

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE PROTECT DEMOCRACY PROJECT, INC.,  
2020 Pennsylvania Avenue, NW, #163  
Washington, DC 20006,

Plaintiff

vs.

Case No. \_\_\_\_\_

OFFICE OF MANAGEMENT AND BUDGET,  
725 17th Street, NW  
Washington, DC 20503,

Defendant.

**COMPLAINT**  
(Freedom of Information Act)

Plaintiff, The Protect Democracy Project, Inc. brings this action against Defendant, the Office of Management and Budget, to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff alleges as follows:

**PARTIES**

1. Plaintiff, The Protect Democracy Project, Inc., is an organization awaiting 501(c)(3) status, incorporated under the laws of the District of Columbia, and headquartered at 2020 Pennsylvania Avenue, NW, #163, Washington, DC 20006.

2. Plaintiff’s mission is to protect our democracy from descending into a more autocratic form of government by preventing those in power from depriving Americans of a free, fair, and fully-informed opportunity to exercise ultimate sovereignty. As part of this mission, Plaintiff seeks to inform public understanding of operations and activities of the government by gathering and dissemination information that is likely to contribute significantly to the public understanding of executive branch operations and activities.

3. Plaintiff regularly requests information pursuant to FOIA. Plaintiff intends to give the public access to documents transmitted via FOIA on its website, [www.protectdemocracy.org](http://www.protectdemocracy.org), and to provide information about and analysis of those documents as appropriate.

4. Defendant, Office of Management and Budget (“OMB”) is a component of the Executive Office of the President of the United States and is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1). Defendant is headquartered at 725 17th Street, NW, Washington, DC 20503. Defendant has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA requests.

### **JURISDICTION & VENUE**

5. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

### **STATEMENT OF FACTS**

7. The Congressional Budget Office (“CBO”) was founded in 1975 to give Congress an objective source of cost estimates and budget analysis. As detailed on its website, CBO is a nonpartisan organization, which conducts impartial analysis. CBO does not make policy recommendations, and its reports and cost estimates summarize the underlying methodology.

8. With the creation of CBO, the legislative branch has an independent source of economic data and analysis and is not forced to rely on those supplied by the executive. As such, CBO serves an important role in maintaining the checks and balances between the executive and legislative branches. It also plays an essential role in the legislative process by setting out a set of facts established by an impartial body rather than those supplied by the proponents of a particular policy.

9. In the 42 years of its existence, CBO has developed a reputation for impartiality and nonpartisanship. It has been described by scholars and commentators as “a critical component of our system of checks and balances” and “one of the most influential and well-regarded institutions in Washington.”

10. Shortly after President Donald Trump was elected, however, the incoming Administration challenged CBO’s work and its very existence. Campaign surrogate Newt Gingrich wrote that “[t]he Congressional Budget Office is simply incompatible with the Trump era.”

11. Similarly, OMB Director Mick Mulvaney has reinforced this message, stating that CBO’s time had “come and gone.”

12. Most recently, the White House itself has attacked CBO. On the official White House twitter feed, it publicized its video, called Reality Check: CBO, declaring that “CBO uses faulty assumptions and bad numbers.” *See* Video @WhiteHouse, July 12, 2017, <https://twitter.com/WhiteHouse/status/885202925370224641>.

13. Additionally, White House staff, in their official capacity, authored a public opinion piece in which they stated that “CBO’s estimates will be little more than fake news,”<sup>1</sup> announcing this conclusion before CBO released its estimate related to legislation repealing the Affordable Care Act.

14. If the Administration is, as their public statements indicate, actively impugning CBO as “faulty,” “bad,” and “fake,” in an effort to end its existence, then the American people deserve to know more about the plans for doing so. Abolishing CBO, and leaving Congress

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<sup>1</sup> *See* Marc Short and Brian Blase, *The Fundamental Error in the CBOs Health Care Projections*, Wash. Post, July 14, 2017, [https://www.washingtonpost.com/opinions/the-fundamental-error-in-the-cbos-health-care-projections/2017/07/14/25f0d8a4-67ee-11e7-a1d7-9a32c91c6f40\\_story.html?utm\\_term=.0d2095f4623f](https://www.washingtonpost.com/opinions/the-fundamental-error-in-the-cbos-health-care-projections/2017/07/14/25f0d8a4-67ee-11e7-a1d7-9a32c91c6f40_story.html?utm_term=.0d2095f4623f)

without any independent source for economic or budgetary figures or analysis, would place the legislature in a subservient role to the executive and undermine our democracy, where informed citizens exercise power through their elected representatives

15. Consistent with its mission, The Protect Democracy Project submitted two FOIA requests to OMB, seeking information from the new Administration about its views and plans for CBO. As detailed below, OMB did not respond to either request other than acknowledging receipt.

**A. FEBRUARY 15, 2017 FOIA REQUEST**

16. On February 15, 2017, The Protect Democracy Project submitted a FOIA request (“the February Request”) to OMB seeking agency records related to CBO. The February Request also requested a fee waiver. A true and correct copy of the February Request is attached as Exhibit 1.

17. Specifically, the February Request identified three categories of requested records:

(1) Any and all records by or between any employee of the Office of Management and Budget (OMB) between November 9, 2016 and the present date regarding the Office of Congressional Ethics;

(2) Any and all records created between November 9, 2016 and the present date by or between Newt Gingrich and any employee of OMB or any of the following individuals: Donald Trump, Michael Pence, Jared Kushner, Stephen Bannon, Stephen Miller, Kellyanne Conway, Sean Spicer, Dan Kowalski, Daniel Hanlon, David Burton, John Gray, Justin Bogie, Karen Evans, Linda Springer, Mark Robbins, Pat Pizzella, Paul Winfree, Russ Vought, and Scott Laragy;

(3) Any and all records created between November 9, 2016 and the present date by or between any employee of OMB and any member of the White House Office or Presidential Transition Team (including but not limited to the following individuals: Donald Trump, Michael Pence, Jared Kushner, Stephen Bannon, Stephen Miller, Kellyanne Conway, Sean Spicer, Dan Kowalski,

Daniel Hanlon, David Burton, John Gray, Justin Bogie, Karen Evans, Linda Springer, Mark Robbins, Pat Pizzella, Paul Winfree, Russ Vought, and Scott Laragy) regarding the Congressional Budget Office.

18. On February 16, 2017, The Protect Democracy Project received an automated response from OMB stating that the February Request had been “logged in and is being processed” and assigning it OMB FOIA number 2017-075. The response did not indicate the scope of the documents OMB would produce or the exemptions OMB would claim with respect to any withheld documents.

19. Pursuant to FOIA, within 20 business days of receipt of Plaintiff’s request – that is, no later than March 16, 2017 – Defendant was required to “determine . . . whether to comply with such request” and to “immediately notify” Plaintiff of “such determination and the reasons therefor,” and, in the case of an adverse determination, Plaintiff’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

20. To date, The Protect Democracy Project has received no further response from OMB related to the February Request.

21. OMB has not responded to the February Request’s fee waiver request.

#### **B. APRIL 7, 2017 FOIA REQUEST**

22. On April 7, 2017, The Protect Democracy Project submitted a FOIA request (“the April Request”) to OMB seeking additional agency records related to CBO. The April Request also included a fee waiver request. A true and correct copy of the April Request is attached as Exhibit 2.

23. Specifically, the April Request identified four categories of requested records:

(1) Any and all records that refer to abolishing, ending, eliminating, terminating, repealing, defunding, reducing funding, outsourcing, or privatizing the Congressional Budget Office (CBO).

(2) Any and all records that refer to abolishing, ending, eliminating, terminating, repealing, defunding, reducing funding, outsourcing, or privatizing CBO's (a) estimates of the deficit; (b) budget projections; (c) cost estimates for legislation or proposals; or (d) scores for legislation or proposals.

(3) Any and all records that refer to altering the mission or function of CBO, or modifying, changing, or replacing the leadership, personnel, or staffing of CBO.

(4) Any and all records that refer to the Congressional Budget and Impoundment Control Act of 1974, Pub. L. 93-344, 88 Stat. 297, 2 U.S.C. §§ 601-688, or any subsection or portion thereof.

24. On April 7, 2017, The Protect Democracy Project received an automated response from OMB stating that the April Request had been "logged in and is being processed" and assigning it OMB FOIA number 2017-159. The response did not indicate the scope of the documents OMB would produce or the exemptions OMB would claim with respect to any withheld documents.

25. Pursuant to FOIA, within 20 business days of receipt of Plaintiff's request – that is, no later than May 5, 2017 – Defendant was required to "determine . . . whether to comply with such request" and to "immediately notify" Plaintiff of "such determination and the reasons therefor," and, in the case of an adverse determination, Plaintiff's appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

26. To date, The Protect Democracy Project has received no further response from OMB related to the April Request.

27. OMB has not responded to the April Request's fee waiver request.

#### **COUNT I - FAILURE TO COMPLY WITH FOIA**

28. The Protect Democracy Project incorporates each of the foregoing paragraphs of this Complaint.

29. Pursuant to FOIA, 5 U.S.C. § 552(a), The Protect Democracy Project has a statutory right to access requested agency records.

30. OMB has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i)-(ii).

31. OMB has failed to conduct a reasonable search for records responsive to the requests.

32. OMB has failed to properly respond to The Protect Democracy Project's record requests.

33. OMB has failed to respond to The Protect Democracy Project's fee waiver requests.

#### **PRAYER FOR RELIEF**

WHEREFORE, The Protect Democracy Project respectfully requests that this Court enter a judgment for Plaintiff and award the following relief:

- a. Order Defendant, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff's request;
- b. Order Defendant, by a date certain, to demonstrate that it has conducted an adequate search;
- c. Order Defendant, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;
- d. Enjoin Defendant from withholding the requested records;
- e. Order Defendant to grant Plaintiff's request for a fee waiver;

- f. Award Plaintiff its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- g. Grant Plaintiff such other and further relief as the Court may deem just and proper.

July 20, 2017

Respectfully submitted,

/s/ Kevin T. Barnett

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