

Congress of the United States
Washington, DC 20515

February 1, 2017

The Honorable James Mattis
Secretary
U.S. Department of Defense
1400 Defense Pentagon
Washington, D.C. 20301-1400

Dear Secretary Mattis:

We are writing to request that the Department of Defense conduct a review of a potentially serious violation of the Emoluments Clause by retired Lt. General Michael Flynn. As a retired Army officer, General Flynn was prohibited from accepting direct or indirect payments from foreign governments. Since his retirement in 2014, General Flynn has made regular appearances on Russia Today (RT), that country's state-sponsored propaganda outlet. He has admitted to being paid on at least one of these occasions—at an RT gala in Moscow where he dined with Russian President Vladimir Putin.

Defense Department Guidance on Emoluments Clause Violations

The Emoluments Clause, which is set forth in Article 1, Section 9, Clause 8 of the U.S. Constitution, prohibits any person “holding any Office of Profit or Trust” from accepting gifts or payments from any foreign country. The Department of Defense has made clear that this restriction applies to retired military officers because they continue to hold offices of trust.¹

For example, in June 2013, the Defense Department highlighted this restriction on retired officers in particular:

Significantly, **retired** regular military officers are also subject to the Emoluments Clause because they are subject to recall, and, therefore, hold an “Office of Profit or Trust” under the Emoluments Clause.²

According to the Department of Defense, a “foreign state” includes commercial entities that are owned or controlled by a foreign government or are considered instruments of the foreign government:

¹ Department of Defense, *Summary of Emoluments Clause Restrictions* (online at www.dod.mil/dodgc/defense_ethics/resource_library/summary_emoluments_clause_restrictions.pdf).

² Department of Defense, *Application of the Emoluments Clause to DoD Civilian Employees and Military Personnel* (June 2013) (online at www.dod.mil/dodgc/defense_ethics/resource_library/emoluments_clause_applications.pdf) (emphasis in original).

A foreign state includes any organization that is owned or operated by a foreign government, including federal, regional and local level governments. ... Thus, foreign governmental entities, such as commercial entities owned or controlled by a foreign government and foreign public universities controlled by a foreign government, can be considered instrumentalities of “foreign states” for purposes of the Emoluments Clause.³

The Department of Defense has also warned its retired officers against accepting “indirect” foreign payments, including from pass-through companies in the United States:

There are several types of scenarios in which an employee will be deemed to have received an “emolument” where the payment is indirectly received from a foreign state. Such scenarios include consulting, law, or other partnership distributions, as well as payments (such as salary) **from domestic professional corporations. Federal personnel, especially retired military personnel, need to be aware of these potential traps for the unwary.**⁴

“The Kremlin’s Principal International Propaganda Outlet”

On January 6, 2017, the National Intelligence Council issued its report detailing Russia’s attack on the United States in an effort to undermine our election. This report described RT in stark terms as the “Kremlin’s principal international propaganda outlet.”⁵ It explained how the “Kremlin staffs RT and closely supervises RT’s coverage, recruiting people who can convey Russian strategic messaging because of their ideological beliefs.”⁶ In 2015, RT reportedly received 15.38 billion rubles (\$400 million) in state funding from the Russian government.⁷

General Flynn has acknowledged that he was paid on at least one occasion to travel to Russia and speak at a gala hosted by RT.⁸ He stated that the funds were paid through a speaker’s bureau in the United States, Leading Authorities (LAI), which also took a portion of the funds. He had the following exchange with the *Washington Post*:

Q: Tell me about the RT relationship?

A: I was asked by my speaker’s bureau, LAI. I do public speaking. It was in Russia. It was a paid speaking opportunity. I get paid so much. The speaker’s bureau got paid so much, based on our contract.

³ *Id.*

⁴ *Id.* (emphasis added).

⁵ National Intelligence Council, *Assessing Russian Activities and Intentions in Recent US Elections* (Jan. 6, 2017) (online at www.dni.gov/files/documents/ICA_2017_01.pdf).

⁶ *Id.*

⁷ *Looking at the West, Russia Beefs Up Spending on Global Media Giants*, Moscow Times (September 23, 2014) (online at <https://themoscowtimes.com/articles/looking-west-russia-beefs-up-spending-on-global-media-giants-39708>).

⁸ *The Kremlin’s Candidate, In the 2016 Election, Putin’s Propaganda Network is Picking Sides*, Politico Magazine (May/June 2016) (online at www.politico.com/magazine/story/2016/04/donald-trump-2016-russia-today-rt-kremlin-media-vladimir-putin-213833).

- Q: Can you tell me how much you got for that?
A: No.
Q: No? Because you don't want to get your fees out there?
A: Yeah, I don't.⁹

Request for Documents and Information

It is extremely concerning that General Flynn chose to accept payment for appearing at a gala hosted by the propaganda arm of the Russian government, which attacked the United States in an effort to undermine our election, according to U.S. intelligence agencies. Even more concerning is that General Flynn, who President Trump has now chosen to be his National Security Advisor, may have violated the Constitution in the process.

It remains unclear how much General Flynn was paid for his dinner with Vladimir Putin, whether he received additional payments from Russian or other foreign sources on separate occasions, or whether he sought the approval of the Department of Defense or Congress to accept any of these payments.

To investigate this matter, we request that you provide, by February 16, 2017, all documents in the possession or control of the Department of Defense from the date of General Flynn's retirement through January 20, 2017, relating to:

1. direct or indirect communications between General Flynn and Russian government officials representatives, affiliates, or agents, or those of any other foreign state;
2. direct or indirect interactions between General Flynn and RT officials representatives, affiliates, or agents;
3. direct or indirect payments received by General Flynn from any foreign source;
4. efforts by General Flynn to seek permission or approval for the direct or indirect receipt of payments from any foreign source; and
5. General Flynn's contract with LAI, as well as any documents relating to his work on behalf of LAI.

⁹ *Trump Adviser Michael T. Flynn On His Dinner With Putin and Why Russia Today is Just Like CNN*, Washington Post (Aug. 15, 2016) (online at www.washingtonpost.com/news/checkpoint/wp/2016/08/15/trump-adviser-michael-t-flynn-on-his-dinner-with-putin-and-why-russia-today-is-just-like-cnn/?utm_term=.203df7052c59).

The Honorable James Mattis

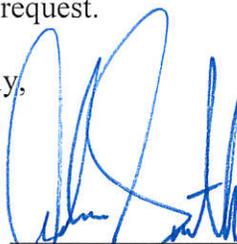
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Thank you for your prompt attention to this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Adam Smith
Ranking Member
Committee on Armed Services



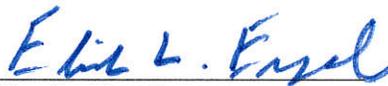
John Conyers, Jr.
Ranking Member
Committee on the Judiciary



Bennie G. Thompson
Ranking Member
Committee on Homeland Security



Adam Schiff
Ranking Member
Permanent Select
Committee on Intelligence



Eliot L. Engel
Ranking Member
Committee on Foreign Affairs

cc: The Honorable Jason Chaffetz, Chairman
Committee on Oversight and Government Reform

The Honorable Mac Thornberry, Chairman
Committee on Armed Services

The Honorable Bob Goodlatte, Chairman
Committee on the Judiciary

The Honorable Michael McCaul, Chairman
Committee on Homeland Security

The Honorable Devin Nunes, Chairman
Permanent Select Committee on Intelligence

The Honorable Ed Royce, Chairman
Committee on Foreign Affairs