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August 4, 2017

Gen. John Kelly, ret.  
Chief of Staff  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Honorable Jeff Sessions  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

David Apol  
Acting Director  
Office of Government Ethics  
1201 New York Avenue NW Suite 500  
Washington, D.C. 20005

Dear Sirs:

We write to request that your offices exercise the appropriate authority to investigate, prosecute, or make recommendations regarding potential violations of federal laws and regulations by White House Chief Strategist Steve Bannon.

According to a July 27, 2017 report by Center for Public Integrity (CPI), veteran Republican media strategist Alexandra Preate is providing professional services to the White House and White House Chief Strategist Steve Bannon, yet “is not employed by President Donald Trump’s administration or paid by the federal government.”<sup>1</sup>

Preate, who is founder and CEO of the public relations firm Capital HQ, “describes herself as Bannon’s ‘personal spokesperson.’” But she also collaborates with other White House

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<sup>1</sup> Christina Wilkie, *Steve Bannon Has a Shadow Press Office. It May Violate Federal Law*, Center for Public Integrity (July 28, 2017), <https://goo.gl/UZ1Zrz>.

officials on public messaging and responses to press inquiries,” CPI reported.<sup>2</sup> *Politico* similarly reported on July 6 that:

Bannon relies on an outside press person, former Breitbart spokeswoman Alexandra Preate, who formerly represented Trump donor and Breitbart backer Rebekah Mercer. But her job is primarily to keep Bannon’s name out of the press, to avoid distracting from Trump’s agenda, according to two White House officials.<sup>3</sup>

In early July, a CPI reporter contacted the White House Press Office with questions about Bannon’s personal financial disclosure, and after initial emails with Press Office staff:

received a phone call from Preate, who said that she was calling ‘for Steve.’ Preate later arranged a call for the Center for Public Integrity with a member of the White House Counsel’s Office, who addressed questions about Bannon’s financial disclosures.

From July 11 through July 13, Preate called the Center for Public Integrity 18 times about the story. During these conversations, Preate would only agree to speak off the record, which is why the Center is not reporting on the content of the calls.<sup>4</sup>

An associate at Preate’s firm, Capital HQ, also told CPI that Preate “has never received a dime” from Bannon for her work on his behalf.<sup>5</sup>

This arrangement raises several potential violations of federal law and regulations.

First, based on the above reports, it appears that Alexandra Preate and her firm Capital HQ has been providing professional services to the White House and its Chief Strategist Bannon in his governmental capacity without receiving compensation from the government.

As noted above, in July a CPI reporter contacted the White House Press Office for a story related to Bannon’s governmental responsibilities, but was contacted by Preate, rather than a White House Press Office employee. Preate went on to arrange a phone call between the reporter and White House staffers *other than Bannon*, and over a three day period called the reporter 18 times. This set of facts indicates that Preate was providing services to the White House, and effectively operating as a White House Press Office contractor, yet without being paid by the White House.

If Bannon has accepted Preate’s provision of professional services to the government without any compensation, then Bannon is likely in violation of the Antideficiency Act, which

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<sup>2</sup> *Id.*

<sup>3</sup> Tara Palmeri, *Trump’s Aides Build Their Own Empires in the West Wing*, *Politico* (July 6, 2017), <https://goo.gl/835jJ5>.

<sup>4</sup> Wilkie, *supra* note 1.

<sup>5</sup> *Id.*

provides that a government employee “may not accept voluntary services for [the] government or employ personal services exceeding that authorized by law.” 31 U.S.C. § 1342. An officer or employee who violates this statutory prohibition is subject to disciplinary action, up to and including removal from the federal service. 31 U.S.C. § 1349. If the violation is knowing and willful, the officer or employee may be imprisoned up to 2 years and fined. 31 U.S.C. § 1350. In addition, if an executive branch employee violates this provision, the head of the agency—in this case, Chief of Staff Kelly—“shall report immediately to the President and Congress all relevant facts and a statement of actions taken.” 13 U.S.C. § 1351.

Second, Preate appears to be providing services to the White House, but at other times, she also appears to be providing services to Bannon—indeed, Preate had been serving as spokeswoman for Bannon as far back as August 2016.<sup>6</sup> And those duties may be intertwined; two White House officials told *Politico* that “her job is primarily to keep Bannon’s name out of the press, to avoid distracting from Trump’s agenda.”

To the extent that Preate is providing services to Bannon (or other White House staffers) in his *personal capacity*, Bannon may be in violation of the executive branch gift rules, which prohibit an employee from soliciting or accepting a gift “because of the employee’s official position” or from a prohibited source. 5 C.F.R. § 2635.202(a)-(b); *see also* 5 U.S.C. § 7353.<sup>7</sup> The definition of “gift” includes “services.” 5 C.F.R. § 2635.203(b).

The exception for gifts “motivated by a family relationship or personal friendship rather than the position of the employee” does not apply here. *See* 5 C.F.R. § 2635.204(b). Even before Trump became president and Bannon became Chief Strategist, reports indicate that it was Preate’s firm promoting Bannon, rather than Preate herself, and that it was being paid to do so by an undisclosed third party.<sup>8</sup> The “personal friendship” exception does not encompass gifts provided by an entity, like Capital HQ.<sup>9</sup>

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<sup>6</sup> *See* Wilkie, *supra* note 1 (noting “In August, Preate first appeared in a news story as a spokeswoman for Bannon. This was a few days before Trump officially named Bannon CEO of his presidential campaign . . . Later on, if news organizations described Bannon as a Trump campaign staffer, it was Preate — not a Trump campaign representative — who would push back, reminding reporters that Bannon was offering his services to Trump for free . . . Throughout the final months of the campaign, Preate appeared in media reports identified only as a “Bannon spokeswoman.” But behind the scenes, Preate’s team at Capital HQ worked hard to promote Bannon.”).

<sup>7</sup> “Prohibited source” is defined as any person who: “(1) Is seeking official action by the employee’s agency; (2) Does business or seeks to do business with the employee’s agency; (3) Conducts activities regulated by the employee’s agency; (4) Has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties.” 5 C.F.R. § 2635.203(d).

<sup>8</sup> *See* Tim Molloy, *Rebranding Steve Bannon: Inside the PR Campaign to Rehab Trump Adviser’s Image*, *The Wrap* (Nov. 16, 2016), <https://goo.gl/5Z66KY> (describing how publicist Maria Sliwa, emailing on behalf of Preate’s CapitalHQ, worked to promote Bannon’s image, yet stated “I’m not working for Bannon . . . I have a client who is”).

<sup>9</sup> *See* 5 C.F.R. § 2635.204(b), example 2 (illustrating that a gift attributable to a business does not qualify for the personal relationship exception). Moreover, if Preate or her firm had been billing Bannon

The “personal friendship” exception also does not apply if third parties are paying for the services, and there may be reason to believe that Preate is in fact being compensated for her work for Bannon and the White House.<sup>10</sup> According to CPI, Preate’s top client and a major source of her firm’s income is *Breitbart News*, which Bannon led until recently.<sup>11</sup> Preate has also represented Rebekah Mercer, whose family is part-owner of *Breitbart*, and who has a long relationship with Bannon.<sup>12</sup> Bannon and members of the Mercer family continue to co-own at least two companies, according to Bannon’s most recent financial disclosure form: the production company Glittering Steel and the data firm Cambridge Analytica.<sup>13</sup> Evidence also indicates that a super PAC chaired by Rebekah Mercer and financed by her father quietly subsidized Bannon’s work as Trump campaign CEO through payments to these companies.<sup>14</sup> If *Breitbart* is subsidizing Preate’s work for its former CEO, or if the Mercer family is paying her to provide services to their longtime business associate, then *Breitbart* or the Mercers may be providing prohibited gifts to Bannon.

For the above reasons, we request that your offices investigate, prosecute, or make recommendations regarding these potential violations of federal laws and regulations.

Thank you for your attention to this matter.

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for these professional services prior to his government service but ceased billing him while continuing to provide the services after he entered government, Bannon’s acceptance of these services as a government employee may violate the salary supplementation ban at 18 U.S.C. § 209. An employee who violates 18 U.S.C. § 209 is subject to up to one year in prison, and whoever willfully violates the prohibition could be imprisoned up to five years, enforceable by the Attorney General. 18 U.S.C. § 216(a).

<sup>10</sup> As discussed in the preceding footnote, any gratuitous provision of these professional services without charge to Bannon may also violate 18 U.S.C. § 209. The same is true if a third-party donor is covering the fees for services provided by Preate or her firm. The only difference is that the payor offense would be attributable to the third-party payor, rather than to Preate or her firm. *See* 18 U.S.C. § 209(a) (establishing criminal liability for “[w]hoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection”); *see also* OGE Inf. Advisory Op. 02x4, at 1 (2002) (“The payor offense is defined by reference to the payee offense, that is, making a contribution to or supplementation of salary that would violate the payee offense if received by an employee.”).

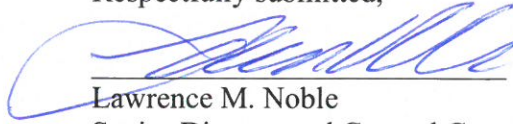
<sup>11</sup> Wilkie, *supra* note 1.

<sup>12</sup> *Id.*

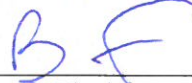
<sup>13</sup> *Id.*

<sup>14</sup> *See, e.g.* Andrew Perez, *Trump Campaign and Super PAC May Have Violated Election Rules, Says Watchdog Group*, Fast Company (April 12, 2017), <https://goo.gl/d6pBaf> (noting “The Campaign Legal Center believes Make America Number 1, a super PAC that backed Trump, may have improperly subsidized Bannon’s salary”).

Respectfully submitted,



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