PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL March 7, 2025

TO: The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Mr. David Warrington
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Office of the Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W. (2140T)
Washington, D.C. 20460

Re: Former Special Assistant to the President for Climate Policy David Hayes's Apparent Ethics Breaches Related to the Greenhouse Gas Reduction Fund.

Dear Administrator Zeldin and Mr. Warrington,

The following complaint was originally submitted on June 27, 2024. Recent events have given this complaint added relevance and heightened the need to investigate. Administrator Zeldin and his team report to have discovered the Biden administration rushed $20 billion in energy subsidies out the door and "parked" it with an outside financial institution before inauguration day in a scheme he alleged to be "the first of its kind in EPA history…purposefully designed to obligate all of the money in a rush job with reduced oversight." These funds appear to be connected to the Greenhouse Gas Reduction Fund (GGRF) at the center of the original complaint. Another recent article reported that among the largest recipients of GGRF money was the Coalition for Green Capital, which was the former employer of the EPA's GGRF director Jahi Wise, and also counts as one of its board members Mr. Wise's former close EPA colleague David Hayes. Mr. Hayes is the subject of the following complaint. To supplement the original request, we respectfully ask for the investigation to search agency communications with the White House that may have been protected by the previous administration.

Original Complaint

President Thomas Jefferson stated, "When a man assumes a public trust, he should consider himself as public property." Regrettably, there are public officials who not only fail to treat themselves as public property but treat their offices and powers as private property instead.

Protect the Public's Trust (PPT) is a nonpartisan organization dedicated to promoting ethics in government and restoring the public's trust in government officials.

We call your attention to a disturbing development in a problem Inspector General O'Donnell is already familiar with: potential ethics violations in the Environmental Protection Agency's ("EPA") distribution of funds under the Greenhouse Gas Reduction Fund ("GGRF").[1]

Based on recent reporting, there is reason to believe that former White House Special Assistant to the President for Climate Policy David Hayes may have breached his ethics obligations by engaging in influence peddling to funnel billions of dollars in Greenhouse Gas Reduction Fund ("GGRF") funds to an organization where he serves as board member.

To uphold the integrity of the White House and the EPA, avoid a loss of public trust in the government's mission and impartiality, and ensure tens of billions of dollars of taxpayer dollars are not misdirected for private gain, we request that you immediately investigate Mr. Hayes's conduct.

I. Factual Background

Mr. Hayes joined the board of the Coalition for Green Capital ("CGC"),[2] a "nonprofit consortium of 'green banks,'" between the Obama and Biden administrations.[3] He returned to CGC's board after leaving the Biden White House.[4]

Mr. Hayes entered the Biden administration in January 2021, where he served as Special Assistant to the President for Climate Policy, where his portfolio included working "with the National Climate Advisor and the National Climate Task Force on issues ranging from reducing greenhouse gas emissions to accelerating the United States' transition to energy sources like offshore wind and other projects."[5] As Mr. Hayes put it, one of his chief accomplishments was "establish[ing] the first-ever[] 'whole of government' effort to improve the United States'

[1] Statement of Sean W. O'Donnell, Inspector General, U.S. Environmental Protection Agency, to House Subcommittee on Oversight and Investigations Committee on Energy and Commerce hearing titled "Follow the Money: Oversight of President Biden's Massive Spending Spree," EPA Office of the Inspector General (March 29, 2023), https://d1dth6e84htgma.cloudfront.net/O_Donnell_Testimony_OI_Spending_Hearing_3_29_23_c1d82efafa.pdf?updated_at=2023-03-27T20:07:19.729Z.

[2] *David Hayes to serve as special assistant to the president for climate policy*, NYU Law News (Jan. 14, 2021), https://www.law.nyu.edu/news/david-hayes-biden-special-assistant-president-climate.

[3] Nick Pope, *Shortlist For EPA's Multi-Billion Dollar 'Green' Fund Features Groups With Deep Connections to Biden Admin, Dems*, Daily Caller News Foundation (Nov. 15, 2023), https://dailycaller.com/2023/11/15/epa-green-fund-biden-admin-connections/.

[4] *Coalition for Green Capital Welcomes Four New Board Members Ahead of Greenhouse Gas Reduction Fund Application Submission*, Coalition for Green Capital (Sep. 25, 2023), https://coalitionforgreencapital.com/coalition-for-green-capital-welcomes-four-new-board-members-ahead-of-greenhouse-gas-reduction-fund-application-submission/.

[5] David Hayes, *Standford's David Hayes Advocates 'Whole Government' Approach to Promote 'Climate Resilience*, Stanford Law School (December 5, 20233), https://law.stanford.edu/2022/12/05/stanfords-david-hayes-advocates-whole-of-government-approach-to-promote-climate-resilience/.

resilience in the face of climate change."[6] Significantly, as a leader of the Biden administration's climate policy, "he assisted in developing and implementing climate-related provisions of the IRA [Inflation Reduction Act] and the IIJA [Infrastructure Investment and Jobs Act]."[7]

As a senior leader on climate issues within the White House, Mr. Hayes was at the top of the pyramid that crafted the Biden administration's climate policies and the legislative and regulatory effort that funded the GGRF with $27 billion under the IRA and IIJA. Now, under the National Clean Investment Fund ("NCIF"), $14 billion in GGRF funds will be granted to selected applicant organizations to "establish national clean financing institutions [in order to] deliver accessible, affordable financing for clean technology projects nationwide" by "partnering with private-sector investors, developers, community organizations, and others to deploy projects [and] mobilize private capital at scale."[8]

Mr. Hayes departed the White House in October 2022 and rejoined the board of CGC shortly thereafter.[9] He also joined the Natural Resources Defense Council ("NRDC") as a Senior Fellow.[10] NRDC is a partner with CGC and is an organization with business before the EPA, including litigation against EPA over regulations, commenting on the EPA's proposed rules, and lobbying on environmental issues within the EPA's jurisdiction.

After Mr. Hayes left the White House, his return to CGC was announced in a press release also publicizing that CGC was applying for GGRF funds.[11] In addition to Mr. Hayes's return, CGC announced that it was welcoming other notable new board members "ahead of [its] Greenhouse Gas Reduction Fund application submission."[12]

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[6] *Id*.
[7] *Make or Break: Transforming U.S. Infrastructure to Meet Climate Goals*, UCLA Law, https://law.ucla.edu/academics/centers/emmett-institute-climate-change-environment/make-or-break-transforming-us-infrastructure-meet-climate-goals.
[8] *National Clean Investment Fund*, Environmental Protection Agency, https://www.epa.gov/greenhouse-gas-reduction-fund/national-clean-investment-fund.
[9] Robin Bravender, *Senior White House climate official steps down*, E & E News (Sep. 30, 2022), https://www.eenews.net/articles/senior-white-house-climate-official-steps-down/; *Coalition for Green Capital Welcomes Four New Board Members Ahead of Greenhouse Gas Reduction Fund Application Submission*, Coalition for Green Capital (Sep. 25, 2023), https://coalitionforgreencapital.com/coalition-for-green-capital-welcomes-four-new-board-members-ahead-of-greenhouse-gas-reduction-fund-application-submission/.
[10] *David J. Hayes Joins NRDC as a Senior Fellow*, NRDC (Jan. 12, 2023), https://www.nrdc.org/press-releases/david-j-hayes-joins-nrdc-senior-fellow.
[11] *Coalition for Green Capital Welcomes Four New Board Members Ahead of Greenhouse Gas Reduction Fund Application Submission*, Coalition for Green Capital (Sep. 25, 2023), https://coalitionforgreencapital.com/coalition-for-green-capital-welcomes-four-new-board-members-ahead-of-greenhouse-gas-reduction-fund-application-submission/.
[12] *Id*.

EPA recently announced that CGC had been selected to receive $5 billion in GGRF funds from NCIF.[13]

II. Mr. Hayes's Ethics Obligations

As a senior adviser within the White House, Mr. Hayes was, and remains, bound by a stringent set of ethics policies designed to prevent conflicts of interest and corruption. These policies stem from statutes, executive orders, and federal regulations.

18 U.S.C. § 207 Prohibits Exploitation of Revolving Door Employment

Under federal criminal law, certain kinds of revolving door influence-peddling are prohibited. 18 U.S.C. § 207(a) prohibits former officers and employees of the executive branch from knowingly making communications to "any officer or employee of any department, agency, [or] court" with "the intent to influence" its decision in connection with matters in which 1) the United States has "a direct and substantial interest," 2) the former officer or employee "participated personally and substantially," and 3) "involved a specific party or specific parties" at the time of their participation.

18 U.S.C. 207(c) further restricts influence peddling by placing a one-year restriction on former executive branch officers and employees prohibiting them from knowingly making communications to officers and employees of their former department or agency with the intent to influence "official action" by any of its officers or employees.

The Biden Administration's Executive Order on Ethics Commitments by Executive Branch Personnel

On the very day President Biden assumed power, his administration announced its Executive Order on Ethics Commitments by Executive Branch Personnel (hereinafter, the "Pledge"), which required "every appointee in every executive agency" in the Biden administration to sign a pledge committing them to avoid certain ethics violations.[14] Among these commitments were prohibitions on revolving door influence peddling:[15]

> 2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

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[13] Nick Pope, *'The Swamp Is Getting Deeper': EPA Awards Billions From Biden's Landmark Climate Bill To Orgs Loaded With Dem Insiders*, Daily Caller News Foundation (Apr. 4, 2024), https://dailycaller.com/2024/04/04/biden-epa-billions-grants-green-groups-democrat-ties/.

[14] *Executive Order on Ethics Commitments by Executive Branch Personnel*, The White House (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel/.

[15] *Id*.

. . .

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

Executive Orders 12674 and 12731 Prohibit Conflict of Interests

Executive Orders 12674 and 12731 establish a set of "Principles of Ethical Conduct for Government Officers and Employees,"[16] including the following:[17]

- Employees shall not use public office for private gain.[18]
- Employees shall act impartially and not give preferential treatment to any private organization or individual.[19]
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.[20]
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.[21]

Regulatory Restrictions on Gifts and Conflicts of Interest

Federal ethics regulations prohibit an employee from using "his public office for his own private gain . . . 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."[22] The regulation establishes the following prohibitions:[23]

- An official may not use his position, title, or any authority associated with his office in a manner that "could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another."

[16] Exec. Order No. 12674.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] Exec. Order No. 12731.
[22] 5 C.F.R. § 2635.702
[23] 5 C.F.R. § 2635.702(b)-(d)

- An official may not use his position, title, or any authority associated with his office to endorse any products, service, or enterprise, with limited exceptions for conduct directly related to his agency's work.
- An official must recuse himself or seek approval from relevant ethics authorities when performance of his duties would affect the financial interests of a friend, relative, or person with whom he is affiliated in a nongovernmental capacity.

III. Mr. Hayes Appears to Have Violated His Ethical Obligations

There is reason to investigate whether Mr. Hayes violated some or all of his ethical duties.

The optics of Mr. Hayes's entrance into the Biden administration and departure from it are troubling. Mr. Hayes left CGC's board for a relatively brief stint in the White House and presumably worked at the highest level on the very GGRF program from which CGC sought funding upon his return. This timing is suspect considering CGC itself publicly announced his return to its board as part of its effort to obtain GGRF funding.[24]

In doing so, Mr. Hayes appears to have violated several of his ethics obligations.

First, Mr. Hayes appears to have violated the Pledge by leaving CGC's board to work on creating the GGRF. The second provision of the Pledge prohibited Mr. Hayes from participating in "any particular matter involving specific parties that is directly and substantially related to" his former employment with CGC within 2 years from the date of his appointment.[25] Considering that his tenure at the White House lasted less than 2 years and he directly worked on creating a funding program to which CGC would be applying for funding, Mr. Hayes's work may have violated this restriction

Second, Mr. Hayes's work on climate policy and creating the GGRF during his time in the White House appears to have violated restrictions on using public service for private gain. Mr. Hayes left CGC's board to work in the White House on matters directly pertaining to CGC's billion-dollar interests in GGRF funds and left the White House to rejoin CGC just in time for it to apply for billions in GGRF funds. This situation raises concerns that Mr. Hayes misused his public service for CGC's private gain. The "Principles of Ethical Conduct for Government Officers and Employees" prohibited Mr. Hayes from using his public office for CGC's benefit, giving preferential treatment to CGC, or using nonpublic government information to further CGC's private interest. A reasonable inference that can be drawn from Mr. Hayes's seamless move from

[24] *Coalition for Green Capital Welcomes Four New Board Members Ahead of Greenhouse Gas Reduction Fund Application Submission*, Coalition for Green Capital News (Sep. 25, 2023), https://coalitionforgreencapital.com/coalition-for-green-capital-welcomes-four-new-board-members-ahead-of-greenhouse-gas-reduction-fund-application-submission/.
[25] *See* the Pledge.

setting up GGRF funding to re-joining CGC as it applied for that funding is that Mr. Hayes may have violated these restrictions.

Third, Mr. Hayes may have violated the prohibitions on peddling influence after public service if he had contact with government officials. Under 18 U.S.C. 207(a) and (c), Mr. Hayes was prohibited from contacting officials and employees within the administration to influence its decisions on any matter, including the GGRF's funding awards. Section 4 of the Pledge extends these restrictions in both duration and scope, further prohibiting Mr. Hayes from trying to influence senior White House staff.[26] Mr. Hayes's senior position at the White House and immediate return to CGC raises serious concerns that he may have violated these restrictions by using his connections to influence the GGRF application process in CGC's favor if he had any contact with government officials.

Similar influence peddling concerns apply to Mr. Hayes's role as a senior fellow at NRDC. Mr. Hayes joined NRDC within three months of leaving the White House. As an organization with business before the EPA and a mission and interests affected by the kind of White House climate policies that Mr. Hayes helped lead, there is a distinct possibility that Mr. Hayes may have used his connections to the Biden administration on NRDC's behalf.

IV. Conclusion

As outlined above, the nature and circumstances of Mr. Hayes's roles with CGC, NRDC, and the Biden White House raise obvious and serious questions about his conduct.

Accordingly, we call for an immediate and comprehensive investigation into Mr. Hayes's potential ethics violations and the GGRF funding process.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust

[26] *See* the Pledge.