



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

January 17, 2023

Emory A. Rounds, III
Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, DC 20005

Corey Amundson
Chief, Public Integrity Section
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

CC: The Honorable Stuart Delery
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Misuse of Position and Potential Obstruction of Congressional Investigation for the Personal Benefit of Joseph Biden

Dear Mr. Rounds,

It has been widely reported in the press that several batches of classified documents have been discovered and retrieved from at least three locations associated with President Joseph Biden. These discoveries of documents originating from the President's tenure as Vice President during the Obama Administration have kicked off significant public concern over mishandling of sensitive and classified information, triggered a congressional oversight investigation, and even led to the appointment of a Special Counsel by Attorney General Merrick Garland. We write today in regard to a related matter that has implications for the ability of the public, Congressional investigators, and law enforcement authorities to fully understand the nature of the events still unfolding.

Specifically, we believe taxpayer resources may have been inappropriately used by senior White House lawyers, including Special Counsel to the President Richard Sauber, to personally benefit Joe Biden. We further believe that the apparent representation of Mr. Biden by the White House Counsel's Office in this matter creates an untenable conflict of interest for that office. The result, intended or not, could be to reduce transparency into the mishandling of state secrets and foreclose disclosure of communications between



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White House Counsel staff while acting on behalf of Joe Biden in his capacity as a citizen facing the prospect of criminal prosecution.

I. Who We Are

Protect the Public's Trust is a group of retired and former public servants dedicated to the idea that public service is a public trust. Too often, we have seen high-level public servants play fast and loose with the rules that other government officials have to live with, creating the perception of a two-tiered system and resulting in an unprecedented dip in trust in our elected officials. We believe that the American people deserve a government that is impartial, free from conflicts of interest, and operates without political interference or favoritism. Our goal is to ensure our nation fulfills that promise.

II. Background

According to media reports, on November 2, 2022, personal attorneys for President Biden discovered the existence of sensitive, classified documents at the Penn Biden Center. This Center was personally used by Joe Biden from mid-2017 until the start of his 2020 presidential campaign, a time period in which he was not serving in an official government capacity.¹ Presumably, the documents were taken by then-Vice President Biden upon leaving the White House in early 2017. The public became aware of the existence of these documents in early January 2023 through media reports.

In the ensuing coverage, the White House Counsel's Office, and Special Counsel to the President Richard Sauber in particular, appeared to be heavily involved in the President's personal legal matter. According to one article in Reuters:

The White House Counsel's Office notified the National Archives on the day of the discovery of those documents, Sauber said, adding the National Archives took possession of the material on the following morning.

The documents were discovered when Biden's personal attorneys "were packing files housed in a locked closet to prepare to vacate office space at the Penn Biden Center in Washington, D.C.," Sauber said. He added the White House was cooperating with the Justice Department and the National Archives.

...Sauber's statement did not mention the number of classified documents, what they contained or their level of classification.²

¹ <https://www.reuters.com/world/us/classified-documents-bidens-vice-presidency-found-think-tank-cbs-news-2023-01-09/>

² *Id.*



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CNN has reported that the tranche contained 10 classified documents, including US intelligence materials and briefing memos about Ukraine, Iran, and the United Kingdom.³ Inquiries to the White House Press Secretary have affirmed the role of the Counsel's office in order to limit public access to information on the issue. Press Secretary Karine Jean-Pierre stated, "I'm not going to go beyond what my colleagues at the White House counsel shared with all of you as well."⁴

Additional classified documents have been discovered at other locations in the last ten days, further affirming the White House Counsel's role in what appears to be a legal and public relations issue involving the President in his personal capacity and pertaining to actions taken prior to assuming the office of the Presidency. According to CNN, "The discovery of the classified documents in his former office in November set off alarm bells inside the White House, where only a small circle of advisers and lawyers were aware of the matter. An effort was launched to search other locations where documents from Biden's time as vice president may have been stored."

The extent of taxpayer resources and federal employee time spent to assist in the burgeoning public relations and legal nightmare facing Joe Biden in his individual capacity is unclear at this time.

Mr. Sauber has gone on the record to make clear he was personally involved as early as November 2, 2022, when the initial classified documents were discovered.

"Because I have a security clearance, I went to Wilmington Thursday evening to facilitate providing the document the President's personal counsel found on Wednesday to the Justice Department," Sauber said. "While I was transferring it to the DOJ officials who accompanied me, five additional pages with classification markings were discovered among the material with it, for a total of six pages. The DOJ officials with me immediately took possession of them."⁵

Congressional investigators, including Chairman James Comer of the House Committee on Oversight and Reform, have already sent multiple letters seeking information and documents on the mishandling of sensitive and classified documents.⁶ The latest letter seeking the visitor logs and communications of the Biden residences where documents were found have already been met with claims that the requested records sought may be

³ <https://www.cnn.com/2023/01/11/politics/biden-classified-documents/index.html>

⁴ *Id.*

⁵ <https://www.foxnews.com/politics/house-dem-says-no-doubt-biden-classified-docs-scandal-embarrassment>

⁶ <https://oversight.house.gov/release/comer-demands-answers-from-nara-and-biden-white-house-about-classified-docs-stashed-at-penn-biden-center/>; <https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-15-Letter-Klain-Classified-Docs.pdf>.



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withheld under executive privilege.⁷ If this privilege is claimed, it would only further seek to validate concerns that WHCO involvement was improperly used to shield transparency and investigation into a matter of national security importance.

III. The Law

Executive Branch employees operate under laws and regulations that seek to ensure an ethical and transparent administration of government. Many of these rules are contained in the Standards of Ethical Conduct.⁸ When enforced, these laws and standards strengthen the public's trust that their government is acting on their behalf not those of special interests, political parties, or to advance individual interests.

Federal regulations prohibit employees from using their official position for personal gain. For example, 5 C.F.R. § 2635.702 states:

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.⁹

Federal employees also have an obligation to protect and conserve government property and resources, and to make an honest effort to use official time and government property only for government business.¹⁰ An employee may not use the official time of another employee for anything other than official business.¹¹

Executive Branch officials, including political appointees and those operating within the confines of the Executive Office of the President, all receive mandatory ethics training to ensure awareness and compliance with these rules.¹² As experts in the law and legal strategy and advice for political appointees across the federal government, employees of the White House Counsel's Office (WHCO), can often be viewed as standard-bearers for upholding and enforcing these standards.

⁷ <https://www.pbs.org/newshour/politics/house-republicans-request-visitor-logs-from-biden-home-in-classified-documents-investigation>.

⁸ https://www.oge.gov/web/oge.nsf/resources_standards-of-conduct

⁹ 5 C.F.R. §§ 2635.702.

¹⁰ 5 C.F.R. §§ 2635.704 through .705.

¹¹ <https://www.justice.gov/jmd/misuse-position-and-government-resources#:~:text=An%20employee%20may%20not%20use%20his%20public%20office%20for%20his,which%20he%20is%20associated%20personally>.

¹² <https://www.oge.gov/web/oge.nsf/Resources/+A+Refresher+on+Misuse+of+Position>



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IV. Analysis

Mr. Sauber and possibly others in the White House Counsel's Office appear to be representing Mr. Biden in this matter. Mr. Sauber has given numerous public statements and the White House Press Secretary has repeatedly referred to Mr. Sauber as "his," meaning President Biden's, lawyer and referred reporters to Mr. Sauber and the White House Counsel's Office, rather than the President's personal lawyers, for comment.¹³

The involvement of the White House Counsel's Office in a personal legal matter involving the President for activity that took place while he was a private citizen raises several serious legal questions and concerns, including who the WHCO's client is in this matter.

The Office of White House Counsel advises the President in his capacity *as President*; its standard "client" is the Office of the President and it typically represents the interests of the institution of the presidency. As such, it is responsible for advising on all legal aspects of policy questions; legal issues arising in connection with the president's decision to sign or veto legislation, ethical questions, financial disclosures; and conflicts of interest during employment and post-employment. The counsel's office also helps define the line between official and political activities, oversees executive appointments and judicial selection, handles presidential pardons, reviews legislation and presidential statements, and handles lawsuits against the president in his role as president, as well as serving as the White House contact for the Department of Justice.

The White House Counsel's Office is not the President's personal law firm. It does not represent the President in purely personal matters that are separate from his role *as President*.

Yet, the White House Counsel's Office appears to be acting as lawyers to Joe Biden, private citizen, rather than President Biden in this matter. Under the current circumstances, the President appears to be facing potential criminal liability for conduct that occurred prior to being President, while acting as a private citizen. Further, they involve documents that raise national security concerns and implicate the ongoing criminal investigation of his son Hunter Biden.

¹³ See *Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby*, The White House (Jan. 12, 2023), <https://www.whitehouse.gov/briefing-room/press-briefings/2023/01/12/press-briefing-by-press-secretary-karine-jean-pierre-and-nsc-coordinator-for-strategic-communications-john-kirby-7/> ("Ms. Jean-Pierre: Look, I said this in my – I said in the statement. It's in the statement of – from his lawyer, Mr. Sauber. And at the end, he said, 'We are confident that their thorough review will show that these documents were inadvertently misplaced, and the President and his lawyers acted promptly upon discovery of this mistake.' I'm going to leave it there. That is what his lawyer said.")



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Worse, the involvement of the White House Counsel's Office raises serious questions of conflicts of interest. The documents at issue almost certainly originated and entered Joe Biden's possession while he was Vice President. If so, this suggests that either the Office of the Presidency (and possibly the White House Counsel's Office itself) was lax in developing and enforcing its document security protocols at the end of the Obama Administration or the current President violated those protocols. In either case, it suggests a divergence of interests between Joe Biden, in his personal capacity, and the Office of the Presidency, the institution that the White House Counsel's Office is supposed to represent.

Yet, the first instinct by Mr. Biden's personal attorneys was to call the President's senior legal counsel at the White House charged with managing and heading off all potential investigations and congressional oversight facing the Office of the President.¹⁴ While the discovery of classified documents came at an inopportune time for the President – days before a midterm election that was predicted to lead to substantially increased congressional oversight and investigations – the legal basis for the involvement of Mr. Sauber, or his staff at the WHCO, is difficult to understand or identify.

The American people deserve to know who exactly Mr. Sauber is representing in this matter. Under applicable standards and regulations, the involvement of Mr. Sauber and his colleagues at the WHCO appears to have provided multiple benefits for Mr. Biden but arguably none that accrue to the American public. This is a violation of the law.

As publicly reported, “a small circle of advisers and lawyers [inside the White House] were aware of the matter” as “alarm bells were set off” upon the revelation of the first set of classified documents found in November 2022. How many taxpayer-funded lawyers and oversight experts were relied on to manage the impending legal and public relations crisis facing Mr. Biden days before the midterm elections? Will those communications be withheld, if requested, based on claims that they are subject to executive privilege or attorney-client communications? Neither would appear to be an appropriate or legally justifiable basis for such defenses under the current circumstances.

Mr. Sauber's actions may have been undertaken to ease the foreseeable stress likely to come with the torrent of congressional oversight into misconduct and mismanagement of the United States government. However, this tenuous connection to his official duties is insufficient to justify dedicating significant federal resources for the benefit of his boss and political ally.

An independent and thorough investigation into why and to what extent taxpayer resources and expertise of the WHCO were used for the benefit of Mr. Biden and whether the use of such resources created a conflict of interest for the White House Counsel's

¹⁴ https://edition.pagesuite.com/tribune/article_popover.aspx?guid=b7e324b9-4d63-4526-b07b-7c8be2d06191.



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Office is critical to upholding the public's trust. The Biden Administration should not be above the law.

V. Conclusion

A notable example in the previous presidential administration exists to highlight the potential disparate treatment if this incident is not formally investigated. Former Secretary of State Mike Pompeo was investigated by the State Department Inspector General for misuse of position, specifically pertaining to allegations that he directed staff to walk his dog and pick up dry cleaning on his behalf.¹⁵ This was rightly identified as unacceptable behavior for a cabinet official and a waste of taxpayer resources.

Similarly, here we have the President's top lawyers and advisors also conducting personal services for their boss. Yet what's at stake is not restless puppies and wrinkled shirts but rather mishandled classified documents and a special counsel investigation.

For the foregoing reasons, we call upon you to investigate whether the White House Counsel's Office (and Mr. Sauber particularly) improperly dedicated taxpayer resources for the personal benefit of Joseph Biden.

Concerns over double standards, lack of transparency, and mishandling of classified documents can only be worsened in the event the Office of Government Ethics and Justice Department fail to take this matter seriously. If other senior officials outside of the White House complex were using their authority to benefit private citizens or shield individuals from congressional scrutiny, there would be an outcry to hold them accountable. This situation is no different. There should not be a two-tiered system of government ethics that subjects prominent White House Officials to a lower standard of scrutiny than other average public servants.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust

¹⁵ <https://www.politico.com/f/?id=00000178-dc15-d112-a97e-ffbd8ebc0000>.