose his interests and avoid conflicts of interest and raises concerns about whether he was deliberately trying to obfuscate the value of his extensive assets. CREW has asked the agency's Inspector General to investigate.⁹⁹

EDUCATION SECRETARY BETSY DEVOS

Similar to Secretary Ross, Secretary of Education Betsy DeVos' conflict of interest issues arose from her extensive holdings, in her case a brain performance center company called Neurocore. Although Secretary DeVos was required to recuse from participating in particular matters that would have a direct and predictable effect on her financial interests, she was permitted to retain her holdings in the company, in which she and her husband are the chief

92 Blackstone's Stephen Schwarzman and Alibaba's Jack Ma host US-China Business Leaders Summit, *CNBC*, July 18, 2017, available at <https://www.cnbc.com/2017/07/18/watch-alibabas-jack-ma-speaks-at-us-china-business-summit.html>.

93 5 C.F.R. § 2635.502.

94 Dan Alexander, *The Case of Wilbur Ross' Phantom \$2 Billion*, *Forbes*, Nov. 7, 2017, available at <https://www.forbes.com/sites/danalexander/2017/11/07/the-case-of-wilbur-ross-phantom-2-billion/#38f4edfc7515>; Dan Alexander, *The Mystery of Wilbur Ross' Missing Billions*, *Forbes*, Oct. 16, 2017, available at <https://www.forbes.com/sites/danalexander/2017/10/16/the-mystery-of-wilbur-ross-missing-billions/#723d3ff01c90>; Ross Public Financial Disclosure Report.

95 Ashley Balcerzak, *Watchdog calls for investigation into Wilbur Ross*, *Center for Public Integrity*, Dec. 22, 2017, available at <https://www.publicintegrity.org/2017/12/22/21449/watchdog-calls-investigation-wilbur-ross>.

96 *Id.*; Ross Public Financial Disclosure Report, Part 1, line item 33.

97 Ross Ethics Agreement; Balcerzak, *Center for Public Integrity*, Dec. 22, 2017; Secretary Ross' Certifications of Ethics Agreement Compliance, June 2, 2017, Sept. 5, 2017 and Nov. 1, 2017, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/\\$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/A0A1D4D7FB3BA224852581D0006CE4D5/$FILE/Ross,%20Wilbur%20EA%20Certification%20Combined%201-3.pdf).

98 Balcerzak, *Center for Public Integrity*, Dec. 22, 2017.

99 Letter from Noah Bookbinder to Peggy E. Gustafson, Inspector General, U.S. Department of Commerce, December 21, 2017 (available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/12/21195628/Ross-Complaint-FINAL.pdf>).

investors.¹⁰⁰ Secretary DeVos initially reported an investment in Neurocore of between \$5 million and \$25 million, and has invested another \$2 million to \$10 million in the company since joining the administration.¹⁰¹

Neurocore claims to have remarkable success rates for its work with “10,000 children and adults to overcome problems with attention deficit disorder (ADHD), autism, sleeplessness, and stress” as reported by the *New York Times*.¹⁰² Experts consulted by *Education Week*, however, asserted that current scientific evidence does not support the claims made by Neurocore.¹⁰³ Neurocore also has come under investigation by the Better Business Bureau for false advertising after multiple sources concluded there is little conclusive evidence that the treatment works in the way Neurocore claims it does.¹⁰⁴

In general, allowing the Secretary of Education to hold a significant financial interest in an education-related program targeted at children may result in a conflict of interest.¹⁰⁵ Secretary DeVos’ investment in Neurocore also may present a more specific conflict of interest as a result of her agency’s role in analyzing state and local school improvement plans.¹⁰⁶ Under the Every Student Succeeds Act, the Department of Education reviews accountability plans submitted by the states.¹⁰⁷ The “question of what kind of evidence companies [such as Neurocore] can use to justify claims of effectiveness will continue to grow in importance” since the law “requires states and districts to provide evidence to support their approaches to school intervention and turnaround.”¹⁰⁸

Further, the DeVos-owned investment management company that holds Secretary DeVos’ interest in Neurocore, Windquest Group, prominently features Neurocore’s logo and link along with its other major investments on its website.¹⁰⁹ Taken together, the significant financial backing of the company by Secretary DeVos and her spouse, the continued promotion of Neurocore on the DeVos-owned investment company website, and the population targeted

100 Matthew Goldstein, Steve Eder, and Sheri Fink, *Betsy DeVos Won’t Shed Stake in Biofeedback Company, Filings Show*, *New York Times*, Jan. 20, 2017, available at <https://www.nytimes.com/2017/01/20/business/dealbook/betsy-devos-neurocore.html>; Sheri Fink, Steve Eder, and Matthew Goldstein, *Betsy DeVos Invests in a Therapy Under Scrutiny*, *New York Times*, Jan. 30, 2017, available at <https://www.nytimes.com/2017/01/30/us/politics/betsy-devos-neurocore-brain-centers.html>.

101 Betsy DeVos Public Financial Disclosure Report, part 6, line item 24.10, Jan. 19, 2017, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/E554507378A61BDF852580AE002C70E1/\\$FILE/DeVos.%20Elisabeth%20P.%20%20final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/E554507378A61BDF852580AE002C70E1/$FILE/DeVos.%20Elisabeth%20P.%20%20final278.pdf); Betsy DeVos Periodic Transaction Report, line item 4, Aug. 11, 2017, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0804E219026DEF9098525817A0026F147/\\$FILE/Elisabeth-P-DeVos-07.30.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0804E219026DEF9098525817A0026F147/$FILE/Elisabeth-P-DeVos-07.30.2017-278T.pdf); Betsy DeVos Periodic Transaction Report, line item 1, July 26, 2017, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F60E5E3212679DB88525816A0026F16B/\\$FILE/Elisabeth-P-DeVos-06.30.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/F60E5E3212679DB88525816A0026F16B/$FILE/Elisabeth-P-DeVos-06.30.2017-278T.pdf); and Betsy DeVos Periodic Transaction Report, line item 5, May 18, 2017, available at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/FEBCE192842A975C852581250026EC9C/\\$FILE/Elisabeth-P-DeVos-04.28.2017-278T.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/FEBCE192842A975C852581250026EC9C/$FILE/Elisabeth-P-DeVos-04.28.2017-278T.pdf).

102 Goldstein, Eder, and Fink, *New York Times*, Jan. 20, 2017.

103 Benjamin Herold, *DeVos-Backed Company Questioned on ADHD, Autism*, *Education Week*, Feb. 7, 2017, available at <http://www.edweek.org/ew/articles/2017/02/08/devos-backed-company-questioned-on-adhd-autism.html>. (Ken Koedinger, a professor of psychology and human-computer interaction at Carnegie Mellon University in Pittsburgh, in an interview with *Education Week*, stated that “it’s worrisome that the country’s new education secretary nominee would remain closely tied to a company that has apparently made exaggerated and misleading claims about its service.”)

104 Erin Brodwin, *Investigators are calling out Betsy DeVos’ controversial ‘brain training’ company for misleading advertising*, *Business Insider*, Aug. 10, 2017, available at <http://www.businessinsider.com/betsy-devos-brain-training-misleading-advertising-2017-8>.

105 Norm Eisen and Richard Painter, *The Ethics Case Against Betsy DeVos*, *The Hill*, Feb. 6, 2017, available at <https://www.citizensforethics.org/news/ethics-case-betsy-devos/> (Allowing the Secretary of Education to continue to hold an investment in “a science and research brain-based program” that produces “life-changing results” targeted to children is “a departure from precedent and common sense.”).

106 Herold, *Education Week*, Feb. 7, 2017.

107 Every Student Succeeds Act, 20 U.S.C. § 6301, et seq.; Herold, *Education Week*, Feb. 7, 2017.

108 *Id.*

109 Website for Windquest Group, available at <http://windquest.com/corporate-family>.

by the company (*e.g.*, parents of children with ADHD) may constitute an improper endorsement in violation of the standards of ethical conduct.¹¹⁰

Secretary DeVos also may not have complied with her divestiture obligations. In her ethics agreement, Secretary DeVos vowed to divest 102 assets within 90 days of her confirmation as Secretary of Education.¹¹¹ The deadline for completing that divestment should have been May 8, 2017, yet as of January 1, 2018, she had filed only 17 sales transactions.¹¹² Although some of these sales transactions involved holding companies that would include the sale of underlying assets, there appears to be a gap between what she was required to divest and what has been reported as sold. This gap suggests she possibly could still hold millions of dollars in education-related assets, including the \$500,000 to \$1 million she reported holding in Knowledge Universe Education, the largest private provider of early childhood education in the U.S.¹¹³ Although Secretary DeVos could have transferred the value of these assets to a trust or given them away as a gift (in which case no transaction report would have been required), there is no public information confirming she has done this or otherwise complied with her divestiture obligations.

ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY (EPA) SCOTT PRUITT

Ethics questions about EPA Administrator Scott Pruitt's impartiality arose primarily from his participation in multiple lawsuits against the EPA when he served as Oklahoma Attorney General. In that capacity, Mr. Pruitt called for the elimination of the EPA and referred to himself as a "leading advocate against the EPA's activist agenda."¹¹⁴ Of 19 cases Mr. Pruitt filed against the EPA, eight were pending before the courts at the time of his confirmation hearing.¹¹⁵

To address the obvious conflict of interest concerns, 30 Senate Democrats requested that Mr. Pruitt recuse himself from participating personally and substantially in any matter (including regulations) related to the litigation he pursued as Oklahoma Attorney General for the entirety of his tenure at the EPA and without seeking any waiver.¹¹⁶ Of particular concern was the possibility that Mr. Pruitt intended to "switch sides" in pending litigation at the outset of his appointment in a manner that would create both an actual and apparent conflict of interest.¹¹⁷

110 5 C.F.R. § 2635.702.

111 Letter from Betsy DeVos to Marcella Goodridge-Keiller, Designated Agency Ethics Official, U.S. Department of Education, Jan. 19, 2017, *available at* [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/E2461CB47CF5A473852580C1002C7A3B/\\$FILE/DeVos.%20Elisabeth%20P.%20%20finalAM-ENDEDEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/E2461CB47CF5A473852580C1002C7A3B/$FILE/DeVos.%20Elisabeth%20P.%20%20finalAM-ENDEDEA.pdf).

112 Secretary DeVos' has filed 10 periodic transaction reports for her purchase and sales transactions, which are *available at* <https://extapps2.oge.gov/201/Presiden.nsf/PAS%20IndexA?OpenView&Start=1&Count=1000&Expand=1&RestrictToCategory=D#1>.

113 DeVos Public Financial Disclosure Report, Part 6, line item 34.2.1.

114 Dominique Mosbergen, *Scott Pruitt Has Sued the Environmental Protection Agency 13 Times. Now He Wants to Lead It*, *Huffington Post*, Jan. 17, 2017, *available at* http://www.huffingtonpost.com/entry/scott-pruitt-environmental-protection-agency_us_5878ad15e4b0b3c7a7b0c29c.

115 Letter from 30 Senators to Scott Pruitt, Attorney General of Oklahoma, Feb. 16, 2017, *available at* <https://www.markey.senate.gov/imo/media/doc/Pruitt%20recusal%20letter%2002.16.17.pdf>.

116 *Id.*

117 Letter from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, to Kevin S. Minoli, Principal Deputy General Counsel & Designated Agency Ethics Officer, Jan. 17, 2017, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/01/17183250/Letter-to-EPA-ethics-counsel-re-Pruitt-FINAL.pdf>.

In his ethics agreement, Administrator Pruitt acknowledged he had a “covered relationship” with Oklahoma for one year following his resignation, but he affirmatively stated his intent upon confirmation to “seek authorization to participate personally and substantially in particular matters involving specific parties” in which Oklahoma is a party or represents a party.¹¹⁸ Ultimately Administrator Pruitt agreed to put in place specific recusals for twelve active cases in which Oklahoma is a party, petitioner, or intervenor.¹¹⁹ While this is a significant step, it is not sufficient. He must also extend his recusal to the rulemaking that is the subject of the litigation matters in order to adequately address the appearance of impropriety.

118 Letter from Edward Scott Pruitt to Kevin S. Minoli, Designated Agency Ethics Official, U.S. EPA, Jan. 3, 2017, *available at* [https://extapps2.epa.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/\\$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf](https://extapps2.epa.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf).

See also 5 C.F.R. § 2635.501-.502.

119 Memorandum from EPA Administrator E. Scott Pruitt to Acting Assistant Administrators, Acting General Counsel, Inspector General and Acting Regional Administrators, May 4, 2017, *available at* https://www.eenews.net/assets/2017/05/05/document_pm_06.pdf.

THE HATCH ACT

The Hatch Act prohibits executive branch officials from using their official authority for political purposes. Activities covered by this prohibition include use by an official of his or her official title while participating in political activity. Several White House and agency officials have run afoul of this prohibition.

As CREW asserted in a complaint, White House Director of Social Media Dan Scavino Jr. violated the Hatch Act when he used Twitter to call on President Trump's followers to defeat Republican Rep. Justin Amash of Michigan, who had defied the president on health care legislation.¹²⁰ The account (@DanScavino) had a photograph of Mr. Scavino standing in the Oval Office next to the official presidential flag with a header photograph that showed President Trump giving a speech behind a lectern displaying the official seal.¹²¹ All this evidenced Mr. Scavino's use of his official authority to affect Rep. Amash's primary election. The Office of Special Counsel (OSC), which enforces the Hatch Act, concluded in response to CREW's complaint that Mr. Scavino's tweet violated the statute and reprimanded him.¹²²

CREW similarly asserted in a complaint that Nikki Haley, United States Ambassador to the United Nations, also violated the Hatch Act using Twitter,¹²³ retweeting a tweet that President Trump posted in support of Ralph Norman, at the time a candidate running in a special congressional election.¹²⁴ Ambassador Haley sent the retweet from her @nikkihaley Twitter account, which identified her as the "United States Ambassador to the United Nations," used her official photo from the State Department website as her account profile photograph,¹²⁵ and had a header photograph of her standing with President Trump in the White House Diplomatic Reception Room.¹²⁶ With all the indicia of an official Twitter account, its use to engage in political activity was improper under the Hatch Act. The OSC once again concluded in response to CREW's complaint that Ambassador Haley violated the Hatch Act and reprimanded her.¹²⁷

Yet another top administration official, Counselor to the President Kellyanne Conway, also appears to have violated the Hatch Act. In November, Ms. Conway, after being introduced by her official title, was interviewed on Fox and Friends standing in front of the White House. During the interview, Ms. Conway attacked the Democratic candidate in the Alabama Senate special election campaign, Doug Jones, saying he would "be a vote against" President Trump's

120 Letter from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, to Carolyn Lerner, Special Counsel, Apr. 4, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/04/05204606/OSC-Scavino-4-4-171.pdf>.

121 See <https://web.archive.org/web/20170401093617/https://twitter.com/DanScavino>.

122 Eric Lipton, *White House Official's Political Tweet Was Illegal, Agency Says*, *New York Times*, June 9, 2017, available at https://www.nytimes.com/2017/06/09/us/politics/dan-scavino-hatch-act-amash.html?_r=0.

123 Letter from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, to Adam Miles, Acting Special Counsel, June 27, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/06/27151440/OSC-Haley-6-27-17.pdf>.

124 Although Ambassador Haley later removed the retweet, a copy was captured by a journalist and is available at <https://twitter.com/AndrewBeatty/status/876983817717895169>.

125 United States Mission to the United Nations, *The Leadership*, available at <https://usun.state.gov/leadership>.

126 See <https://web.archive.org/web/20170627161134/https://twitter.com/nikkihaley>.

127 Darren Samuelsohn, *Nikki Haley hit for Hatch Act violation over Trump Retweet*, *Politico*, Oct. 3, 2017, available at <https://www.politico.com/story/2017/10/03/nikki-haley-hatch-act-trump-retweet-243415>.

agenda.¹²⁸ By advocating against a candidate while acting in her official capacity, Ms. Conway seemingly violated the statute, a charge OSC is investigating.¹²⁹

Interior Secretary Ryan Zinke's government-funded travel to attend political fundraisers has also raised Hatch Act concerns. Last spring, he participated in a political fundraiser in the Virgin Islands, where he helped solicit donations for the Virgin Islands Republican Party. The fundraiser occurred while Secretary Zinke was on a three-day, government-funded official trip to the Virgin Islands.¹³⁰ The Virgin Islands Republican Party repaid the Interior Department \$275 for expenses related to Secretary Zinke's appearance at the fundraiser,¹³¹ which may be enough to avoid a Hatch Act violation. But Secretary Zinke continues to be under investigation by the Interior Department Inspector General and the OSC, for the multiple times he has mixed official business with political activity.¹³²

128 Miranda Green, Former Ethics Director: Kellyanne Conway violated Hatch Act with Roy Moore comments, *CNN*, Nov. 24, 2017, available at <http://www.cnn.com/2017/11/22/politics/kellyanne-conway-hatch-act/index.html>.

129 Josh Gerstein, Legal complaint filed over Conway's comments on Moore race, *Politico*, Nov. 22, 2017, available at <https://www.politico.com/story/2017/11/22/kellyanne-conway-hatch-act-complaint-doug-jones-comment-259147>.

130 Ben LeFebvre, Interior reimbursed for Zinke Virgin Island fundraiser, but contributions unaccounted for, *Politico*, Dec. 19, 2017, available at <https://www.politico.com/story/2017/12/19/interior-reimbursed-zinke-virgin-island-fundraiser-226980>.

131 *Id.*

132 *Id.*

MISUSE OF GOVERNMENT RESOURCES

Officials at both the White House and agencies have misused or squandered government resources to a startling degree and to the fiscal detriment of the American taxpayer. One of the most egregious examples is the use by multiple cabinet heads of non-commercial aircraft for government travel. HHS Secretary Tom Price resigned under pressure in September after it was revealed he had incurred over \$1 million in travel costs, including more than \$500,000 for trips to Europe, Africa, and Asia on military aircraft and domestic travel on more than 26 charter jets.¹³³ Treasury Secretary Steven Mnuchin also generated controversy when he and his wife were photographed deplaning from a government aircraft on their way to Fort Knox, where they were able to secure a view of the solar eclipse just outside its path of totality.¹³⁴ A report by the Treasury Department's Office of Inspector General found "a disconnect between the standard of proof called for [by White House guidance] and the actual amount of proof provided by Treasury and accepted by the White House in justifying these trip requests."¹³⁵

At the White House, Counselor to the President Kellyanne Conway misused her public office to promote Ivanka Trump's clothing brand. While appearing in her official capacity on Fox News, Ms. Conway told viewers, "Go buy Ivanka's stuff is what I would tell you," and a few moments later added, "I'm going to give a free commercial here: Go buy it today, everybody; you can find it online."¹³⁶ In a similar fashion, the State Department posted on its website an article that appeared to promote President Trump's Mar-a-Lago resort.¹³⁷

At the EPA, Administrator Scott Pruitt has spent tens of thousands of dollars of taxpayer money on counter-surveillance precautions, such as hidden listening devices and sophisticated biometric locks, and a custom privacy telephone booth that alone cost \$25,000.¹³⁸ Further, unlike any of his predecessors, Mr. Pruitt has acquired a round-the-clock security detail of over a dozen agents that is estimated to cost at least \$2 million annually.¹³⁹ At the same time, the administration plans to cut EPA's budget by 30 percent.¹⁴⁰

133 Dan Diamond, *Scoop: Tom Price's travel costs exceed \$1 million since May*, *Politico*, Sept. 29, 2017, available at <https://www.politico.com/tipsheets/politico-pulse/2017/09/29/scoop-tom-prices-travel-costs-exceed-1-million-since-may-222560>; Juliet Eilperin, Amy Goldstein, and John Wagner, *HHS Secretary Tom Price resigns amid criticism for taking charter flights at taxpayer expense*, *Washington Post*, Sept. 29, 2017, available at https://www.washingtonpost.com/news/post-politics/wp/2017/09/29/trump-to-decide-friday-night-whether-to-fire-hhs-secretary-price/?utm_term=.4cf51585aea4.

134 Alan Rappeport, *Seven Flights for \$800,000: Mnuchin's Travel on Military Jets*, *New York Times*, Oct. 5, 2017, available at <https://www.nytimes.com/2017/10/05/us/politics/mnuchin-military-flights.html>.

135 That report is available on *Politico's* website at <http://www.politico.com/f/?id=0000015e-ee60-dfe3-abfe-ffe93fab0000>.

136 Kellyanne Conway on Ivanka Trump's Fashion Line: 'Go Buy It Today!', *Fox & Friends*, Feb. 9, 2017, available at <http://insider.foxnews.com/2017/02/09/kellyanne-conway-ivanka-trump-retailers-go-buy-her-stuff>.

137 Anne Gearan, *State Department Website Removes Article Touting History of Trump's Mar-a-Lago Estate*, *Washington Post*, Apr. 24, 2017, available at https://www.washingtonpost.com/world/national-security/state-department-website-touts-glittering-history-of-trumps-mar-a-lago-estate/2017/04/24/bd298e44-292f-11e7-b605-33413c691853_story.html?utm_term=.887d4e9bcfff.

138 Michael Biesecker, *EPA chief sweeps office for bugs, installs high-tech locks*, *Associated Press*, Dec. 19, 2017, available at <https://www.apnews.com/242fd35342c34a41b2e2db69b64c44d1>.

139 Rene Marsh and Gregory Wallace, *First on CNN: Security costs skyrocket at 'lightning rod' EPA*, *CNN*, Oct. 23, 2017, available at <http://www.cnn.com/2017/10/23/politics/epa-pruitt-security-costs/index.html>.

140 *Id.*

ETHICS EXECUTIVE ORDER: FLOODING THE SWAMP

As a candidate, President Trump pledged to “drain the swamp.” Notwithstanding this promise, and an executive order that restricted lobbying activities, his administration has been filling the swamp with lobbyists and industry influence.

Shortly after taking office, President Trump issued an executive order on ethics that included a five-year ban preventing former Trump appointees from lobbying their former federal agency employer and a lifetime ban restricting former appointees from lobbying on behalf of foreign governments.¹⁴¹ At the same time, he removed a number of important lobbying restrictions that President Obama had imposed including, most significantly, the restriction barring lobbyists from taking administration jobs with any agency they had lobbied in the previous two years.¹⁴² The Trump order still prohibits lobbyists who join the administration from working for two years on matters on which they had previously lobbied without a waiver.

With respect to individual waivers, after initially fighting their release, the Trump White House made an initial public release of those it had granted, consisting of 9 waivers covering 17 White House appointees, among them four former lobbyists.¹⁴³ In total 10 individual waivers have been granted covering 18 White House appointees.¹⁴⁴ They include Mike Catanzaro, a prominent former energy lobbyist whose clients included natural gas and fossil fuel companies,¹⁴⁵ who received a broad waiver that would allow him to work on “emissions regulations, clean air standards and renewable fuel standards” as reported by the *Washington Post*.¹⁴⁶ Of the ten waivers issued for agency appointees, two were issued to former lobbyists who joined EPA, including a former American Petroleum Institute lobbyist and senior deputy general counsel who was granted a waiver to work on renewable fuel standards.¹⁴⁷

In all, given the number of lobbyists the Trump administration has hired, it has issued inexplicably few waivers, and those it has issued do not include at least six former lobbyists working in the White House.¹⁴⁸ This has led to

141 Executive Order 13770, Jan. 28, 2017, available at [https://www.oge.gov/web/oge.nsf/Executive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/\\$FILE/Exec%20Order%2013770.pdf?open](https://www.oge.gov/web/oge.nsf/Executive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf?open).

142 Executive Order 13490, Jan. 21, 2009, available at [https://oge.gov/Web/OGE.nsf/Executive%20Orders/A70F962587DAC28F85257E96006A90F2/\\$FILE/23a5e4eeaffd4e14b4387b40b0eae5963.pdf?open](https://oge.gov/Web/OGE.nsf/Executive%20Orders/A70F962587DAC28F85257E96006A90F2/$FILE/23a5e4eeaffd4e14b4387b40b0eae5963.pdf?open); see also Isaac Arnsdorf, *Trump lobbying ban weakens Obama rules*, *Politico*, Jan., 28, 2017, available at <http://www.politico.com/story/2017/01/trump-lobbying-ban-weakens-obama-ethics-rules-234318>.

143 Matea Gold, *White House grants ethics waivers to 17 appointees, including four former lobbyists*, *Washington Post*, May 31, 2017, available at https://www.washingtonpost.com/news/post-politics/wp/2017/05/31/white-house-grants-ethics-waivers-to-17-appointees-including-four-former-lobbyists/?utm_term=.129b45ee4e74. Two blanket waivers also were granted. See White House website, *List of Ethics Waivers issued as of May 31, 2017*, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/Waiver%20Chart%205-31-17.pdf>.

144 White House website, *List of Ethics Waivers issued as of Oct. 19, 2017*, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Waiver%20Chart%2010-19-17.pdf>.

145 Andrew Restuccia and Anna Palmer, *White House eyeing fossil fuel lobbyist for energy adviser job*, *Politico*, Feb. 2, 2017, available at <https://www.politico.com/story/2017/02/white-house-energy-lobbyist-234773>.

146 Gold, *Washington Post*, May 31, 2017. The other three former lobbyists in the White House are: tax and retirement policy advisor Shahira Knight, formerly a vice president for Fidelity Investments, who received a waiver to allow her to “participate in a range of tax and financial policy matters,” former bankruptcy and securities lobbyist Andrew Olmen from the Venable law firm, who received a waiver to “meet with former clients involving in Puerto Rico’s financial crisis and engage in a range of insurance and financial policies,” and Joshua Pitcock, who serves as chief of staff to Vice President Mike Pence and previously worked on behalf of a lobbyist for the state of Indiana.

147 The waivers issued to agency appointees are available at [https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+\(EO+13770\);](https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+(EO+13770);) Catherine Douglas Moran, *Petroleum Institute Lawyer Picked for EPA Legal Counsel*, *Environment & Energy Report*, July 5, 2017, available at <https://www.bna.com/petroleum-institute-lawyer-n73014461210/>.

148 Theodorick Meyer, *Trump White House lacks waivers for longtime lobbyists*, *Politico*, June 7, 2017, available at <https://www.politico.com/story/2017/06/07/trump-waivers-lobbyists-conflicts-239277>.

questions about whether additional waivers should have been granted or whether the rules are effective. Further, many of the White House waivers that have been granted are undated or unsigned, suggesting a lack of rigor in the process, and some appear to have been made “retroactively” in a legally impermissible manner.¹⁴⁹

Moreover, even with President Trump’s lobbying restrictions, industries are in a position to influence specific issue and policy areas because of the background and experience of many political appointees. According to one analysis, at least 16 of EPA’s 45 political appointees “worked for industries such as oil, coal and chemicals” and four of these individuals “worked for, or donated to, politicians who have questioned established climate science.”¹⁵⁰ EPA career employees have complained that these political appointees are shutting them out of the decision-making process.¹⁵¹

In short, far from achieving its intended effect, the Trump executive order barring certain lobbying activities has failed to curb industry influence on government policies and decision-making. Indeed, it appears President Trump, under cover of the ethics pledge, has actually filled the government with lobbyists and industry representatives.

149 Matea Gold, *Ethics office will press White House on undated conflict-of-interest waivers*, *Washington Post*, June 2, 2017, available at https://www.washingtonpost.com/politics/ethics-office-will-press-white-house-on-undated-conflict-of-interest-waivers/2017/06/02/5700719c-47b0-11e7-a196-a1bb629f64cb_story.html?utm_term=.ad53db229424.

150 Rachel Leven, *A behind-the-scenes look at Scott Pruitt’s dysfunctional EPA*, *Center for Public Integrity*, Nov. 9, 2017, available at <https://www.publicintegrity.org/2017/11/09/21275/behind-scenes-look-scott-pruitts-dysfunctional-epa>.

151 *Id.*

EXECUTIVE BRANCH TRANSPARENCY IS IN SHARP DECLINE

With all of the ethics violations and opportunities for improper influence in this administration's first year, it is particularly crucial to have transparency so the public can monitor how decisions are made and who is influencing them. Instead, executive branch transparency appears to be declining sharply.

THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) creates an affirmative right, upon request, to access government records unless they fall within one of the statute's nine exemptions. The FOIA provides an especially valuable tool for transparency and government accountability by exposing government corruption and revealing how the government really functions. Yearly data is not yet available on the Trump administration's compliance with the FOIA, but anecdotal evidence suggests transparency is suffering badly. The Trump administration has yet to formalize its FOIA policy, as predecessors have done in memoranda from the attorney general, but its watchwords appear to be delay and secrecy. When sued, agencies claim they face ever growing backlogs and requesters report little success in obtaining records of any kind from agencies like the EPA and the Interior Department.

The FOIA process also appears to have become politicized at many agencies. High level political officials at both the EPA and the Interior Department have injected themselves directly into their agencies' FOIA processes to control the release of information that would reveal close ties between top agency officials and the industries they regulate. This has delayed, if not barred, public access to critical documents.¹⁵² And in a low water mark for the FOIA, Trump allies have weaponized the statute by filing FOIA requests for emails sent or received from specific EPA employees who have expressed concerns about the direction in which EPA Administrator Scott Pruitt is taking the agency in an apparent effort to intimidate and silence them.¹⁵³

Secrecy at the White House also has increased exponentially. The Trump administration abandoned the practice of the Obama administration to regularly release the vast majority of White House visitor logs, opting instead for total secrecy regarding who is meeting with the president and his advisors.¹⁵⁴ CREW has joined with the National Security Archive and the Knight First Amendment Institute to sue for release of these important records.¹⁵⁵ Commentators have pointed out that this "claw back" of transparency by the Trump White House fits into a larger narrative about a White House intent on concealing from the American public what it is doing and why.¹⁵⁶ In litigation over this issue the White House has claimed the unchecked power to keep secret anything that reflects the president's schedule, even if found in agency records and notwithstanding the FOIA's mandatory disclosure requirements.¹⁵⁷

152 Dino Grandoni and Juliet Eilperin, *Trump Environmental Officials Are Keeping Tight Rein Over Stampede of FOIA Requests*, *Washington Post*, Dec. 15, 2017, available at https://www.washingtonpost.com/news/powerpost/wp/2017/12/15/trump-environmental-officials-are-keeping-tight-rein-over-stampede-of-foia-requests/?utm_term=.c517535c4419.

153 Eric Lipton and Lisa Friedman, *E.P.A. Employees Spoke Out. Then Came Scrutiny of Their Email*, *New York Times*, Dec. 17, 2017, available at https://www.nytimes.com/2017/12/17/us/politics/epa-pruitt-media-monitoring.html?_r=0.

154 Julie Hirschfeld Davis, *White House to Keep Its Visitor Logs Secret*, *New York Times*, Apr. 14, 2017, available at https://www.nytimes.com/2017/04/14/us/politics/visitor-log-white-house-trump.html?_r=0.

155 *Doyle, et al. v. U.S. Dep't of Homeland Security, et al.*, No. 1:17-cv-02542 (KPF) (S.D.N.Y. filed Apr. 10, 2017).

156 See, e.g., James Hohmann, *The Daily 202: What Does Trump Have to Hide? Secretive White House Unapologetic About Clawing Back Transparency*, *Washington Post*, Apr. 17, 2017, available at https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2017/04/17/daily-202-what-does-trump-have-to-hide-secretive-white-house-unapologetic-about-clawing-back-transparency/58f411b3e9b69b3a72331e8e/?utm_term=.fa15f3202c99.

157 *Doyle, et al. v. U.S. Dep't of Homeland Security, et al.*, No. 1:17-cv-02542 (KPF) (S.D.N.Y. filed Apr. 10, 2017).

The FOIA remains a valuable tool for transparency, but the plethora of questionable, unlawful, and unethical actions and decisions the Trump administration has taken have heavily taxed the statute and the agencies' ability to keep up with the ever-growing number of requests.

RECORDKEEPING LAWS

Transparency issues extend beyond the FOIA. The Federal Records Act (FRA) imposes on agency heads the obligations to both “make and preserve records” that document the agency’s “functions, policies, decisions, procedures and essential transactions.”¹⁵⁸ Further, each agency head must maintain an active records management program that provides effective controls over the creation and use of federal records.¹⁵⁹ Agency records form part of the American public’s historical legacy and assist with meaningful oversight.

Contrary to these directives, EPA Administrator Scott Pruitt reportedly has at times instructed agency employees “not to take notes” at meetings, to prevent a written record from being created.¹⁶⁰ He and his top aides also seem to be avoiding the creation of written documentation that explains why the EPA is making some of its major regulatory changes. According to the *New York Times*, aides to Mr. Pruitt “asked career employees to make major changes in a rule regulating water quality in the United States—without any records of the changes they were being ordered to make.”¹⁶¹ That same rule was initially backed up by an analysis of “the economic benefits of preventing water pollution,” but once Mr. Pruitt decided to reverse the rule, EPA “economists were verbally told to produce a new study that changed the wetlands benefit[.]”¹⁶² In the same vein, a FOIA lawsuit against EPA for records related to an internal Superfund task force revealed the task force had created no record of its deliberations, even though the task force’s work produced 42 detailed recommendations.¹⁶³ This conduct conflicts directly with the recordkeeping obligations the FRA imposes on Mr. Pruitt and all EPA employees.

The Presidential Records Act (PRA) is the corollary recordkeeping statute that applies to the president and those who advise and assist him. Passed in the wake of the Watergate scandal, the PRA establishes public ownership of presidential and vice-presidential records and imposes recordkeeping requirements on the president, vice president, and their staff.¹⁶⁴ While the Trump White House has embraced new communications technologies, it has shown far less enthusiasm for the governing recordkeeping obligations.

¹⁵⁸ 44 U.S.C. § 3101.

¹⁵⁹ 44 U.S.C. § 3102.

¹⁶⁰ Coral Davenport and Eric Lipton, *Scott Pruitt is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, *New York Times*, Aug. 11, 2017, available at <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html?mcubz=0>.

¹⁶¹ *Id.*

¹⁶² Davenport and Lipton, *New York Times*, Aug. 11, 2017, quoting Elizabeth Southerland, a former senior official in EPA’s water office.

¹⁶³ Michael Giesecker, *EPA Says Superfund Task Force Created by Pruitt Kept No Records of Meetings*, *Chicago Tribune*, Dec. 20, 2017, available at <http://www.chicagotribune.com/news/nationworld/politics/ct-epa-pruitt-superfund-task-force-records-20171220-story.html>.

¹⁶⁴ 44 U.S.C. §§ 2201, *et seq.*

White House officials reportedly use messaging applications that destroy messages as they are being read, keeping their contents forever beyond the public's reach¹⁶⁵ and in direct conflict with the PRA's recordkeeping obligations. And while the White House has acknowledged that the president's tweets represent an official presidential communication,¹⁶⁶ the president himself has shown little regard for his obligation to preserve them, deleting those that cast him in a bad or embarrassing light.¹⁶⁷ Here too, CREW is litigating to assure the preservation of these materials.¹⁶⁸

165 Maya Kosoff, White House Staffers Are Using a Secret Chat App to Speak Freely, *Vanity Fair*, Feb. 27, 2017, available at <http://www.vanityfair.com/news/2017/02/white-house-staffers-are-using-a-secret-chat-app-to-speak-freely>.

166 Ali Vitali, Trump's Tweets 'Official Statements,' Spicer Says, *NBC News*, June 6, 2017, available at <https://www.nbcnews.com/politics/white-house/trump-s-tweets-official-statements-spicer-says-n768931>. The National Archives and Records Administration also considers the president's tweets to be presidential records. Shontavia Johnson, Donald Trump's Tweets Are Now Presidential Records, *U.S. News & World Rep.*, Feb. 1, 2017, available at <https://www.usnews.com/news/national-news/articles/2017-02-01/donald-trumps-tweets-are-now-presidential-records>.

167 See, e.g., Ben Kentish, Donald Trump Deletes Tweet About Meeting Generals at his Mar-a-Lago Florida Resort, *The Independent*, Feb. 22, 2017, available at <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-delete-tweet-generals-meeting-mar-a-lago-florida-keith-kellogg-h-r-mcmaster-a7590886.html>.

168 *Citizens for Responsibility and Ethics in Washington v. Trump*, No. 17-cv-01228 (D.D.C. filed Jun. 22, 2017).

CONCLUSION

After a full year of this administration, it is now abundantly clear that the executive branch under President Trump is characterized by contempt for ethics and conflicts of interest rules and for the rule of law. Any hope that President Trump would sell his businesses to avoid conflicts of interest or let the investigation into Russian election meddling proceed without interference—or that he would demand high ethical standards from the rest of his administration—has been conclusively refuted. It is time for the American people to conclude that one year is enough and to demand an end to the culture of corruption that is gripping Washington.

Since President Trump and his administration will not fix the myriad of ethics and corruption problems infecting his presidency, here are key steps that others must take:

- Congress must pass legislation to protect Special Counsel Mueller's investigation. It must also perform its own meaningful bipartisan oversight and investigation into Russian interference with the 2016 election and possible campaign cooperation with that interference, as well as into the president's conflicts of interest and administration ethics problems.
- Enforcement and ethics agencies like the Office of Government Ethics, the Office of Special Counsel, the various Inspectors General, and the Department of Justice must do their jobs diligently, boldly, and independently, to ensure accountability for violations.
- Outside groups must continue to doggedly bring complaints and lawsuits to spotlight abuses and push for accountability and must work to spread public awareness of catastrophic ethics problems.
- Congress must pass legislation, and agencies must amend rules, to tighten corruption, ethics, and transparency laws and rules and to close loopholes exploited by this administration, including the exemption of the president from some conflicts of interest laws.
- The public must express strong and unyielding outrage at the corrupt and unethical conduct of this administration, demanding change from the administration and from those with oversight responsibility over it.

Only with a strong expression from American institutions and people that an abandonment of ethical democracy will not be tolerated can we expect anything to change in the coming year and beyond. CREW will continue to do its part.



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