

Legislative and Campaign Law Section  
State Bar of Texas

Legislative Drafting and Procedure Course

## **Lunch and Some Ethics**

Bryan Hebert  
Delisi Communications

Friday, December 7, 2018  
Texas Law Center ~ Austin, Texas

**BRYAN HEBERT**

*General Counsel, Delisi Communications*

Bryan Hebert has 20 years of experience in public policy analysis, legislative advocacy, legal counseling, and legislative document drafting. Before joining Delisi Communications, Bryan served as General Counsel to the Office of the Lieutenant Governor, where he was also Public Information Officer. Bryan also worked as an attorney for the Texas Legislative Council, serving the governor and all 181 members of the Texas Legislature, and acting as the chief drafter and counsel on several high profile education bills, including the school finance overhaul in 2006.

In addition to his time in the capitol, Bryan's professional experience also includes service as executive director of a not-for-profit public policy group and as a college adjunct professor teaching Texas and United States Government. He is a graduate of Louisiana State University with a degree in Political Science, and received his law degree from Washington University School of Law in St. Louis.

# STATE BAR OF TEXAS

## Legislative and Campaign Law Section

### *Ethics 2018*



# STATE BAR OF TEXAS

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### *Ethics 2018*





**Charlie Kushner** You want to know what I think about ethics watchdogs?

**Laurent Morali** [Laughing] No.

**Charlie Kushner** Do you really want to know what I think about those jerks?

**Absolutely.**

**Charlie Kushner** I think they're a waste of time. They're guys who can't get a real job, ethics watchdog? Who gets a job – ethics watchdog? Give me a break.

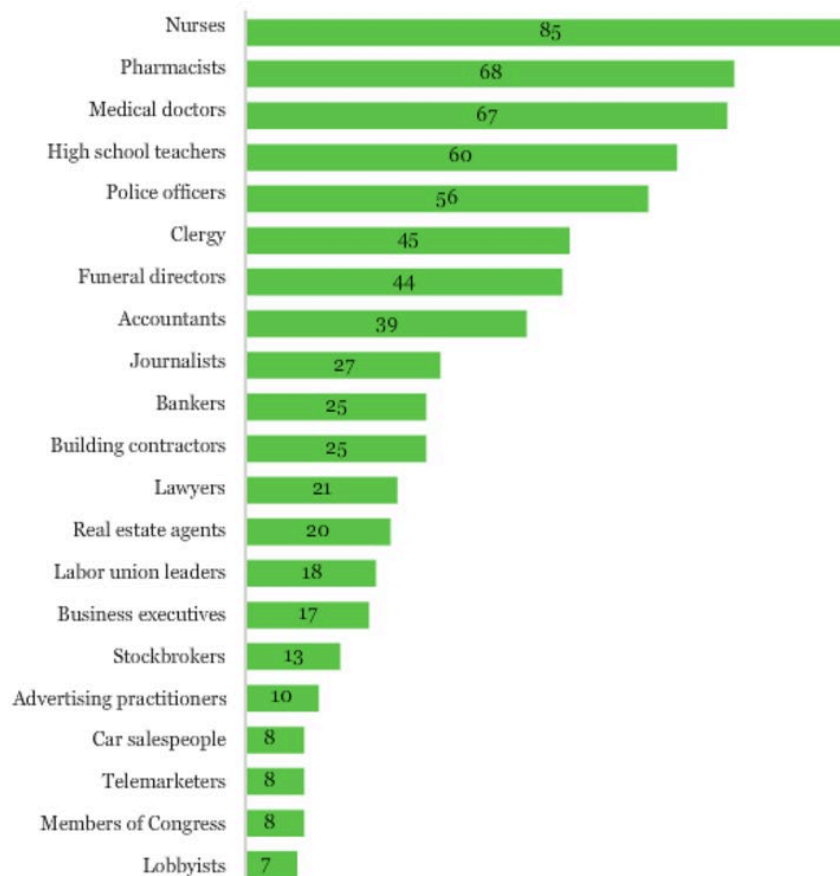


# Honesty/Ethics in Professions

*Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low?*

Dec. 2-6, 2015

■ % Very high/High



"I HOPE YOU'RE NOT A LAWYER OR A  
POLITICIAN. WE'RE TRYING TO DIVERSIFY DOWN HERE."



**ABA**

**MODEL**

**RULE**

**2.1**

**–**

**“ADVISOR”**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

# **DON'T BE A PRETZEL**

The harder you have to work to justify and rationalize your behavior, the more likely it is problematic behavior.



A yellow folder is shown at an angle, casting a soft shadow on the white background. A red circular stamp is centered on the folder's surface. The stamp has a distressed, ink-like texture. Inside the circle, the words "CASE" and "STUDY" are printed in a bold, sans-serif font, stacked one above the other.

**CASE  
STUDY**

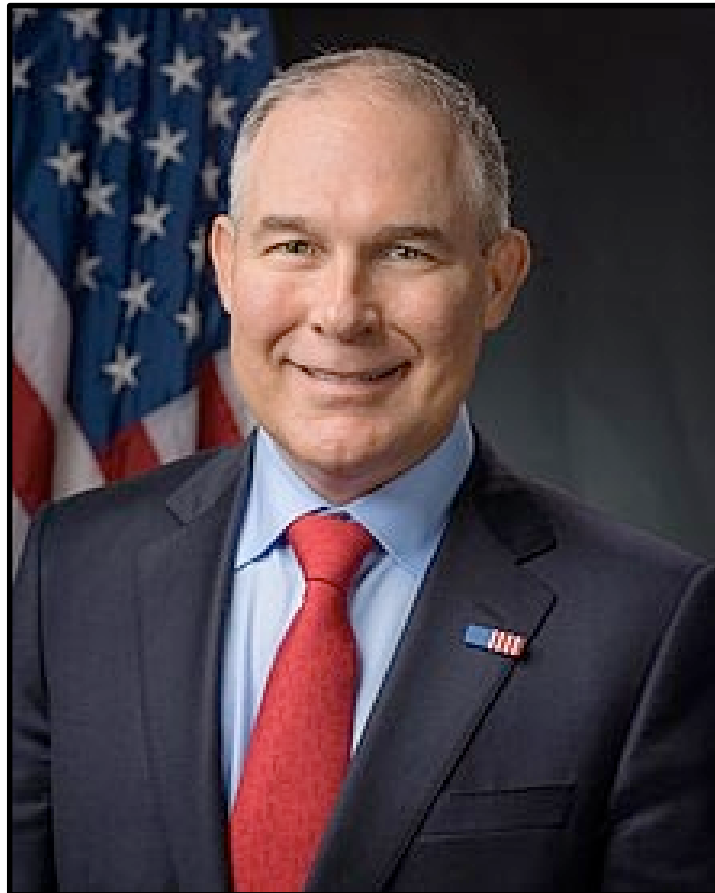


## REP. DUNCAN HUNTER'S ALLEGED MISUSE OF CAMPAIGN FUNDS

Family trip to Italy	<b>\$14,000</b>
Family trip to Hawaii	<b>\$6,500</b>
Costco items	<b>\$11,300</b>
In-N-Out burger joint	<b>\$3,300</b>
Pet rabbit airline ticket	<b>\$600</b>
Gourmet steak & 30 tequila shots	<b>\$462.46</b>



# SCOTT PRUITT: THE MAN, THE MYTH, THE LEGEND





- Born in Kentucky in 1968
- Scholarship to play college baseball
- Moved to Oklahoma in 1990 to attend law school
- Served two terms in state senate from Tulsa area
- Became Oklahoma Attorney General in 2010
- Joined multiple challenges to Obama Administration
- Nominated by Trump as EPA Administrator in 2016

# #1: The Flights





## #2: The Security Detail



# #3: The Soundproof Booth



Energy and Environment

# Scott Pruitt's \$43,000 soundproof phone booth violated spending laws, federal watchdog finds

By **Brady Dennis** and **Juliet Eilperin** [✉ Email the author](#)

April 16

Here's why scrutiny over Scott Pruitt's actions is rising



## #4: The Staff Raises





EXCLUSIVE



**PRUITT: I DID NOT KNOW ABOUT PAY RAISES**

**FOX NEWS ALERT**

# #5: The Apartment



**\$50 A NIGHT!!!\***

**LIVE  
LUXURIOUSLY  
FOR CHEAP—  
JUST LIKE SCOTT!**

## CALL NOW!



*Special rates valid if not a Temp administration official able to provide special favors. Properly may be used to host GOP fundations.*

# *Can I Take It?*



## **A GUIDE FOR**

- The Governor
- The Lieutenant Governor
- A member of the Legislature
- An employee of the Governor
- An employee of the Lieutenant Governor
- An employee of a Legislator
- An employee of a Legislative Agency

*Revised October 25, 2016*

## **GIFT FROM NON-LOBBYIST**

Government official/staff may not accept anything of value, with the following general *exceptions*:

- (1) an item, other than cash, with a value less than \$50;
- (2) a gift received because of an independent relationship (family, friend, business associate);
- (3) fees for services rendered in a capacity other than your official status;
- (4) permissible political contributions; or
- (5) food, lodging, transportation, or entertainment if accepted as a "guest" and reported in accordance with any applicable reporting requirement.

## #6: The Used Mattress





**Millan Hupp**

Director of Scheduling and Advance at US Environmental  
Protection Agency (EPA)

Washington D.C. Metro Area

## **MISUSE OF GOVERNMENT PROPERTY**

**Rule #1:** You may not misapply any thing of value belonging to the government that has come into your custody or possession by virtue of your public office or employment.

**Rule #2:** You may not use state time or state equipment to work on an individual's political campaign.

**Translation:** You may not use government services, personnel, or property, including vehicles and office equipment, for personal, private, or campaign purposes.

**Source:** Section 39.02(a)(2), Penal Code; Ethics Advisory Opinion No. 172

**Penalty:** Class C misdemeanor (for misuse of property with value of less than \$20) up to first degree felony (for misuse of property with value of \$200,000 or more)

# **Texas Administrative Code**

TITLE 25

HEALTH SERVICES

PART 1

DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 205

PRODUCT SAFETY

SUBCHAPTER A

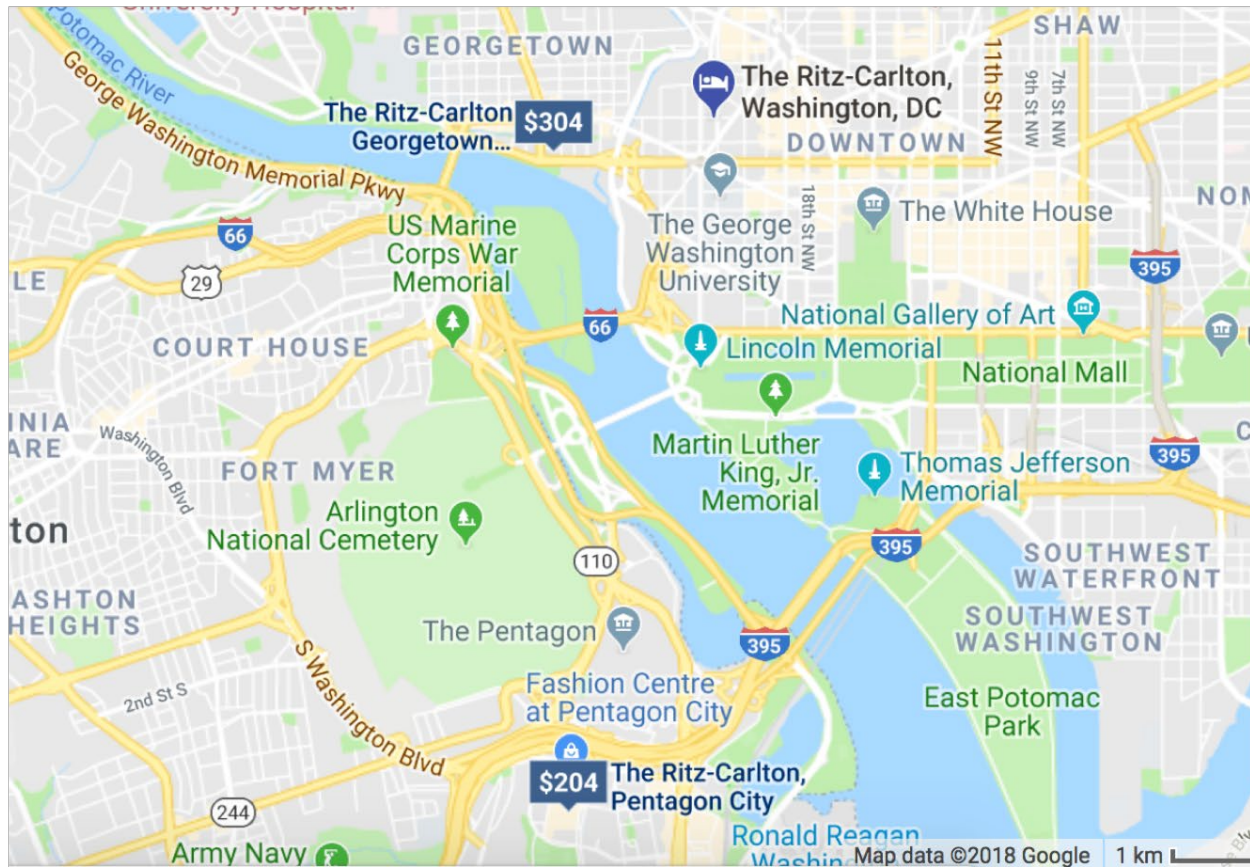
BEDDING RULES

RULE §205.8

Germicidal Treatment Requirements; Methods

# #9: The Lotion





LIVE  
12:54 pm ET



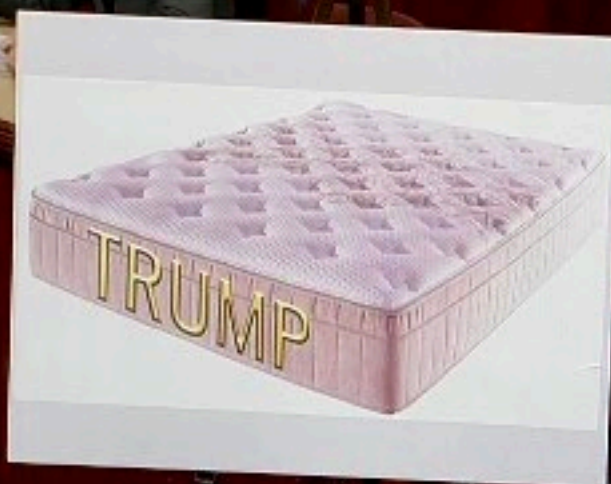
GENERAL SPEECHES - ONE HOUR

U.S.  
House

REP. TED LIEU  
D-California, 33rd District  
Beverly Hills, Santa Monica, Manhattan Beach

C-SPAN  
c-span.org  
@cspan

LIVE  
12:53 pm ET



GENERAL SPEECHES - ONE HOUR

U.S.  
House

REP. RUBEN GALLEGOS  
D-Arizona, 7th District  
Phoenix, Glendale

C-SPAN  
c-span.org  
@cspan

## #7: The Chik-fil-A Franchise

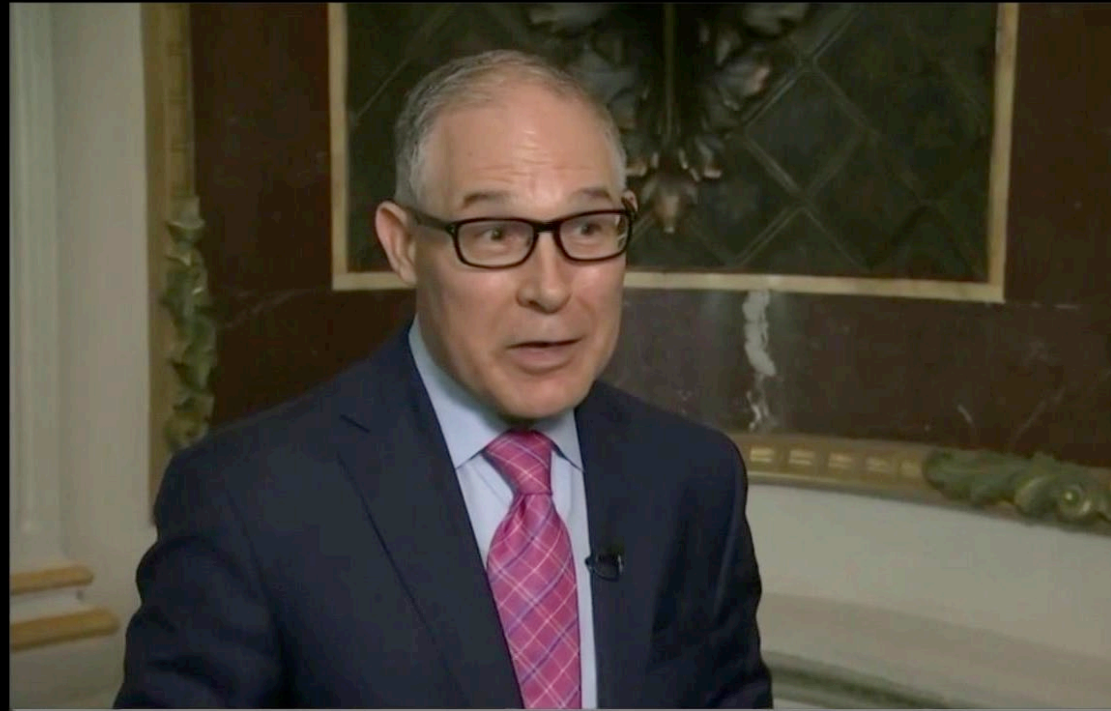


## **Sec. 39.02. ABUSE OF OFFICIAL CAPACITY.**

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.



VIDEO: JESSICA SMITH/N

**SCOTT PRUITT USED EPA STAFF TO INQUIRE ABOUT  
POTENTIAL CHICK-FIL-A FRANCHISE FOR HIS WIFE**

# #8: The White House Mess Hall





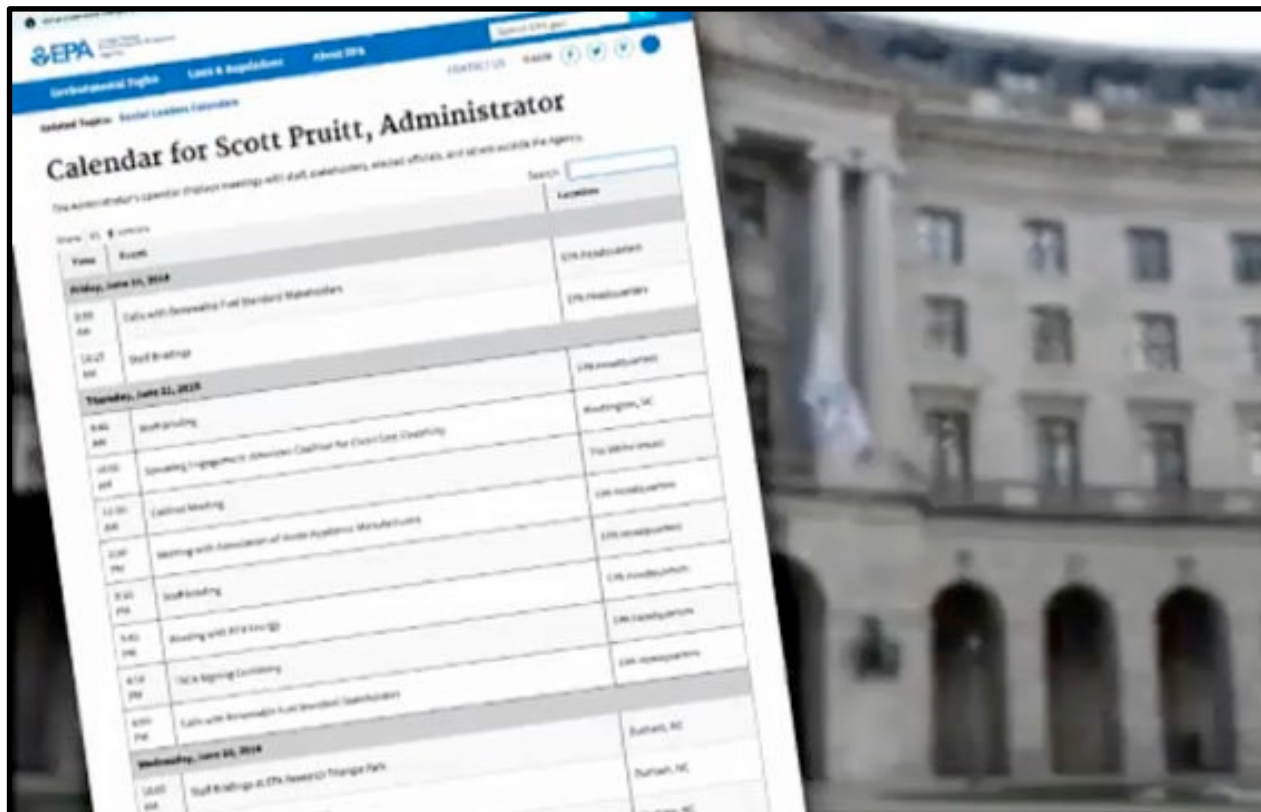
# *#10*: The Open Records



***Scott Pruitt Found In  
Violation of Oklahoma Open  
Records Act; Orders  
Withheld Emails Released  
by February 21***



# #11: The Secret Calendars





## Step by step...

- ▶ Step 1: Recognizing a request that triggers the Act
- ▶ Step 2: Identifying the responsive information
- ▶ Step 3: Calculating the deadlines
- ▶ Step 4: Determining whether a cost estimate is needed
- ▶ Step 5: Gathering the responsive information
- ▶ Step 6a: Releasing the information and/or withholding the information that does not require a ruling
- ▶ Step 6b: Seeking a ruling from the Office of the Attorney General ("OAG")
- ▶ Step 7: Waiting for the ruling
- ▶ Step 8: Receiving the ruling

## **TAMPERING WITH A GOVERNMENTAL RECORD**

**Rule:** You may not:

- (1) knowingly make a false entry in a governmental record;
- (2) use a governmental record with knowledge of its falsity;
- (3) intentionally impair the legibility or availability of a governmental record; or
- (4) possess or sell a governmental record with knowledge that it was obtained unlawfully or with intent that it be used unlawfully.

**Translation:** Don't falsify a government record, including a calendar, report, time sheet, etc.

**Source:** Section 37.10, Penal Code

**Penalty:** Class B misdemeanor (for using false record) up to second degree felony (for intent to defraud or harm)

# #12: The Job Search for His Wife



The Hatch Act restricts and limits  
"certain political activities of Federal  
employees both on and off duty"

Political Activity = something in active  
support of or opposition to a political  
party, a candidate for partisan  
political office , or a partisan political  
group

## **POLITICAL ACTIVITIES BY STATE AGENCY**

**Rule #1:** A state agency may not use any agency money to support the candidacy of a person.

**Rule #2:** A state employee may not attempt to prevent or restrict a political contribution by another person.

**Rule #3:** A state agency, political subdivision, or private entity may not use funds appropriated by the state to employ a lobbyist.

**Source:** Chapter 556, Government Code

**Penalty:** A state agency may have its appropriated funds reduced by up to \$100,000 per occurrence, a political subdivision or private entity may lose eligibility for future state funds, and an employee may lose compensation or be terminated.



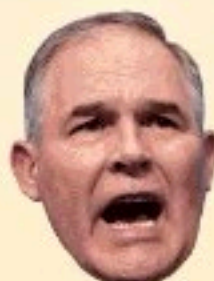
**Travel:** EPA  
Inspector General



**Travel and spending:**  
House Oversight  
Committee



**Security  
expenditures:**  
Inspector General



**Security for  
personal travel:**  
Inspector General



**Security payroll  
recording:**  
Inspector General



**Samantha Dravis  
employment records**  
Inspector General

# 16

## FEDERAL INVESTIGATIONS INTO SCOTT PRUITT



**\$43,000 phone booth:**  
Office of Management  
and Budget



**\$43,000 phone  
booth:** Government  
Accountability Office



**Pruitt email  
accounts:** Inspector  
General



**Pruitt in lobbying  
video:** Government  
Accountability Office



**Pay raises for  
aides:** Inspector  
General



**National Mining  
Association:**  
Inspector General



**Science advisory  
boards:** Government  
Accountability Office



**Lobbyist-owned  
apartment deal:**  
White House review



**Lobbyist-owned  
apartment deal:**  
Inspector General



**Retaliation against  
employees:** Office of  
Special Counsel





**Donald J. Trump**

@realDonaldTrump

Following



I have accepted the resignation of Scott Pruitt as the Administrator of the Environmental Protection Agency. Within the Agency Scott has done an outstanding job, and I will always be thankful to him for this. The Senate confirmed Deputy at EPA, Andrew Wheeler, will...

3:37 PM - 5 Jul 2018

2,604 Retweets 5,024 Likes



2.0K 2.6K 5.0K



Tweet your reply



**Donald J. Trump** @realDonaldTrump · 7m



...on Monday assume duties as the acting Administrator of the EPA. I have no doubt that Andy will continue on with our great and lasting EPA agenda. We have made tremendous progress and the future of the EPA is very bright!

685 1.1K 3.0K



BY THE  
NUMBERS:  
**SCOTT  
PRUITT'S  
EXPENSES**

**CREW** | citizens for responsibility  
and ethics in washington

**\$58,000**   
NON-COMMERCIAL FLIGHTS

**\$42,729**  
 SECURE  
PHONE BOOTH

 **\$8,885**  
SECURITY BUG  
SWEEP AND  
BIOMETRIC LOCKS

 **\$2,000,000**  
APPROXIMATE COST OF AROUND-THE-CLOCK  
SECURITY DETAIL FOR A YEAR

**\$105,000**  
FIRST-CLASS FLIGHTS



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