

June 3, 2020

Hon. Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Re: Request for Investigation of Chief of Staff to the Vice President Marc Short

Dear Director Wray:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Federal Bureau of Investigation (“FBI”) investigate whether Chief of Staff to the Vice President Marc Short violated the primary conflict of interest law applicable to executive branch employees. There is reason to believe he may have violated that law by participating personally and substantially in particular matters affecting companies in which he holds stock.

Mr. Short has participated in his official capacity in the government’s response to the COVID-19 pandemic while holding significant financial interests in companies directly affected by the government’s effort. His office claims he has recused from all particular matters affecting these interests, but information recently obtained by CREW indicates that he participated personally and substantially in particular matters affecting companies whose stock he owns.

Vice President Pence assumed leadership of the coronavirus task force on February 26, 2020.¹ As the Vice President’s Chief of Staff, Mr. Short reportedly determines the agenda for meetings of the coronavirus task force.² He also has spoken to reporters about the administration’s coronavirus response and worked on economic aspects of the pandemic.³

CREW explained Mr. Short’s possible conflicts of interest in April after discovering he had not filed periodic transaction reports disclosing sales of his stocks.⁴ Building on that information in a May 28 story, NPR reported that, in fact, Mr. Short had not divested his stock interests.⁵ NPR’s report included the revelation that Mr. Short sought a Certificate of Divestiture (“CD”) from the Office of Government Ethics (“OGE”), which would have entitled Mr. Short to a break on capital gains taxes resulting from the sale of his stocks.⁶ In seeking a CD, OGE’s regulations required the Vice President’s ethics officer to concede that divestiture was reasonably

¹ Matthew Choi, Trump puts Pence in charge of coronavirus response, *Politico*, Feb. 26, 2020, <https://politi.co/2XxGSNG>.

² Ashley Parker, Yasmeen Abutaleb and Josh Dawsey, Trump administration has many task forces — but still no plan for beating covid-19, *Washington Post*, Apr. 11, 2020, <https://wapo.st/3gv7YgV>.

³ Marc Short Comments to Reporters, *CSPAN*, Feb. 4, 2020, <https://cs.pn/3chcEnC>; ; Doina Chiacu, Pence Aide Dismisses Reports of Possible 20% U.S. Unemployment, *Reuters*, Mar. 18, 2020, <https://bit.ly/36JNRHt>.

⁴ Walter Shaub and Meredith Lerner, Does the vice president’s chief of staff have a coronavirus conflict of interest?, *Citizens For Responsibility and Ethics in Washington*, Apr. 23, 2020, <https://bit.ly/2M8wUNi>.

⁵ Tim Mak, Pence Chief Of Staff Owns Stocks That Could Conflict With Coronavirus Response, *NPR*, May 28, 2020, <https://n.pr/2TNKYA3>.

⁶ *Id.*; 5 C.F.R. § 2634.1004.

necessary to resolve conflicts of interest.⁷ Those regulations also required Mr. Short to pledge that he would divest the stocks whether or not OGE granted a CD.⁸ OGE ultimately denied Mr. Short a CD, not because his stock posed no conflicts of interest, but because he would not divest all of them.⁹

In the absence of divestiture, OGE’s regulations implementing the conflict of interest law, 18 U.S.C. § 208, explain that “an employee is prohibited . . . from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.”¹⁰ A “particular matter” is a matter that involves “deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.”¹¹ The government may issue a waiver exempting an employee from this law under limited circumstances, but the White House publishes all such waivers online and has not published a waiver for Mr. Short.¹²

Rather than divesting, the Vice President’s office claims Mr. Short manages his conflicts of interest by recusing from particular matters affecting them.¹³ But the breadth of his investment portfolio casts serious doubt as to whether recusal is feasible, and there is reason to suspect it is not. Mr. Short holds 3M stock worth between \$65,002 and \$150,000 and Honeywell stock worth between \$50,001 and \$100,000.¹⁴ Nevertheless, in a March 18 interview with *Fox News*, Mr. Short discussed Vice President Pence’s trip to meet with executives of 3M Company.¹⁵ He also highlighted a related legislative effort to enact product liability protection for 3M Company and other manufacturers involved in the coronavirus response.¹⁶ Similarly, on March 20, Mr. Short touted the work of Honeywell in responding to the pandemic.¹⁷

Most significantly, Mr. Short has repeatedly met with companies whose stock he held, and some or all of the meetings may have constituted “particular matters” under the conflict of interest law. On March 2, 2020, the White House convened a meeting with pharmaceutical companies.¹⁸ Because this meeting focused on the interests of a “discrete and identifiable class of persons” – the pharmaceutical industry – it triggered coverage of the conflict of interest law.¹⁹

⁷ 5 C.F.R. § 2634.1005(b)(2).

⁸ 5 C.F.R. § 2634.1005(a)(3).

⁹ Mak, *NPR*, May 28, 2020.

¹⁰ 5 C.F.R. § 2640.103(a).

¹¹ 5 C.F.R. § 2640.103(a)(1).

¹² 18 U.S.C. § 208(b)(1); White House, Waiver Certifications for WHO/OVP Employees, <https://bit.ly/2zE0hEI> (site last viewed May 28, 2020).

¹³ Mak, *NPR*, May 28, 2020.

¹⁴ Marc Short, New Entrant Financial Disclosure Report, Apr. 9, 2019 (Part 6, Lines 5.15, 7.28, 11.16), <https://go.aws/2AdirgC> (“Short New Entrant Report”).

¹⁵ Lou Dobbs, *Trump, Pence called on nation to unite against coronavirus: Marc Short*, *Fox News*, Mar. 18, 2020, <https://bit.ly/3eq2fY3>.

¹⁶ *Id.*

¹⁷ Mak, *NPR*, May 28, 2020.

¹⁸ White House, *Remarks by President Trump and Members of the Coronavirus Task Force in Meeting with Pharmaceutical Companies*, Mar. 2, 2020, <https://bit.ly/2yTlJ8h> (“Pharmaceutical Meeting Transcript”).

¹⁹ 5 C.F.R. § 2640.103(a)(1).

The White House Press Pool reported that the White House listed Marc Short as an expected meeting attendee, along with several companies in which he held stock worth the following amounts: Gilead, \$2,002 - \$30,000; Johnson & Johnson, \$33,005 - \$145,000; and Pfizer, \$51,002 - \$115,000.²⁰ At the meeting, Gilead CEO Daniel O’Day talked about his company’s work with the federal government to test the drug Remdesivir as a treatment for COVID-19.²¹ Johnson & Johnson Chief Science Officer Paul Stoffels touted his company’s work with the federal government to develop a vaccine.²² Pfizer Chief Scientist Mikael Dolsten discussed his company’s plans to work with FDA on drug approvals related to COVID-19.²³ A photograph shows Mr. Short at the meeting talking to the Vice President at the meeting.²⁴

On March 10, 2020, the White House held another meeting, this time with major insurance companies.²⁵ Vice President Pence announced that work related to the meeting had produced a decision directly and predictably affecting the financial interests of these companies: “And I’m pleased to report, as you requested, Mr. President, that all the insurance companies here – either today or before today – have agreed to waive all copays on coronavirus testing and extend coverage for coronavirus treatment in all of their benefit plans.”²⁶ As this meeting also focused on the interests of a “discrete and identifiable class of persons” – this time, the insurance industry – it too triggered coverage of the conflict of interest law.²⁷ The White House identified Mr. Short as an expected meeting attendee, as well as UnitedHealth Group, an insurance company, and CVS, which owns health insurers Aetna and SilverScript.²⁸ Mr. Short holds \$1,001 - \$15,000 worth of stock in United Health Group and \$16,002 - \$65,000 worth of stock in CVS Health Corporation.²⁹ A photograph shows Mr. Short standing in the back of the room during the meeting.³⁰

These were not the only meetings focused on a “discrete and identifiable class of persons” that the White House expected Mr. Short to attend with companies whose stock he holds. A March 17, 2020 meeting with tourism industry executives included Disney, in which he

²⁰ Lachlan Markey, Subject: In town print pool #6: COVID19 meeting details, *White House Public Pool*, Mar. 2, 2020, <https://bit.ly/2XrCm4F>; Short New Entrant Report (Part 5, Line 4.15; Part 6, Lines 1.12, 5.9, 5.10, 7.15, 9.4, 10.13, 11.13, 11.14).

²¹ Pharmaceutical Meeting Transcript.

²² *Id.*

²³ *Id.*

²⁴ Getty Images, Trump, Coronavirus Task Force Members Meet With Pharmaceutical Executives, Mar. 2, 2020, <https://bit.ly/3gNwPwM>.

²⁵ White House, Remarks by President Trump and Vice President Pence at a Coronavirus Briefing with Health Insurers, Mar. 10, 2020, <https://bit.ly/2TYXMnf>.

²⁶ *Id.*

²⁷ 5 C.F.R. § 2640.103(a)(1).

²⁸ Debra Saunders, Subject: In Town Pool Report #2a, *White House Public Pool*, Mar. 10, 2020, <https://bit.ly/2ySY6Nf>; Aetna, Our Company Profile (“Aetna is now a subsidiary company of CVS Health Corporation.”), <https://aetna.com/2AoKoC5> (last viewed June 1, 2020); SilverScript, About SilverScript® Insurance Company (“a proud member of the CVS Health family of companies”), <https://bit.ly/2MkWkaE> (last viewed June 1, 2020).

²⁹ Short New Entrant Report (Part 6, Lines 10.6, 10.16, 11.32). Although a regulation exempts interests in publicly traded stocks worth less than \$15,000, the regulation requires aggregation of the value of an employee’s investments in the stocks of all companies affected by a particular matter. 5 C.F.R. § 2640.202(a)(2).

³⁰ Getty Images, US-HEALTH-VIRUS-POLITICS, Mar. 10, 2020, <https://bit.ly/3cpd5fC>.

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holds \$48,006 - \$195,000 worth of stock.³¹ An April 27, 2020, meeting with companies who are participants in the administration's coronavirus testing plan included Thermo Fisher Scientific, in which he holds \$53,004 - \$145,000 worth of stock; Walmart, in which he holds \$1,001 - \$15,000; and CVS, in which he holds \$16,002 - \$65,000 worth of stock.³² A March 11 meeting with financial service industry members included Citi, in which he holds \$3,003 - \$45,000; Wells Fargo, in which he holds \$16,002 - \$65,000 worth of stock; and JPMorgan Chase, in which he holds \$103,004 - \$295,000 worth of stock.³³ A photograph shows Mr. Short's name tent at the March 11 meeting.³⁴

CREW urges the FBI to review the information in our April report and the May 28, 2020 NPR story for further details about Mr. Short's conflicts, as well as the new information regarding Mr. Short's personal and substantial participation in meetings that appear to have affected the financial interests of companies in which he holds stock. Therefore, the FBI should immediately investigate to determine whether he has violated the primary conflict of interest statute, 18 U.S.C. § 208.

Sincerely,



Noah Bookbinder
Executive Director



Walter M. Shaub, Jr.
Senior Advisor

³¹ White House, Remarks by President Trump in Meeting with Tourism Industry Executives on COVID-19 Response, Mar. 17, 2020, <https://bit.ly/2XoSBzf>; Meredith McGraw, Subject: WH Pool Report #5 - Tourism meeting participants, *White House Public Pool*, Mar 17, 2020, <https://bit.ly/2zQs7h5>; Short New Entrant Report (Part 6, Line 1.7, 5.4, 7.9, 9.9, 10.5 11.1).

³² White House, Remarks by President Trump in a Meeting with Industry Executives on COVID-19 Response, Apr. 27, <https://bit.ly/3dAHvqp>; David Boyer, Subject: In-town pool 9 -- full list of attendees, *White House Public Pool*, Apr. 27, 2020, <https://bit.ly/2XObKcN>; Short New Entrant Report (Part 6, Lines 1.24, 4.18, 7.25, 10.6, 10.15, 11.15, 11.32).

³³ White House, Remarks by President Trump in Meeting with Bankers on COVID-19, Mar. 11, 2020, <https://bit.ly/2MwxcOx>; Noah Bierman, Subject: In town pool #4 banker info, *White House Public Pool*, Mar. 11, 2020, <https://bit.ly/2U1zMjt>; Short New Entrant Report (Part 6, Lines 4.10, 5.23, 5.7, 7.14, 7.27, 7.39, 10.9, 10.11, 11.12).

³⁴ Getty Images, President Trump Meets With Bankers On Coronavirus Response, Mar. 11. 2020, <https://bit.ly/2U5Xds5>.