

March 30, 2017

The Honorable Donald F. McGahn
White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. McGahn:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the White House Counsel’s Office investigate whether Chief Strategist and Senior Counselor to the President Stephen K. Bannon violated the “Ethics Pledge” he signed as a condition of his appointment by repeatedly communicating about official matters with his recent former employer, the Breitbart News Network (“Breitbart”).

On January 28, 2017, President Trump issued an Executive Order that requires all executive branch appointees to pledge to abide by several ethical obligations (“Ethics Pledge”).¹ As part of the pledge, appointees like Mr. Bannon promise not to participate in certain matters related to their former employers for two years after being appointed. Prohibited activities include “any meeting or other communication relating to the performance of one’s official duties.”²

Since Mr. Bannon began working at the White House, he appears to have engaged in repeated communications with Breitbart Editor-in-Chief Alex Marlow and Breitbart Washington Editor Matthew Boyle. Several of these conversations reportedly concerned Breitbart’s news coverage of President Trump’s Chief of Staff Reince Priebus, and one apparent outcome of them was the granting to Breitbart interviews with top administration officials, including President Trump. If Mr. Bannon engaged in communications with his former employer about these types of official matters, he may have violated the Ethics Pledge he took when he joined the Trump administration.

Background

Prior to joining the Trump administration as Chief Strategist and Senior Counselor to the President,³ Mr. Bannon served as Breitbart’s Executive Chairman.⁴ According to Breitbart CEO and President Larry Solov, Mr. Bannon resigned from his position with Breitbart on or about November 13, 2017.⁵

¹ Executive Order No. 13770, Ethics Commitments by Executive Branch Appointees (Jan. 28, 2017).

² *Id.* sec. 1, para. 6; sec. 2(s).

³ Press Release, President-Elect Donald J. Trump Announces Senior White House Leadership Team, Nov. 13, 2016, available at <https://greatagain.gov/president-elect-donald-j-trump-announces-senior-white-house-leadership-team-3dcb0a37b8#.to4e1ynok>.

⁴ Breitbart News Corporate Statement on Stephen K. Bannon, Aug. 17, 2016, available at <http://www.breitbart.com/big-journalism/2016/08/17/breitbart-news-stephen-k-bannon/>.

⁵ Hadas Gold, Breitbart’s Bid For Congressional Pass Put Off, *Politico*, Mar. 27, 2017, available at

Mr. Bannon's Reported Communications with Mr. Boyle

On February 14, 2017, Breitbart published a news story written by Mr. Boyle that was “extremely critical” of Mr. Priebus.⁶ It stated:

Specifically, multiple sources close to President Trump with internal knowledge of White House operations told Breitbart News on Monday night that the buck stops with Priebus when it comes to the botched rollout of the executive order temporarily banning most travel to the United States from seven nations with a history of exporting terrorism and temporarily halting the refugee program. This news comes of course in the wake of the news that [National Security Advisor Michael] Flynn was pushed out, but also as more and more reports of a likely shake-up at the top loom.⁷

Mr. Bannon contacted Mr. Boyle soon after Breitbart published the story.⁸ Mr. Bannon admitted he “went ballistic” on the call,⁹ and was characterized as “angry” because he and Mr. Priebus were “portraying themselves in the press as friends and allies.”¹⁰ Apparently, many observers “connected Breitbart’s coverage” to Bannon as if he had “ordered the attack.”¹¹ Mr. Bannon reportedly felt “blindsided” by the article, and was “so furious” that he “unloaded” on Mr. Boyle, who failed to notify him in advance of publishing the story.¹²

Mr. Bannon reportedly “further aggravated” Mr. Boyle “that week when he instructed him not to publish additional articles critical of Priebus.”¹³ Tension between the two “reached a fever pitch” until senior White House staff reportedly offered Mr. Boyle “access to key staffers.”¹⁴ Shortly thereafter, exclusive interviews were arranged for Mr. Boyle with Press Secretary Sean Spicer on February 18,¹⁵ Deputy Chief of Staff Katie Walsh on February 22,¹⁶

<http://www.politico.com/story/2017/03/breitbart-capitol-hill-credentials-merciers-236547>.

⁶ Oliver Darcy, ‘There are no sacred cows’: Breitbart’s honeymoon with establishment wing of Trump White House may be over, *Business Insider*, Mar. 8, 2017, available at <http://www.businessinsider.com/breitbart-establishment-trump-this-is-war-obamacare-2017-3>.

⁷ Matthew Boyle, As Flynn Resigns, Priebus Future in Doubt as Trump Allies Circulate List of Alternate Chief of Staff Candidates, *Breitbart*, Feb. 14, 2017, available at <http://www.breitbart.com/big-government/2017/02/14/flynn-resigns-priebus-future-doubt-trump-allies-circulate-list-alternate-chief-staff-candidates/>.

⁸ Darcy, *Business Insider*, Mar. 8, 2017; Lloyd Grove, Steve Bannon: I Didn’t Order Breitbart Hit On Reince Priebus, *Daily Beast*, Feb. 15, 2017, available at <http://www.thedailybeast.com/articles/2017/02/15/steve-bannon-i-didn-t-order-breitbart-hit-on-reince-priebus.html>.

⁹ *Id.*

¹⁰ Darcy, *Business Insider*, Mar. 8, 2017; see also Jonathan Swan, Steve Bannon Privately Unloaded On Breitbart Reporter, *Axios*, Feb. 15, 2017, available at <https://www.axios.com/steve-bannon-privately-unloads-on-breitbart-2263308411.html>.

¹¹ Darcy, *Business Insider*, Mar. 8, 2017.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Matthew Boyle, Exclusive - Sean Spicer: President Trump Taking Message of Success Directly to America

and President Trump on February 27.¹⁷ Considering Mr. Bannon's role and responsibilities, it is likely he was involved in authorizing the interviews.

In a subsequent interview about the reported conversations between him and Mr. Bannon, Mr. Boyle said the story was "absurd and fake news."¹⁸ However, Mr. Boyle only asserted he "never said those things" – apparently referring to his alleged comment that "Bannon had betrayed Breitbart and was guilty of 'treason'" – and denied that he had issued any instructions not to publish any more articles critical of Mr. Priebus. Notably, however, Mr. Boyle did not deny that the conversations between him and Mr. Bannon took place or that Mr. Bannon sought to influence Breitbart's reporting on Mr. Priebus.

Based on these reports, it appears that Mr. Bannon and Mr. Boyle engaged in at least two conversations regarding Breitbart's news coverage of Mr. Priebus following Breitbart's publication of Mr. Boyle's February 14 news story. It further appears that these communications resulted in Breitbart receiving preferential access to senior members of the Trump administration. As a result, it appears Mr. Bannon engaged in the alleged communications with Mr. Boyle and that they involved official matters and were related to Mr. Bannon's duties.

Mr. Marlow's Reported Communications with Mr. Bannon

Mr. Marlow also has acknowledged communications with Mr. Bannon. In an interview aired on March 17, 2017, a reporter asked Mr. Marlow about his contacts with President Trump and Mr. Bannon. Specifically, when asked whether Mr. Bannon reaches out to him, Mr. Marlow responded: "Every so often. Not as often as I would have expected. I think Steve is a very busy man these days."¹⁹ The interviewer then went on to ask Mr. Marlow about the possible connection between President Trump's tweets accusing President Obama of wiretapping him and a related article that had appeared in Breitbart the day before.²⁰ Mr. Marlow responded: "That, I

Around Inaccurate 'Filter of the Mainstream Media, Feb. 18, 2017, available at <http://www.breitbart.com/big-government/2017/02/18/exclusive-sean-spicer-president-trump-taking-message-success-directly-america-around-inaccurate-filter-mainstream-media/>.

¹⁶ Matthew Boyle, Exclusive - Meet Deputy Chief of Staff Katie Walsh: The Woman Who Helps Coordinate Trump's White House, Feb. 22, 2017, available at <http://www.breitbart.com/big-government/2017/02/22/exclusive-meet-deputy-chief-staff-katie-walsh-helps-coordinate-white-house/>.

¹⁷ Matthew Boyle, Exclusive - President Trump: Oscars 'Were Focused So Hard on Politics' They Could Not Get the Basics of the Ceremony Right, Feb. 27, 2017, available at <http://www.breitbart.com/big-government/2017/02/27/exclusive-president-trump-oscar-fail-focused-hard-politics-not-get-basics-right/>.

¹⁸ Joe Concha, Breitbart Editor Slams 'Absurd' Story About Dispute with Bannon Over Coverage, *The Hill*, Mar. 8, 2017, available at <http://thehill.com/homenews/media/323093-breitbart-editor-slams-absurd-story-about-dispute-with-bannon-over-coverage>.

¹⁹ Hannah Rapple, Stephanie Gosk, and Anneke Foster, Insider Breitbart News: 'We're Not a Hate Site', *NBC News*, Mar. 17, 2017, available at <http://www.nbcnews.com/news/us-news/breitbart-editor-we-re-not-hate-site-n733576>; see also <http://www.breitbart.com/video/2017/03/17/watch-breitbart-editor-chief-alex-marlow-interviewed-nbcs-today/> (transcript).

²⁰ Rapple, Gosk, and Foster, *NBC News*, Mar. 17, 2017.

don't know. I have heard things, probably similar things to you, and I heard a Breitbart article played a big factor in it."²¹

In the interview, Mr. Marlow admitted to having conversations with Mr. Bannon and acknowledged the possible impact that at least one of Breitbart's articles had on President Trump. Given the nature of Mr. Bannon's reported conversations with Mr. Boyle, and the impact that Breitbart's news coverage seemingly had on the Trump administration, there is a reasonable basis to believe that Mr. Bannon's conversations with Mr. Marlow were similarly focused on official matters, such as Breitbart's news coverage of the administration, and were related to Mr. Bannon's duties.

Potential Violations

Under the Ethics Pledge, an appointee may not "participate in any particular matter involving specific parties" that is directly and substantially related to his or her former employer for two years after his appointment.²² The definition of "particular matter involving specific parties" contained in the Ethics Pledge incorporates the longstanding interpretation of that term reflected in 5 C.F.R. § 2641.201(h).²³ Moreover, the definition specifically expands the term's scope to include "any meeting or other communication relating to the performance of [the appointee's] official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties."²⁴ The Ethics Pledge also permits the President or his designee to grant a waiver from the restrictions.²⁵

Mr. Bannon's communications with Mr. Boyle and Mr. Marlow are subject to the Ethics Pledge's restriction because Breitbart is Mr. Bannon's former employer and he is within two years of his appointment.²⁶ Moreover, it appears that Mr. Bannon's communications with Mr. Boyle and Mr. Marlow related to the performance of Mr. Bannon's duties. Mr. Bannon's responsibilities as Chief Strategist and Senior Counselor to the President almost certainly include communications matters involving the Trump administration. Given that at least two reported

²¹ *Id.*

²² Ethics Pledge, sec. 1, para. 6.

²³ Ethics Pledge, sec. 2(s).

²⁴ *Id.* This definition is the same as the definition found in the Ethics Pledge issued by President Obama, and the Office of Government Ethics has determined that its guidance regarding President Obama's Ethics Pledge applies to President Trump's. Executive Order 13490, Ethics Commitments by Executive Branch Personnel, sec. 2(h) (Jan. 21, 2009); OGE Legal Advisory LA-17-03 (Mar. 20, 2017) ("OGE's prior guidance on Executive 13490 is applicable to Executive Order 13770 to the extent that it addresses language common to both executive orders."). See also OGE Memorandum DO-09-011 (Mar. 26, 2009), available at [https://oge.gov/Web/OGE.nsf/Legal%20Advisories/1231E7FF31E2E54985257E96005FBB7E/\\$FILE/DO-09-011.pdf?open](https://oge.gov/Web/OGE.nsf/Legal%20Advisories/1231E7FF31E2E54985257E96005FBB7E/$FILE/DO-09-011.pdf?open) (interpreting the term "particular matter involving specific parties").

²⁵ Ethics Pledge, sec. 3.

²⁶ The communications in question also were not open to all interested parties and thus cannot be exempt from the Ethics Pledge's expanded definition.

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conversations between Mr. Bannon and Mr. Boyle allegedly concerned Breitbart's treatment of Mr. Priebus in its news coverage, and that one result of those communications was that Breitbart was accorded preferential interviews with three top administration officials, it appears these conversations were related to official matters and were part of Mr. Bannon's performance of his official duties. In addition, there is no evidence Mr. Bannon received a waiver from the President or his designee. Accordingly, if the communications took place as reported, they likely violated the Ethics Pledge.

Conclusion

These potential violations come to light after repeated incidents demonstrating an apparent disregard among White House staff for the importance of ethics and of avoiding conflicts. Within the last two months, CREW has asked the White House Counsel's Office to investigate potential ethical violations by Counselor to the President Kellyanne Conway and Assistant to the President for Strategic Initiatives Christopher P. Liddell, and has brought to your attention potential violations of the Federal Advisory Committee Act. Again here, there are reasonable grounds to believe rules established to ensure ethical conduct by executive branch officials may have been violated.

Accordingly, CREW requests that the White House Counsel's Office investigate whether Mr. Bannon violated the Ethics Pledge by participating in conversations with Mr. Boyle and/or Mr. Marlow regarding official matters that are part of Mr. Bannon's performance of his official duties, such as Breitbart's news coverage of Mr. Priebus or other matters relating to the Trump administration. If you determine Mr. Bannon violated the pledge and did not receive a waiver, CREW further requests you take any necessary disciplinary action.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

cc: Walter M. Shaub, Jr.
Director, U.S. Office of Government Ethics

Jason Chaffetz, Chairman, and Elijah E. Cummings, Ranking Minority Member
House Committee on Oversight and Government Reform