



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Feb. 6, 2019

The Hon. Elijah Cummings, Chairman
The Hon. Jim Jordan, Ranking Member
House Committee on Oversight and Reform
2471 Rayburn House Office Bldg.
Washington, D.C. 20515

Public Citizen Statement for the Record in Support of H.R. 1

Dear Members of the Committee:

On behalf of Public Citizen's 500,000 members and supporters, we write to express our wholehearted support for the sweeping ethics, campaign finance and voting rights reforms offered by the For the People Act (H.R. 1), which you are moving through the hearing process in your committee. We also write as a part of the 130 organization-strong Declaration for American Democracy coalition that is supporting H.R. 1.

In November, the American people went to the polls and resoundingly cast their ballots in support of candidates and officeholders committed to cleaning up corruption and holding government accountable. H.R. 1 embodies these principles and constitutes your promise to the nation to ensure that public officials work for the people.

This sweeping legislative package addresses three key buckets of reforms which are essential to make our government work effectively and fairly. The legislation provides:

- Comprehensive campaign finance reforms that would end dark money and reduce the alarming influence of special interest and corporate money over our elections.
- Desperately-needed governmental ethics reforms to slow the revolving door between public service and powerful business interests, and strengthening oversight and enforcement of ethics laws and rules.
- Voting and electoral reforms that would end gerrymandering and reaffirm the principle of one person, one vote.

Within each of these three buckets H.R. 1 proposes numerous critical reforms that get to the heart of the corruption problems and, if implemented, will go a long way toward restoring public confidence in our federal government. Each and every one of these proposals are significant remedies to what ails this nation and are endorsed by Public Citizen.

We want to highlight the significance of just a couple of the many constructive reforms. Today's hearing is focusing especially on the ethics reforms for the executive branch, and so those ethics issues will be the center of attention of these comments.

The ethics section of H.R. 1 (Title VIII) squarely addresses the most critical problems that have become particularly prevalent today. Ethical lapses within each of these areas have long existed – most notably, in terms of revolving door abuses and conflicts of interest involving campaign fundraising – but all of these areas have become sources of major and on-going scandals under the current administration, more so than any time before.

Donald Trump has set the tone for his entire administration that ethics do not really matter. He has declared that the president cannot have a conflict of interest and is therefore above the rules of ethical behavior proscribed by 18 USC 208 – the same rule of ethical behavior that every president prior to Trump has respected for the previous 40 years. Trump has refused to divest himself of conflicting properties and sees no need to recuse himself from official actions that pose a direct and substantial conflict.

Trump has appointed many cabinet and other administration officials with similar conflicts of interests in terms of their financial interests and official duties. This has resulted in a numbing drum beat of ethics scandals, one after another. In just two short years, there have been at least 40 departures of high-ranking officials due to these scandals, eight criminal convictions or guilty pleas, and at least 29 pending indictments. More are likely to follow.

As the most scandal-ridden administration in recent history, Trump has highlighted where the nation's ethics laws and rules fall short, and what needs to be done to repair the damage. H.R. 1 embodies these remedies.

1. Revolving Door Abuses.

The revolving door both into and out of the federal government is perhaps the most pernicious form of undue influence-peddling. The revolving door enables corporations and wealthy special interests to gain control over the regulatory agencies that oversee them. Such “regulatory capture” occurs when the executives or lobbyists of business interests are appointed to agencies that will oversee their business matters. It essentially breaks down the barrier between private interest and public service. A similarly troubling trend occurs when the business interests provide a former government regulator with lucrative private-sector employment upon leaving public service. The prospects of such lucrative employment may well affect the regulator's official actions while in government service.

H.R. 1 addresses revolving door abuses in several ways. First, it eliminates the “golden parachute” in which companies, especially banks and law firms, award former employers with huge bonuses specifically for taking a senior position in a regulatory agency. Though such payments are downright illegal if made after the former employer steps into government, it is perfectly legal to be awarded prior to the move, sometimes even days before stepping into government. These bonuses can create a sense of obligation for the new regulator toward his or her former employer.

Second, the “Executive Branch Conflict of Interest Act” (Subtitle A), as well as the “Ethics Pledge for Senior Executive Branch Employees” (Subtitle G), would prevent agency regulators from taking official actions that directly and substantially affect their former employers or clients within the last two years. This had been an ethics policy first imposed in the Obama administration and is widely credited with sharply reducing instances of regulatory capture and conflict of interest scandals.

These revolving door proposals would also impose a two-year cooling off period on former government officials from accepting lobbying positions in the private sector for two years after leaving public service. Procurement officers could not accept employment with any company they awarded a government contract for two years.

This is excellent policy for reining in the revolving door. However, it could be made yet even more effective. The ban against becoming a lobbyist for two years after leaving government is narrowly defined to apply only to banning “lobbying contacts.” Many government officials currently take jobs as strategic consultants for lobbying firms and avoid making lobbying contacts, but they plan, organize and carry out the lobbying campaign nonetheless. *The revolving door restriction should ban conducting “lobbying activity” (strategic consulting) as well as “lobbying contacts” for two years after leaving government.*

2. Strengthening Ethics Enforcement in the Executive Branch.

The Office of Government Ethics agency charged with ethics oversight for the executive branch. Although the agency is staffed by well-trained, professional ethics officers, the agency’s efforts are hampered by three basic structural flaws that are imposed by statute:

- OGE acts more as an advisory partner within the executive branch rather than an enforcement watchdog.
- Responsibility for implementation of the executive branch ethics laws and regulations is widely dispersed among some 4,000 ethics officers of the White House and the various executive agencies, divisions and offices.
- While OGE attempts to serve as a central clearinghouse of ethics records, it has only partially fulfilled that mission.

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.

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 limited authority to implement ethics regulations and little jurisdiction over other executive branch agencies to ensure compliance with the laws and regulations. Furthermore, though the agency attempts to serve as a central clearinghouse of ethics records, it has yet to fulfill that mission adequately.

H.R. 1 would transform OGE into an actual ethics cop. The thousands of ethics officers would be subsumed under the authority of OGE, and the agency would be empowered to promulgate rules and regulations that carry across the administration. It would become the central clearinghouse of ethics records, made available on-line in a searchable, sortable and downloadable format. H.R. 1 would also enhance the desperately-needed enforcement mechanisms of OGE.

Again, this is excellent policy for ensuring that the nation's ethics rules are uniformly interpreted and enforced. However, one important enforcement mechanism for OGE is not yet included in H.R. 1. *The agency should be vested with authority to issue administrative penalties for ethics violations, rather than refer all transgressions to the Department of Justice for enforcement. Penalties of a more serious nature should be left to the Justice Department.*

3. Conflicts from Political Fundraising.

Money is the ultimate source of political corruption, which often includes campaign funds. Currently, political appointees in the executive branch, even senior cabinet officials, are not required to disclose whether they have solicited or contributed funds for political purposes to political committees or electioneering nonprofit organizations. This secrecy has become a major problem in the Trump administration, which is full of appointees who rose to their positions by being powerful political fundraisers. Frequently, these fundraisers are appointed to positions overseeing the same committees and organizations that they financially supported.

H.R. 1 addresses this potential conflict of interest by requiring political appointees to disclose any fundraising they have conducted for political committees and organizations that seek to influence public policy, either through electioneering activity or lobbying. This disclosure alone will enable citizens to determine whether serious conflicts of interest exist in the administration.

4. Presidential Conflicts of Interest.

President Donald Trump in particular, and the Trump White House and administration in general, have brought concerns about the application of conflict of interest laws and regulations to the top of the nation's ethics agenda. Trump has decided to maintain ownership and effective control of the vast Trump Organization and largely ignore the conflicts of interest constraints of 18 U.S.C. 208 and much of the ethics advice of the Office of Government Ethics (OGE). In doing so, Trump has set the tone for lax compliance to ethics norms for himself and among White House personnel as well as for administration officers and employees.

As noted in a joint report entitled "Trump-Proofing the Presidency" by Public Citizen and Citizens for Responsibility and Ethics in Washington, the president and vice president are exempt from the main federal conflict-of-interest law, 18 U.S.C. § 208(a), and its implementing regulations. Together, these rules bar federal employees from participating personally and substantially in any particular matter in their government work that would have a direct and predictable effect on their financial interests or financial interests that are imputed to them (for example, financial interests held by their spouses). Typically, federal employees and officers who are subject to these rules have complied with them in one of three ways: (1) recusing themselves from a part of their government work, (2) obtaining special permission to work on

the conflicting matter from ethics officials within their agency, known as a waiver, or (3) divesting the financial interest that is causing the conflict.

Modern presidents of both parties before President Trump addressed potential financial conflicts of interest by adhering to ethical norms and traditions that resulted in the sale of financial interests that could present the risk of corruption. Since the Ethics in Government Act of 1978 was passed, presidents of both parties have established blind trusts or limited their holdings to U.S. Treasuries and diversified mutual funds and other assets so as to avoid a conflict-of-interest.

H.R. 1 recognizes the egregious problems posed by Trump's refusal to comply with the spirit of the nation's conflict of interest laws and regulations. However, H.R. 1 only goes as far as declaring that it is a "sense of Congress" that the president should comply with the conflict of interest laws. *While this is a step in the right direction, the law needs to go a step further and explicitly apply the conflict of interest laws and regulations to the president and vice president.*

Conclusion

These are just a few of the major ethics improvements offered by H.R. 1 to the functionality and accountability of the federal government. The sweeping legislation provides many more sorely-needed reforms, not just in governmental ethics but in campaign finance and voting rights as well.

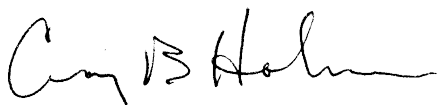
H.R. 1 is the sweeping governmental reform that Americans are demanding.

In 2016, many voters believed in the campaign pledge to "drain the swamp," only to be sorely disappointed by the growing power of wealthy special interests over all levers of government in Washington DC. And voters responded in 2018.

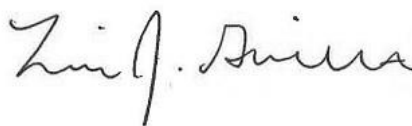
These key issues took front and center of the political dialogue in the last election, and will once again emerge as the most important factors affecting voting choices in the 2020 elections. A new class of representatives has been ushered into the 116th Congress upon the promise of making the federal government accountable and transparent to the public.

Carry through with that promise by doing everything you can to advance H.R. 1 into law.

Sincerely,



Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen's Congress Watch division
215 Pennsylvania Avenue SE
Washington, D.C. 20003



Lisa Gilbert
Vice president of legislative affairs
Public Citizen
215 Pennsylvania Avenue SE
Washington, D.C. 20003

FURTHER RESEARCH

Public Citizen has conducted extensive independent research on many of the issues addressed in the sweeping reform legislation of H.R. 1. Below is a brief description and link to some of these additional studies.

I. REVOLVING DOOR

A. Lobbyists and Regulatory Capture

In what appears to be a breach of Trump’s own ethics rules, dozens of former lobbyists who serve in the Trump administration handle the same specific issues on which they lobbied within the past two years, according to [a new report](#) by Public Citizen.

President Donald Trump promised to “drain the swamp” when he got to Washington, D.C. He issued ethics Executive Order No. 13770, which allows former lobbyists to immediately join the administration, but to lessen conflicts of interest, they are not permitted to work on “specific issue areas” that they lobbied on unless they receive a waiver.

Yet Trump’s appointments have included not just former lobbyists, but dozens of lobbyists whose governmental responsibilities fall into the same specific issue areas on which they lobbied within the past two years.

The report, entitled “[The Company We Keep](#),” shows that early in setting up Trump’s administration:

- More than 25 percent of all political appointees in the Trump administration are former lobbyists.
- Of these, despite Trump’s own ethics rules, 35 are former lobbyists who recently lobbied the same issue area that they now oversee in the administration, of which six have received waivers.
- That means at least 29 incoming officials early in the Trump administration appear to be in violation of Trump’s own revolving door policy. That number is likely to be substantially higher today.

This prompted a wave of [29 ethics complaints](#) filed by Public Citizen against these conflict of interest appointments, as violations of paragraph 6 of ethics Executive Order #13770. All complaints were either dismissed or ignored by the administration.

B. Administration’s Legal Team

The revolving door between the federal government and law firms that represent big, powerful corporations is spinning like never before under the Trump administration, a [new Public Citizen report](#) finds.

The report, “Big Law, Big Conflicts,” found that:

- Out of 127 senior Trump administration lawyers, 76 present revolving door concerns, meaning they previously represented companies with business before the government or worked in the same field they now oversee.

- The top revolving door issues involving lawyers are twice as severe in the Trump administration as they were in the Obama administration.
- Two law firms – Jones Day and Kirkland & Ellis – have shuffled nearly two dozen attorneys into the Trump administration.

C. Trump’s Campaign and Transition Team Swell the Ranks of Lobbyists

Individuals with close ties to President Donald Trump and Vice President Mike Pence are plunging into the swamp that candidate Trump pledged to drain and profiting by lobbying for corporate and foreign interests, a new [report](#) by Public Citizen shows.

At least 44 individuals with close ties to Trump or Pence have worked as registered lobbyists so far this year, according to the report, “Feeding Frenzy in Trump’s Swamp.” These lobbyists, most of whom worked on Trump’s campaign or transition team, are connected to nearly \$42 million in client billings and in-house lobbying expenditures in 2017, with \$32.2 million coming from domestic sources and \$9.5 million from foreign entities.

[Read the report](#) (PDF). Watch Public Citizen’s animated explainer [video](#).

II. CONFLICTS OF INTERESTS IN THE TRUMP PRESIDENCY

A. Trump-Proofing the Presidency

In a joint report by Public Citizen and Citizens for Responsibility and Ethics in Washington, entitled “[Trump-Proofing the Presidency](#),” it was found that:

President Trump’s decision to retain his ownership interest in the Trump Organization has led to unprecedented conflicts of interest resulting from various business interests that fall under the umbrella of the Trump Organization. Some of these interests include the Trump Organization’s lease with the federal government to operate a hotel in the Old Post Office building in Washington, D.C., business dealings in Panama and other countries, foreign trademarks, debt obligations, and temporary visas from the U.S. government necessary for foreign persons to work at the Trump-owned club Mar-a-Lago and other Trump properties.

- President Trump spent 121 days or a third of his presidency visiting his commercial properties;
- President Trump and his White House staff promoted the Trump brand by mentioning or referring to one of his private businesses on at least 54 different occasions;
- Special interest groups held more than 40 events at Trump properties;
- At least eleven foreign governments paid Trump-owned entities during the first year of office and six foreign government officials made appearances at Trump Organization properties; and
- Political groups spent more than \$1.2 million at Trump properties during the president’s first year.

B. Deregulating for Dollars

In a report jointly authored by Rep. David Cicilline and Public Citizen, entitled “[Deregulating for Dollars.](#)” several opportunities for Trump to enrich himself through official actions taken by the administration are documented.

The conflicts of interest stem from President Trump’s refusal to divest from his business empire after taking office. Instead, Trump maintains his ownership stake in his businesses, setting the stage for unprecedented opportunities for the president to profit by wiping out protections. In several instances, Trump’s financial interests are directly at odds with protecting the public it is his administration’s duty to serve. The result is the disturbing potential for Americans to be harmed by policies that are implemented partly because they offer short-term financial benefits to the president’s businesses.

This report highlights six examples of cases in which President Trump’s business interests could benefit from his administration’s plans to dismantle public protections. Gutting these protections – the Environmental Protection Agency’s Clean Water Rule and ban on brain-damaging pesticide chlorpyrifos, the Department of Labor’s overtime rule, the National Labor Relations Board’s “joint employer” rule, the Equal Employment Opportunity Commission’s pay transparency rule and the Department of Homeland Security’s cap on H-2B visa workers — could benefit the Trump Organization. At the same time, these rollbacks would harm low- and middle-income Americans, many of whom supported his candidacy.

The report also provides nine additional examples of anti-corruption restrictions, consumer protections and worker protections that could be rolled back under Trump, to the potential benefit of his companies. It also notes Trump’s potential conflicts of interest relating to an affordable housing program from which he and his family profit and details how Trump could benefit from restrictions on class action lawsuits and tax cuts to benefit corporations and the rich.

III. KOCH BROTHER’S INFLUENCE IN THE TRUMP ADMINISTRATION

Despite a rocky relationship during the 2016 presidential campaign between Donald Trump and the Koch brothers, the two Republican megadonors have infiltrated the Trump administration, with 44 Koch allies staffing the White House and other agencies, a [Public Citizen report](#)(PDF) finds.

More than one year after Trump’s election, political operatives and policy experts who have worked at numerous Koch-funded organizations have fanned out through the Trump administration. They are taking jobs influencing policies about taxes, the environment, energy, education and health care – in service of the hard-right anti-government agenda espoused by right-wing organizations created by the Kochs.

Public Citizen’s [review](#) of the Koch brothers’ connections to the Trump administration and policy agenda in Washington, D.C., finds that:

- 44 Trump administration officials have close ties to the Koch brothers and their political groups, particularly Vice President Mike Pence, White House Legislative Affairs Director Marc Short, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt and White House Budget Director Mick Mulvaney.
- Of the Koch allies who are working in the administration, most are in the White House, with 21 officials working there or nominated for White House jobs.

- Koch allies also are staffing jobs at the EPA, the Interior Department, the Energy Department and the Treasury Department. The positions they are advocating overlap with the Kochs' economic interests in weakening regulatory enforcement, lowering corporate taxes, loosening environmental regulations and opening up public land to oil and gas extraction.
- The Kochs already have achieved the majority of goals contained in "Roadmap to Repeal" – a policy document published in January 2017 by Freedom Partners, a Koch group.

IV. PERSONAL FINANCIAL INTERESTS OF THE PRESIDENT

["Hotel Swamplandia: 200 Big Spenders at President Donald Trump's Businesses"](#) looks at the interest groups, companies, politicians and governments most enthusiastically embracing Trump and spending money socializing at his properties around the country, ostensibly to curry favor with the president.

Public Citizen has kept a close watch over who is spending money at Trump properties and has documented 204 instances of trade groups, companies, religious groups, charities, foreign governments, interest groups and political candidates staying in Trump properties or spending money there. This tally is more than triple what [we counted](#) in our first look at the issue in January.

V. OFFICE OF GOVERNMENT ETHICS: LACKING ENFORCEMENT AUTHORITY

In the joint Public Citizen-CREW report ["Trump-Proofing the Presidency,"](#) it was found that:

Responsibility for implementation of the executive branch ethics laws and regulations is decentralized and widely dispersed among some 4,500 officials in the White House and the various executive agencies whose job responsibilities include interpreting and administering ethics laws.

While OGE serves as a central clearinghouse for some ethics records, it does not collect or maintain all agency ethics records that are of public interest.

Currently, ethics laws and regulations that govern the executive branch are implemented and enforced on a decentralized basis through a loose confederation of federal officials with different levels and areas of jurisdiction. In theory, the Office of Government Ethics is responsible for overseeing federal ethics laws and regulations, but it has limited authority to implement ethics regulations or to ensure compliance.

Because of this, ethics regulations and compliance in the executive branch are not always implemented or enforced in a consistent fashion. For example, OGE has little say over agency determinations regarding recusals or divestitures. In addition, while OGE does develop standards of conduct, waivers, authorizations, approvals and gifts are not in practice treated consistently across all agencies.

Just as problematic is OGE's role in the ethics process in the White House. While OGE and agency ethics officials retain at least the power of persuasion to compel officials in agencies besides the White House to file disclosure reports properly and comply with ethics rules, OGE has almost no practical ability to provide this oversight role for White House employees. This

authority is left almost entirely to the White House counsel and, thus, to the president. This president has shown very little inclination to monitor and enforce compliance to even his own ethics Executive Order.

VI. COLLAPSE OF REGULATORY ENFORCEMENT

In two separate reports – “[Corporate Impunity](#)” and “[Wall Street Impunity](#)” – Public Citizen found that enforcement of regulations over corporations in general, and Wall Street in particular, has plummeted.

During President Donald Trump’s first year in office, enforcement against corporate crime and wrongdoing declined dramatically, with total penalties for such violations plummeting from the final year of the Obama administration, according to a [report](#) from Public Citizen

In almost every federal agency under control of a Trump appointee – and most notably at the U.S. Department of Justice (DOJ), the nation’s lead law enforcement agency – enforcement against corporations dropped, often plunging to just a small fraction of what it had been. In 11 of the 12 agencies, the amount of penalties imposed on corporate violators declined, in many cases drastically. In 10 of the 12 agencies, the number of individual enforcement actions against corporate violators also declined significantly.

The same troubling trend of declining enforcement actions was found on [Wall Street](#).

At the Securities and Exchange Commission, which protects shareholders from corporate fraud and abuse, the total penalties against corporate violators dropped by 68 percent, from more than \$2.9 billion to about \$927 million.¹ At the Office of the Comptroller of the Currency, another powerful bank regulator, penalties dropped by 58 percent. At the Commodity Futures Trading Commission, the agency that, among other things, polices the derivatives market, penalties dropped 80 percent.

VII. INADEQUATE FINANCIAL DISCLOSURE

Trump refused to adhere to the 40-year custom of presidential nominees releasing their tax returns to the public. He opted instead to argue, falsely, that a federally mandated financial disclosure form provided far better insight into his business affairs than his tax returns would.

A report by Public Citizen, “[President Trump, Inc.](#)” shows that the non-disclosure of Trump’s tax returns, as well as the ambiguities of the personal financial disclosure forms (278e), have largely hidden from public view Trump’s income, properties and conflicts of interest.

More than half of Trump’s business entities indicate a single direct owner. One might assume a business having a single direct owner translates to simplicity – but with Trump’s entities, that is not usually the case.

The vast majority of entities with a single direct owner are owned by another LLC or corporation. And these LLCs and corporations in turn may have two or more owners, which then have multiple owners, and so on.

Adding to the confusion, Trump often creates business entities in groups of two – a corporation and an LLC. In most cases, the corporation owns a percentage of the LLC (often only 1 percent).

The 278e form asks respondents to answer questions in broad ranges. This inherently creates imprecision in the data. But, where Trump is concerned, the form includes even more blatant shortcomings. The form includes catch-all top-level categories of “Over \$5 million” for income and “Over \$50 million” for liabilities.

While these categories would rarely be invoked by most politicians, Trump often uses them. On his most recent 278e form, Trump listed liabilities of “Over \$50 million” in five instances. These debts could be \$50 million plus \$1. But they could also be 10 times that, or, theoretically, as high as the mind could imagine

Trump has created at least 49 business entities since he announced his bid for the Republican nomination on June 16, 2015. Roughly half of the entities were related to projects in foreign countries, including Argentina, India, Saudi Arabia, and Indonesia.

Trump had his most active day in terms of business entity formation on June 23, 2015 – just seven days after he announced his intention to seek the office of president. In total, he created 16 new entities, all in Delaware, on June 23, 2015.

The pace with which Trump created businesses after announcing for president is consistent with speculation that he intended for his candidacy to enhance his business prospects and raises questions about how he intends to use his presidency. But the public is left with few answers given the lack of adequate disclosure by the president.