



November 26, 2019

Hon. Mark Lee Greenblatt  
Inspector General  
U.S. Department of the Interior  
Office of the Inspector General  
1849 C Street, NW – Mail Stop 4428  
Washington, D.C. 20240

Dear Inspector General Greenblatt:

Campaign Legal Center (CLC) writes to call your attention to emails between Interior Secretary David Bernhardt and members of the agency ethics staff,<sup>1</sup> reported on by the *New York Times*.<sup>2</sup> The emails raise questions about whether Mr. Bernhardt used his authority and influence to interfere with what should be a neutral and independent process for soliciting and giving ethics advice. CLC has filed multiple complaints with your office alleging ethics violations by Mr. Bernhardt and other high-ranking Interior officials,<sup>3</sup> and these emails may further suggest a pattern of disregard for ethical norms at Interior.

Mr. Bernhardt's employment prior to joining government makes regular solicitation of ethics advice necessary to avoid actual or apparent conflicts of interest. Mr. Bernhardt previously worked as a registered lobbyist, and he lobbied

<sup>1</sup> U.S. Dep't. of the Interior's Response to Friends of the Earth Freedom of Information Act Request, <https://assets.documentcloud.org/documents/6153640/FOE-FOIA-SOL-2018-00129-Redacted.pdf>.

<sup>2</sup> Coral Davenport, *Interior Chief's Lobbying Past Has Challenged the Agency's Ethics Referees*, N.Y. TIMES (Nov. 9, 2019), <https://www.nytimes.com/2019/11/09/climate/interior-secretary-ethics.html>.

<sup>3</sup> CAMPAIGN LEGAL CTR., *CLC Complaint to Inspector General on Department of the Interior Acting Secretary David Bernhardt*, <https://campaignlegal.org/sites/default/files/2019-02/2-28-19%20Bernhardt%20CLC%20Complaint%20FINAL.pdf>; CAMPAIGN LEGAL CTR., *CLC Complaint to Inspector General on Department of the Interior Ethics Violations*, <https://campaignlegal.org/sites/default/files/2019-02/2-20-19%20Letter%20to%20Interior%20IG%20Regarding%20Ethics%20Violations%20%28with%20exhibits%29.pdf>.

on particular matters that he now oversees at Interior. His former clients also regularly lobby and otherwise interact with Interior, and are often parties (or represent parties) to particular matters at Interior.

However, these emails show that in seeking such ethics advice, Mr. Bernhardt regularly bypassed practices established to minimize the potential for coercion, such as seeking ethics advice through a subordinate, by making the requests personally. As the *Times* reported, “In other administrations, Republican and Democratic, aides to senior officials such as schedulers or assistants, sought the opinion of ethics lawyers, not the senior officials themselves.”<sup>4</sup>

Additionally, the emails show that Mr. Bernhardt regularly primed ethics officials—in particular, the Alternate Designated Agency Ethics Official, Ed McDonnell—with messages expressing his belief that ethics laws and regulations did not strictly bar his participation in particular matters on which he lobbied or that related to his former clients.

In several instances, Mr. Bernhardt seeks clearance directly from Mr. McDonnell, provides his own conclusions, and engages in extensive back-and-forth regarding the outcome of Mr. McDonnell’s ethics review.<sup>5</sup> The email exchanges also indicate that other senior political appointees applauded Mr. McDonnell for offering the ethics conclusion desired by Mr. Bernhardt.<sup>6</sup>

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<sup>4</sup> Davenport, *supra* note 2. The *Times* reported: “In any professional organization, if your boss comes to you and says, here’s the reason I should do this, it becomes very difficult to say no,” said Francis Iacobucci, who served as director of scheduling to Sally Jewell, an interior secretary in the Obama administration.

“That’s intimidating,” he said, adding, “there are layers for a reason.”

Lynn Scarlett, who served as deputy interior secretary in the George W. Bush administration, said that when ethics questions arose during her tenure, “certainly I would never signal what I want the answer to be.”

When Mr. Iacobucci was at Interior, he said he met with the ethics lawyers, including Mr. McDonnell, who would then vet the Ms. Jewell’s proposed meetings well in advance and reject any that violated ethics rules or created the appearance of ethical conflicts. Only then were meetings put on the secretary’s calendar.

“That is not a new process,” Mr. Iacobucci said. “It was learned from doing it this way in the agency for years.”

<sup>5</sup> See, e.g., U.S. Dep’t. of the Interior’s Response to Friends of the Earth Freedom of Information Act Request, *supra* note 1, at 122-135; 782-784; 763 and 827-850; 922.

<sup>6</sup> *Id.* at 945 (then-Principal Deputy Solicitor Daniel H. Jorjani replying to Mr. McDonnell’s email giving Mr. Bernhardt ethics clearance with the message “Ed – Superb value creation. Much appreciated. Dan”). As noted by the *New York Times*, “Value creation is not usually an ethics lawyer’s job. ‘It is not the job of career ethics employees to ensure the political agenda pushes forward,’ [Former Director of Scheduling] Iacobucci said. ‘It’s his job to ensure that it stays within ethical guidelines.’” Davenport, *supra* note 2.

We ask that your office review the interactions between Mr. Bernhardt and Interior ethics officials for compliance with ethical obligations.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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\_\_\_\_\_/s/\_\_\_\_\_  
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