



October 23, 2014

S. Amanda Marshall
United States Attorney
District Of Oregon
1000 S.W. Third Ave, Suite 600
Portland, OR 97204
VIA FACSIMILE: (503) 727-1117

Re: Referral of Potential Criminal Activities of Governor John Kitzhaber and First Lady Cylvia Hayes; Request for Investigation

Dear United States Attorney Marshall:

We respectfully request that you investigate whether Mr. John Kitzhaber, Governor of the State of Oregon, and his fiancé, Ms. Cylvia Hayes, Oregon's First Lady and Adviser to the Governor, violated federal law and Oregon's ethics laws by using their official roles and taking official action in exchange for private financial gain. Specifically, we request that you direct the Federal Bureau of Investigation and the United States Department of Justice's Public Integrity Section to investigate whether Mr. Kitzhaber and Ms. Hayes—by abusing their official roles as Governor and First Lady, and by taking official action in exchange for private financial gain—knowingly and intentionally conspired with each other to devise a scheme to defraud the citizens of Oregon their right to honest services.

Mr. Kitzhaber and Ms. Hayes' apparent scheme to defraud Oregonians of their right to honest services is strikingly similar to that of former Virginia Governor Bob McDonnell and First Lady Maureen McDonnell, who were recently convicted of honest services fraud in federal court in Virginia. Similar to the McDonnell conviction, most of the allegations set forth below center around the apparent illegal and unethical behavior of an elected official's partner. However, as the U.S. Department of Justice strenuously (and successfully) argued in the McDonnell case, an elected official's tacit approval of such actions while financially benefiting from them is more than enough to prove his role as a co-conspirator in such illegal behavior. In light of countless news stories detailing Mr. Kitzhaber and Ms. Hayes' flagrant disregard for ethics laws, and the illegal *quid pro quo* arrangements orchestrated by Mr. Kitzhaber and Ms. Hayes since he took office in January of 2011, we strongly urge your office to investigate and prosecute such apparent criminal activity with the same vigor and thoroughness exercised by the U.S. Attorney's office in the Eastern District of Virginia in the McDonnell case.

Mr. Kitzhaber and Ms. Hayes' ostensible criminal activity stems from the First Lady's dual role as a "public official" and "policy adviser" to Mr. Kitzhaber, and as a private energy and economic consultant who receives compensation from numerous profit and non-profit companies to represent their interests before Mr. Kitzhaber's administration. As the *Willamette Week* recently put it, "Cylvia Hayes has two careers. She pursues both out of the governor's office."¹ Ms. Hayes has a long history of exploiting her role and title as First Lady and as a "public official" in Mr. Kitzhaber's administration to secure lucrative contracts for her private consulting business—all of which was done with Mr. Kitzhaber's approval and endorsement. Once those contracts were secured, Ms. Hayes would use her influence and role within Mr. Kitzhaber's administration to further her client's interests and take official actions on their behalf. Even more troubling, however, is that Mr. Kitzhaber appears to have followed suit on numerous occasions, taking official action to benefit Ms. Hayes' private clients—all the while benefiting financially from those clients' payments to his fiancé. Such illegal *quid pro quo* arrangements were perhaps best summed up by former Oregon Supreme Court Justice, William Riggs, who explained that "if [Hayes] uses the title 'first lady' or 'adviser to the governor' when she's consulting for private companies, that's problematic...In effect, she's selling her special relationship with the governor to clients from whom she's getting a fee. It smells bad."² The couple's flagrant disregard for state ethics laws and federal honest services laws are explored in depth below.

In bringing Ms. Hayes' unethical, and potentially illegal activities to light, we are not dismissing the right of an elected official's spouse or partner to earn a living separate and aside from his or her official role with that elected official's office or administration. Someone should not be required to give up a career simply because his or her spouse or partner is elected to public office. In fact, Vice President Joe Biden's wife, Jill Biden, a longtime English professor, earned \$82,022 in 2011 for teaching at Northern Virginia Community College while she concurrently served in her role as Second Lady. Such outside employment should be celebrated and encouraged. What should not be tolerated, however, is outside employment where an elected official's spouse or partner is paid by private companies to take official acts on their behalf, curry favor, and provide access and influence to the very administration of which she is a part—which is precisely the case with Ms. Hayes.

It should be noted that several complaints making similar allegations have been filed against Mr. Kitzhaber and Ms. Hayes with the Oregon Government Ethics Commission ("OGEC"). However, in light of the fact that the Governor is responsible for appointing all seven members of the OGEC, it strains reality to think that any complaint against the Governor or his fiancé would receive impartial consideration. Mr. Kitzhaber also stated on October 10th, 2014 that he would not appoint a Special Prosecutor to review and investigate the serious ethical violations presented herein. It is therefore critical that the U.S. Attorney's Office initiate an independent investigation into these potentially serious criminal violations by Mr. Kitzhaber and Ms. Hayes. The people of Oregon are entitled to honest services from their public officials, and a federal inquiry into their questionable activities is the only way to ensure a transparent and impartial investigation.

¹ Nigel Jaquiss, *First Lady, Inc.*, WILLAMETTE WEEK, Oct. 8, 2014, available at http://www.wweek.com/portland/article-23203-first_lady_inc.html (attached as Exhibit A).

² *Id.*

I. Facts Underlying Governor Kitzhaber and Cylvia Hayes' Scheme to Defraud Oregonians of Their Right to Honest Services

A. Cylvia Hayes is a "Public Official" in John Kitzhaber's Administration and Plays a Major Role in Shaping His Administration's Policies

As detailed in recent articles in *Willamette Week* and *The Oregonian*, Cylvia Hayes' abuse of her official title and role in her fiancé's administration to benefit her private consulting business, Mr. Kitzhaber's approval of such rampant exploitation, and the couple's financially benefiting from such arrangements, stem back to the very beginning of Mr. Kitzhaber's third term as Governor in January of 2011. Remarkably, Mr. Kitzhaber and Ms. Hayes engineered this apparent scheme despite the fact that Mr. Kitzhaber's general counsel, Liani Reeves, made clear that "under Oregon law," Ms. Hayes "is considered a public official." As *Willamette Week* explains, "that means her actions as first lady and as an adviser to Kitzhaber are governed by state ethics laws."³ The article adds that:

Her dual roles have created tension in Kitzhaber's office and have raised concerns that she may be violating provisions ORS Chapter 244, the state's government ethics law. The law prohibits public officials from engaging in conflicts of interest, from using their positions for private gain and from using public resources for personal benefit.⁴

Beyond being legally considered a "public official" under Oregon law, Ms. Hayes "has played a central role" in Mr. Kitzhaber's administration, as "she keeps a desk in the governor's office, attends senior staff meetings and communicates regularly with agency directors." The bio provided by her to the National Governors Association describes her role as "policy adviser to Gov. John Kitzhaber on the issues of clean energy and economic development." According to reports, there have even been discussions between the couple about Hayes "taking a larger role" in the Kitzhaber administration, with the possibility of her having a full time chief of staff and going on the state's payroll.⁵

As for Mr. Kitzhaber's role, the *Willamette Week* states that "records show Kitzhaber did more than simply encourage Hayes to continue with her career; he gave her free access to the inner working of the governor's office and allowed her to land private consulting deals based on contacts she developed there."⁶ In short, it is undeniable that Ms. Hayes has a major role in advising Mr. Kitzhaber and shaping his administration's policies, and that she has exploited that role for her private consulting business and private financial gain.

³ Jaquiss Article, *supra* n. 1.

⁴ *Id.*

⁵ *Id.*

⁶ Nigel Jaquiss, *Kitzhaber's Office Bent State Ethics Standards to Suit First Lady Cylvia Hayes, Records Show*, WILLAMETTE WEEK, Oct. 13, 2014, available at <http://www.wweek.com/portland/blog-32307-kitzhabers-office-bent-state-ethics-standards-to-suit-first-lady-cylvia-hayes-records-show.html> (attached as Exhibit B).

B. Cylvia Hayes Has Been Paid by Numerous Private Companies in Exchange for Her Providing Access to John Kitzhaber's Administration and Taking Official Acts on Their Behalf

1. Demos

One of the most troubling *quid pro quo* arrangements facilitated by the first couple was Ms. Hayes' business relationship with Demos, a New York-based public policy organization. According to *Willamette Week*, in April 2013, Mr. Kitzhaber and Ms. Hayes flew to a conference called Global Well-being and Gross National Happiness Lab in the Himalayan nation of Bhutan. The trip was paid for by the German government and they attended in their official capacities as Governor and First Lady. However, Ms. Hayes used the trip to help land another private consulting contract with Demos.⁷

In her "public official" role as "adviser" to the governor, Hayes had already been working with Demos, which promotes a new method of measuring economic output called the Genuine Progress Indicator ("GPI"). In April 2012, Kitzhaber and Hayes attended a Portland State University session on the topic, and later that year appeared at a Demos conference in Maryland. Lew Daly, director of policy and research for Demos, met with Hayes and Kitzhaber in Bhutan. Shortly afterward, Ms. Hayes landed a \$25,000 contract with Demos.⁸

Remarkably, in her contract with Demos, Ms. Hayes was tasked with being an "active liaison" with Oregon state officials. In fact, in Ms. Hayes 2013 disclosure form filed with the Governor's in-house attorneys, she explained that Demos would pay her for the following Oregon-specific responsibilities:

- "You will play an active and strategic liaison role between Demos, other stakeholders, and Oregon government representatives."
- "This liaison role includes connecting Demos and partners with key public officials, and representing Demos and partners in official meetings and in discussions with non-governmental stakeholders."
- "Locating and cultivating potential donors to support Demos' contributions in Oregon and other needs within the Oregon GPI partnership."⁹

Ms. Hayes delivered on Demos' directives. In October 2013, while Demos was paying her as a consultant, Ms. Hayes, in her official capacity as a "public official" and "adviser" to the Governor, lobbied Oregon officials and members of Mr. Kitzhaber's administration for \$100,000 in funding for a project to be led by her and Demos, which would create an Oregon GPI.¹⁰ Therefore, not only did Ms. Hayes use her and Mr. Kitzhaber's official roles to secure the Demos

⁷ Jaquiss Article, *supra* n. 1.

⁸ *Id.*

⁹ Laura Gunderson, *Cylvia Hayes scandal: Nonprofit asked her to be 'active liaison' with Oregon officials, business leaders*, THE OREGONIAN, Oct. 13, 2014, available at http://www.oregonlive.com/politics/index.ssf/2014/10/cylvia_hayes_scandal_nonprofit.html (attached as Exhibit C).

¹⁰ Jaquiss Article, *supra* n. 1.

contract, but once the contract was secured, Ms. Hayes followed Demos' explicit directives and used her official role to further Demos' interests before Oregon state officials and the Governor's administration.

In addition, while on contract to Demos, Hayes attended conferences and delivered speeches across the country. She was introduced not as a paid consultant to Demos but as Oregon's First Lady. The work included a trip to Baltimore, where she moderated a Demos panel that featured Maryland Gov. Martin O'Malley and Columbia University professor Jeffrey Sachs.¹¹

2. Energy Foundation

In her public role as Mr. Kitzhaber's adviser, Ms. Hayes worked with Energy Foundation, a San Francisco-based nonprofit that encourages governments to address climate change. Mr. Kitzhaber and Ms. Hayes spoke, in their official capacities, at a Jan. 13, 2012 Energy Foundation event in Seattle called the West Coast Clean Economy alignment. A year later, Hayes actively pitched Energy Foundation to hire her as a private consultant. According to *Willamette Week*, on Jan. 3, 2013, Ms. Hayes sent an email to Katie McCormack, Energy Foundation's Western region program director, stating, "I would like to talk to you about the 2013 work and getting it funded." She wrote to McCormack. "Do you have some time in the next week or so?" Five months later, in May 2013, Hayes signed a \$40,000 contract with Energy Foundation to advocate for their interests in Oregon and other west coast states.¹²

3. Oregon Business Council

Last year, a leading Oregon business group spent \$35,000 to provide first lady Cylvia Hayes with a spokesperson, at the same time Mr. Kitzhaber publicly advocated for the group's agenda. In 2013, in her capacity as a public official, Hayes solicited this substantial gift from the Oregon Business Council ("OBC"), which represents some of the state's biggest employers, in return for her continued efforts to advocate for OBC's agenda, coined the Oregon Business Plan.¹³

OBC's president, Duncan Wyse, said Hayes asked if the OBC would help, stating "she was seeking support for her work." Wyse's group then earmarked a \$35,000 grant from the Northwest Area Foundation to hire Therese Lang, a public relations consultant, to work as Hayes' spokeswoman. All of this occurred while Mr. Kitzhaber promoted the group's agenda. In fact, since beginning his third term as Governor in January 2001, Kitzhaber has relied heavily on the OBC to help promote many of his top priorities. The OBC's Wyse helped design Kitzhaber's 2011 education reforms. The group's business plan also called for cutting benefits from the state's Public Employees Retirement System, and pushed for building the Columbia River Crossing project.¹⁴

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Until recently, neither OBC nor Mr. Kitzhaber had publicly disclosed the financial role OBC played in supporting Ms. Hayes' work.¹⁵ Oregon law prohibits any group with a "legislative or administrative" interest in a public official's work from giving a gift to that official of more than fifty dollars. *See* ORS § 244.025. OBC paying for a public relations specialist for Ms. Hayes' work clearly violates this rule, and raises questions about whether the governor's office used the arrangement to sidestep public hiring or contracting rules. It also raises serious questions about whether Ms. Hayes, with Mr. Kitzhaber's knowledge and approval, solicited and accepted OBC's gift in exchange for the couple's official acts to support their agenda.

4. Resource Media

According to *Willamette Week*, in March 2012, Resource Media, a Seattle public relations firm, reached out to Mr. Kitzhaber's office to promote an initiative called the Pacific Coast Collaborative Action Plan on Climate and Energy, a joint venture among California, Washington, Oregon, Alaska and British Columbia. Ms. Hayes was directly involved in this initiative in her public role as adviser to the governor. In March 2013, however, Ms. Hayes also assumed a private role as well, signing a \$20,611 consulting contract with Resource Media.¹⁶

Just yesterday, *The Oregonian* uncovered that Resource Media was hired to persuade Mr. Kitzhaber to block a massive coal export terminal at the same time they were paying Ms. Hayes as a consultant. Resource Media helped coordinate a social media campaign last spring aimed at convincing Mr. Kitzhaber that a proposed coal export terminal at the Port of Morrow was a bad idea. This was just a year after the company hired Ms. Hayes as a paid consultant. In addition, according to *The Oregonian*, coal terminal opponents reached out to Ms. Hayes in early 2014 to discuss the coal issues and keep her updated on their anti-export terminal campaign. Coincidentally, soon after the environmentalists' campaign, led by Resource Media, Mr. Kitzhaber came out forcefully against the coal terminal, and ordered the Department of State Lands to decline the request to build the terminal.¹⁷

In addition, Resource Media arranged for Ms. Hayes to speak at a May 3, 2013, conference on ocean acidification at the University of California, Irvine. The conference program called her a "clean economy expert and first lady of Oregon." There was no disclosure to OGEC that she was being paid by Resource Media despite the fact that she was concurrently advocating for their interests before her fiancé's administration and other state government agencies. Ms. Hayes also directed her state-paid assistant, Mary Rowinski, to book her travel for the event. Hayes provided the same bio, touting her official role as First Lady, for another Resource Media event in Washington, DC on June 5, 2013. Ms. Rowinski booked Hayes' travel for that event, as well.¹⁸

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Jeff Manning, *Coal terminal opponent signed Cylvia Hayes to contract a year before Kitzhaber opposed project*, THE OREGONIAN, Oct. 22, 2014, available at http://www.oregonlive.com/politics/index.ssf/2014/10/coal_terminal_opponent_signed.html (attached as Exhibit D).

¹⁸ Jaquiss Article, *supra* n. 1.

5. Waste to Energy Group

Ms. Hayes erroneously maintains that she “changed [her] business model to decrease the possibility of conflicts of interest,” when Mr. Kitzhaber was elected, and that she has chosen to “work only for nonprofit clients, not for governmental entities or for-profit companies.” This could not be further from the truth. In fact, Ms. Hayes’ 2012 disclosure forms show she signed a consulting contract with Waste to Energy Group, a for-profit California firm. The company hired her in July 2011 to help secure a contract to convert methane from a Bend, Oregon landfill into energy. Around the same time, Mr. Kitzhaber named Ms. Hayes to the team charged with writing his 10-year energy plan, which coincidentally placed significant emphasis on the policies and issues near and dear to her private clients’ hearts.¹⁹

In what was becoming a pattern of unethical behavior for Ms. Hayes, she also used state resources to facilitate her meetings with Waste Energy Group. In a July 20, 2011 email obtained by *Willamette Week*, Ms. Hayes once again directed her state-paid assistant, Mary Rowinski, to schedule time with Waste to Energy executives. The executives wanted a meeting on July 25, 2011, and Hayes directed Rowinski to “please add to Google calendar.” According to people familiar with Ms. Hayes’ schedule, she routinely directed Rowinski to book hotels and make plane reservations for her private consulting work.²⁰

II. Governor Kitzhaber and Cylvia Hayes Have Deprived Oregonians of Their Right to Honest Services

A. *Honest Services Fraud*

Two statutes comprise the federal offense of honest services wire fraud, 18 U.S.C. § 1343 and § 1346. Section 1343, the wire fraud statute, provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343. Section 1346 defines “scheme or artifice to defraud” to include “a scheme or artifice to deprive another of the intangible right of honest services.” 18 U.S.C. § 1346.

The Supreme Court recently narrowed the honest services doctrine “to encompass only bribery and kickback schemes,” so as to avoid finding it unconstitutionally vague. *Skilling v. United States*, 130 S. Ct. 2896, 2933 (2010). The Ninth Circuit has further clarified that a

¹⁹ *Id.*

²⁰ *Id.*

“breach of fiduciary duty is required for honest services fraud,” although that duty need not be formal; “a trust relationship” suffices. *United States v. Milovanovic*, 678 F.3d 713, 721 (9th Cir. 2012). “A fiduciary is generally defined as “[a] person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor” *Milovanovic*, 678 F.3d at 722.

Moreover, “the fraudulent nature of the ‘scheme or artifice to defraud’ is measured by a non-technical standard.” *United States v. Omer*, 395 F.3d 1087, 1089 (9th Cir. 2005). “Thus, schemes are condemned which are contrary to public policy or which fail to measure up to the reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society.” *Id.* (quotation marks omitted). *See also United States v. Bohonus*, 628 F.2d 1167, 1171 (9th Cir. 1980) (“The requisite ‘scheme . . . to defraud’ is found in the deprivation of the public’s right to honest and faithful government. When a public official is bribed, he is paid for making a decision while purporting to be exercising his independent discretion. The fraud element is therefore satisfied.”).

Importantly, the Government need neither prove nor even allege that a public official actually followed through on the corrupt bargain and took or caused official action because “fulfillment of the *quid pro quo* is not an element of the offense.” *Evans v. United States*, 504 U.S. 255, 268 (1992) ; *see also United States v. Brewster*, 408 U.S. 501, 526 (1972) (“There is no need for the Government to show that [defendant public official] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise.”).

In the Ninth Circuit, bribery requires at least an implicit *quid pro quo*. *United States v. Kincaid-Chauncey*, 556 F.3d 923, 941 (9th Cir. 2009). Furthermore, the *quid pro quo* necessary for a bribery honest services conviction need not be explicit, and an implicit *quid pro quo* need not concern a specific official act. *Id.* at 943 (citing *United States v. Kemp*, 500 F.3d 257, 282 (3d Cir. 2007) (“[T]he government need not prove that each gift was provided with the intent to prompt a specific official act.”)). A *quid pro quo* requirement is satisfied if the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official acts favorable to the donor. *Id.* at 943.

B. Federal Bribery Laws

18 U.S.C. § 666 concerns bribery in connection with state and local entities receiving federal funds. An official violates § 666 if the official “corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions” of an entity, if the exchange involves at least \$5,000 and the entity receives federal funds in excess of \$10,000. 18 U.S.C. § 666(a)(1)(B), (b). The purpose of the statute is to “protect federal funds by preserving the integrity of the entities that receive the federal funds.” *United States v. Garrido*, 713 F.3d 985, 999 (9th Cir. 2013) (citing *United States v. Westmoreland*, 841 F.2d 572, 578 (5th Cir. 1988)). Violators of this provision shall be fined, imprisoned not more than ten years, or both. 18 U.S.C. § 666(a)(2).

C. Conspiracy

Any person who attempts or conspires to commit any offense under the Honest Services Fraud statute, 18 U.S.C. §§ 1341 et seq., shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. 18 U.S.C. § 1349.

III. Cylvia Hayes' Apparent *Quid Pro Quo* Arrangements, and Governor Kitzhaber's Approval of Such Arrangements, Subject Both to Potential Criminal Liability for Honest Services Fraud and Bribery

A. Honest Services Fraud Violations

By engaging in the apparent *quid pro quo* arrangements outlined above, Governor Kitzhaber and Cylvia Hayes appear to have violated the Honest Services Fraud statute, 18 U.S.C. § 1346, which prohibits public officials from depriving their constituents of the right of honest services, including conscientious, loyal, faithful, disinterested, unbiased services, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud, and corruption. 18 U.S.C. § 1346. Even as narrowed by the Supreme Court in *Skilling*, the statute quite clearly covers the type of behavior that appears to have occurred here.

The Ninth Circuit has been clear that a “breach of fiduciary duty is required for honest services fraud,” and that duty does not need to be formal—a “trust relationship” suffices. *Milovanovic*, 678 F.3d at 721. Furthermore, a fiduciary is generally defined as “[a] person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor” *Milovanovic*, 678 F.3d at 722. In this case, Mr. Kitzhaber and Ms. Hayes, in her official capacity as First Lady and adviser to the Governor, without question, have a fiduciary duty to the people of Oregon. When Ms. Hayes holds herself out as the First Lady of Oregon, and represents the official Office of the Governor, she is a fiduciary to Oregon’s citizens and is “required to act for the benefit” of those citizens in “all matters within the scope of their relationship.” Ms. Hayes, with Mr. Kitzhaber’s knowledge and approval, has breached her duty to Oregonians each time she uses her title as First Lady, and her role as a public official, for private gain.

In being paid thousands of dollars by Demos to exploit her official role as First Lady and adviser to the Governor to be an “active liaison” with Oregon state officials, to connect “Demos and partners with key public officials,” and to lobby for \$100,000 in funding for a project to be led by her consulting business, is undoubtedly a breach of her fiduciary duty to the people of Oregon. Likewise, her use of state-paid staff to facilitate her private business is also a breach of her fiduciary duty to Oregon taxpayers, and a gross violation of the public trust.

As for the bribery element of Honest Services Fraud, there are countless examples of Ms. Hayes, with Mr. Kitzhaber’s knowledge and approval, seeking financial payments in exchange for official acts. As the Ninth Circuit has made clear, bribery requires at least an implicit *quid pro quo* and it need not be explicit or concern a specific public act. *Kincaid-Chauncey*, 556 F.3d

at 941, 943. In this case, at the very least, Ms. Hayes has engaged in private financial arrangements where there is an understanding, or implicit *quid pro quo*, that she will use her role as a “public official,” “adviser” to the governor, and First Lady to further the payers’ interests. Ms. Hayes’ contract with Demos actually explicitly describes a *quid pro quo*—she would receive payment for being an “active liaison” with “Oregon government representatives,” and “connecting Demos and partners with key public officials.” She even delivered on this *quid pro quo* arrangement by lobbying Oregon lawmakers and members of Mr. Kitzhaber’s own administration for \$100,000 in funding for Demos.

Remarkably, Ms. Hayes even had the audacity to directly solicit, through email, a \$35,000 gift, in the form of a public relations assistant, from the Oregon Business Council. She said in the email that she needed the gift for “support for her work.” It is difficult to imagine that there was not, at the very least, an implicit *quid pro quo* involved in this transaction, especially in light of the fact that all of this occurred while Mr. Kitzhaber promoted the group’s agenda, and Ms. Hayes continued to promote the OBC’s agenda using her new privately-funded public relations assistant following the transaction.

Ms. Hayes’ private arrangements with the Energy Foundation, Resource Media and Waste to Energy Group also raise red flags. With regard to Energy Foundation, not only does it appear that Ms. Hayes secured a private contract by exploiting her official role in Mr. Kitzhaber’s administration, but she solicited the contract, via email, by offering her help in getting the Foundation’s 2013 work funded. It is unclear whether she exploited her role as a public official to lobby Mr. Kitzhaber’s administration for the group’s funding, but it is difficult to imagine that she was awarded the contract without some sort of implicit understanding that she would utilize her role as a “public official,” and use her official contacts within Oregon’s state government to further the Foundation’s interests.

Similarly, Mr. Kitzhaber and Ms. Hayes had already been doing work for Resource Media, in their official capacities, on the Pacific Coast Collaborative Action Plan on Climate and Energy. In fact, Ms. Hayes was directly involved in this initiative in her public role as adviser to the governor. Then, in March 2013, Resource Media decided to pay her \$20,611 for a job she was already doing. Ms. Hayes, at Resource Media’s expense and in her official capacity as adviser to the Governor and First Lady, proceeded to give numerous presentations around the country advocating for Resource Media’s interests. Although ostensibly serving in her official capacity, she failed to disclose that she was concurrently being paid by Resource Media. Moreover, in light of yesterday’s article in *The Oregonian*, it now appears that Ms. Hayes may have been paid by Resource Media to exploit her role as Mr. Kitzhaber’s adviser and block the construction of a coal terminal at Port of Morrow.

Lastly, although she denies it, Ms. Hayes even sought payments from for-profit companies during her tenure as adviser to the Governor and First Lady. In her arrangement with California for-profit company, Waste Energy Group, she was paid to secure a contract for the company in Bend, Oregon. It is unclear whether she abused her role as adviser to the Governor and First Lady to attempt to secure the contract, but it is reasonable to believe that her arrangement with the company involved an implicit *quid pro quo* whereby she would wield her official position to secure the contract for her client.

B. Bribery

If any of the organizations who have paid Ms. Hayes have received certain amounts of federal funding, Ms. Hayes' actions, and Mr. Kitzhaber's knowledge and approval of such actions, could subject both to criminal liability under 18 U.S.C. § 666. As mentioned above, a public official violates § 666 if the official "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions" of an entity, if the exchange involves at least \$5,000 and the entity receives federal funds in excess of \$10,000. 18 U.S.C. § 666(a)(1)(B), (b).

In this case, Ms. Hayes, with Mr. Kitzhaber's blessing, appears to have solicited payments from numerous organizations in exchange for her using her role as a "public official" to further their interests. Many of these organizations are funded by a combination of private and public sources, including state and federal grants. It is difficult to determine the exact sources of each organization's funding because they are not required to disclose their donors on their publicly available Form 990 tax returns. However, if it is determined that any of those organizations received over \$5,000 in federal funding, Ms. Hayes and Mr. Kitzhaber's corrupt actions on their behalf potentially subject both to criminal liability for violations of the bribery statute at 18 U.S.C. § 666.

C. Conspiracy

As mentioned above, any person who attempts or conspires to commit Honest Services Fraud is subject to the same penalties as those prescribed for the offense. 18 U.S.C. § 1349. In this case, virtually all of the discussion has focused on the illicit actions of Oregon's First Lady, Ms. Hayes. However, just as was the case with the McDonnells in Virginia, even though the majority of the potentially illegal activity is undertaken by an elected official's spouse or partner, the elected official's knowledge and tacit approval of such activity is sufficient to prove that the elected official conspired with his or her spouse or partner in the underlying offenses.

This case is no different. Mr. Kitzhaber was aware of each and every questionable act taken by his fiancé to personally profit from her role as a public official in his administration and as First Lady. In fact, he encouraged such actions and facilitated them by giving "her free access to the inner working of the governor's office and allowed her to land private consulting deals based on contacts she developed there."²¹ Furthermore, as a member of the same household, Mr. Kitzhaber personally profited from Ms. Hayes' bringing additional outside income into the household. He is therefore equally culpable for the apparent criminal violations stated herein.

²¹ Jaquiss Article, *supra* n. 6.

IV. Conclusion

In light of the foregoing, we respectfully request that you direct the Federal Bureau of Investigation and the United States Department of Justice's Public Integrity Section to investigate the unethical, deceitful, and potentially criminal violations outlined above. The people of Oregon deserve a thorough and impartial investigation that holds their elected and public officials accountable for their actions. Should you find that Governor Kitzhaber and Cyivia Hayes violated the public trust by engaging in a scheme to defraud the people of Oregon of their right to honest services, we ask that you follow the lead of the U.S. Attorney's Office in the Eastern District of Virginia in the McDonnell case, and prosecute them to the fullest extent of the law.

Thank you for your prompt attention to this serious matter.

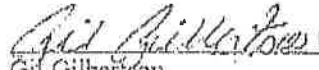
Sincerely,



Dennis Richardson
10725 SW Barbur Blvd., Suite 230
Portland, OR 97219



Mike Winters
Jackson County Sheriff
1577 North Valley View Rd.
Ashland, OR 97520



Gil Gilbertson
Josephine County Sheriff
388 Claibourn St.
Grants Pass, OR 97527

Cc:

Gregory T. Bretzing
Special Agent in Charge
Federal Bureau of Investigation
Portland Division
9109 NE Cascades Parkway
Portland, OR 97220
VIA FACSIMILE: (503) 460-8088

Jack Smith
Chief, Public Integrity Section
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
VIA FEDEX

Ellen F. Rosenblum
Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301
VIA FACSIMILE: (503) 378-4017

Mary Kremer
Chair, Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302
VIA FACSIMILE: (503) 373-1456