

United States Senate

WASHINGTON, DC 20510

December 10, 2018

Emmet T. Flood
Acting White House Counsel
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. Flood,

We write to request information regarding Assistant to the President and Deputy Chief of Staff for Communications Mr. William “Bill” Shine, and his compliance with federal ethics law. In his role as a top communications advisor at the White House, Mr. Shine has reportedly interacted with employees of Fox News Channel (“Fox News”) and its affiliates.¹ However, a recently-released financial disclosure form² reveals that Mr. Shine holds a significant financial interest in 21st Century Fox³, the current owner of Fox News Channel,⁴ and is scheduled to receive millions of dollars in bonuses and other payments from 21st Century Fox while working at the White House—raising questions about his ability to adhere to federal ethics requirements.

Mr. Shine Continues to Receive Large Payments from 21st Century Fox while Serving as President Trump’s Deputy Chief of Staff for Communications.

President Trump appointed Mr. Shine to serve in his Administration as Assistant to the President and Deputy Chief of Staff for Communications in July 2018.⁵ In that role, Mr. Shine “reports directly to the president” and is responsible for “overseeing both the press and communications teams.”⁶ Prior to working in the White House, Mr. Shine served as a senior executive at 21st Century Fox. In announcing Mr. Shine’s hiring, the White House championed his “two decades of television programming, communications, and management experience,” including

¹ Politico, “‘I forgot he’s even there’: Bill Shine lies low in the West Wing,” Annie Karni and Eliana Johnson, August 31, 2018, <https://www.politico.com/story/2018/08/31/bill-shine-donald-trump-white-house-805786>.

² U.S. Office of Government Ethics, “Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e): William Shine,” October 9, 2018, https://www.scribd.com/document/393967899/William-Shine-new-entrant-report-pending-review#from_embed.

³ CNBC, “Financial disclosure form for top Trump communications advisor Bill Shine shows \$15.4 million in severance and bonuses from Fox News,” Brian Schwartz, November 23, 2018, <https://www.cnbc.com/2018/11/23/trump-aide-bill-shine-gets-15-million-in-bonuses-severance-from-fox.html>.

⁴ 21st Century Fox, “Cable Network Programming,” <https://www.21cf.com/businesses/cable-network-programming/>.

⁵ The White House, “President Donald J. Trump Announces Senior Staff Appointment,” July 5, 2018, <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-senior-staff-appointment/>.

⁶ New York Times, “Bill Shine, Ousted From Fox News in Scandal, Joins White House Communications Team,” Maggie Haberman, July 5, 2018, <https://www.nytimes.com/2018/07/05/us/politics/bill-shine-white-house-communications.html>.

his experience as “Co-President of Fox News Channel and Fox Business Network.”⁷ Mr. Shine worked at the company from September 1996 until May 2017.⁸

According to Mr. Shine’s recently-released financial disclosure, Mr. Shine received a large severance payment from 21st Century Fox, and is scheduled to receive additional payments even while serving in the White House. Mr. Shine received an \$8.4 million severance package from the company in 2017 and entered into a “Severance Agreement” through which he “will receive a bonus and options for 2018 & 2019” worth approximately \$3.5 million for each year.⁹

Mr. Shine’s Receipt of Large Payments from 21st Century Fox Raises Concerns about Compliance with Federal Ethics Laws and Regulations.

The federal criminal conflict of interest law, 18 U.S.C. § 208, states that executive branch officers and officials may not participate “personally and substantially” through “decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise” in any “particular matter” in which they have a financial interest.¹⁰ Covered officials may take actions that would otherwise place them in violation of 18 U.S.C. § 208 if they receive a written waiver from their agency’s Designated Agency Ethics Official (DAEO). Federal officials who violate federal conflict of interest law may be subject to civil or criminal penalties outlined in 18 U.S.C. § 216, which may include civil fines, imprisonment, or both. Recently released guidance from the U.S. Office of Government Ethics (OGE) makes clear that federal employees with outstanding severance payments are subject to the prohibitions of 18 U.S.C. § 208.¹¹

OGE regulations regarding impartiality (5 CFR 2635.502) further specify that if a government official “knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of ... a person with whom he has a covered relationship,”¹² then the employee should not participate in the matter unless given explicit authorization. This regulation defines “a covered relationship” as “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee”¹³ and any person “with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine

⁷ The White House, “President Donald J. Trump Announces Senior Staff Appointment,” July 5, 2018, <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-senior-staff-appointment/>.

⁸ National Public Radio, “Fox News Co-President Bill Shine Resigns,” David Folkenflik, May 1, 2017, <https://www.npr.org/sections/thetwo-way/2017/05/01/526429448/fox-news-president-bill-shine-resigns>.

⁹ CNBC, “Financial disclosure form for top Trump communications advisor Bill Shine shows \$15.4 million in severance and bonuses from Fox News,” Brian Schwartz, November 23, 2018, <https://www.cnbc.com/2018/11/23/trump-aide-bill-shine-gets-15-million-in-bonuses-severance-from-fox.html>.

¹⁰ 18 U.S.C. § 208. Per 5 C.F.R. 2640.103, the term “particular matter” refers to issues focused on “the interests of specific persons, or a discrete and identifiable class of persons.” It “may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons.”

¹¹ U.S. Office of Government Ethics, “Conflicts of Interest Considerations: Common Employment Interests,” June 22, 2018, p. 7, [https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/\\$FILE/Employment%20\(Common%20Interests\).pdf?open](https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/$FILE/Employment%20(Common%20Interests).pdf?open).

¹² 5 CFR 2635.502, Personal and business relationships

¹³ *Id.*

consumer transaction.”¹⁴ OGE guidance also makes clear that any federal employee with an outstanding severance payment “will...have a covered relationship for as long as the severance payment is outstanding.”¹⁵ Mr. Shine clearly has a covered relationship with Fox News while he is scheduled to receive severance payments from 21st Century Fox.

Moreover, Mr. Shine’s receipt of large payments from 21st Century Fox raises questions about his compliance with OGE regulations regarding extraordinary payments from former employers (5 CFR 2635.503). An extraordinary payment is “any item, including cash or an investment interest, with a value in excess of \$10,000” paid to a federal employee by a former employer “on the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position” and “other than pursuant to the former employer’s established compensation, partnership, or benefits program.”¹⁶ These rules state that, “an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service.”¹⁷ Extraordinary payments can also be considered a supplementation of a federal salary, prohibited under 18 U.S.C. § 209.¹⁸ OGE has made clear that “a severance payment received after the employee’s entry in to Government service can raise supplementation concerns under 18 U.S.C. § 209” and that “a severance payment received before entry into Government service with a value in excess of \$10,000 may raise concern as to whether it constitutes an ‘extraordinary payment’.”¹⁹

In addition, President Trump signed Executive Order 13770 on January 28, 2017, prohibiting political appointees from participating “in any particular matter involving specific parties that is directly and substantially related to” any person that the appointee “served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment.” The ban extends for two years after the date of appointment.²⁰

Mr. Shine Does Not Appear to Have Received Sufficient Authorizations or Waivers Absolving Him of Ethics Compliance Concerns.

Mr. Shine’s role as Deputy Chief of Staff for Communications necessitates his involvement with employees and affiliates of Fox News Channel. Mr. Shine is responsible for overseeing the White House press team, which holds press briefings for White House correspondents. Fox News

¹⁴ *Id.*

¹⁵ U.S. Office of Government Ethics, “Conflicts of Interest Considerations: Common Employment Interests,” June 22, 2018, p. 7, [https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/\\$FILE/Employment%20\(Common%20Interests\).pdf?open](https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/$FILE/Employment%20(Common%20Interests).pdf?open).

¹⁶ 5 CFR 2635.503.

¹⁷ 5 CFR 2635.503.

¹⁸ 18 U.S.C. 209.

¹⁹ U.S. Office of Government Ethics, “Conflicts of Interest Considerations: Common Employment Interests,” June 22, 2018, p. 8, [https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/\\$FILE/Employment%20\(Common%20Interests\).pdf?open](https://www.oge.gov/web/oge.nsf/All%20Documents/10ED9DDFA2A4C051852582B4006248BF/$FILE/Employment%20(Common%20Interests).pdf?open).

²⁰ The White House, “Executive Order: Ethics Commitments by Executive Branch Appointees,” January 28, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/>.

reporters have a front-row seat at White House press briefings.²¹ In addition, Mr. Shine has reportedly been personally involved in White House-related matters with Fox News and its affiliates during his tenure in the Administration. He has, for example, helped prepare President Trump for interviews with Fox News hosts, and he reportedly communicates with 21st Century Fox Executive Chairman Rupert Murdoch.²²

Mr. Shine has received two waivers from ethics rules and pledges, but neither appears to cover all of his potential violations of ethics rules and regulations. The White House Counsel in July 2018 provided Mr. Shine with an authorization to participate in matters involving his former employer, Fox News, under 5 CFR 2635.502, permitting Mr. Shine to participate certain matters where a reasonable observer could have impartiality concerns.²³ The waiver, however, does not address the slew of additional ethics concerns created by Mr. Shine's multi-million dollar "Severance Agreement" under federal statutes and regulations banning financial conflicts, supplementation of income, and extraordinary payments (18 U.S.C § 208, 18 U.S.C. § 209, and 5 CFR 2635.503).

In addition, Mr. Shine is subject to an undated Ethics Pledge Waiver that permits all appointees in the Executive Office of the President to "participate in communications and meetings with news organizations on matters of broad policy and particular matters of general applicability, notwithstanding the limitations found in....the Ethics Pledge."²⁴ This waiver does not address employees ethics obligations under federal statutes and regulations banning financial conflicts, supplementation of income, and extraordinary payments (18 U.S.C § 208, 18 U.S.C. § 209, or 5 CFR 2635.503).

Questions

21st Century's Fox's previous and ongoing payments to Mr. Shine of millions of dollars in severance payments raise questions about his compliance with federal conflict of interest statutes and regulations. To help us better understand Mr. Shine's adherence to federal conflict of interest laws and regulations, we request that you provide us with answers to the following questions no later than January 2, 2019:

1. Since starting his job at the White House in July 2018, has Mr. Shine informed White House ethics officials about meetings or communications with current employees of 21st Century Fox, Fox News Channel, and its affiliates? If so, please provide a list of relevant meetings and participants and copies of any relevant communications.
2. Have White House ethics officials made any ethics determinations regarding Mr. Shine's participation in meetings or communications related to particular matters that affect 21st Century Fox, Fox News Channel, and its affiliates? If so, please provide copies of any

²¹ The Hill, "Conservative media outlets gain seats in White House briefing room," Brandon Carter, June 30, 2017, <https://thehill.com/homenews/media/340323-conservative-media-outlets-gain-seats-in-white-house-briefing-room>.

²² Politico, "'I forgot he's even there': Bill Shine lies low in the West Wing," Annie Karni and Eliana Johnson, August 31, 2018, <https://www.politico.com/story/2018/08/31/bill-shine-donald-trump-white-house-805786>.

²³ The White House, Memorandum for Bill Shine, Assistant to the President and Deputy Chief of Staff, July 13, 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/07/Shine-Authorization.pdf>.

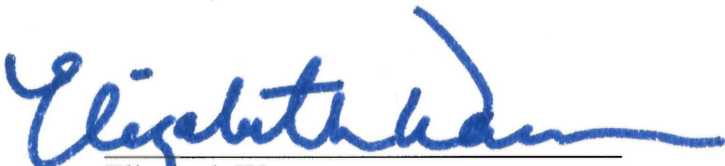
²⁴ Memorandum for Appointees in the Executive Office of the President from the Counsel to the President, undated, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/ALL%20EOP.PDF>.

determinations, ethics guidance, or ethics advice regarding Mr. Shine's participation in these meetings, or, if the determinations, guidance, or advice was communicated orally and not otherwise documented, a description of any determinations, guidance, or advice communicated to Mr. Shine or his staff.

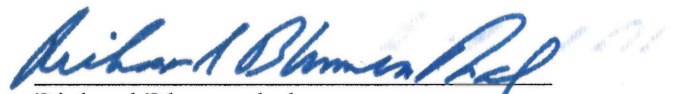
3. Did you or other ethics officials at the White House provide Mr. Shine with any authorizations or ethics waivers regarding his participation in meetings or communications related to particular matters that affect 21st Century Fox, Fox News Channel, and its affiliates other than those identified in this letter? If so, please provide copies of those authorizations or waivers. If not, please describe why the White House does not believe authorizations or waivers were necessary or warranted.
4. Did you or other ethics officials at the White House make any ethics determinations under 18 U.S.C. § 209 or 5 CFR 2635.503 regarding Mr. Shine's continued receipt of payments from 21st Century Fox in the form of his "Severance Agreement", which includes a "bonus and options"? If so, please provide copies of any determinations, ethics guidance, or ethics advice regarding Mr. Shine's continued payments from 21st Century Fox.
5. Has Mr. Shine entered into any recusal agreements as a result of his financial connection to 21st Century Fox? If so, please provide copies of those recusal agreements. If not, please describe why the White House does not believe recusal agreements are warranted.

Please do not hesitate to reach out to Susannah Savage of Senator Warren's staff, Sam Simon of Senator Blumenthal's staff, Joseph Wender of Senator Markey's staff, or Joe Gaeta of Sentaor Whitehouse's staff with any questions or concerns.

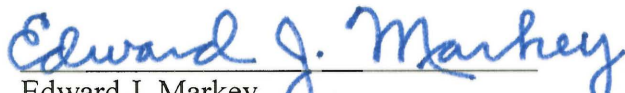
Sincerely,




Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator



Edward J. Markey
United States Senator



Sheldon Whitehouse
United States Senator

CC:
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