

April 25, 2017

The Honorable Carolyn Lerner
Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner:

Pursuant to 5 U.S.C. § 1216, I submit the following as a complaint and respectfully request the Office of Special Counsel (OSC) investigate whether Scott Pruitt, Administrator of the Environmental Protection Agency (EPA), violated the Hatch Act by agreeing to appear as the Keynote Speaker at the Oklahoma Republican Party (OKGOP) "Gala" on May 5, 2017. Administrator Pruitt's featured participation in an event to raise money for the Oklahoma Republican Party is likely political activity prohibited by the Act.

Factual Background

On February 17, 2017, Scott Pruitt was sworn in as Administrator of the EPA. Pruitt was nominated for the position while serving his second term as the Republican Attorney General of the State of Oklahoma. Prior to that, Pruitt served as a Republican member of the Oklahoma State Senate from 1998 to 2006.

On April 24, 2017, it was first reported by *Politico* that Pruitt would be the "Keynote Speaker" at the May 5, 2017, OKGOP Gala.¹ The invitation, attached as Exhibit A,² included the following text:

The OKGOP is proud to announce that EPA Administrator Scott Pruitt will be the Keynote Speaker at this year's Oklahoma Republican Party Gala!

During his short tenure as EPA Administrator, Pruitt has overseen the rollback of the Waters of the US rule, called for an exit from the Paris Climate Agreement, and championed a return to EPA "originalism."

You do not want to miss Pruitt at this year's OKGOP Gala, as he discusses his plans to slash regulations, bring back jobs to Oklahoma, and decrease the size of the EPA!

¹ <https://www.politicopro.com/energy/whiteboard/2017/04/pruitt-to-headline-oklahoma-gop-gala-086639>.

² An electronic version of the invitation is available at: <http://mailchi.mp/okgop/scott-pruitt-confirmed-to-speak-at-okgop-convention>.

Make sure to purchase your Gala tickets so you don't miss out on Administrator Pruitt's future plans and how he will continue to Drain the Swamp! This is a once in a lifetime opportunity, so buy your tickets before they sell out!

The invitation appears to include a photograph of Pruitt being sworn in as Administrator by Supreme Court Justice Samuel Alito,³ and contains the link "Click Here to Buy Gala Tickets!" The electronic version also contains an image noting "Sponsorship Levels" ranging from \$2,000 to \$5,000, and setting the price of the dinner at \$100, with a "VIP reception" costing an additional \$50.

Pruitt has a long track record of making direct political solicitations, participating in political fundraising events, and chairing the boards of political organizations like the section 527 Republican Attorney Generals Association (RAGA) and its associated 501(c)(4) organization, the Rule of Law Defense Fund (RLDF). These activities frequently involved industries he now regulates as EPA Administrator.

Devon Energy and Koch Industries are regulated by EPA and have supported the OKGOP, Scott Pruitt, and RAGA. During the 2010 and 2014 election cycles, Devon Energy and Koch Industries maxed out to Pruitt's campaign.⁴ From 2014 to 2016, Pruitt was a Member of the RAGA Executive Committee when it raised \$530,000 from Koch Industries and \$125,000 from Devon Energy.⁵ Koch Industries has contributed \$5,000 to the OKGOP.⁶ J. Larry Nichols, co-founder and director of Devon Energy from 1971 to 2016, has given the OKGOP \$30,500.⁷

RLDF, a 501(c)(4) organization, does not have to disclose its donors but public reporting has shown that it received at least \$175,000 from Freedom Partners, a 501(c)(6) organization run by several Koch Industries executives.⁸ As recently as February 28, 2017, Pruitt was a speaker at the RAGA major donors dinner.⁹

Thanks to Pulitzer Prize winning reporting by the *New York Times*, the public knows that contributing to Pruitt's political causes is a good investment. For example, in 2011, he took a letter written by Devon Energy, put it on Oklahoma Attorney General letterhead, signed it, and

³ Compare Exhibit A with Dave Boyer, "Scott Pruitt sworn in as EPA administrator," *The Washington Times*, February 17, 2017, available at <http://www.washingtontimes.com/news/2017/feb/17/scott-pruitt-sworn-in-as-epa-administrator/> (accessed on April 25, 2017).

⁴ National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

⁵ Center for Media and Democracy, "RAGA Fossil Fuel Funders 2014-2016," January 6, 2017.

⁶ National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

⁷ National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

⁸ Elena Schor, "Democrats press EPA pick Pruitt on energy sector ties: A nonprofit he helps lead accepted \$175,000 from a central arm of the Koch brothers' network," *Politico*, December 27, 2016, available at <http://www.politico.com/story/2016/12/congress-democrats-epa-pruitt-232989>.

⁹ "Senators Question Timing of EPA Action Following Industry Meeting," April 14, 2017, available at <https://www.whitehouse.senate.gov/imo/media/doc/2017-04-14%20Letter%20to%20Pruitt%20on%20ICR.pdf>.

sent it to EPA pleading Devon's case. According to the *New York Times*' analysis of the 1,016 words that Devon proposed, only 37 were changed.¹⁰

During his confirmation process, several Senators, including me, sought further information from Pruitt about his political and financial connections in an effort to determine what conflicts of interest he would bring to his role as Administrator.¹¹ Pruitt stonewalled those efforts.¹² As a result, we now have an Administrator with potentially wide-ranging conflicts of interest related to his federal position. As discussed in greater detail below, the facts related to the May 5 OKGOP Gala appear to be a continuation of Pruitt's troubling conflation of official and political activity, now in violation of federal law.

Legal Analysis

The Hatch Act places limitations on the ability of executive branch employees to participate in political activities. An executive branch employee is prohibited from using "his official authority or influence for the purpose of interfering with or affecting the result of an election."¹³ That prohibition extends to an employee "[u]sing his or her official title while participating in political activity,"¹⁴ where "political activity" is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."¹⁵

More specifically, an employee may not "[a]llow his or her official title to be used in connection with fundraising activities."¹⁶ According to OSC guidance, an employee "is allowed to give a speech or keynote address at a political fundraiser, as long as he or she is not on duty, appears only in his or her personal capacity, and does not solicit political contributions."¹⁷ Furthermore,

[a]n employee's name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions.... However, the employee's official title may not appear on invitations to

¹⁰ Eric Lipton, "Energy Firms in Secretive Alliance With Attorneys General," *New York Times*, December 6, 2014, available at <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>.

¹¹ EPW Members Call on Pruitt to Reveal Connections to Secretive Group Coordinating EPA Challenges, available at <https://www.whitehouse.senate.gov/news/release/epw-members-call-on-pruitt-to-reveal-connections-to-secretive-group-coordinating-epa-challenges>, December 28, 2016; Questions for Oklahoma Attorney General Scott Pruitt from Senator Tom Carper, available at https://www.carper.senate.gov/public/_cache/files/2a41152c-395c-4b3f-864e-630474ba1ddc/senator-carper-preliminary-questions-for-epa-nominee-scott-pruitt.pdf, December 28, 2016.

¹² Whitehouse Slams Pruitt's Evasive Responses to Post-Hearing Questions, available at <https://www.whitehouse.senate.gov/news/release/whitehouse-slams-pruitts-evasive-responses-to-post-hearing-questions>, January 26, 2017.

¹³ 5 U.S.C. § 7323(a)(1)

¹⁴ 5 C.F.R. § 734.302(b)(1)

¹⁵ 5 C.F.R. § 734.101

¹⁶ 5 C.F.R. § 734.303

¹⁷ "Hatch Act: Federal FAQs," Office of Special Counsel, <https://osc.gov/Pages/HatchAct-FAQs.aspx> (accessed April 25, 2017).

any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as “The Honorable,” may use or permit the use of that term of address for such purposes.¹⁸

The May 5 invitation contains representations that on their face make out a violation of the Hatch Act.

- His official title appears, or is referenced, at least three times.
- The invitation is for a political fundraiser, with sponsorship levels ranging from \$2,000 to \$5,000, dinner for \$100, and special “VIP” access for an additional \$50.
- The invitation uses Pruitt’s official actions to promote the Gala, noting how “[d]uring his short tenure as EPA Administrator, Pruitt has overseen the rollback of the Waters of the US rule, called for an exit from the Paris Climate Agreement, and championed a return to EPA ‘originalism.’”
- The invitation directly ties Pruitt’s speech to his official activities, stating that he will discuss “his plans to slash regulations, bring back jobs to Oklahoma, and decrease the size of the EPA.”
- The invitation explicitly connects purchasing Gala tickets to the opportunity to hear about official government activities, like Pruitt’s “future plans and how he will continue to Drain the Swamp!” calling the Gala a “once in a lifetime opportunity.”

In short, the unmistakable impression one receives from the May 5 invitation is that by purchasing a ticket or agreeing to sponsor the OKGOP Gala, the attendee will have special access to a federal employee discussing official actions already taken, and to be taken in the future. This is clearly impermissible political activity under the Hatch Act.

Other considerations

Pruitt has been Administrator of the EPA for over two months and should be presumed to have been advised of his responsibilities under the Hatch Act. He is not new to the world of Oklahoma politics and political fundraising. He should have known that the OKGOP Gala was a political fundraiser and that his participation as a keynote speaker would be used by the Oklahoma Republican Party to promote the event and increase donations. That, combined with Pruitt’s long history of political solicitation from industries he now regulates, and stonewalling of congressional and other public inquiries into his ties to those industries, suggests a pattern of behavior that warrants close scrutiny by your office.

Conclusion

The Hatch Act protects the integrity and impartiality of the federal government by preventing officials like Administrator Pruitt from engaging in political activity in their official capacities. The facts here appear to be a blatant violation of the Act. As an initial matter, I urge you to take quick action to ameliorate some of the harm already done. The OKGOP Gala has not yet occurred, so Administrator Pruitt should be instructed not to attend. In light of the fact that the

¹⁸ 5 C.F.R. § 734.208(d) Example 2.

OKGOP's promotional materials have already promised donors special access to a federal employee in exchange for a political contribution, anything short of prohibiting his attendance will not change, in the public's perception, that the OKGOP's Gala is a "pay-to-play" event with a federal Cabinet official.

Prompt action to prevent further harm is necessary here but not sufficient. I further urge you to conduct a full investigation into the facts and circumstances of this matter and take all appropriate disciplinary action against Administrator Pruitt.

Sincerely,



Sheldon Whitehouse
United States Senator

cc: Ana Galindo-Marrone, Chief, Hatch Act Unit, Office of Special Counsel (*by electronic mail*)

Exhibit A

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Scott Pruitt Set to Be Keynote Speaker at Annual OKGOP Gala!





**THE ANNUAL
OKLAHOMA
REPUBLICAN PARTY
GALA**
with
**Keynote Speaker
Scott Pruitt!**

VIP Reception: 6PM

Dinner: 7PM

**MAY
5**

The OKGOP is proud to announce that EPA Administrator Scott Pruitt will be the Keynote Speaker at this year's Oklahoma Republican Party Gala!

During his short tenure as EPA Administrator, Pruitt has overseen the rollback of the Waters of the US rule, called for an exit from the Paris Climate Agreement, and championed a return to EPA "originalism."

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Click Here to Buy Gala Tickets!



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