



February 9, 2017

Walter M. Shaub
Director
Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, D.C. 20005

Hon. Donald F. McGahn II
White House Counsel
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Director Shaub and Mr. McGahn,

On the morning of February 9, 2017, White House staff Kellyanne Conway, Counselor to President Donald J. Trump, appeared in her official capacity from the White House press briefing room on the *Fox News* program *Fox & Friends*. As *POLITICO* reported:

Standing in the White House press briefing room, Conway, a counselor to the president, encouraged Americans to purchase Ivanka Trump's products, one day after President Donald Trump himself lashed out at the department store Nordstrom for dropping his daughter's clothing line.

"It's a wonderful line. I own some of it," Conway told "Fox & Friends." "I fully — I'm going to give a free commercial here. Go buy it today, everybody. You can find it online."¹

Earlier in the same *Fox & Friends* interview, Conway stated: "Go buy Ivanka's stuff is what I would tell you. I hate shopping. I'm going to go get some myself today."²

Federal regulation provides that "[a]n employee shall not use his public office ... for the endorsement of any product, service or enterprise[.]" 5 C.F.R. § 2635.702. This general prohibition is repeated in subsection (c) of the regulation, with several exceptions that don't apply to Conway's statements. See 5 C.F.R. § 2635.702(c). Furthermore, subsection (c) provides examples of conduct that violates the "endorsement" prohibition, including a statement that a government employee "may not appear in a television commercial in which she endorses" a

¹ Louis Nelson and Isaac Arnsdorf, *Kellyanne Conway: 'Go buy Ivanka's stuff,'* *POLITICO*, Feb. 9, 2017, <http://www.politico.com/story/2017/02/kellyanne-conway-ivanka-nordstrom-234838>.

² *Id.*

product, and another that a government employee may not, in his official capacity, endorse “a novel . . . written by an author whose work he admires.” *Id.*

The Office of Government Ethics, which administers government ethics regulations generally, including this “endorsement” prohibition specifically, summarizes the prohibition as follows:

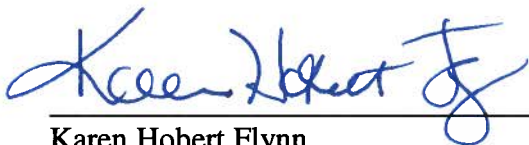
Subpart G contains four provisions designed to ensure that employee do not misuse their official positions. These include: A prohibition against employees using public office for their own private gain for the private gain of friends, relatives, or persons with whom they are affiliated in a non-Government capacity, or for the endorsement or any product, service, or enterprise[.]³

Through her remarks on *Fox & Friends* that viewers should “Go buy Ivanka’s stuff,” Ms. Conway clearly violated the federal regulation prohibiting government employees from endorsing products.

“It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases[,]” and “corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures” set forth in at part 2638 of the Government Ethics code. 5 C.F.R. §§ 2635.106(b) and 2638.501-04.

Common Cause calls on the Office of Government Ethics and the White House Counsel’s Office to conduct an investigation and to take disciplinary action to hold Ms. Conway accountable for this clear violation of federal ethics rules.

Sincerely,



Karen Hobert Flynn
President
Common Cause
805 Fifteenth Street, NW
Suite 800
Washington, DC 20005

³ U.S. Office of Government Ethics, *5 C.F.R. Part 2635: Standards of ethical conduct for employees of the executive branch*, <https://www.oge.gov/web/oge.nsf/All%20Documents/5D633072D0B2DB5085257E96006A90E7?opendocument>.