

United States Senate
WASHINGTON, DC 20510

May 17, 2017

Walter Shaub
Director
Office of Government Ethics
1201 New York Avenue NW, Suite 500
Washington, D.C. 20005

Dear Director Shaub,

We write today to request information about the ethics rules that President Trump's Chief Strategist and Senior Counselor, Stephen Bannon, is required to follow with regard to communications with his former employer, Breitbart News Network. We also request your assistance with understanding the role your office and other federal offices will play in ensuring Mr. Bannon's compliance with these rules.

On April 20, 2017, we sent letters to Mr. Bannon and to Stefan Passantino, Deputy Counsel to the President, raising questions about Mr. Bannon's recent communications with Breitbart News Network ("Breitbart").¹ Mr. Bannon formerly served as Breitbart's Executive Chairman.² On February 14, 2017, Breitbart published what has been described as "an extensive attack" on Reince Priebus, President Trump's Chief of Staff.³ Mr. Bannon told news outlets that he "went ballistic" on a phone call with Breitbart's Washington political editor, Matthew Boyle, to protest this article.⁴ Later that week, Mr. Bannon reportedly "instructed [Boyle] not to publish additional articles critical of Priebus," an act that spurred the White House to offer Boyle "access to key staffers," including Press Secretary Sean Spicer, Deputy Chief of Staff Katie Walsh, and

¹ See Senator Elizabeth Warren, "Senators Question Steve Bannon, White House Ethics Official on Violations of Trump Ethics Pledge (press release)" (April 20, 2017) (online at https://www.warren.senate.gov/?p=press_release&id=1560).

² David Folkenflik, "Ex-Breitbart Executive Brings Alt-Right Ties To The White House," *NPR* (November 15, 2016) (online at <http://www.npr.org/2016/11/15/502165973/ex-breitbart-executive-brings-alt-right-ties-to-the-white-house>); Hadas Gold, "Breitbart's bid for congressional pass put off," *Politico* (March 27, 2017) (online at <http://www.politico.com/story/2017/03/breitbart-capitol-hill-credentials-mercurs-236547>).

³ Jonathan Swan, "Steve Bannon privately unloaded on Breitbart reporter," *Axios* (February 15, 2017) (online at <https://www.axios.com/steve-bannon-privately-unloads-on-breitbart-2263308411.html>).

⁴ Lloyd Grove, "Steve Bannon: I Didn't Order Breitbart Hit on Reince Priebus," *The Daily Beast* (February 15, 2017) (online at <http://www.thedailybeast.com/articles/2017/02/15/steve-bannon-i-didn-t-order-breitbart-hit-on-reince-priebus.html>).

President Trump himself.⁵ In March, Breitbart's Editor in Chief, Alex Marlow, told reporters that Mr. Bannon "reach[es] out" to him "every so often."⁶

In our letters to Mr. Bannon and Mr. Passantino, we expressed our concern that Mr. Bannon's actions were in violation of Executive Order 13770. President Trump signed Executive Order 13770 on January 28, 2017.⁷ The order requires "[e]very appointee in every executive agency appointed on or after January 20, 2017" to sign and "be contractually committed to" an "Ethics Pledge."⁸ Among other provisions, the Ethics Pledge prevents appointees from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients" for the first two years after their appointment.⁹ The Executive Order states that a "particular matter involving specific parties" includes "any meeting or other communication relating to the performance of one's official duties with a former employer or former client."¹⁰ It appears that Mr. Bannon's communications with Breitbart may be in violation of the Ethics Pledge.

Our letters also indicated that Mr. Bannon's communications may have violated requirements that executive branch officials "maintain the appearance of impartiality" regarding former employers. Office of Government Ethics ("OGE") regulations require executive branch employees to "avoid an appearance of loss of impartiality in the performance of... official duties."¹¹ To maintain the appearance of impartiality, executive branch employees are prohibited by 5 C.F.R. § 2635.502 from "participat[ing] in a particular matter" if they "know that a person with whom [they have] a covered relationship is or represents a party." Executive branch employees are considered to be in a "covered relationship" with individuals "for whom the employee, within the last year, served as officer, director, trustee, general partner, agent,

⁵ Oliver Darcy, "'There are no sacred cows': Breitbart's honeymoon with establishment win of Trump White House may be over," *Business Insider* (March 8, 2017) (online at <http://www.businessinsider.com/breitbart-establishment-trump-this-is-war-obamacare-2017-3>).

⁶ Lachlan Markay, "Bannon May Have Violated Ethics Pledge by Communicating with Breitbart," *Daily Beast* (March 30, 2017) (online at <http://www.thedailybeast.com/articles/2017/03/30/bannon-may-have-violated-ethics-pledge-by-communicating-with-breitbart.html>); Breitbart TV, "Watch: Breitbart Editor-in-Chief Alex Marlow Interviewed by NBC's 'Today,'" *Breitbart* (March 17, 2017) (online at <http://www.breitbart.com/video/2017/03/17/watch-breitbart-editor-chief-alex-marlow-interviewed-nbcs-today/>).

⁷ President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

⁸ President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

⁹ *Id.*

¹⁰ 5 U.S.C. § 2641.201 (h) defines a "particular matter involving a specific party or parties" as "a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case" (online at <https://www.law.cornell.edu/cfr/text/5/2641.201>); President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

¹¹ 5 C.F.R. § 2635.501 (online at <https://www.law.cornell.edu/cfr/text/5/2635.501>).

attorney, consultant, contractor or employee.”¹² Mr. Bannon’s public financial disclosures clearly list Breitbart News Network, LLC, as one of Mr. Bannon’s employers in 2016.¹³

Neither Mr. Bannon nor Mr. Passantino has responded to our April 20th letters. We therefore ask your office to provide us with answers to the following questions no later than June 5, 2017. To the extent that any of our questions raise privilege or confidentiality concerns, we would be happy to discuss our request further to clarify the information we hope OGE will provide:

1. Please provide an overview of relevant laws, precedents, executive orders, and legal opinions applicable to Mr. Bannon’s role as Chief Strategist and Senior Counselor to the President and his relationship and communications with Breitbart News.
2. If Mr. Bannon communicated with Breitbart News, would those communications comply with any of these relevant laws, executive orders, precedents, and legal opinions?
 - a. Would these communications with Breitbart appear to be in violation of Executive Order 13770 and 5 C.F.R. § 2635.502?
 - b. Are you aware of whether the White House provided Mr. Bannon with a waiver from Executive Order 13770, or an authorization under 5 C.F.R. § 2635.502, to allow him to communicate with Breitbart News?
3. If Mr. Bannon is not complying with relevant laws, executive order, precedents, and legal opinions, what are the potential consequences for him? Which government officials in the White House or elsewhere are responsible for determining if Mr. Bannon is complying, and enforcing these consequences if he is not?
4. Has Mr. Bannon discussed his conflicts of interest and recusal requirements related to Breitbart News with the Office of Government Ethics?
 - a. If so, when, and what was the nature of the discussion?
 - b. Did OGE provide Mr. Bannon with any advice, and did he follow this advice?
 - c. Should Mr. Bannon violate this guidance, what disciplinary actions could OGE or the Designated Agency Ethics Official in the White House Counsel take?


¹² 5 C.F.R. § 2635.502 (online <https://www.law.cornell.edu/cfr/text/5/2635.502>).

¹³ OGE Form 278e for Steve Bannon, Assistant to the President and Chief Strategist, White House (updated March 31, 2017).


5. Have any other White House officials discussed Mr. Bannon's conflicts of interest and recusal requirements related to Breitbart News with the Office of Government Ethics?
- a. If so, when, and what was the nature of the discussion?
 - b. Did OGE provide these individuals with any advice, and was this advice followed by the White House and Mr. Bannon?

Please do not hesitate to reach out to Brian Cohen of Senator Warren's staff at 202-224-2245, Joe Gaeta of Senator Whitehouse's staff at 202-224-2921, Andrew Cohen of Senator Markey's staff at 202-224-2742, and Jeremy Horan of Senator Hirono's staff at 202-224-6361.

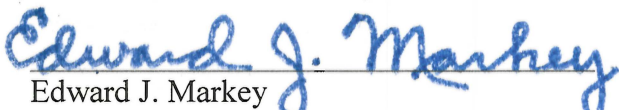
Sincerely,




Elizabeth Warren
United States Senator



Sheldon Whitehouse
United States Senator



Edward J. Markey
United States Senator



Mazie K. Hirono
United States Senator