









**From:** [Shelley K. Finlayson](#)  
**To:** [Director of OGE](#)  
**Cc:** [David J. Apol](#); [Seth Jaffe](#); [Rachel K. McRae](#)  
**Subject:** FW: Comment on Proposed "Legal Expense Fund Regulation"  
**Date:** Monday, June 17, 2019 9:13:51 AM

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-----Original Message-----

From: Rolando DeLeon  
Sent: Friday, June 14, 2019 12:37 PM  
To: Shelley K. Finlayson; Nicole Stein  
Subject: FW: Comment on Proposed "Legal Expense Fund Regulation"

Contact OGE email

-----Original Message-----

From: Robert Rutkowski [[mailto:\(b\)\(6\)](#)]  
Sent: Thursday, June 13, 2019 4:42 PM  
To: Contact OGE <[contactoge@oge.gov](mailto:contactoge@oge.gov)>  
Cc: Keith Abouchar [[mailto:\(b\)\(6\)](#)]  
Subject: Comment on Proposed "Legal Expense Fund Regulation"

Hon. Emory A. Rounds, III,?? Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, DC 20005  
Email: [ContactOGE@oge.gov](mailto:ContactOGE@oge.gov)

Re: Comment on Proposed ???Legal Expense Fund Regulation???

Dear Director:

The Office of Government Ethics (OGE) must promulgate rules governing the recent proliferation of legal expense funds within the executive branch.

The funds are set up by government officials in legal trouble to raise money from private sources to help pay for legal expenses. They are largely unregulated for executive branch officials.

New rules, at a minimum, should require a \$5,000 limit on contributions, a prohibition on donations from those with business pending before the government official and a requirement for full transparency of the sources of funds and expenditures. Also mandate that each official may create only one legal expense fund to ensure accountability.

Previously these funds were set up so rarely, and voluntarily disclosed their finances, that the OGE felt tougher regulations were unnecessary.??

But in the Trump administration these slush funds are popping up everywhere, and each one plays by its own rules of how much money they take from which sources and whether to disclose any of this to the public.

In September 2017 Public Citizen filed a petition for rulemaking on legal expense funds for the executive branch with the OGE. The agency is currently undertaking such rulemaking.

Government officials facing costly legal expenses are particularly desperate for donations from others to cover those expenses. This desperation provides a perfect window for special interests with business pending before that official to buy favors through large donations to pay for legal expenses.

Congress has a long history with congressional legal expense funds, and so both the House and Senate have developed strict rules establishing contribution limits, banning donations from certain potentially corrupting sources such as lobbyists and foreign principals, and requiring quarterly disclosure of contributions and expenditures. The OGE should do the same for the executive branch.

Yours sincerely,  
Robert E. Rutkowski

cc:  
Representative Steny Hoyer  
House Majority Leader  
Legislative Correspondence Team  
1705 Longworth House Office Building  
Washington DC 20515  
Office: (202) 225-4131  
Fax: (202) 225-4300

(b)(6)

(b)(6)

P/F: (b)(6)

E-mail: (b)(6)

Re: Public Citizen comments:

<https://www.citizen.org/article/public-citizen-comment-on-proposed-legal-expense-fund-regulation/?eType=EmailBlastContent&eId=50380bc8-32c4-48ed-a5f3-b96c6af72b42>

**From:** [Christopher J. Swartz](#)  
**To:** [David J. Apol](#); [David Taube](#); [Seth Jaffe](#)  
**Subject:** RE: Trump Social Media Opinion  
**Date:** Tuesday, July 9, 2019 11:56:04 AM

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I also thought this footnote (6) was interesting: “Both accounts are official government accounts. Those accounts belong strictly to the government, in the sense that the President and members of the White House administration *will not retain control over those accounts upon leaving office*. The @POTUS account is the official account of the U.S. President. The @WhiteHouse account is the official account for the White House administration.” (emphasis mine)

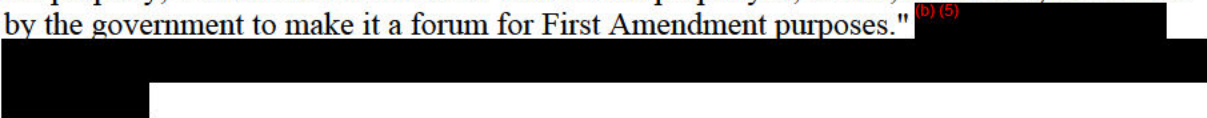
Chris

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**From:** Christopher J. Swartz  
**Sent:** Tuesday, July 9, 2019 11:54 AM  
**To:** David J. Apol <djapol@oge.gov>; David Taube <dtaube@oge.gov>; Seth Jaffe <sjaffe@oge.gov>  
**Subject:** Trump Social Media Opinion

The 2nd Circuit held today that the President’s cannot engage in discriminatory blocking of commenters from the @realdonaldtrump handle based on their disagreement with his policies. The court held that the account has “all the trappings of an official, state-run account” and that blocking was viewpoint discrimination. Note that this “all the trappings” language is somewhat similar to the test laid down in LA-15-03.

I also thought that this was of interest: “the fact that government control over property is temporary, or that the government does not “own” the property in the sense that it holds title to the property, 1 is not determinative of whether the property is, in fact, sufficiently controlled by the government to make it a forum for First Amendment purposes.” <sup>(b) (5)</sup>



The first amendment holding is based on the view that the “interactive space” associated with each tweet is a public forum.

-Chris

**From:** [Lori Kelly](#)  
**To:** [David J. Apol](#)  
**Subject:** White House Filers  
**Date:** Friday, July 19, 2019 3:01:12 PM

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List of White House filers "not received" at OGE as of 7/19/2019:

Nonresponsive records



<a href="#">Trump Ivanka</a>	2018 Annual	White House Office	Assistant to the President
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Nonresponsive records



Best,

Lori Kelly, Program Specialist  
U.S. Office of Government Ethics  
Financial Disclosure Branch  
Compliance Division  
Tel. 202.482.9306

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**From:** [Christopher J. Swartz](#)  
**To:** [GCLPD MailGroup](#)  
**Subject:** Article of Interest  
**Date:** Friday, August 16, 2019 10:18:58 AM

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You may find the attached article of interest: [PRESIDENT TRUMP'S WAR ON REGULATORY SCIENCE](#) 43 Harv. Envtl. L. Rev. 247 , 306 (2019) for its discussion of the application of the conflict of interest laws to FACA board members at the EPA. Of particular interest is the author's discussion of whether challengers can allege violations of 208 (or the existence of 208) when challenging a FACA appointment or process and the overall discussion of 208. The author notes the *Lorillard* case, although he does not describe further that the plaintiffs in that case lost on standing/ripeness at the appellate level.

Christopher J. Swartz  
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Follow OGE on Twitter: @OfficeGovEthics

**From:** [David J. Apol](#)  
**To:** [Deborah J. Bortot](#)  
**Subject:** FW: President Donald J. Trump Announces Intent to Nominate Individual to a Key Administration Post  
**Date:** Tuesday, August 27, 2019 3:20:32 PM

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**From:** Gast, Scott F. EOP/WHO [mailto:[\(b\) \(6\)](#)]  
**Sent:** Tuesday, August 27, 2019 3:19 PM  
**To:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** FW: President Donald J. Trump Announces Intent to Nominate Individual to a Key Administration Post

**From:** White House Press Office <[\(b\) \(6\)](#)>  
**Date:** August 27, 2019 at 3:07:28 PM EDT  
**To:** <[\(b\) \(6\) - Email Address - Dino Laverghetta](#)>  
**Subject:** **President Donald J. Trump Announces Intent to Nominate Individual to a Key Administration Post**  
**Reply-To:** White House Press Office <[\(b\) \(6\)](#)>

|\_\_\_\_\_|  
Office of the Press Secretary

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FOR IMMEDIATE RELEASE

August 27, 2019

**President Donald J. Trump Announces Intent to Nominate Individual to a Key Administration Post**

Today, President Donald J. Trump announced his intent to nominate the following individual to a key position in his Administration:

**Eugene Scalia of Virginia, to be Secretary of Labor.**

Mr. Scalia, a partner at Gibson, Dunn & Crutcher LLP, is a renowned labor, employment, and regulatory lawyer. He has previously held several positions in the Federal Government. In the mid-to-late 1980s, he was a speechwriter to Secretary of Education William J. Bennett. From 1992 to 1993, Mr. Scalia served as a Special Assistant to Attorney General William P. Barr. In 2001, Mr. Scalia joined the Department of Labor as Solicitor of Labor, the Department's principal legal officer with responsibility of a broad range of regulatory and enforcement matters. Mr. Scalia is a

senior fellow of the Administrative Conference of the United States, a Federal agency that makes recommendations to Congress and the Executive branch on ways to improve agency procedures. He has served as a lecturer in labor and employment law at the University of Chicago Law School and as an adjunct professor at the University of the District of Columbia David A. Clarke School of Law. Mr. Scalia received his undergraduate degree, with distinction, from the University of Virginia and his law degree from the University of Chicago Law School, graduating *cum laude* and serving as editor-in-chief of the University of Chicago Law Review.

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**From:** [Christopher J. Swartz](#)  
**To:** [GCLPD MailGroup](#)  
**Subject:** Case of High Interest  
**Date:** Friday, October 4, 2019 10:18:12 AM

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The Federal District Court of the Eastern District of California issued a memorandum opinion in *Griffin v. Padilla*, No. 2:19-CV-01477-MCE-DB, 2019 WL 4863447, at \*11 (E.D. Cal. Oct. 2, 2019) that granted a preliminary injunction preventing enforcement of California’s “Presidential Tax and Transparency Act” which would have required the President to disclose five years of tax returns to qualify to appear on the State’s primary ballot.

Among the various arguments made was that the law was preempted by EIGA section 107, which states that “The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest.”

Interestingly, in granting the injunction the district court held that the President’s attorneys were likely to win on the claim that the EIGA preempted the disclosure of the President’s tax returns. I produce that section below.

#### **4. Preemption by the Ethics in Government Act (“EIGA”)**

Finally as to the merits, and as already mentioned above, Title I of EIGA provides for the disclosure of “source, type, and amount or value of income”; honoraria from any source; dividends, rents, interest, and capital gains, and interests in property; the “entity and category of value of the total liabilities owed to any creditor”; and the identity of all positions held “as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.” See generally **5 U.S.C.A. App. 4, § 102**. Title I of the EIGA also protects candidates from the need to make different or additional disclosure by expressly displacing all other similar federal or state disclosure laws. It expressly “supersede[s] any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest.” *Id.* at § 107(b).

**\*12** Like EIGA, by requiring production of a candidate’s tax returns for the preceding five years, the Act also purports to provide for the disclosure of extensive financial information by candidates running for President, with one of its chief purposes being “to provide voters with essential information regarding the candidates’ potential conflicts of interest, business dealings, financial status, and charitable donations.” [Cal. Elec. Code § 6881](#). As such, according to the Trump Plaintiffs, the Act is plainly a “law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest” as described by EIGA, and by EIGA’s express provisions it is preempted.

The State nonetheless claims that because § 107(b) makes no explicit reference to preemption of state law, and because a previous version of the statute did explicitly do so in another context, no preemptive intent should be inferred. See Defs.’ Opp., 27:21-28:11. In this regard, the State cites a presumption against preemption, in fields traditionally occupied by the states, unless the clear and manifest purpose of Congress suggests otherwise.

Defendants’ statement of the law may be correct, but it has no bearing here because regulation of federal officeholders is clearly not a field traditionally occupied by the states. Moreover, although the words “state” and “preemption” appear nowhere in the text of § 107(b), the

statute is nonetheless unambiguous. Congress clearly intended that the EIGA “supersede” state laws touching on the field of financial disclosures and conflict-of-interest laws for federal officeholders. “Supersede” means to “[o]bliterate, set aside, annul, replace, make void, inefficacious or useless, repeal.” See Black’s Law Dictionary (6th ed. 1990). Section 107(b) of EIGA therefore “set[s] aside” and “replace[s]” “any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest.” By using the expansive term “any” with the phrase “other provision of law or regulation,” the plain and ordinary language of EIGA

unambiguously gives it preemptive force over the Act.<sup>20</sup> Plaintiffs are accordingly likely to prevail on the merits with respect to EIGA preemption as well.

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**From:** [Heather A. Jones](#)  
**To:** [David J. Apol](#)  
**Cc:** [Deborah J. Bortot](#)  
**Subject:** (b) (5)  
**Date:** Tuesday, October 15, 2019 11:44:04 AM

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(b) (5)

[https://www.washingtonpost.com/lifestyle/style/third-time-was-not-the-charm-rudy-giulianis-latest-divorce-is-bitter-expensive-and-very-public/2019/10/14/2e028b8a-ec3c-11e9-85c0-85a098e47b37\\_story.html](https://www.washingtonpost.com/lifestyle/style/third-time-was-not-the-charm-rudy-giulianis-latest-divorce-is-bitter-expensive-and-very-public/2019/10/14/2e028b8a-ec3c-11e9-85c0-85a098e47b37_story.html)

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