



November 1, 2018

Hon. Peggy E. Gustafson  
Inspector General  
Attn: Complaint Intake Unit,  
Mail Stop 7886  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

Dear Inspector General Gustafson:

On August 13, 2018, the Campaign Legal Center ("CLC") submitted a complaint to your office requesting an investigation of Secretary of Commerce Wilbur Ross, Jr., for possible violations of the criminal conflict of interest law applicable to executive branch employees, 18 U.S.C. § 208.<sup>1</sup> We write to supplement that complaint with additional information from newly-public entries on Secretary Ross's 2017 calendar that show he may have committed additional violations of the conflict of interest law.

On March 22, 2017, Secretary Ross participated in a meeting with Chevron CEO John Watson and two Chevron lobbyists.<sup>2</sup> At the time of the meeting, Secretary Ross's wife held more than \$250,000 in Chevron stock, which Secretary Ross disclosed in his nominee financial disclosure report.<sup>3</sup> While the existence of the meeting was public as early as July,<sup>4</sup> a calendar entry that recently became public reveals that the meeting's stated purpose was to "[s]hare Chevron's perspectives on global oil and gas developments and to discuss tax reform and trade."<sup>5</sup>

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<sup>1</sup> CAMPAIGN LEGAL CENTER, COMPLAINT REGARDING COMMERCE SECRETARY WILBUR L. ROSS JR. FROM THE CAMPAIGN LEGAL CENTER TO THE INSPECTOR GENERAL FOR THE U.S. DEPARTMENT OF COMMERCE (Aug. 13, 2018), <https://bit.ly/2MISsPi>.

<sup>2</sup> Dan Alexander, *Wilbur Ross Scheduled Meetings With Chevron, Boeing Despite Conflicts Of Interest*, FORBES (Oct. 25, 2018), <https://bit.ly/2Ro6SXg>; 2017 Calendar of Secretary of Commerce Wilbur Ross, 204, March 27, 2017, available at <https://bit.ly/2OZy6Xm>.

<sup>3</sup> U.S. OFFICE OF GOV'T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)* (Dec. 19, 2016), <https://bit.ly/2iy3hJa> (nominee financial disclosure report of Wilbur L. Ross, Jr., listing \$250,000-\$500,000 in Chevron stock in Part 6, Line 24.2.3).

<sup>4</sup> Dan Alexander, *Wilbur Ross' Calendar Reveals Dozens Of Meetings With Companies Tied To His Personal Fortune*, FORBES (July 13, 2018), <https://bit.ly/2zeCc2S>.

<sup>5</sup> 2017 Calendar of Secretary of Commerce Wilbur Ross, *supra* note 2.

Because Secretary Ross knew his wife held a financial interest in Chevron at the time he met with the company's executives about government policy affecting the company, Secretary Ross's conduct appears to meet all elements of a violation of the conflict of interest statute.<sup>6</sup>

For a violation of 18 U.S.C. § 208 to occur, an executive branch employee must participate personally and substantially in a particular matter.<sup>7</sup> A "particular matter" is a matter focused on the interests of either identified parties or a discrete and identifiable class of persons.<sup>8</sup> The meeting with Chevron lobbyists and Chevron's CEO to discuss "Chevron's perspectives on global oil and gas developments" and "tax reform and trade" constituted a "particular matter" because it was focused on the interests of one party: Chevron.<sup>10</sup>

Presumably, Chevron is not sending its CEO and two of its lobbyists to discuss broad policy options, but instead to promote "Chevron's perspectives" on matters that affect the company in the particular. Moreover, Secretary Ross's Commerce Department apparently recognized that the meeting was intended to focus on Chevron's interests in trade and other affairs relating to their business. Chevron is a producer and refiner of crude oil and natural gas; accordingly, Commerce sent Julius Svoboda, an oil and gas specialist<sup>11</sup> from the International Trade Administration<sup>12</sup> ("ITA") Office of Energy and Environmental Industries ("OEEI"), an office within the Department of Commerce tasked with "advanc[ing] the competitiveness" of U.S. energy industries, including the fossil energy sector, by "leveraging in-depth sector expertise to identify their most pressing trade

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<sup>6</sup> Secretary Ross is an "employee" for purposes of the statute. *See* 5 U.S.C. § 2104 (definition of "officer"); 18 U.S.C. § 208(a) (prohibition is applicable to any "officer or employee of the executive branch"); *see also Application of Conflict-of-Interest Rules to Appointees Who Have Not Begun Service*, 26 Op. O.L.C. 32 (May 8, 2002) (Office of Legal Counsel opinion noting that, because title 18 sets out no definition of "officer" or "employee," the Department of Justice has looked to the definitions in title 5, United States Code as the most obvious source of a definition for title 18 purposes).

<sup>7</sup> 18 U.S.C. § 208(a), 5 C.F.R. § 2640.103.

<sup>8</sup> 5 C.F.R. § 2640.103(a)(1), example 2 (illustrating that the consideration of a request for a meeting and the decision to hold the meeting are "particular matters"); 5 C.F.R. § 2640.103(d)(2), example 1 (illustrating that the meeting itself is a particular matter); 5 C.F.R. § 2641.201(h) (defining a particular matter "involving a specific party or parties" as a type of particular matter).

<sup>9</sup> *See* 2017 Calendar of Secretary of Commerce Wilbur Ross, *supra* note 2.

<sup>10</sup> *See* 18 U.S.C. § 208(a); *see also* 5 C.F.R. § 2640.103(a)(1) (defining "particular matter" as any matter "focused upon the interests of specific persons, or a discrete and identifiable class of persons"); *Id.*, example 2 (illustrating that the consideration of a request for a meeting and the decision to hold the meeting are "particular matters"); 5 C.F.R. § 2640.103(d)(2), example 1 (illustrating that the meeting itself is a particular matter); 5 C.F.R. § 2641.201(h) (defining a particular matter "involving a specific party or parties" as a type of particular matter).

<sup>11</sup> *Office of Energy and Environmental Industries (OEEI), Contacts*, INT'L TRADE ADMIN., <https://www.trade.gov/td/energy/contacts.asp> (last visited Oct. 31, 2018); *see also Biography of Julius Svoboda*, SECURING AMERICA'S FUTURE ENERGY, <https://secureenergy.org/julius-svoboda/> (last visited Nov. 1, 2018).

<sup>12</sup> The International Trade Administration is an agency within the Department of Commerce "charged with strengthening the competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements." *International Trade Administration (ITA)*, U.S. DEPT. OF COMMERCE, <https://bit.ly/2CXkntW> (last visited Oct. 31, 2018).

challenges and top opportunities and coordinating public-private sector responses.”<sup>13</sup> Commerce sent an employee with specialized expertise working directly with private energy companies to the Chevron meeting because the meeting was focused on the particular opportunities for, and challenges faced by, Chevron.<sup>14</sup>

Secretary Ross’s participation in the meeting was personal and substantial. To participate “personally” means to participate directly, and to participate “substantially” means that the employee’s involvement is of significance to the matter.<sup>15</sup> Secretary Ross participated personally because he himself was one of five federal government participants, and the meeting took place in his conference room.<sup>16</sup> He participated substantially because his participation, as Commerce Secretary, was certainly of significance to the discussion about oil and gas developments, tax reform, and trade.

The final element of the conflict of interest law requires that the employee know that he, or a person whose interests are imputed to him, has a financial interest directly and predictably affected by the particular matter.<sup>17</sup> Secretary Ross knew that a person whose interests are imputed to him, his wife, held Chevron stock through a trust at the time the meeting took place because he disclosed that financial interest on his nominee financial disclosure report.<sup>18</sup> The interest was not sold until May 15, 2017, according to one of his periodic transaction reports.<sup>19</sup> This ownership of company stock gives Ross a financial interest in any particular matter directly and predictably affecting Chevron’s financial interests, whether or not the stock price is ultimately affected.<sup>20</sup>

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<sup>13</sup> Office of Energy and Environmental Industries, *Who We Are*, INT’L TRADE ADMIN., <https://www.trade.gov/td/energy/> (last visited Oct. 31, 2018).

<sup>14</sup> Even if Chevron and the Department of Commerce contend that the meeting was not focused on Chevron specifically, the meeting would still constitute a particular matter. The description of the meeting and inclusion of Mr. Svoboda suggest that, at the very least, this meeting was focused on policy and trade relating to the oil and gas industry. The Office of Government Ethics has said that an industry is a discrete and identifiable class of persons. *Memorandum to Designated Agency Ethics Officials Regarding “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter,”* OGE Inf. Adv. Op., 06 x 09, 7 (2006) (“Essentially, the term [particular matter] covers two categories of matters: (1) those that involve specific parties . . . , and (2) those that do not involve specific parties but at least focus on the interests of a discrete and identifiable class of persons, *such as a particular industry or profession.*”) (emphasis added). *See also* 5 C.F.R. § 2640.103(a)(1), example 3.

<sup>15</sup> 5 C.F.R. § 2640.103(a)(2).

<sup>16</sup> 2017 Calendar of Secretary of Commerce Wilbur Ross, *supra* note 2.

<sup>17</sup> 18 U.S.C § 208(a); 5 C.F.R. § 2640.103(c)(1); *see also* *Employees Entering Government*, U.S. OFFICE OF GOV’T ETHICS (Mar. 31, 2017), <https://bit.ly/2OWOmIp>.

<sup>18</sup> U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e)*, *supra* note 3.

<sup>19</sup> U.S. OFFICE OF GOV’T ETHICS, *Executive Branch Personnel, Public Financial Disclosure Report: Periodic Transaction Report (OGE Form 278-T)* (Dec. 21, 2017), <https://bit.ly/2ICRXUb> (report of Wilbur L. Ross, Jr.).

<sup>20</sup> *See Memorandum to Designated Agency Ethics Officials Regarding Waivers Under 18 U.S.C. § 208*, OGE Inf. Adv. Op., 07 x 04, 11 (2007) (“Section 208 applies much more broadly to stock ownership than simply to particular matters affecting the stock price itself. Because a stock interest is an ownership interest in the company, section 208 prohibits an employee from participating in particular matters that have an effect on the financial interests of an entity in which he (or anyone whose interests are imputed to him) owns stock.”); *see also* 5 C.F.R. § 2640.103(c), example 1 (requiring an employee’s recusal from a particular matter affecting a company in which the

That financial interest would have been directly and predictably affected by the March 22 meeting. A particular matter will have a “direct” effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest,<sup>21</sup> and it will have a “predictable” effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest.<sup>22</sup>

The subject matter of the March 22 meeting and the high-ranking status of the meeting’s participants suggest that Chevron expected this meeting to have a direct and predictable effect on Chevron’s business performance. Chevron’s CEO and lobbyists discussing their “perspectives” on oil and gas developments, tax reform, and trade with high-ranking government officials who have power in those areas could have the direct effect of steering or informing the government’s policies in a way that benefits Chevron’s financial outlook.<sup>23</sup> Moreover, it is unlikely that a multinational, multi-billion-dollar company would send its CEO and two lobbyists to a meeting unless there is a real possibility that the meeting will affect the company’s financial interests.

Secretary Ross’s inclusion of the ITA oil and gas specialist provides further evidence that the meeting could be expected to have a direct and predictable impact on Chevron’s financial interests. The ITA OEEI’s purpose is not only to increase the competitiveness of U.S. businesses, but to do so by coordinating public-private sector responses; they “support[] immediate export opportunities, set[] up broader market development efforts to create demand for U.S. exports, and develop[] whole-of-government initiatives to address systemic constraints on U.S. export competitiveness.”<sup>24</sup> The possibility that a meeting with Secretary Ross and an employee of OEEI could result in one of those outcomes for Chevron (e.g., the government’s support of immediate export opportunities for Chevron’s products) further demonstrates the direct and predictable effect the meeting could have on Chevron’s financial interests.

In addition to the meeting with Chevron, Secretary Ross’s calendar also shows a meeting with the CEO of Boeing while he and his wife both held Boeing stock, although the

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employee’s minor child holds stock, without regard to the effect of the particular matter on the stock price); 5 C.F.R. § 2640.202(a), example 1 (requiring an employee to recuse from a particular matter in which the employee holds stock, without regard to the effect of the particular matter on the stock price).

<sup>21</sup> 5 C.F.R. § 2640.103(a)(3)(i).

<sup>22</sup> *Id.* § 2640.103(a)(3)(ii).

<sup>23</sup> The exact gain or loss does not need to be known for a violation to occur. *See* 5 C.F.R. § 2640.103(a)(3)(ii) (“It is not necessary . . . that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.”); *see also United States v. Gorman*, 807 F.2d 1299, 1303 (6th Cir. 1986) (citing Office of Gov’t Ethics Advisory, OGE Inf. Adv. Op., 83 OGE 1 (1983))(explaining that “[g]ain or loss need not be probable for the prohibition against official action to apply” and that “All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment.”).

<sup>24</sup> *Office of Energy and Environmental Industries, Who We Are*, INT’L TRADE ADMIN., *supra* note 13.

focus of that meeting has yet to be disclosed by the government.<sup>25</sup> An investigation by your office could reveal the subject of this meeting and determine if it constitutes a particular matter that would affect Secretary Ross's stock interest.

For the foregoing reasons, it appears that Secretary Ross's meeting with Chevron violated the criminal conflict of interest law. This is particularly troubling given the credible evidence that Secretary Ross has violated the conflict of interest law on other occasions. CLC's prior complaint explained in detail that Secretary Ross participated in a steel tariff investigation while holding stock in both a steel-dependent railcar company and a company heavily invested in Chinese steel.<sup>26</sup> He also participated in trade agreements regarding the natural gas industry while holding stock in a shipping company that is a transoceanic and regional carrier of products related to natural gas.<sup>27</sup>

Secretary Ross has clearly fallen short of the ethical mandate to avoid even the appearance of a conflict of interest.<sup>28</sup> CLC therefore asks again that you investigate this matter and issue a public report of your findings.

Sincerely,

A handwritten signature in dark ink, appearing to read "Delaney N. Marsco". The signature is fluid and cursive, with the first name "Delaney" being more prominent.

Delaney N. Marsco  
Ethics Counsel

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<sup>25</sup> Alexander, *Wilbur Ross Scheduled Meetings With Chevron, Boeing Despite Conflicts Of Interest*, *supra* note 2. A Boeing spokesperson said only that "Boeing meets regularly with officials across the U.S. government to discuss policy matters impacting our business, the aerospace industry, and our workforce . . . . These meetings were in line with that long-standing practice." *Id.*

<sup>26</sup> CAMPAIGN LEGAL CENTER, *supra* note 1, at 12, 27.

<sup>27</sup> *Id.* at 34.

<sup>28</sup> 5 C.F.R. § 2635.101(b)(14).