

July 2, 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”) submits this letter to supplement our June 3, 2020 letter requesting 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, 18 U.S.C. § 208.¹

As we previously explained, 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 and predictably affected by that effort. The Vice President’s office claims Mr. Short is complying with the conflict of interest law by recusing from all particular matters affecting his financial interests, but CREW has obtained information suggesting otherwise. In our prior letter, we identified several possible violations of that law, including five meetings he had regarding the government’s pandemic response with companies whose stock he held. CREW has now uncovered evidence that Mr. Short participated in three additional meetings with companies whose stock he held.

On March 4, 2020, Mr. Short participated in a meeting of the coronavirus taskforce with executives of diagnostic laboratories. A photograph posted online by Getty Images shows Mr. Short participating in the meeting.² At the meeting, Vice President Pence discussed actions directly and predictably affecting the financial interests of diagnostic laboratories: “I want to thank those that are gathered around the table for being here and for informing me, just a few short minutes ago, that, in cooperation with our administration, with some changes with the FDA rules that are going forward, that they have formed a consortium in this industry to share information and to speed the availability of tests to the broader American public.”³ Participants in the meeting included Thermo Fisher Scientific and Abbott Laboratories, companies in which Mr. Short held between \$53,004 and \$145,000 and between \$15,001 and \$50,000 worth of stock

¹ Letter to Christopher Wray, Director, Federal Bureau of Investigation, from Noah Bookbinder, *et al.*, Executive Director, Citizens for Responsibility and Ethics in Washington, June 3, 2020, <https://go.aws/2Z4TIDM>. We also direct the FBI’s attention to a recent letter by several members of Congress regarding Mr. Short’s compliance with the conflict of interest law. Letter from Sen. Elizabeth Warren, Sen. Richard Blumenthal, and Rep. Pramila Jayapal to Scott Gast, Deputy Counsel to the President, June 15, 2020, <https://bit.ly/2zLeAr4>.

² Getty Images, Vice President Pence Participates In Coronavirus Briefing With Diagnostic Lab CEOs, Mar. 4, 2020, <https://bit.ly/2Y8eQd0>.

³ White House, Remarks by Vice President Pence at a Coronavirus Briefing with Diagnostic Lab CEOs, Mar. 4, 2020, <https://bit.ly/2UUGLLt>.

respectively.⁴ A news story by *NPR* reported that, as of May 28, Mr. Short had not divested the assets he disclosed in his new entrant financial disclosure.⁵

According to a White House Public Pool report, Mr. Short also participated in a March 17, 2020 call “with the executives of industrial supply retailers and wholesalers about the national response to COVID-19.”⁶ One of the participants was Craig Menear, Chairman, President and CEO of The Home Depot.⁷ The meeting related to issues directly and predictably affecting the financial interests the participants, as evidenced by a tweet that day in which Vice President Pence announced: “Today, President @realDonaldTrump convened the Nation’s top industrial suppliers and directed them to ensure that critical medical supplies are being focused exclusively on the health care industry so that our health care professionals can do their jobs safely.”⁸ In a video linked to the tweet, The Home Depot was one of only two participating companies that Vice President Pence mentioned to a reporter.⁹ When he filed his new entrant financial disclosure, Mr. Short reported holding between \$67,004 and \$180,000 worth of stock in The Home Depot.¹⁰

A White House Public Pool report indicates that Mr. Short was expected to participate in another meeting with energy company executives on April 3.¹¹ The meeting directly and predictably affected the financial interests of these companies. At the start of the meeting, for example, President Trump indicated the focus would be on “the impact of the coronavirus on American energy industry.” Senator Ted Cruz urged the administration to augment the Department of Energy’s Strategic Petroleum Reserve, emphasizing that “[w]e have an opportunity now to buy [oil] when it’s cheap.”¹² In response, President Trump asked Senator Cruz to seek congressional approval for the government to purchase 75 million barrels of oil.¹³ Secretary of Energy Dan Brouillette added that the Department of Energy had “found an alternative financing mechanism” for the purchase of oil that did not depend on congressional approval.¹⁴ President Trump then directed Secretary Brouillette to find new sites where the government can store additional oil.¹⁵ Among other participants in the meeting were Chevron

⁴ Jeff Mason and Carl O’Donnell, Laboratories meet with White House, form consortium for coronavirus tests, Reuters, Mar. 4, 2020, <https://reut.rs/2zFoOZZ>; Short New Entrant Report (Part 6, Lines 1.1, 1.24, 7.25, 10.15, 11.15).

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

⁶ Meridith McGraw, Subject: WH Pool Report #11 - Readout of industrial suppliers call, *White House Public Pool*, Mar. 17, 2020, <https://bit.ly/2URcBcg>.

⁷ *Id.*

⁸ Mike Pence (@Mike_Pence), Twitter, Mar. 17, 2020, <https://bit.ly/2YaLeMb>.

⁹ *Id.*

¹⁰ Marc Short, New Entrant Financial Disclosure Report, Apr. 9, 2019 (Part 5, Line 4.9; Part 6, Lines 5.2, 10.34, 11.2), <https://go.aws/2AdirgC> (“Short New Entrant Report”).

¹¹ Christian Datoc, Subject: In-town pool report #7 — attendees at energy meeting, *White House Public Pool*, Apr. 3, 2020, <https://bit.ly/2V033M9> (“Public Pool Schedule”).

¹² White House, Remarks by President Trump in Meeting with Energy Sector CEOs, Apr. 3, 2020, <https://bit.ly/2YTEiSC> (“Energy Meeting Transcript”).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Corporation, Devon Energy Corporation, Exxon Mobil Corporation, and Phillips 66 Company.¹⁶ In his new entrant financial disclosure, Mr. Short reported owning between \$53,004 and \$145,000 worth of stock in Chevron Corporation; between \$15,001 and \$50,000 in Devon Energy Corporation; between \$66,003 and \$165,000 in Exxon Mobil Corporation; and between \$15,001 and \$50,000 in Phillips 66 Company.¹⁷

As with the meetings discussed in our June 3 letter, these meetings implicate the primary conflict of interest law, 18 U.S.C. § 208. For a violation to occur, an employee's conduct must meet several elements of the law: the employee must be found to have (1) participated personally and substantially in (2) a particular matter (3) directly and predictably affecting the employee's (4) known (5) financial interests.¹⁸ A "particular matter" is a matter focused on the interests of identified parties or a discrete and identifiable class of persons, such as an industry.¹⁹ The Office of Government Ethics ("OGE") recently emphasized in a legal advisory that an employee's financial interests are affected if a particular matter affects the financial interests of a company whose stock the employee holds, whether or not the particular matter affects the stock price.²⁰

Circumstances described in this letter and our June 3 letter appear to satisfy all five elements.²¹ We have recounted Mr. Short's personal and substantial participation in up to eight meetings with companies whose stock he holds—and there may be others we have not been able to identify. Each of these meetings constituted a particular matter because each focused on the interests of a specific industry, which is a discrete and identifiable class of persons. Mr. Short held significant amounts of stock in companies that participated in these meetings, and his financial disclosure revealed his knowledge that he owned the stocks.²² There is evidence that each meeting directly and predictably affected the participating companies' financial interests. The direct and predictable effect flowed from the issues and governmental actions discussed in the meetings. At one meeting, for example, Vice President Pence announced that "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."²³ Even if some of the meetings produced no agreements or policy decisions, they had the requisite effect on the companies' financial interests for purposes of the conflict of interest law if, as appears to be the case, they sent salaried employees to the meetings.²⁴

¹⁶ Public Pool Schedule; Energy Meeting Transcript.

¹⁷ Short New Entrant Report (Part 2, Line 1.9; Part 4, Line 4.6; Part 6, Lines 1.2, 1.5, 7.7, 11.6, 11.8).

¹⁸ 5 C.F.R. § 2640.103.

¹⁹ 18 U.S.C. § 208(a); 5 C.F.R. § 2640.103(a)(1).

²⁰ Office of Gov't Ethics, Conflict of Interest Analysis for Stocks under 18 U.S.C. § 208, LA-20-03, May 1, 2020, <https://bit.ly/2zFY9wa>; see also 5 C.F.R. § 2640.103(b) ("The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock . . .").

²¹ 18 U.S.C. § 208.

²² Short New Entrant Report (Part 5, Line 4.9; Part 6, Lines 1.1, 1.24, 5.2, 7.25, 10.15, 10.34, 11.2, 11.15).

²³ White House, Remarks by President Trump and Vice President Pence at a Coronavirus Briefing with Health Insurers, Mar. 10, 2020, <https://bit.ly/2TYXMnf>.

²⁴ 5 C.F.R. § 2640.103(a)(3)(ii) (the dollar amount of the gain or loss is immaterial"); Office of Gov't Ethics, Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest), 60 Fed. Reg. 47208, 47216 ("Section 208 is implicated if the matter affects the entity's financial interest in any measurable way, . . ."), <https://bit.ly/3dbkBeh>.

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Given the troubling evidence of multiple possible violations of law by a top administration appointee, it is imperative that the FBI investigate this matter. No government official—especially not one like Mr. Short who occupies a senior leadership position—is above the law. Therefore, we urge the FBI to review our letters, as well as the related materials they cite, and open an investigation at once to determine whether Mr. Short has violated the primary conflict of interest law, 18 U.S.C. § 208.

Sincerely,



Noah Bookbinder
Executive Director



Walter M. Shaub, Jr.
Senior Advisor

cc: Sen. Elizabeth Warren
Sen. Richard Blumenthal
Rep. Pramila Jayapal