March 15, 2018

United States Senate
Washington, D.C. 20510

RE: Enhance the Enforcement Authority and Accountability of the Office of Government Ethics (OGE)

Dear Senator:

We are writing to encourage all Senators to support and co-sponsor the “Executive Branch Comprehensive Ethics Enforcement Act” sponsored by Sen. Richard Blumenthal (D-Conn.). This legislation would enhance the effectiveness and accountability of the ethics process in the executive branch by streamlining enforcement authority within the Office of Government Ethics (OGE).

Our organizations and academics include: Citizens for Responsibility and Ethics in Washington (CREW); Common Cause; Democracy 21; Ambassador (ret.) Norman L. Eisen; Norman J. Ornstein; Richard W. Painter (former ethics lawyer for President George W. Bush); Project on Government Oversight (POGO); Public Citizen; Sunlight Foundation; and Prof. James A. Thurber.

Currently, ethics laws and regulations that govern the executive branch are implemented and enforced through a loose confederation of federal officers, each with different levels of jurisdiction. The reason for this arrangement is that the federal ethics system has evolved both through piecemeal legislation that applies throughout the government and through rules and procedures that individual agencies and the federal government have adopted on their own.

Presumably, the Office of Government Ethics (OGE) is charged with responsibility for overseeing this loose patchwork of ethics laws and regulations. However, the agency is empowered to operate primarily in an advisory capacity. It has only limited authority to implement ethics regulations and little jurisdiction over other executive branch agencies to ensure compliance with the laws and regulations.

As an ethics agency, OGE is better structured than the congressional ethics committees in that most of its employees are career public servants rather than political appointees. The Director, however, is appointed by the president for a five-year term and serves at the pleasure of the President.

Nevertheless, OGE is far from an ideal agency. Perhaps its greatest weakness is that it has been conceived as an advisory “partner” with all other executive branch agencies in developing, interpreting and implementing ethics laws and regulations. OGE also does not generally enforce the ethics code for other agencies, instead to granting that authority to some 4,000 ethics officers appointed within each executive branch agency and office.
This partnership role has at times caused confusion and fraction between OGE and other executive branch agencies and offices, and has sometimes left ethics laws and regulations unenforced.

The “Executive Branch Comprehensive Ethics Enforcement Act” would remedy these current deficiencies in the ethics process by clarifying and strengthening the enforcement authority of OGE. The key components of this legislation would:

- Grants the Director of OGE with the authority to request subpoenas from a federal court to gather necessary information and conduct formal investigations.
- Preserves the thousands of agency ethics officers as the first-line authority to interpret and enforce the ethics laws, but would subsume final authority under OGE.
- Clarifies that the scope of OGE rules and regulations extend to White House personnel as well as executive branch agencies.
- Authorizes OGE to order corrective actions (such as divestiture, blind trusts and recusal), and impose appropriate administrative penalties (such as reprimand, suspension or dismissal).
- Requires “for cause” to remove the Director before the end of a term.
- Protects the rights of executive branch personnel by allowing any individual subject to an investigation or corrective action to demand a formal hearing.
- Establishes OGE as the central repository for ethics records deemed public information by law or by the Director, and makes these records available on-line in a searchable, sortable and downloadable format.

The Office of Government Ethics clearly has the expertise when it comes to knowledge of ethics laws and how to implement these laws. But the agency is denied the means to carry through on its expertise.

We strongly support the “Executive Branch Comprehensive Ethics Reform Act” as a means to establish OGE as a reasonably independent, professional ethics agency with the legal authority and tools to carry out its mandate. OGE must assume the role of a genuine watchdog over governmental ethics rather than merely serve as an advisory partner within the executive branch.

Sincerely,

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