

United States Senate

WASHINGTON, DC 20510

March 16, 2017

Donald F. McGahn II
White House Counsel
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. McGahn:

We are writing to follow up on last month's unanswered request for information regarding Carl Icahn's role in the Trump Administration and the significant conflicts of interest caused by his refusal to divest from his private sector interests while serving as a close advisor to President Trump. In light of new information released last month indicating that Mr. Icahn has been intimately involved with the proposal and advancement of an executive order that would overhaul burdens under the Renewable Fuel Standard – and make Mr. Icahn millions of dollars in the process – we, again, request that you provide us with information regarding his role with the Administration and his numerous conflicts.

On February 13, 2017, we sent your office a letter requesting information about Mr. Icahn's classification as a government employee; his access to confidential information and agency officials; his financial disclosures and conflicts of interest; and any limitations on his role with the Administration and his capacity to advise the President.¹ We are concerned that his substantial and widespread private-sector investments present perverse incentives for Mr. Icahn in his role as a special advisor to the President. We are particularly concerned about Mr. Icahn's involvement with an upcoming decision on a potential rule impacting the EPA Renewable Fuel Standard because of Mr. Icahn's 82% ownership interest in the fuel refiner CVR Energy (CVR), his reported role in the selection of Scott Pruitt to lead the Environmental Protection Agency (EPA), and his prior statements on the issue. As of March 16, 2017, we have not received any response to these concerns.

Subsequent actions have deepened our concerns. On February 27, 2017, Mr. Icahn and the Renewable Fuels Association (RFA), reportedly presented the White House with draft language that would direct the EPA to “shift the burden for complying with the biofuel quotas from refiners to fuel blenders.”² The RFA had previously opposed such a shift, but its President and CEO recently stated that he was told “in no uncertain terms that the point of obligation was going to be” shifted from the refiners to blenders, and that the “executive order was not

¹ Letter from Senator Warren et al. to Donald F. McGahn II dated February 13, 2017

² Jennifer A Dlouhy and Mario Parker, “Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group,” *Bloomberg* (February 28, 2017) (online at <https://www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group>).

negotiable.”³ As a result of this pressure, it appears that the RFA swapped sides, trading their opposition to the policy change for other concessions in the proposal.⁴

Mr. Icahn, as the majority owner of fuel refiner CVR Energy, Inc., appears to have been a significant beneficiary of this proposal. According to the *Wall Street Journal*, Mr. Icahn claimed that, if not modified, the biofuel quota obligations would cost his company \$200 million over the course of this year alone.⁵ If the President follows the advice of his special advisor, then Mr. Icahn will rake in hundreds of millions of dollars as he profits from his role in the Trump Administration. The day that Mr. Icahn's proposal was sent to the White House, CVR Energy's stock value increased by 3.5%, representing a single-day, multi-million dollar windfall for Mr. Icahn.⁶ An ethics watchdog has described this process as “the purest definition of a conflict of interest that you can get.”⁷

We are not aware of any efforts from either the Trump Administration or Mr. Icahn to address these serious conflicts of interest. Mr. Icahn has made no discernable effort to separate his extensive business holdings from his broad mandate to address “strangling regulations” as special advisor to the President.⁸ Instead, he has taken the first opportunity to leverage his newfound political power for his own personal gain.

Given these concerns, we request answers to the questions below, in addition to the questions in our February 13th letter, by March 23, 2017:

- Is the White House preparing executive action language to direct the EPA to modify the RFS?
- Has Mr. Icahn provided advice or input to the President or any other White House or EPA officials about the RFS policy?
- Is Mr. Icahn authorized to negotiate with outside entities – including the RFA – on behalf of the President and the White House?
- What ethics requirements apply to Mr. Icahn in his role as special advisor to the President? Has he been required to divest himself of any holdings or recuse himself from the deliberations of any decisions in this role? Has he received any waivers from ethics requirements?
- On February 22, 2017, the EPA concluded an open comment period regarding a proposed shift of the RFS obligation from refiners to blenders. Did Mr. Icahn take these

³ *Id.*

⁴ *Id.*

⁵ Rebecca Ballhaus, Amy Harder, and David Benoit, “Carl Icahn, Critic of the EPA, Is Helping Donald Trump Shape It,” *Wall Street Journal* (December 4, 2016) (online at <https://www.wsj.com/articles/carl-icahn-critic-of-the-epa-is-helping-donald-trump-shape-it-1480863601>).

⁶ Jennifer A Dlouhy, Ari Natter, and Bill Allison, “‘Purest Definition of a Conflict’: Icahn’s \$126 Million Gain on Biofuel Deal Draws Criticism,” *Bloomberg Markets* (March 1, 2017) (online at <https://www.bloomberg.com/news/articles/2017-02-28/icahn-s-126-million-gain-on-biofuel-deal-prompts-criticism>).

⁷ *Id.*

⁸ The Transition Team, “President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform,” *GreatAgain.gov* (December 21, 2016) (online at <https://greatagain.gov/icahn-advisor-regs-cd3c949af118#.2srwi4sos>).

comments, and any EPA responses, into consideration when crafting the aforementioned draft RFS modification language submitted to the White House?

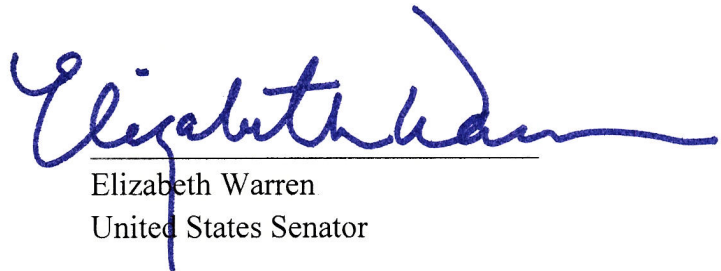
- Has Mr. Icahn been provided access to a government phone line or used any other government resources relevant to his “special advisor” role?
- Has Mr. Icahn obtained an official government email address?

We look forward to your timely response to the questions above, including those in our original letter. Please do not hesitate to contact Brian Cohen of Senator Warren’s staff (202-224-4543) or Joe Gaeta of Senator Whitehouse’s staff (202-224-2921) with any questions or concerns.

Sincerely,



Sheldon Whitehouse
United States Senator



Elizabeth Warren
United States Senator



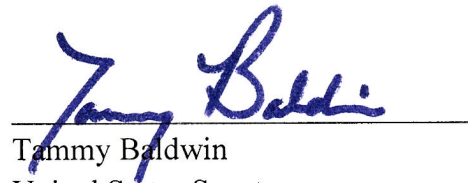
Debbie Stabenow
United States Senator



Sherrod Brown
United States Senator



Al Franken
United States Senator



Tammy Baldwin
United States Senator