

Testimony of Richard W. Painter
before the United States House of Representatives
Committee on Natural Resources, Subcommittee on Oversight and Investigations
Hearing on April 30, 2024

Mr. Chairman, Ranking Member, and Members of the Committee:

Thank you for inviting me to testify today on the ethics and integrity of the Department of the Interior.

I am a law professor at the University of Minnesota, and I was the chief White House ethics lawyer for President George W. Bush from 2005 to 2007. I specialize in corporate law, securities regulation, lawyers' ethics, and government ethics.

The subject of my testimony today is improper influence of special interest groups on the Department of the Interior.

The federal government owns about six hundred forty million acres of land, between a quarter and a third of the total land in the United States. That is almost two acres of land for each of the approximately three hundred and thirty million people living in the United States.

Federal land does not belong to oil companies, or to mining companies, or to anyone else. It belongs to "you and me"¹ the American people.

Under the United States Constitution, Congress holds this land in trust. Your power as custodians of this land is set forth in the Constitution Article IV, Section 3, Clause 2:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Public lands may only be disposed of with congressional authorization. The Supreme Court has held that the power of Congress is exclusive: *United States v.*

¹ *This Land in Your Land*, As recorded by Woody Guthrie in April 1944

Fitzgerald, 40 U.S. (15 Pet.) 407, 421 (1841); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 403–04 (1917), although in the absence of Congressional action courts often defer to the executive branch. *United States v. Midwest Oil Co.*, 236 U.S. 459, 469 (1915). Congress has from time-to-time reasserted control over federal lands. See e.g. 43 U.S.C. §315. Grazing districts; establishment; restrictions; prior rights; rights of-way; hearing and notice; hunting or fishing rights. Pub. L. No. 94–579, § 704(a), 90 Stat. 2792 (1976).

The time has come, once again, for Congress to act. I testify today not about specific laws for best use and preservation of public lands, but rather much needed reform of the ethics rules that bind the Department of Interior.

Corruption of government officials is an ancient problem.² Because the Interior Department controls such vast swaths of federal land, and much of this Country's natural resources, however, corruption of the Interior Department is perhaps an even greater risk. The Interior Department has been a problem in government ethics for over a century. The Interior Department was an ethics disaster zone in the 1920's, it was problematic during the Bush Administration when I was the chief White House ethics lawyer, and the problems remain today.

I will close my testimony with specific suggestions on what Congress can do to prevent yet more scandals in the Interior Department and assure that authority delegated to the Department by Congress is used in a manner consistent with the interests of the owners of federal land – the American people.

In April 1922, Senator John Kendrick (D-WY) sought investigation of a secret deal in which Interior Secretary Albert Fall, without competitive bidding, leased the U.S. Naval Petroleum Reserve at Wyoming's Teapot Dome to a private oil company. Senator Robert La Follette (R WI) and the Senate Committee on Public Lands investigated. Prosecutions soon followed. Fall was the first former cabinet officer to go to prison.³

Secretary Fall went to prison for bribery. He was not the victim of a political prosecution. He was a felon. In the United States, no person is above the law – not a cabinet member and not even a president. There is no immunity from criminal

² The late Judge John T. Noonan of the Ninth Circuit Court of Appeals recorded the history of bribery over two thousand years in his seminal book Bribes, published shortly after President Reagan appointed him to the Ninth Circuit Court of Appeals. John T. Noonan, Jr., Bribes (1986).

³ *Albert B. Fall v. United States*, 49 F.2d 506 (D.C. Cir. 1931) (conviction affirmed).

prosecution for official acts that are criminal.⁴ A Secretary of the Interior or any other Interior Department official who for personal profit sells access to federal land or natural resources on federal land commits a felony. See 18 U.S. Code § 201 - Bribery of public officials and witnesses.

But criminal laws cannot be the only constraint on the affairs of the Interior Department. We should not delegate management of vast portions of the United States to a federal agency that can do whatever it wants, whenever it wants, so long as prosecutors cannot prove a public official committed a crime.

There have been way too many Interior Department scandals to mention all of them in my testimony. I note a few.

When I came to the White House in February of 2005, lobbyist Jack Abramoff faced criminal charges for corrupt dealings with clients and the government. Much of his activity centered on the Department of Interior and misuse of statutes and rules intended to allow Indian Tribes specific privileges in lobbying the government about use of tribal land and federal land. Abramoff used – indeed abused – these federal laws to make profits for himself and the casino industry. J. Steven Griles, former Deputy Secretary of the Interior was sentenced to ten months in prison for obstructing the U.S. Senate’s investigation into Abramoff.⁵

We had other problems during the Bush Administration. A New York Times article summarizing an Inspector General’s report on an Interior Department program that managed oil and gas royalties from federal lands, stated:

“The report says that eight officials in the royalty program accepted gifts from energy companies whose value exceeded limits set by ethics rules including golf, ski and paintball outings; meals and drinks; and tickets to a Toby Keith concert, a Houston Texans football game and a Colorado Rockies baseball game.

⁴ See *United States v. Trump*, 23-939, Brief of the United States and oral argument, April 25, 2024; review on cert. of *U.S. v. Trump*, No. 23-3228 (D.C. Cir. 2024).

⁵ See Department of Justice Press Release, June 26, 2007, Former Interior Deputy Secretary Steven Griles Sentenced to 10 Months in Prison for Obstructing U.S. Senate Investigation into Abramoff Corruption Scandal, https://www.justice.gov/archive/opa/pr/2007/June/07_crm_455.html

The investigation also concluded that several of the officials ‘frequently consumed alcohol at industry functions, had used cocaine and marijuana, and had sexual relationships with oil and gas company representatives.’”⁶

None of this behavior was disclosed to the White House ethics office during my watch. I assure you I would have recommended immediate dismissals if it had.

More recently, during the Trump Administration, Interior Secretary Ryan Zinke faced allegations that he misused his position to advance a commercial development project in his Montana hometown and may have lied to an agency ethics official about his involvement. He was also accused of making false statements during a probe of a Native American casino development.⁷ Zinke was the subject of over a dozen investigations by either the Interior Department Office of the Inspector General (OIG), the Government Accountability Office (GAO), or the Office of Special Counsel (OSC). No criminal charges were filed and none of these allegations have been proven in court, but they are concerning.

Zinke’s successor, Interior Secretary David Bernhardt disclosed over two dozen former clients and employers presenting potential conflicts of interest.⁸ Hopefully these conflicts were appropriately managed by Interior Department ethics lawyers, but Bernhardt’s appointment is just one example of the longstanding close ties between senior Interior Department officials and private industry.

On May 19, 2022, the Interior Department OIG released a report of its investigation into whether Bernhardt violated the Lobbying Disclosure Act of 1995 when he represented Westlands Water District as a lobbyist before and after serving as

⁶ Charles Savage, *Sex, Drug Use and Graft Cited in Interior Department*, New York Times, September 10, 2008, <https://www.nytimes.com/2008/09/11/washington/11royalty.html>

⁷ The OIG found that Zinke used his office and taxpayer resources for personal gain, used a personal email account to communicate information, and may have lied to the OIG about it. See https://www.washingtonpost.com/national/health-science/interior-secretary-zinke-resigns-amid-investigations/2018/12/15/481f9104-0077-11e9-ad40-cdfd0e0dd65a_story.html and <https://www.washingtonpost.com/climate-environment/2022/08/24/ryan-zinke-misled-investigators-watchdog-report/>

⁸ Marc Rehmann, *David Bernhardt Is President Trump’s Most Conflicted Cabinet Nominee*, American Progress, March 15, 2019. <https://www.americanprogress.org/article/david-bernhardt-president-trumps-conflicted-cabinet-nominee/>

Interior Secretary.⁹ Bernhardt refused to be interviewed and OIG was not able to make a determination. On January 19, 2023, OIG issued a report on whether Bernhardt violated the Ethics Pledge and conflict of interest rules by participating in matters involving the California Central Valley Project, a large Federal water project under the jurisdiction of the Bureau of Reclamation.”¹⁰ Once again, Bernhardt declined to be interviewed and OIG did not reach a determination.

On May 11, 2022, Committee Democrats made a criminal referral to the Department of Justice outlining evidence of a *quid pro quo* between Trump administration officials, including Bernhardt, and real estate developer Mike Ingram, the owner of El Dorado Holdings, which proposed to build the Villages at Vigneto (Vigneto), a large housing and commercial development near the endangered San Pedro River in Benson, Arizona. At the same time as the Army Corp of Engineers permit for the project was re-opened, Ingram and other Arizona donors gave about a quarter of a million dollars to the Trump Victory Fund and the Republican National Committee. The question, not yet proven one way or the other, is whether this donation was in exchange for the U.S. Fish and Wildlife Service changing its position about a Clean Water Act permit for Vigneto.¹¹

In none of these instances has criminal wrongdoing yet been proven. Nonetheless there have been so many allegations backed up by substantial evidence about corruption in the Interior Department that the American people ought to be concerned. Congress also should be concerned.

⁹ Office of Inspector General, *Former Secretary’s Alleged Lobbying Disclosure Act Violation Before Joining the U.S. Department of the Interior as Deputy Secretary*, Report No: 20-0393, Department of the Interior, May 19, 2022. <https://www.oversight.gov/sites/default/files/oig-reports/DOI/WebRedactFormerSecretarysAllegedLDAViolation.pdf>

¹⁰ Office of the Inspector General, *Allegations of Ethics Violations by Former U.S. Department of the Interior Secretary Were Not Substantiated*, Report Number: 19-0313, Department of the Interior, January 19, 2023. https://www.doioig.gov/sites/default/files/2021-migration/WebRedacted_AllegationsofEthicsViolationsbyFormerDOISecretaryWereNotSubstantiated.pdf

¹¹ House Committee on Natural Resources, *Letter of Criminal Referral to U.S. Department of Justice*, U.S. House of Representatives, May 11, 2022. <https://democrats-naturalresources.house.gov/download/grijalva-porter-to-doj-regarding-villages-at-vigneto&download=1>

Yet another problem is the growing influence of foreign corporations, some with ties to foreign governments. Arne Carlson, former Republican Governor of Minnesota, and I have vocally opposed efforts of mining conglomerates controlled by foreign billionaires, to open sulfide mines near the Boundary Waters and Lake Superior watershed. Sulfide mining is not like the iron mining Minnesota is famous for. A sulfide mine loosens up rocks and minerals deep underground and can turn water into the color of orange hair dye. Whether or not we like orange hair dye, Minnesotans don't want their lakes and rivers looking like that.

One of these mining companies, PolyMet, in 2017 arranged a land swap with the Interior Department to acquire federal land for sulfide mining. Litigation by environmental groups against the Interior Department continues to this day. See *Center for Biological Diversity v. Haaland* (D. Minn.) Case No. 22-cv-181 (PJS/LIB) (seeking an Order of the Court voiding the land exchange between the Forest Service and PolyMet; setting aside and vacating the various reports, opinions, and assessments created by defendants). PolyMet (now NorthMet) is controlled by Swiss mining conglomerate Glencore, founded by a tax cheat Marc Rich, pardoned by President Clinton. Glencore recently has had close ties with Russian oligarchs, and in 2017 Glencore's CEO Ivan Glasenberg received the Presidential Medal of Friendship from Vladimir Putin.¹² These are not the people we want opening a sulfide mine in Minnesota on federal land.

Yet another sulfide mine on a lease of federal land, adjacent to the Boundary Waters, was championed by federal officials in the Trump Administration. This mine would be controlled by Antofagasta, a corporation owned by a billionaire from Chile. The same billionaire in 2017 also leased an expensive house he had purchased in Washington DC to Jared Kushner and Ivanka Trump.¹³ I have no idea

¹² See Jack Farchy, *Putin Awards Glasenberg Order of Friendship After Rosneft Deal*, Bloomberg, Bloomberg, April 10, 2017, <https://www.bloomberg.com/news/articles/2017-04-10/putin-awards-glasenberg-order-of-friendship-after-rosneft-deal>

¹³ Mark Maremont, *Ivanka Trump's Landlord Is a Chilean Billionaire Suing the U.S. Government: President Donald Trump's daughter and her husband, White House adviser Jared Kushner, live in a Kalorama house owned by a Chilean business titan. His company is suing the U.S. over a Minnesota mine*, Wall Street Journal, March 8, 2017, <https://www.wsj.com/articles/ivanka-trumps-landlord-is-a-chilean-billionaire-suing-the-u-s-government-1489000307>

what the rent was, but this landlord's focus was not real estate. He was in the sulfide mining business. Despite Minnesotans' overwhelming opposition to sulfide mining in the Boundary Waters, the Trump Administration supported this mine. Fortunately, that decision was reversed during the Biden Administration.¹⁴

Environmental groups also seek to influence the Interior Department. While their resources are nowhere near as vast as those of industry groups, they must play by the same rules. We can't have one set of rules for industry and another for nonprofits. Furthermore, it is not always easy to discern who is funding nonprofits and whether industry or other special interests stand behind them.

A recent Inspector General's report points out a violation of the Biden ethics pledge by Nada Culver, the Bureau of Land Management's director of policy and programs.¹⁵ The inspector general concluded that Culver met with her previous employer, the Wilderness Society, on potential changes to regulation of oil and gas development and climate change. The inspector general apparently also concluded that Culver did so unintentionally and followed ethics guidance given to her, and that these meetings did not affect Bureau policy decisions. Intent, however, is not determinative – a violation of the ethics pledge is a violation (intent is relevant in criminal law, but violations of the ethics pledge are not criminal). The fact that a previous employer was an environmental advocacy organization rather than a private company also is not a factor in the ethics pledge. A violation of the ethics pledge is not a criminal offense, but still should be avoided.

We did not have this ethics pledge during the Bush Administration. Senior officials met with their former employers frequently as they had during the Clinton, George H.W. Bush, and Reagan Administrations. Many of these officials had been previously employed by oil and gas, mining, or energy companies or by

¹⁴ U.S. Department of the Interior, Press Release: Interior Department Takes Action on Mineral Leases Improperly Renewed in the Watershed of the Boundary Waters Wilderness, 01/26/2022, <https://www.doi.gov/pressreleases/interior-department-takes-action-mineral-leases-improperly-renewed-watershed-boundary>

¹⁵ Office of the Inspector General, *Bureau of Land Management Official Did Not Comply with the Federal Ethics Pledge*, Department of the Interior, August 18, 2022, https://www.doioig.gov/sites/default/files/2021-migration/WebRedacted_BLMethicsPledgeViolation.pdf

trade associations. As the White House ethics lawyer, I did not like these meetings with former employers, but there was little I could do about them. At that time, no rule prohibited them.

President Obama's ethics pledge, drafted by Ambassador Norman Eisen and embodied in an executive order in 2009, changed this.¹⁶ Similar language was used in Trump and Biden Administration ethics pledges. Meetings with previous employers to discuss federal policy are prohibited, even if the language of the ethics pledge is not as clear as it should be. Violation of the ethics pledge is not a criminal offense, but it should be taken seriously. The ethics pledge should be enforced. A single violation is not necessarily a firing offense, but this must be taken seriously.

How do we fix the ethics problems in the Interior Department?

First, we must realize that government ethics is not a partisan issue. Republicans and Democrats have an interest in protecting our federal lands and in the integrity of the Interior Department. Democratic, Republican, and Independent voters demand higher standards of ethics in government, Congress should pass legislation that will improve ethics in the Interior Department and other federal agencies.

It is your choice whether to turn this hearing into a partisan competition between members making accusations – true or false – against the Interior Department under a president of the other political party, while defending everything that happened under a president of their own. Voters, however, see right through that. We want change, not partisan acrimony.

Second, we must understand what the real problem is, and has been since the Teapot Dome scandal. Most of the corruption in the Interior Department is on account of private enterprises -- oil and gas companies, mining companies, developers and casino operators. Environmental groups also will seek to assert influence, hoping to even the playing field. Some might even break the rules and should be held accountable. But worrying about extreme environmental groups trying to take over the Interior Department would be like worrying that pacifists

¹⁶ Executive Order 13490 -- Ethics Commitments By Executive Branch Personnel, January 21, 2009.

will take over the Defense Department. Lockheed Martin and Boeing Corporation surely have closer ties with the Defense Department than your local Quaker Meeting House. Likewise, it is persons seeking profit from misuse of federal lands who for over a century have sought influence in the Interior Department.

Contacts with former employers are a major problem. The Interior Department should promulgate its own regulations prohibiting senior officials from engaging in policy discussions with their former employers or the former employers of more senior officials in the Department. One of the ways lobbyists get around the ethics pledge is to lobby a government officer's subordinates, often dropping the name of their boss. That should not be permitted.

18 USC 208 prohibits financial conflicts of interest for all federal employees. The accompanying financial disclosure regime, however, is deficient. As I have testified before in this House,¹⁷ the financial disclosure form needs to list the financing of separately incorporated entities in which the public official owns a controlling interest.

Spousal lobbying of an agency is yet another problem, but it is currently allowed in most instances.¹⁸ The Interior Department should say no to this. Individuals outside the government, including spouses, have the First amendment right to lobby, but the Interior Department is not required to give them preferential access not available to every other American.

The Department decides who gets preferential access to its most senior officials. Persons personally connected with senior officials should only be afforded the level of access available to a member of the public unknown to the Department. This should include lobbying by grown children of Interior Department officials.

¹⁷ Testimony of Richard W. Painter Before the Committee on Oversight and Government Reform, United States House of Representatives, Hearing entitled Legislative Proposals for Fostering Transparency March 23, 2017.

¹⁸ See Richard W. Painter, Getting the Government America Deserves: How Ethics Reform Can Make a Difference (Oxford U. Press 2009) at 184 (“Another increasingly important personal connection comes through spouses. One spouse serves in government, while the other lobbies. This is the so-called ‘Washington power-couple phenomenon.’”)

It would probably go too far to exclude employers of these family members from lobbying senior officials in the Department but the family members themselves should not participate in Interior Department meetings other than meetings open on similar terms to the public. Under existing ethics rules, and even the ethics pledge, however, many such private meetings with well-connected individuals are now permitted.

Ethics rules can't monitor or prohibit discussions Interior Department officials have with their own friends or family members about broad policy issues also debated in the public forum.¹⁹ However, disclosure of nonpublic information about the Department to persons outside the government should in most circumstances be prohibited. When nonpublic agency information is disclosed, almost always it is private industry, including persons engaged in trading in securities, who benefit.²⁰ On at least one prior occasion the Interior Department Inspector General found that a senior official, the Director of Fish and Wildlife, had improperly disclosed nonpublic information to private parties.²¹

Undisclosed gifts are yet another problem. Federal gift rules and disclosure rules are detailed, but too often are not followed. For example, I repeatedly told senior White House officials and Interior Department ethics lawyers that free rides on private jets are prohibited under the gift rules and in rare exceptions where free travel can be accepted, it must be reported. I and other ethics lawyers ridiculed what we called the “empty seat theory” of corporate jet travel: the specious argument that a government employee can accept and not disclose a free ride on an oil company jet because the jet had an empty seat and the free trip cost the

¹⁹ Secretary Haaland's adult child, Somáh Haaland has advocated on a matter pending before the Interior Department, but I have not seen evidence that Somáh Haaland lobbied Secretary Haaland, or other presidential appointees in the Department.

²⁰ See Donna Nagy and Richard W. Painter, *Plugging Leaks and Lowering Levees in the Federal Government: Practical Solutions for Securities Trading Based on Political Intelligence* (with Donna Nagy), ILLINOIS LAW REVIEW (2014).

²¹ See Department of the Interior Office of the Inspector General, Report of Investigation, Julie MacDonald, Deputy Assistant Secretary Fish, Wildlife and Parks (March 2007) (finding violation of under 5 C.F.R. 9 2635.703 Use of Nonpublic Information and 5 C.F.R. 5 2635.101 Basic Obligation of Public Service, Appearance of Preferential Treatment).

company no money. This same prohibition on free travel applies to federal judges, and the White House discussed it with several judges, including prospective nominees to the Supreme Court.²² The existing gift rules are sufficient and do not need amending, but Congress should increase the penalties for violation of these rules and failure to disclose gifts from prohibited sources.

Congress also needs to fix its own ethics problems. First, Members of Congress should not own – and trade – energy company stocks while regulating/deregulating the energy industry. Such financial conflicts of interest are legal because Congress has not applied the criminal conflict of interest statute, 18 USC 208, to itself. But this is unseemly. Congress should pass a law applying to Congress the conflicts of interest rules that apply to the executive branch, including the Interior Department.

Second, our campaign finance system is an invitation to corruption. Last June I testified before the Senate Budget Committee about the enormous expenditures by fossil fuel companies on electioneering communications, lobbying and other attempts to influence Congress and the Executive Branch.²³ Some Members of the Committee took this subject seriously. Other senators strayed into the irrelevant.

I sincerely hope the Members of this Committee will take ethics in government seriously. That includes careful attention to the issues raised in today’s hearing and also fixing a campaign finance system that gives polluters an outsized influence in Congress as well as in the Interior Department.

Foreign money is another concern. Foreign money comes mostly on the industry side, but theoretically could also infiltrate nonprofit organizations that pretend to advocate for the environment but are really acting on behalf of foreign principles.

²² But see Samuel A. Alito, Jr., *Justice Samuel Alito: ProPublica Misleads Its Readers*, WALL ST. J. (June 20, 2023) (defending an undisclosed free trip on a private plane to Alaska).

²³ Testimony of Richard W. Painter before the United States Senate, Committee on the Budget, Hearing “Democracy Distorted: Unraveling the Consequences of Fossil Fuel Dark Money in Politics,” June 21, 2023, <https://www.budget.senate.gov/imo/media/doc/Mr.%20Richard%20Painter%20-%20Testimony%20-%20Senate%20Budget%20Committee1.pdf>

It is important that American environmental advocacy organizations not be infiltrated by extremists or foreign adversaries. We should be vigilant about attempts by China to influence American nonprofits, as well as governments in the Middle East that fund organizations that deny the existence of Israel as a Jewish state. We should remember that Middle East oil money comes from an industry that has profited enormously from CO2 emissions. There is little evidence of foreign governments or extremists infiltrating the major environmental advocacy organizations in the United States. Let's keep it that way.

Reform of the Foreign Agents Registration Act of 1938 (FARA) is essential. I have spoken of sulfide mining companies controlled by foreign billionaires who seek to influence public opinion so they can open sulfide mines in Minnesota. Foreign agents have a largely unconstrained opportunity to influence our government, but they must disclose who they are under FARA. Too many foreign agents do not disclose. The rules need to be clarified and enforcement improved. At the same time, FARA should not be used to make false allegations against environmental organizations or engage in political witch hunts.

In conclusion, the Interior Department is vulnerable to corruption by special interests. Congress has delegated to it broad authority to administer federal lands covering over a quarter of the Country. These lands belong to you and me, the American people. Natural resources extraction by private industry on federal land can generate enormous wealth for the few but may or may not also serve the public welfare. That depends on the facts. The Interior Department should administer federal lands entrusted to it according to the facts and the interests of the American people, not the political influence of moneyed special interests.

The American people also are entitled to their share of what natural resources on federal land are worth, a share that should not be diminished because special interests buy off officials in the Interior Department, politicians, or political parties. Government ethics reform is an important way in which Congress can protect the value of federal land, our land, for perpetuity.

Thank you, Mr. Chairman, Ranking Member and Members of this Committee, for your attention to these serious matters.