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July 13, 2020

The Honorable Emory A. Rounds
Director
U.S. Office of Government Ethics
1201 New York Avenue NW, Suite 500
Washington, DC 20005

Dear Director Rounds:

I am writing today regarding an issue of significant relevance to ethical governance at the top of American government: recent revelations that Marc Short, Vice President Pence's Chief of Staff and chief aide determining the Coronavirus Task Force's agenda, owns between \$506,043 and \$1.64 million worth of individual stocks in companies that have been directly involved in or affected by the Task Force's work.¹² Public service demands not only our thorough commitment to putting the needs of the country ahead of ourselves, but also to holding ourselves to the highest ethical standards in eliminating conflicts of interest and complying with the law in doing so.

The Office of Government Ethics (OGE) recently issued guidance reiterating that the primary conflict of interest statute applicable to executive branch employees applies to an employee's stock interests. OGE explained that, under 18 U.S.C. § 208, "executive branch employees are prohibited from participating personally and substantially in any particular matter that they know would have a direct and predictable effect on their own financial interest or financial interests imputed to them."³ With respect to an employee's stock holdings, OGE noted that "[s]tock constitutes ownership rights in a company" and that "as such, OGE has consistently treated financial interests of the company and the financial interests of the shareholders as one and the same."⁴ Thus, OGE advised, "[e]mployees who own stock in a company should be counseled that they may not participate in a particular matter affecting the company even if there is not a probable effect on the company's stock price."

¹ NPR, *For Pence, Coronavirus Task Force Is A High-Profile Assignment With Political Risk*, Tamara Keith, 4/29/20, <https://www.npr.org/2020/04/29/847580759/for-pence-coronavirus-task-force-is-a-high-profile-assignment-with-political-risk>

² Ashley Parker, Yasmeeen 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 U.S. 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/37V1Bjk>.

⁴ Id.

For this reason, I was disturbed by National Public Radio's (NPR) recent report regarding Marc Short's substantial ownership of individual stocks in companies directly involved in the COVID-19 pandemic relief efforts. Beyond the presence of Mr. Short's conflict of interest through owning stock in companies central to the coronavirus response while holding his position as aide to the chair of the Coronavirus Task Force, Mr. Short has also publicly praised these companies in his official capacity. For example, on March 18th Mr. Short discussed the 3M Company on Fox Business as one of the "primary producers" of respirator masks while owning between \$65,002 and \$150,000 worth of 3M stock.⁵

The Vice President's office indicates that Mr. Short applied for a certificate of divestiture, which would have provided a tax break upon his divesting from his conflicted assets.⁶ However, your agency declined to grant this certificate because he refused to divest from all his potentially conflicted assets. It is important to note that not receiving a certificate of divestiture is not an acceptable reason to fail to divest from stocks deemed a potential conflict of interest. OGE's regulations expressly provide that an employee seeking a certificate of divestiture must agree to divest the asset at issue, whether or not OGE ultimately grants a certificate of divestiture.⁷ Additionally, OGE's regulations provide that, when seeking a certificate of divestiture for an employee, the ethics official for the employing office must submit a written opinion articulating why divestiture is "reasonably necessary" or, stated differently, why the asset poses a conflict of interest for the employee.⁸ This means that Mr. Short was still required to resolve the conflict of interest caused by his stock ownership, whether or not OGE granted him a certificate of divestiture, and that the ethics official for the Office of the Vice President was required to explain why Mr. Short's stock holdings posed a conflict of interest with his official duties.

The Office of the Vice President told NPR that Mr. Short was managing these conflicts of interest by recusing from matters affecting the companies whose stock he held. But, as discussed above, Mr. Short has not refrained from praising 3M publicly, despite holding 3M stocks. He has also participated in meetings regarding the administration's pandemic response with companies whose stocks he holds. Each of these meetings appears to have focused on the interests of a specific industry, which implicates the conflict of interest law.⁹ While waivers from the conflict of interest law are sometimes provided, Mr. Short is not listed on the White House's website as receiving a waiver as of this date.¹⁰

In response to these disturbing revelations, please provide the following information:

1. What is OGE doing to address Mr. Short's apparent violations?

⁵ NPR, *Pence Chief of Staff Owns Stocks that Could Conflict with Coronavirus Response*, Tim Mak, 5/28/20, <https://www.npr.org/2020/05/28/860927054/pence-chief-of-staff-owns-stocks-that-could-conflict-with-coronavirus-response>

⁶ NPR, *Pence Chief of Staff Owns Stocks that Could Conflict with Coronavirus Response*, Tim Mak, 5/28/20, <https://www.npr.org/2020/05/28/860927054/pence-chief-of-staff-owns-stocks-that-could-conflict-with-coronavirus-response>

⁷ 5 C.F.R. § 2634.1005(a)(3); U.S. Office of Gov't Ethics, *Procedures for Requesting a Certificate of Divestiture*, DO-06-30 (2006), <https://bit.ly/2A5xBVu>; U.S. Office of Gov't Ethics, *Release of OGE's Certificate of Divestiture Reference Guide*, PA-16-04 (2016) ("The person requesting a Certificate of Divestiture (i.e., you, your spouse, your dependent or minor child, or a trustee) must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued."), <https://bit.ly/37WtuHy>.

⁸ 5 C.F.R. § 2634.1005(b)(2).

⁹ Letter to the Federal Bureau of Investigation from Citizens for Responsibility and Ethics in Washington, June 3, 2020, <https://go.aws/31jEHkt>.

¹⁰ *Citizens for Ethics and Responsibility in Washington, Does the Vice President's Chief of Staff have a Coronavirus Conflict of Interest?*, Walter Shaub and Meredith Lerner, 4/23/20, <https://www.citizensforethics.org/marc-short-coronavirus-stocks-conflict-of-interest/>

2. Does OGE plan to certify Mr. Short's annual financial disclosure despite these apparent violations?
3. Does OGE plan to refer this matter to the Public Integrity Section of DOJ? Why or why not?
4. Has OGE taken steps to ensure that these violations do not continue to occur in the future?
5. Has OGE obtained a list of meetings regarding the pandemic response in which Mr. Short participated with companies whose stock he held? If not, why not?
6. What justification did the Office of the Vice President or the White House offer for considering a certificate of divestiture for Mr. Short and, specifically, what was the basis for concluding that Mr. Short had a conflict of interest?
7. What guidance has OGE provided Mr. Short, the White House or the Office of the Vice President regarding the management of Mr. Short's conflicts of interest?
8. Was Mr. Short required to complete government ethics training during his recent service at the White House or during his current service at the Office of the Vice President, and did any such training cover conflicts of interest?

On the broader issue of OGE's stated duty to prevent conflicts of interest in the executive branch and to address similar issues, I also ask:

1. What measures does OGE take in response to individuals disclosing conflicts of interest but refusing to divest from them?
2. How does OGE evaluate the thoroughness of recusals proposed in ethics agreements or other arrangements, and how does it ensure continued compliance with those agreements or arrangements?
3. Can a recusal function as an acceptable substitute for divestment in the absence of an approved ethics agreement and, if so, what measures does OGE take to ensure compliance with the alleged recusal?
4. How many individuals in the administration have been denied certificates of divestiture for reasons other than OGE determining a conflict did not exist?
5. How many of these individuals have failed to divest under such circumstances, and have any done so without completing an ethics agreement or implementing a recusal arrangement?
6. Has the OGE undertaken any efforts to ensure individuals who have failed to divest have adhered to the terms of their ethics agreements or, in their absence, to federal ethics law?

Finally, please provide us with copies of the following records:

1. Any written request for a certificate of divestiture for Mr. Short or, if none exists, all records of communications regarding the possibility of Mr. Short seeking or obtaining a certificate of divestiture.
2. All guidance provided by OGE to the White House, the Office of the Vice President and/or Mr. Short regarding the management of his conflicts of interest.
3. Any referral of Mr. Short that you have made to the Public Integrity Section or any other component of the Department of Justice.

4. Any ethics agreement, recusal arrangement or waiver for Mr. Short pertaining to his service in the Office of the Vice President.
5. All documents demonstrating that OGE has taken affirmative steps to address revelations of Mr. Short's possible violation of the conflict of interest law.

Please provide answers to my offices no later than July 27th. It is unethical to have senior members of the executive branch abusing positions of power and violating public trust, and we urge you to do everything in your power to hold individuals accountable to the law.

Sincerely,



Raja Krishnamoorthi
Member of Congress