



1411 K Street, NW, Suite 1400 · Washington, DC 20005  
tel (202) 736-2200 · fax (202) 736-2222  
[www.campaignlegalcenter.org](http://www.campaignlegalcenter.org)

January 18, 2017

Mr. Kevin S. Minoli  
Principal Deputy General Counsel &  
Designated Agency Ethics Officer  
U.S. Environmental Protection Agency  
Mail Code: 2355A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Mr. Minoli:

On behalf of the Campaign Legal Center, we write concerning the January 3, 2017, ethics agreement addressed to you from Edward Scott Pruitt, nominee to be the Administrator of the Environmental Protection Agency (EPA).<sup>1</sup> A copy of this letter is also being sent to Mr. Walter M. Shaub, Jr., Director of the Office of Government Ethics.

Whatever policy agenda the President's nominee has for the EPA, it is a central feature of our government that the agenda be pursued free of legal conflicts of interest. Presumably, in an effort to satisfy that obligation, Mr. Pruitt's ethics agreement describes certain steps he will take if confirmed as EPA Administrator to limit his participation in litigation against the agency that he initiated or joined as Oklahoma Attorney General.

However, given Mr. Pruitt's role in leading and coordinating litigation against the same agency he hopes to lead, the plan described in his ethics agreement is insufficient to avoid actual or apparent conflicts of interest, and would cause members of the public to question his impartiality in the conduct of his duties, contrary to his obligation to "ensure that every citizen can have complete confidence in the integrity of the Federal Government." 5 C.F.R. § 2635.101(a).

According to Mr. Pruitt's personal campaign website (<http://scottpruitt.com/meet-scott/>), as Oklahoma Attorney General he has been "a national leader in the fight against . . . the EPA's intrusion into property rights." Mr. Pruitt's website boasts that:

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<sup>1</sup> Available on the Office of Government Ethics website, [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1D30B3387FC4E8C0852580A1002C7D1E/\\$FILE/Pruitt.%20Edward%20Scott%20%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1D30B3387FC4E8C0852580A1002C7D1E/$FILE/Pruitt.%20Edward%20Scott%20%20%20finalEA.pdf)

“Pruitt led a coalition of thirty states who have obtained an injunction barring the EPA’s ‘Waters of the United States’ rule, which seeks to greatly expand the federal governments regulatory jurisdiction under the Clean Water Act.”

Mr. Pruitt’s campaign website also states:

“Pruitt has led a nearly thirty state coalition of states who obtained an unprecedented injunction from the Supreme Court barring the EPA’s ‘Clean Power Plan’ from going into effect. The *Wall Street Journal* Editorial Board noted that ‘Oklahoma AG Scott Pruitt deserves particular credit for developing the federalist arguments and exposing how the Clean Power Plan commandeers states.’”

Both of the cases against EPA described on Mr. Pruitt’s campaign website are ongoing, active cases. If confirmed as the head of the EPA, Mr. Pruitt will be in a position to decide to defend—or settle—the same cases that he initiated or supported in his role as Oklahoma Attorney General. According to some estimates, as Oklahoma Attorney General Mr. Pruitt has been involved in litigation opposing the EPA in at least 26 cases; nine of those cases appear to ongoing.

For Mr. Pruitt now to participate as EPA Administrator in litigation he initiated, organized, or otherwise supported would present an actual and apparent conflict of interest.

Mr. Pruitt’s ethics agreement does not explicitly address these lawsuits, but suggests that, one year after being confirmed, he may attempt to participate as EPA Administrator in ongoing matters he initiated and supported as Oklahoma Attorney General—and that he will seek waivers to participate in those matters before that period expires. The agreement also raises the possibility he would be free as EPA Administrator to participate in these lawsuits if Oklahoma were to withdraw or waive any conflicts.

The relevant paragraph states:

Upon confirmation, I will resign from my position as Attorney General of the State of Oklahoma. For a period of one year after my resignation, I will have a “covered relationship” under 5 C.F.R. § 2635.502 with the State of Oklahoma. Pursuant to 5 C.F.R. § 2635.502(d), I will seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party.

The actions he proposes are unacceptable, and will not resolve the conflicts that would arise from his participating as EPA Administrator in litigation against the EPA that he initiated or otherwise participated in.

5 C.F.R. § 2635.502, often known as the “impartiality rule,” requires recusal when an employee has a “covered relationship” with a party to a particular matter, and the circumstances are such that a reasonable person would question the employee’s impartiality were they to participate in the matter.

An employee has a "covered relationship" with a person if within the last year, they served as an officer of, or attorney for, that person. 5 C.F.R. § 2635.02(b)(1)(iv). Mr. Pruitt's ethics agreement acknowledges that, given his role as Attorney General of Oklahoma within the past year, he has a "covered relationship" with the state.<sup>2</sup> And given Mr. Pruitt's role in litigation against the EPA, the circumstances are such that a reasonable person would question his impartiality as EPA Administrator in that same litigation.

However, by limiting Mr. Pruitt's recusal obligations to a one-year period, his ethics agreement ignores the purpose of the relevant regulations and adopts an overly narrow view of their application.

The Standards of Ethical Conduct for Executive Branch Employees, of which the impartiality rule is part, require that employees avoid any actions that create the appearance of a conflict of interest, 5 C.F.R. § 2635.101(b)(14), so that the public can have complete confidence in the integrity and appearance of administrative decisionmaking, *id.* § 2635.101(a).

The impartiality rule, 5 C.F.R. § 2635.502, is not intended to be read in the narrow and mechanical manner reflected in Mr. Pruitt's ethics agreement. Indeed, the rule expressly anticipates "circumstances other than those specifically described in this section [that] would raise a question regarding [an employee's] impartiality," and indicates that an agency may require an employee to recuse in such circumstances. 5 C.F.R. § 2635.502(a)(2); *see also* OGE DO-06-029 at 7.

By any reasonable standard, the circumstances here require Mr. Pruitt's recusal for the duration of the litigation, and regardless of whether Oklahoma withdraws from a suit or waives any conflict.

The conflict or appearance of a conflict arising from Mr. Pruitt participating as EPA Administrator in litigation that he initiated or supported against the agency does not diminish by the passage of one year. Pruitt's "covered relationship" with Oklahoma triggers the application of 5 C.F.R. § 2635.502, but given that the lawsuits in question may endure for several years, the application of the rule in this instance must endure as well.

Mr. Pruitt also must continue to recuse himself from EPA lawsuits that he initiated or supported even if Oklahoma were to withdraw or waive any conflicts. The actual or apparent conflicts that would arise from Mr. Pruitt's participation in these matters are less about his previous relationship with Oklahoma, and more about his central role in advancing the litigation against the EPA. Mr. Pruitt has gone beyond merely representing Oklahoma in these cases: as described on his campaign website, Mr. Pruitt was a driving force behind the suits and personally held himself out as an opponent of the EPA and the challenged rules.

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<sup>2</sup> It is beyond dispute that litigation is a "particular matter involving specific parties" for purposes of 5 C.F.R. § 2635.502. *See* Memorandum from the OGE Director Robert I. Cusick to Designated Agency Ethics Officials, DO-06-029, [http://www.usoge.gov/pages/daeograms/dgr\\_files/2006/do06029.html](http://www.usoge.gov/pages/daeograms/dgr_files/2006/do06029.html); *see also* 5 C.F.R. § 2640.102(l).

Finally, given the real and apparent conflicts posed by the unique circumstances described above, any request from Mr. Pruitt for a waiver should be denied pursuant to 5 C.F.R. § 2635.502(d).

As EPA's designated ethics official, we respectfully request that you take steps to prevent the actual and apparent conflicts of interest that would arise were Mr. Pruitt allowed to participate as EPA Administrator in litigation that he previously initiated or supported against the EPA.

At a minimum, Mr. Pruitt must agree to recuse from participating as EPA Administrator in litigation matters where he previously supported an adverse interest as Oklahoma Attorney General; that such recusal will last for the duration of the litigation, and regardless of whether the State of Oklahoma withdraws or waives any conflicts; and that he will not apply, or be considered eligible, for any waivers from these recusal requirements.

Respectfully submitted,



Lawrence M. Noble  
General Counsel  
Campaign Legal Center  
1411 K Street, NW, Suite 1400  
Washington, DC 20005  
(202) 736-2200

cc: Walter M. Shaub  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005