

VIA FED EX DELIVERY

April 24, 2018

The Honorable Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency, Office of the Inspector General
1200 Pennsylvania Ave., N.W. (2410T)
Washington, D.C. 20460

Re: Request for Investigation of Administrator Pruitt's Appointments of Kenneth Wagner and Albert Kelly

Dear Inspector General Elkins:

We write to request that you investigate whether Scott Pruitt, Administrator of the Environmental Protection Agency ("EPA"), improperly used his office for the benefit of two longtime friends and business partners: Albert "Kell" Kelly and Kenneth Wagner. Beginning no later than 2003, Administrator Pruitt received the benefit of millions of dollars in loans, business opportunities, and cash equivalents from Mr. Wagner, Mr. Kelly, and Mr. Kelly's family bank, SpiritBank. Administrator Pruitt now appears to have returned the favor: Despite essentially nonexistent backgrounds in federal environmental policy – and, in Mr. Kelly's case, a federal order banning him from work in banking, his chosen profession – Mr. Kelly and Mr. Wagner each have been appointed by the Administrator to positions as senior EPA officials. Particularly in light of Administrator Pruitt's well-documented pattern of unethical behavior while at EPA, there is good reason to conclude that his appointments of Mr. Kelly and Mr. Wagner violate the Ethics in Government Act and implementing regulations by bestowing public benefits on otherwise-unqualified individuals with whom he has a close relationship. Accordingly, we request that you investigate the circumstances of Mr. Pruitt's appointments of Mr. Kelly and Mr. Wagner and, if warranted, recommend appropriate disciplinary action up to and including dismissal.

Background

Administrator Pruitt's career as an Oklahoma businessman and state official is closely linked with Mr. Kelly and Mr. Wagner. Beginning in 2003, Mr. Kelly's family bank, SpiritBank, appears to have extended millions of dollars in loans so that Administrator Pruitt could purchase expensive residences and a share in the Oklahoma Redhawks, a AAA baseball team. In subsequent years, Administrator Pruitt, Mr. Wagner, and SpiritBank shared office space and managed the Redhawks in concert, ultimately selling the team at enormous profit. And throughout his time as Oklahoma Attorney General, Administrator Pruitt received generous benefits from Mr. Wagner while outsourcing costly legal work to Mr. Wagner's law firm. The long history of favoritism between the Administrator and Messrs. Kelly and Wagner now

extends to the EPA, where the Administrator's former business partners have been appointed to positions of leadership.

Before receiving significant financial assistance from Mr. Kelly and SpiritBank, Administrator Pruitt's assets appear to have been modest. Between 1999 and 2002, Administrator Pruitt served as an Oklahoma state senator, a position earning him approximately \$38,400 per year in base salary.¹ Additionally, Administrator Pruitt practiced law part-time, appearing in 39 state and federal cases between 1993 and 2002, *i.e.*, an average of approximately four cases per year. As of 2002, Administrator Pruitt resided at 833 Lynwood Lane in Broken Arrow, Oklahoma, a property he had purchased in 1993 for \$90,000 (with a mortgage of roughly \$85,000) and against which he borrowed \$17,000 in 1999.²

According to reporting and publicly available information, Mr. Kelly and SpiritBank began loaning the Administrator significant sums in 2003, notwithstanding the Administrator's apparently limited assets. First, in 2003, the Administrator partnered with various local businessmen to purchase the Redhawks for \$6.8 million.³ The Administrator's significant share of the RedHawks (variously estimated at between 25 and 29 percent) was worth approximately \$2 million, and appears to have been financed by SpiritBank and Mr. Kelly, then the Bank's CEO.⁴ Second, SpiritBank loaned over \$400,000 to a shell company, owned in part by Administrator Pruitt, designed to purchase a part-time home for Oklahoma state lawmakers, including the Administrator himself. (Administrator Pruitt did not list his ownership interest in this shell company on Oklahoma state ethics disclosures, in possible violation of that state's ethics laws.)⁵ Finally, in 2004, Administrator Pruitt received a \$533,230 mortgage from SpiritBank to purchase a \$605,000 property at 7712 South 3rd Place in Broken Arrow, Oklahoma.⁶ Three months later, SpiritBank refinanced this mortgage.⁷

Administrator Pruitt's ties to Mr. Kelly and SpiritBank appear to have transcended an arm's length debtor-creditor relationship. By 2005, Administrator Pruitt and SpiritBank both

¹ Ex. 1: Okla. Dep't of Libraries, *Oklahoma State Agencies, Boards and Commissions* 137 (1999) [Old Document 6].

² Ex. 3: Ken Yazel, *Property Search - Tulsa County Assessor* (Jan. 20, 2018); Ex. 4: State of Oklahoma, *FHA Mortgage* (Aug. 26, 1993); Ex. 5: Tulsa County Clerk, *NationsBank Mortgage* (June 1, 1999) [Old Documents 1, 2, 3].

³ See Bob Hersom, *Oklahoma RedHawks Ownership*, NewsOK (Nov. 21, 2003), <http://newsok.com/article/1956722>; Margaret Talbot, *Scott Pruitt's Dirty Politics*, New Yorker (Apr. 2, 2018), <https://www.newyorker.com/magazine/2018/04/02/scott-pruitts-dirty-politics>.

⁴ Sharon Lerner, *Banned from the Banking Industry for Life, a Scott Pruitt Friend Finds a New Home at the EPA*, Intercept (Dec. 28, 2017), <https://theintercept.com/2017/12/28/scott-pruitt-failed-banker-running-epa-superfund-program/>.

⁵ Steve Eder & Hiroko Tabuchi, *Scott Pruitt Before the E.P.A.: Fancy Homes, a Shell Company and Friends with Money*, N.Y. Times (Apr. 21, 2018), <https://www.nytimes.com/2018/04/21/us/politics/scott-pruitt-oklahoma-epa.html>.

⁶ Ex. 7: Tulsa County Clerk, *SpiritBank Mortgage* (Sept. 13, 2004) [Old Document 20].

⁷ Ex. 8: Tulsa County Clerk, *SpiritBank Mortgage* (Dec. 30, 2004); Ex. 9: Tulsa County Clerk, *SpiritBank Mortgage* (Dec. 30, 2004) [Old Documents 21, 22].

leased office space at 1800 South Baltimore Avenue in Tulsa, Oklahoma.⁸ There, they were joined by Administrator Pruitt's law school classmate and co-owner of the RedHawks, Mr. Wagner, whose law firm not only employed the Administrator, but also represented SpiritBank and a car dealership affiliated with Administrator's Pruitt's family.⁹ During this period, Mr. Wagner, Mr. Pruitt, and the Oklahoma City Athletic Club (a corporate umbrella for the RedHawks linked with SpiritBank) routinely filed UCC reports for the RedHawks on the same days.¹⁰ The final such filings followed the sale of the RedHawks – reportedly for over \$20 million – in September, 2010.¹¹

Shortly thereafter, Administrator Pruitt won election as Oklahoma Attorney General, where he apparently outsourced an unusually large quantity of state legal work to Mr. Wagner. These contracts, which were not awarded following competitive bidding, channeled roughly \$600,000 in public funds to Mr. Wagner's law firm. In return, Mr. Wagner reportedly used his position as Chairman and Treasurer of "Oklahoma Strong Leadership" – a political action committee devoted almost entirely to Administrator Pruitt – to fund the Administrator's lavish travel expenses.¹²

As Administrator Pruitt and Mr. Wagner exchanged favors, Mr. Kelly's leadership of SpiritBank became legally untenable. Mr. Kelly stepped down as CEO and President of the bank in May 2017, and shortly thereafter signed consent agreements with the Federal Deposit Insurance Corporation ("FDIC") wherein he agreed to a \$125,000 fine and to the issuance of an FDIC order banning him for life from employment with SpiritBank or with any other federally-insured financial institution.¹³ The FDIC order stated that, while affiliated with SpiritBank, Mr. Kelly had "engaged in or participated in a violation of law or regulation, unsafe or unsound practice, and/or breach of fiduciary duty," which "involved [his] willful or continuing disregard for the safety or soundness of the Bank."¹⁴

As the FDIC's investigation into SpiritBank was concluding, Administrator Pruitt ensured that Mr. Kelly would enjoy a position of leadership at EPA. On May 22, 2017 – less than two weeks after Mr. Kelly signed the FDIC consent order banning him from certain banking-related employment – Administrator Pruitt named Mr. Kelly the Chair of EPA's Superfund Task Force.¹⁵ At this time, Administrator Pruitt also named Ken Wagner EPA Senior

⁸ Eder & Tabuchi, *supra* note 6; Ex. 10: Pruitt Statements of Financial Interests (2003-2010) [Old Document 13].

⁹ Ex. 10, *supra* note 9; Eder & Tabuchi, *supra* note 6.

¹⁰ Exs. 12-15: UCC Filings dated 2/23/2004; Exs. 16-19: UCC Continuation Filings dated 1/30/2009 [Old Documents 16-19, 28-31].

¹¹ See Game Plan LLC, *Transactions*, <http://www.gameplanllc.com/transactions/> (last visited Mar. 29, 2018); Exs. 20-23: UCC Financing Statement Amendments dated 9/3/2010 [Old Documents 33-36].

¹² Eder & Tabuchi, *supra* note 6.

¹³ Tulsa World 5-8-14; Ex. 24: Order to Pay, *In re Kelly*, No. FDIC-15-0180k (July 27, 2017); Ex. 25: Order of Prohibition from Further Participation, *In re Kelly*, No. FDIC-15-4179e (July 27, 2017) [Old Documents 37, 38].

¹⁴ Ex. 25, *supra* note 14.

¹⁵ Lerner, *supra* note 5.

Advisor for Regional and State Affairs.¹⁶ Neither Mr. Kelly nor Mr. Wagner has any significant prior experience with federal environmental policy.

Potential Legal Violations

The bedrock principle of government ethics is that public service is a public trust, requiring employees to place loyalty to the Constitution, the nation's laws, and ethical principles above private gain. As an executive branch employee, Administrator Pruitt is prohibited from using his public position for the private benefit of his relatives, friends, or associates.¹⁷ Specifically, Office of Government Ethics regulations command that an "employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity."¹⁸

Administrator Pruitt's appointment of Mr. Kelly and Mr. Wagner to EPA leadership suggests that he has violated these regulations. The length and scope of the Administrator's relationships with Mr. Kelly and Mr. Wagner suggest that the Administrator is "affiliated" with Mr. Kelly and Mr. Wagner "in a nongovernmental capacity" and/or is their "friend" under the regulations.¹⁹ Accordingly, Administrator Pruitt may not use his office to benefit Mr. Kelly and Mr. Wagner.

But circumstances suggest Administrator Pruitt has done just that. Mr. Kelly and Mr. Wagner do not appear to have meaningful expertise in federal environmental policymaking, yet hold senior positions at EPA, suggesting that their appointment flows largely from their preexisting business and personal relationships with the Administrator. Further suggesting Administrator Pruitt's improper use of his office for the benefit of Mr. Kelly and Mr. Wagner are (1) Mr. Kelly's and Mr. Wagner's long history of entanglement with and extension of significant benefits to Administrator Pruitt; (2) Mr. Kelly's inability to obtain employment in his chosen profession following the FDIC consent orders; and (3) Administrator Pruitt's well-documented history of ethical violations while at EPA, including his use of public funds for lavish travel,²⁰ his use of an abnormally large security detail to combat unsubstantiated threats during both professional and private trips,²¹ his use of the Safe Water Drinking Act to obtain raises for

¹⁶ Kevin Bogardus & Mike Soraghan, *Pruitt's Friend Joins Agency as Senior Adviser*, E&E News (Apr. 13, 2017), <https://www.eenews.net/stories/1060053058>.

¹⁷ 5 C.F.R. § 2635.102(h).

¹⁸ 5 C.F.R. § 2635.702

¹⁹ *Id.*

²⁰ Letter from David J. Apol, Acting Director & Gen. Counsel, U.S. Office of Gov't Ethics, to Kevin Minoli, Principal Deputy Gen. Counsel & Designated Agency Ethics Official, U.S. EPA, at 2 & nn. 6, 7 (Apr. 6, 2018).

²¹ Juliet Eilperin & Brady Dennis, *EPA Documents Question Justification for Pruitt's 24/7 Security Detail, First-Class Travel*, Wash. Post (Apr. 10, 2018), https://www.washingtonpost.com/news/energy-environment/wp/2018/04/10/internal-epa-documents-question-justification-for-pruitts-round-the-clock-security-detail/?utm_term=.ffde2979fd0d.

non-expert agency employees,²² his improper lease of an apartment from one or more registered lobbyists at below market rates,²³ his reportedly retaliatory personnel decisions meant to downplay the improper lease and other misuse of government property,²⁴ his reliance on EPA employees to conduct personal business on government time,²⁵ and his unlawful purchase of a secured phone booth and related counter-espionage services.²⁶ Indeed, the Administrator's ethical lapses are so significant that the Office of Government Ethics recently took the extraordinary step of requesting that you investigate his conduct while at EPA.

Collectively, these circumstances suggest not only that Administrator Pruitt has violated Office of Government Ethics regulations, but also his own ethics pledge, embodied in President Trump's Executive Order, to make hiring decisions based on candidates' "qualifications, competence, and experience."²⁷

Request for Relief and Further Investigation

Your office has the authority to review potential violations of applicable ethics rules, including President Trump's executive order on ethics.²⁸ We respectfully request that you use this authority to extend your ongoing investigations into Administrator Pruitt's behavior – including those investigations recommended by the Office of Government Ethics – to determine whether Administrator Pruitt's appointment of Mr. Kelly and Mr. Wagner constitutes an improper use of his office. If such an investigation reveals that Administrator Pruitt has, in fact, improperly used his authority to benefit two former business partners at public expense, we respectfully request that you recommend appropriate disciplinary action.

We look forward to learning more about the outcome of your inquiry. Should you have any questions, or wish to discuss this matter further, please do not hesitate to contact Travis Annatoyn at tannatoyn@democracyforward.org or (202) 601-2483.

Sincerely,

/s/ Anne Harkavy

Anne Harkavy
Executive Director

Travis Annatoyn

²² U.S. EPA, *Report: Management Alert - Salary Increases for Certain Administratively Determined Positions* (Apr. 16, 2018) <https://www.epa.gov/office-inspector-general/report-management-alert-salary-increases-certain-administratively>.

²³ Letter, *supra* note 22, at 1 & n. 3.

²⁴ *Id.* at 2 & n.10.

²⁵ *Id.* at 2 & n.9.

²⁶ See, e.g., U.S. GAO, *Opinion, U.S. Environmental Protection Agency—Installation of Soundproof Privacy Booth* (Apr. 16, 2018), <https://www.gao.gov/products/B-329603>.

²⁷ Exec. Order. 13770, § 8 (Jan. 28, 2017).

²⁸ 40 C.F.R. § 1.29.

Counsel

Democracy Forward Foundation

CC: Kevin Minoli, Deputy General Counsel and Designated Agency Ethics Official, EPA
David J. Arpol, Acting Director and General Counsel, Office of Government Ethics