

United States Senate

WASHINGTON, DC 20510

January 12, 2017

Kevin Minoli
Designated Agency Ethics Official
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. Minoli:

We are in receipt of the Office of Government Ethics [OGE] certified financial disclosure report [Form 278] of Edward Scott Pruitt, and Mr. Pruitt's letter to you outlining the steps he will take to avoid conflicts of interest should he be confirmed as Administrator of the Environmental Protection Agency [EPA]. We are concerned that his representations to date have been incomplete. Without a fuller disclosure of financial and political relationships, EPA may not have sufficient information to evaluate whether Mr. Pruitt should be recused from many matters about which a reasonable person would question his impartiality. We are also concerned that his ethics agreement does not fully address how legal conflicts of interest arising from his representation of the State of Oklahoma in litigation against EPA will be resolved.

With respect to Mr. Pruitt's financial conflicts of interest and his Form 278 disclosures, Mr. Pruitt represents he will not participate personally and substantially in particular matters involving: Southern Baptists Theological Seminary, the Windows Ministry Incorporated, and the Rule of Law Defense Fund [RLDF]. In the attached letter we are sending today to OGE, we have raised concerns that this accounting does not include sufficient detail to allow OGE or EPA to fully assess conflicts of interest arising from his solicitation of funds for 527 and 501(c)(4) organizations, some of which may continue to operate during his tenure as EPA Administrator, should he be confirmed.

For example, RLDF can receive unlimited contributions from individuals, corporations, or partnerships and need not disclose the identity of its donors because it is organized under section 501(c)(4) of the Internal Revenue Code. The RLDF has previously contributed to section 527 political action committees [PACs] like the Republican Attorney Generals Association, effectively laundering the identity of donors whose money ended up funding overtly political purposes. What safeguards will EPA put in place to guard against Mr. Pruitt's involvement in matters involving regulated entities that contribute either publicly or anonymously to PACs and 501(c)(4) organizations with which he has had a prior relationship? In other words, what assurances will we have that regulated entities did not and will not make political contributions in exchange for favorable treatment by him as Administrator? Reporting in the *New York Times* and elsewhere has documented the real risk of pay-to-play arrangements with this nominee.

With respect to conflicts of interest arising from his position as Attorney General of the State of Oklahoma, Mr. Pruitt makes little more than pro forma representations that he will seek your authorization for a one-year period of time concerning matters in which the State of Oklahoma is a party or represents a party. As you may be aware, Mr. Pruitt has brought multiple lawsuits against EPA on behalf of the State of Oklahoma, many of which remain in active litigation with

entities that have contributed large sums of money to RAGA and other PACs with which Mr. Pruitt is affiliated.

- Could you provide us a complete list of matters that in your opinion will require your authorization?
- What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?
- Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?
- The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?
- Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?
- Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to participate in EPA decisions involving Oklahoma, how will you determine whether Mr. Pruitt has obtained consent from his client to be released from ethical obligations he may have to it?
- Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?
- It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state-plaintiffs in Mr. Pruitt's litigation?

- Pursuant to 42 U.S.C. § 7601(d), the authority of the Administrator to issue rules related to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering one of these topics?
- If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?
- Under what obligation is Mr. Pruitt to follow determinations made by you concerning his recusals and waivers? If he chooses not to follow your determinations, what recourse is available for EPA?

We are committed to protecting the integrity of the EPA. All Americans should have confidence that EPA's decisions are made transparently, without favor to political donors, and by an Administrator who is committed to protecting the prerogatives and mission of the agency, not those suing it. The EPW Committee has scheduled Mr. Pruitt's confirmation hearing for January 18th. Accordingly, we respectfully request responses to these questions prior to the date of the hearing.

Sincerely,



Thomas R. Carper
United States Senator



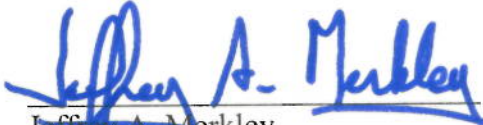
Sheldon Whitehouse
United States Senator



Benjamin L. Cardin
United States Senator



Bernard Sanders
United States Senator



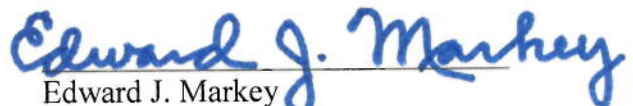
Jeffrey A. Merkley
United States Senator



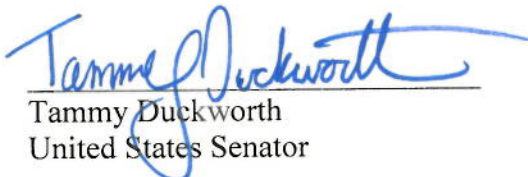
Kirsten Gillibrand
United States Senator



Cory A. Booker
United States Senator



Edward J. Markey
United States Senator



Tammy Duckworth
United States Senator

Enclosure: letter to Walter M. Shaub, Jr., Director of the U.S. Office of Government Ethics

CC: Justina Fugh, Senior Counsel for Ethics Office of General Counsel, U.S. Environmental Protection Agency