

February 11, 2013

David Soares
Albany County District Attorney
The Albany County Judicial Center
4th Floor
6 Lodge St.
Albany, NY 12207

Dear District Attorney Soares:

We are writing to urge you to investigate whether Lawrence Schwartz, Secretary to Gov. Andrew M. Cuomo, has a conflict of interest between his stock investments and his involvement in the state's decision on whether to allow high-volume hydraulic fracturing for shale gas.

We are also writing to urge you to investigate whether Deputy Secretary for Energy and Environment Robert Hallman has complied with state financial disclosure rules and, provided Mr. Hallman makes full disclosure of his financial holdings, whether he has a conflict of interest between his investments and his involvement in the state's decision on whether to allow high-volume hydraulic fracturing for shale gas.

This letter is directed to you, District Attorney Soares, rather than to the Joint Commission on Public Ethics because there would be a conflict of interest in JCOPE undertaking this investigation. As Times Union editor Rex Smith detailed in a [column](#) on September 22, 2012, by its charter JCOPE is not suited to investigate the governor's own administration.

Both Mr. Schwartz and Mr. Hallman hold key positions in New York's decision over whether to allow high-volume hydraulic fracturing. Governor Cuomo is expected to make a decision on this issue soon. Mr. Schwartz supervises all state deputies and commissioners, including Mr. Hallman and the Commissioner of the New York State Department of Environmental Conservation, the agency that is tasked with studying high-volume hydraulic fracturing and developing the state's policy regarding this extraction technique. Mr. Hallman is the state's highest gubernatorial staff member who has oversight over the state Department of Environmental Conservation.

NYS law (see below) requires public officials to list "EACH SOURCE" of income greater than \$1,000 and "the type and market value of securities...from each issuing entity" greater than \$1,000. These are not insignificant investments. The state has not required officials to disclose estimates of how much money they hold in each investment. That policy will change for the disclosures due to be filed this spring.

Since 2009, Mr. Schwartz has reported in state financial disclosure forms investments in several companies engaged in shale gas development, including "Burlington Res." (apparently Burlington Resources), ConocoPhillips, Occidental Petroleum and one he identified as "Mobile Exon," apparently a reference to Exxon Mobil Corp. Exxon Mobil has a direct interest in New York's decision on high-volume hydraulic fracturing through its subsidiary, XTO Energy, Inc., which holds 43,000 acres of leases for natural gas drilling in New York's portion of the Marcellus Shale. Mr. Schwartz also reported financial interests in a firm or firms he identified variously as "Williams Co." and "Williams Companies," apparently references to The Williams Companies Inc., an oil and gas pipeline firm that has a general interest in the Marcellus formation that underlies large portions of New York and other eastern states.

The results of a Freedom of Information Law request show that Mr. Schwartz and his deputies have recently dealt directly with these companies. On Aug. 3, 2012, XTO Energy, Inc., wrote to Mr. Schwartz and several other administration officials including Mr. Hallman seeking changes in the state's draft regulations regarding high-volume hydraulic fracturing. The freedom of information request also showed that on at least two recent occasions, July 30 and Sept. 20, 2012, The Williams Companies have communicated with Mr. Hallman and another Cuomo administration official regarding two of the company's planned natural gas pipelines – one through New York's Southern Tier, the other through New York City. The [Associated Press](#) recently reported that the Williams Companies' proposed \$750 million pipeline through the southern tier known as the "Constitution Pipeline" would run from Pennsylvania's Susquehanna County through New York's Broome, Chenango and Delaware counties to connect with existing pipelines in Schoharie County. Broome, Chenango and Delaware counties are part of "the portion of the Marcellus Shale most likely to produce gas," according to the New York State Department of Environmental Conservation in its draft drilling plan. It is fair to ask whether Mr. Schwartz still held stock in Exxon Mobil and The Williams Companies last year and, if so, whether he could impartially represent the people of New York when he and his deputies were dealing directly with them.

The timing of Mr. Schwartz's apparent investment in Exxon raises further concern. State financial disclosure records indicate that Mr. Schwartz was invested in the company's stock in 2010 and 2011. The state will not release 2012 financial disclosure records until later this spring. "Mobile Exxon" or a similarly spelled company does not appear in Mr. Schwartz's financial disclosure from 2009, his first year of service in state government when he served as Secretary to former governor, David A. Paterson. Nor does the company appear in financial disclosures that Mr. Schwartz made to Westchester County in 2002, 2003, 2005 and 2006 when he served as deputy county executive. (The County indicated that other years of disclosures were missing.) The records suggest that the first time Schwartz invested in Exxon was in 2010, just after Exxon acquired XTO for \$31 billion in Dec. 2009, giving Exxon a direct interest in the outcome of New York's debate over high-volume hydraulic fracturing. If Mr. Schwartz invested in Exxon shortly after the merger, it raises questions about whether Mr. Schwartz did so knowing that a decision to allow drilling in New York could benefit his personal stock holdings.

Mr. Schwartz's investments in shale gas companies, especially Exxon Mobil and The Williams Companies, raise concern about whether he can impartially fulfill his duties to the people of New York state when a decision to allow high-volume hydraulic fracturing would benefit these companies and, potentially, Mr. Schwartz's stock portfolio.

New York state law urges a public official to avoid personal investments that would "create substantial conflict between his duty in the public interest and his private interest." See N.Y. Pub. Off. § 74(3)(g). We ask you to investigate whether Mr. Schwartz is living up to this standard.

It is unclear whether Mr. Hallman has similar potential conflicts of interest because Mr. Hallman has failed to make specific financial disclosures, which appears to violate the spirit, if not the substance of N.Y. Pub. Off. § 73-a. This law requires public officials to list "EACH SOURCE" of income greater than \$1,000 and "the type and market value of securities...from each issuing entity" greater than \$1,000. In his 2011 financial disclosure form, the only such form Mr. Hallman has filed because he began his service with the state in 2011, Mr. Hallman lists five sources of income greater than \$1,000: "law firm, interest on bonds, bank, stock, partnership." Mr. Hallman also states that his securities worth more than \$1,000 include "various common stock" and "various corporate bonds."

These vague listings such as "interest on bonds" and "various common stock" do not comply with the requirement to list each source of income and securities from each issuing entity. Moreover, if public

officials could use such imprecise disclosures, it would defeat the purpose of the state's financial disclosure law by denying citizens, regulators and the media the opportunity to determine whether officials had conflicts of interest. Please investigate whether Mr. Hallman has properly complied with financial disclosure standards.

We have attached to this letter copies of Mr. Schwartz's financial disclosures, Mr. Hallman's financial disclosure and the recent Freedom of Information Law requests showing that Exxon Mobil and The Williams Companies have communicated directly with Mr. Schwartz and his deputies regarding hydraulic fracturing and natural gas issues. Please let us know if you have any questions; feel free to contact Frack Action at 607-220-4632. We look forward to hearing from you.

Sincerely,

Catskill Citizens for Safe Energy, Jill Wiener

Community Environmental Defense Council, Inc., David F. Slottje, Executive Director

Frack Action, Julia Walsh, Campaign Director

Food & Water Watch, Wenonah Hauter, Executive Director

Public Citizen, Tyson Slocum, Director of Public Citizen's Energy Program

United For Action, David Braun, President

Capital District Against Fracking, Siobhan Burke