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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
KRISTINE J. LOKOS, Democratic Chief Counsel and Staff Director

March 25, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

At the Judiciary Committee's March 9, 2016, Department of Justice (DOJ) oversight hearing you were asked several questions regarding the Emoluments Clause, its applicability to Secretary Clinton and former President Bill Clinton, and whether the DOJ played a role in advising the Department of State about the Clause's prohibitions on the receipt of foreign government money during Secretary Clinton's tenure.¹ In response, you answered that it was an "interesting issue" but that you were "not aware of any other issues along the lines of what you have outlined."² In a follow up question, you were asked whether it would be possible for the DOJ to "look into it and report back to this Committee."³ In reply, you stated, "Well, Senator [Tillis] certainly if you would provide us information, we would see. I'm not sure that I could promise you a report at this time..." while also noting that you were unaware of the facts and circumstances of the matter.⁴

According to Secretary Hillary Clinton's public financial filings and her joint tax returns with former President Bill Clinton, it appears that they received money from foreign states as compensation for some of his personal speeches.⁵ Given Secretary Clinton's position in high public office, there is considerable concern that her joint receipt of those payments may run afoul

¹ Senate Judiciary Hearing, Oversight of the U.S. Department of Justice, Questioning by Senator Thom Tillis (March 9, 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ U.S. Office of Gov't Ethics, OGE Form 278, Executive Branch Personnel Public Financial Disclosure Report: Hillary R. Clinton, (2009) (2010) (2011) (2012), [hereinafter Public Financial Disclosure Report]; U.S. Department of the Treasury-Internal Revenue Service, U.S. Individual Income Tax Return Form 1040: William J. Clinton & Hillary Rodham Clinton, (2010) (2011) (2012).

of the Emoluments Clause of the U.S. Constitution.⁶ Article I, Section 9, Clause 8 of the Constitution states in pertinent part:

[N]o person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.⁷

The Constitutional Convention of 1787 unanimously adopted the “Emoluments Clause” in order to “recognize the ‘necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence,’ specifically, undue influence and corruption by foreign governments.”⁸ The acceptance of foreign money often comes with an expectation that the recipient will act out the desires of the offering party even if those desires run contrary to the best interests of the American people. The Department of Justice (Department) Office of Legal Counsel (OLC) has echoed that concern noting that “[t]hose who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty.”⁹

During her tenure as Secretary of State from January 21, 2009 to February 1, 2013, Secretary Clinton filed four Executive Branch Personnel Public Financial Disclosure Reports. In these four reports, Secretary Clinton reported 215 speaking engagements by former President Clinton for which he received honoraria.¹⁰ The honoraria ranged from \$75,000¹¹ to \$750,000,¹² all of which appear to be joint income to both former President Clinton and Secretary Clinton. Of President Clinton’s 215 speaking engagements, 62 functions were in foreign states,¹³ and at least some of those functions appear to have had significant ties to foreign governments.¹⁴ Additionally, news reports indicate that some of former President Clinton’s domestic speaking engagements were apparently sponsored by a foreign government.¹⁵

⁶ U.S. Const. art. I, §9, cl. 8.

⁷ *Id.*

⁸ *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President’s Receipt of the Nobel Peace Prize*, 33 Op. O.L.C. 1, 3 (2009) (citing Notes of James Madison, United States Constitutional Convention, THE RECORDS OF THE FEDERAL CONVENTION 389 (Max Ferrand ed., Yale Univ. Press 1966) (1787)) [hereinafter OLC Opinion 2009].

⁹ *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 122 (1993) [hereinafter OLC Opinion 1993].

¹⁰ Public Financial Disclosure Report (2009) (2010) (2011) (2012). These reports only indicate those speeches that President and Secretary Clinton sought and received approval for from the State Department and actually delivered. But President Clinton sought approval for many speeches that either the State Department did not approve or that he did not deliver. Included in these requests were many attempts to participate in events sponsored or co-sponsored by foreign governments. Through these requests, President Clinton established a pattern of a “nothing ventured nothing gained” mentality with the State Department requests.

¹¹ Public Financial Disclosure Report (2010).

¹² Public Financial Disclosure Report (2011).

¹³ Public Financial Disclosure Report (2009), (2010), (2011), & (2012).

¹⁴ See *infra* notes 15-17 and accompanying text.

¹⁵ See Alexander Marlow, *Chinese Government Paid Bill Clinton Lucrative Speaking Fee as Sec. State Hillary Made ‘Asia Pivot,’* Breitbart (May 11, 2015), <http://www.breitbart.com/national-security/2015/05/11/chinese-govt-paid-bill-clinton-lucrative-speaking-fee-as-sec-state-hillary-made-asia-pivot/> (noting that funding for President Clinton’s speech to the Silicon Valley Business Information Council in California came from a coalition of Chinese government entities and organizations); Public Financial Disclosure Report (2011) at 10; see generally, *President Clinton to Keynote at Major U.S./Mid East Business Conference*, Business Wire (Sept. 10, 2012), <http://www.businesswire.com/news/home/20120910006060/en/President-Clinton-Keynote-Major-U.S.-Mid-East-Business> (noting that Premier Paula A. Cox, JP, MP on behalf of the country of Bermuda was co-chairing the C3 Summit in New York); see also, C³ Summit 2012, <http://www.c3business2012.com/> (last visited Feb. 3, 2016) (“We would like to thank our sponsors and our affiliates Government of Bermuda [. . .]”); Public Financial Disclosure Report (2012) at 10.

For example, former President Clinton accepted \$500,000 for an appearance sponsored by the United Arab Emirates government.¹⁶ In 2011 former President Clinton was paid \$300,000 by the Tanmiah Commercial Group to speak at a Competitiveness Forum in Saudi Arabia hosted by the Kingdom of Saudi Arabia.¹⁷ The “Office of William Jefferson Clinton” described the event as “...founded in 2006 by the Saudi Arabian General Investment Authority (SAGIA) and [] held under the patronage of King Abdullah Bin Abdulaziz.”¹⁸ According to the Department of State, SAGIA’s mission is to “improv[e] the overall economic prosperity of the country. Toward this goal, [SAGIA] [has] the full support of the Kingdom’s great leadership, including and especially HM King Abdullah bin Abdulaziz, Custodian of the Two Holy Mosques.”¹⁹

The Department has determined that foreign government-owned or controlled enterprises “should indeed be considered a ‘foreign state’ within the meaning of the Emoluments Clause” because the language of the Emoluments Clause is “both sweeping and unqualified” and even extends to corporations that “are susceptible of becoming” agents of foreign states.²⁰ The Department has further stated that the “entity need not engage specifically in ‘political, military, or diplomatic functions’ to be deemed an instrumentality of a foreign state.”²¹

Based upon this record and in light of the fact that the Clintons filed a joint tax return, it appears that some of former President Clinton’s speeches generated income from foreign governments that was shared jointly with Secretary Clinton because under the law they have a community of interest in the profits from the former President’s speaking engagements.²² The Office of Government Ethics has held as much in its advisory opinions, noting that,

¹⁶ Public Financial Disclosure Report (2011) at 11 (listing the sponsor as the “Abu Dhabi Global Environmental Data Initiative (AGEDI)”); see James V. Grimaldi and Rebecca Ballhaus, *Speaking Fees Meet Politics for Clintons*, The Wall Street Journal (Dec. 30, 2015), <http://www.wsj.com/articles/speaking-fees-meet-politics-for-clintons-1451504098>. According to the Wall Street Journal, “the invitation came from the Abu Dhabi Global Environmental Data Initiative (AGEDI), a group created by Sheikh Khalifa bin Zayed Al Nahyan, president of the United Arab Emirates and emir of Abu Dhabi, according to Mr. Clinton’s request to the State Department.” Notably, AGEDI was founded by the Environmental Agency-Abu Dhabi, a governmental agency of the Emirate of Abu Dhabi. See <https://agedi.org/who-we-are/> listing “AGEDI Brochures” which states, “AGEDI works closely with its founders, the United Nations Environment Programme (UNEP) and Environment Agency- Abu Dhabi (EAD) towards achieving sustainable development.” See also, Law No. 16 of 2005 pertaining to the Reorganization of the Abu Dhabi Environmental Agency, <https://www.ead.ae/Documents/PDF-Files/Law-No.-16-of-2005-Eng.pdf>.

¹⁷ Public Financial Disclosure Report (2011) at 5 (listing the source as the “Tanmiah Commercial Group”); see also, Memorandum from Terry Krinvic, Director of Scheduling and Advance for William Jefferson Clinton, to Jim Thessin, Designated Agency Ethics Official, U.S. Dep’t of State (Jan. 7, 2011) (accessed at <http://www.judicialwatch.org/wp-content/uploads/2015/04/85-86-and-121-pgs..pdf>) SAGIA is a governmental agency and the Tanmiah Commercial Group is owned by the Al-Dabbagh Group, which was founded by a former Saudi minister and its current Chairman and CEO, His Excellency Amr Al-Dabbagh, is a former Governor of SAGIA. Given the closeness of these relationships to the Saudi government, Tanmiah could be seen as making efforts on behalf of the Saudi government, and thus potentially becoming susceptible of becoming an agent of a foreign state – a standard articulated by the OLC.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ OLC Opinion 1993 at 120, 121 citing 49 Comp. Gen. 819, 821 (1970) (the “drafters [of the Clause] intended the prohibition to have the broadest possible scope and applicability”).

²¹ OLC Opinion 2009 at 7.

²² *In re Spina*, 416 B.R. 92, 97 (Bankr. E.D.N.Y. 2009). (Citing Section 236 of the New York Domestic Relations Law to hold that any property acquired during a marriage is owned equally by the spouses in an ‘economic partnership,’ and is thus available for equitable distribution upon dissolution of the union.) According to Secretary Clinton and former President Bill Clinton’s joint tax returns, their official residence was in Chappaqua, New York.

[employees who prepare joint tax returns with their spouses] would be considered to have derived financial or economic benefit from their spouses' assets. They would also be charged with knowledge of their spouses' assets. Similarly, where an employee and his spouse share household expenses, it would be difficult to establish that the employee would not derive a financial benefit from his spouse's assets.²³

More importantly, it appears that former President Clinton's presence at speaking events may have been sought after, at least in part, due to his wife's position as Secretary of State; his speaking appearances²⁴ and fees²⁵ both increased after she became Secretary of State.

Indeed, the evidence seems to illustrate that former President Clinton took financial advantage of Secretary Clinton's position at the Department of State. During Secretary Clinton's tenure, millions of dollars flowed not only to former President Clinton, but to the Clinton Foundation and Secretary Clinton, conferring substantial monetary benefits on all parties. Notably, former President Clinton's speaking fees appear to increase from \$150,000 to occasionally \$500,000 or \$750,000, sometimes doubling what he received prior to Secretary Clinton taking the position as the country's top diplomat.²⁶ Based upon this mutual financial benefit and the filing of joint tax returns, a common financial interest existed between them. Moreover, at least a portion of their income from the speeches, as reported by Secretary Clinton, appears to be attributed to foreign government sources.²⁷ At a minimum, this raises serious questions about how these speaking fees could be constitutionally permissible, given the prohibition in the Constitution.

None of the publicly released emails from the Department of State regarding its approval of the speeches indicates that Department of State personnel undertook any analysis of the Emoluments Clause issue. Given the importance of this topic, please respond to the following:

1. What steps, if any, has the Department of Justice taken to determine whether any monies received by former President Clinton and Secretary Clinton were prohibited by the Emoluments Clause? If none, please explain why not.
2. What steps, if any, may the Department of Justice consider in order to remedy any Emoluments Clause violation? If there are none, please explain why not.

²³ U.S. Office of Government Ethics, *04x16 Disclosure of Assets of a Spouse and Dependents*, Nov. 16, 2004.

²⁴ See Arit John, *Putting Bill Clinton's Speaking Fees Into Perspective*, Bloomberg Politics (Apr. 20, 2015), <http://www.bloomberg.com/politics/articles/2015-04-20/putting-bill-clinton-s-speaker-fees-into-perspective> (noting that President Clinton gave 542 speeches over 12 years); compare with Luke Rosiak & Micah Morrison, *State Department approved 215 Bill Clinton speeches, controversial consulting deal, worth \$48m; Hilary Clinton's COS copied on all decisions*, Washington Examiner (July 30, 2014), <http://www.washingtonexaminer.com/state-department-approved-215-bill-clinton-speeches-controversial-consulting-deal-worth-48m/article/2551428> (stating that President Clinton gave 215 speeches in the four years while Hillary Clinton was Secretary of State). In other words, President Clinton gave 40% of his total speeches for a 12 year period of time in the four years while his wife was Secretary of State.

²⁵ See Matthew Mosk & Brian Ross, *Bill Clinton Cashed in When Hillary Became Secretary of State*, ABC News (Apr. 23, 2015), <http://abcnews.go.com/Politics/bill-clinton-cashed-hillary-secretary-state/story?id=30522705>.

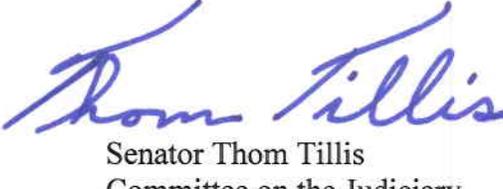
²⁶ *Id.*

²⁷ See *supra*, notes 15-17 and accompanying text.

Thank you in advance for your cooperation with this request. Please respond no later than April 11, 2016 and if you have questions, please contact Josh Flynn-Brown of Senator Grassley's Judiciary Committee staff at (202) 224-5225 and Chad Rhoades of Senator Tillis' Judiciary Committee staff at 202-224-6342.

Sincerely,


Charles E. Grassley
Chairman
Committee on the Judiciary


Senator Thom Tillis
Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 2, 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Thom Tillis
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Senator Tillis:

This responds to your letter to the Attorney General dated March 25, 2016, regarding the Emoluments Clause to the United States Constitution ("Emoluments Clause") and then-Secretary of State Clinton.

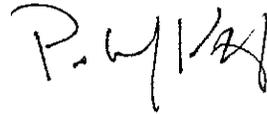
As your letter notes, the Emoluments Clause provides in relevant part that "no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." U.S. Const. art. I, § 9, cl. 8. At present, no statute provides a criminal penalty or civil remedy for receipt of emoluments from a foreign government without the consent of Congress except, in certain circumstances, the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342. The Foreign Gift and Decorations Act authorizes the Attorney General to bring a civil action in U.S. court to recover from federal employees the amount of gifts (plus \$5,000) that they have solicited or received from foreign governments in violation of the Act. However, the Foreign Gifts and Decorations Act does not apply to the receipt of compensation for services rendered.

As a general matter, each Executive Branch agency exercises its own administrative authorities to ensure compliance by that agency's employees who are subject to the obligations of the Emoluments Clause.

The Honorable Charles E. Grassley
The Honorable Thom Tillis
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kadzik". The signature is written in a cursive, somewhat stylized font.

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Member

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

January 25, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Q. Yates
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Attorney General Yates:

I was disappointed to read the Department's May 2, 2016 response to my March 25, 2016 letter regarding the application of the Emoluments Clause of the U.S. Constitution to Secretary Clinton's receipt of foreign government money during her time at the Department of State. In that letter, I asked two very clear questions that the Department failed to adequately answer.¹ The answers to those questions are even more relevant now that there is significant interest in the application of the Emoluments Clause to President Trump.

The new concerns involve speculative future payments to organizations in which the President has ownership interests, although he has stated his intention to direct any such profits to the Treasury. In contrast to these speculative and indirect allegations, Secretary Clinton's apparent violations of the Emoluments Clause were well-documented and direct. She even reported in her tax returns and public financial statements joint income received directly from foreign governments or foreign controlled entities while she was Secretary of State. However, despite the public discussion with Attorney General Lynch of Secretary Clinton's apparent violations of the Clause during the course of a March 9, 2016 Justice Department oversight hearing, the issue has been virtually ignored. Democratic politicians and most of the media have instead focused exclusively on President Trump.

Indeed, on Monday a group filed a lawsuit in federal district court requesting the court find that President Trump's conduct violates the Clause and enjoin him from further violating it.² Noticeably absent from the complaint was any reference to Secretary Clinton, despite substantial evidence of her violations. That is unsurprising given that the plaintiff in the lawsuit is a liberal group known as Citizens for Responsibility and Ethics in Washington, which until recently was controlled by David Brock, a Democratic Party operative and fervent supporter of Hillary

¹ 1. What steps, if any, has the Department of Justice taken to determine whether any monies received by former President Clinton and Secretary Clinton were prohibited by the Emoluments Clause? If none, please explain why not. 2. What steps, if any, may the Department of Justice consider in order to remedy any Emoluments Clause violation? If there are none, please explain why not.

² Citizens for Responsibility and Ethics in Washington v. President Donald J. Trump, No. 1:17-cv-00458, (S.D.N.Y. filed Jan. 23, 2017).

Clinton's campaign. Mr. Brock stated that it was Secretary Clinton herself who advised him after the election to sign up litigators to do pro-bono work against the President as part of a plan to "use litigation as a way of tying up [President] Trump," reportedly part of a broader plan of "revenge" for the election.³

In the Department's May 2 response, it appeared to take the position that because no federal statute provides a criminal penalty or civil remedy for the receipt of unallowable emoluments, the DOJ is therefore unable to take any action to enforce the Constitutional provision. That is deeply troubling on many levels, regardless of who may have violated the Constitutional prohibition. Failure to enforce the Clause would make it a nullity, and any enforcement should treat everyone equally, regardless of power, privilege or party.

The Emoluments Clause of the U.S. Constitution states in pertinent part:

[N]o person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.⁴

The Constitutional Convention of 1787 unanimously adopted the "Emoluments Clause" in order to "recognize the 'necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence,' specifically, undue influence and corruption by foreign governments."⁵ The DOJ Office of Legal Counsel (OLC) has noted that "[t]hose who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty."⁶ The Framers of our Constitution clearly intended to shield public officers from invasive foreign influence.

It is disturbing that the Department would argue that aspects of the Constitutional provision not addressed by federal statute essentially have no force. That position is contrary to its own OLC opinion:

The Emoluments Clause of the Constitution prohibits government employees from accepting any sort of payment from a foreign government, except with the consent of Congress. Congress has consented to the receipt of minimal gifts from a foreign state, 5 U.S.C. § 7342, but has not consented to receipt of compensation for services rendered.⁷

³ Michael Scherer, "Liberals Plot Revenge as Donald Trump Assumes the Presidency," TIME (January 20, 2017). Available at <http://time.com/4641901/trump-inauguration-david-brock/>.

⁴ U.S. Const. art. I, §9, cl. 8.

⁵ *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize*, 33 Op. O.L.C. 1, 3 (2009) (citing Notes of James Madison, United States Constitutional Convention, THE RECORDS OF THE FEDERAL CONVENTION 389 (Max Ferrand ed., Yale Univ. Press 1966) (1787))

⁶ *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 122 (1993)

⁷ *Application of the Emoluments Clause of the Constitution and the Foreign Gifts and Decorations Act*, 6 Op. O.L.C. 156 (1982).

Secretary Clinton clearly, and by her own admission in her financial disclosures, received emoluments. Specifically, she received and shared jointly in direct compensation from foreign government or foreign controlled entities for her husband's speeches.⁸ As I noted in my previous letter, joint income in a spousal relationship is considered income for each individual. The Office of Government Ethics has held in its advisory opinions,

[employees who prepare joint tax returns with their spouses] would be considered to have derived financial or economic benefit from their spouses' assets. They would also be charged with knowledge of their spouses' assets. Similarly, where an employee and his spouse share household expenses, it would be difficult to establish that the employee would not derive a financial benefit from his spouse's assets.⁹

Recently, former ethics officials have written about the application of the Clause to President-elect Trump but have ignored its application to Secretary Clinton despite her public financial filings. The authors have also noted, "the underlying purpose of the Clause strongly favors covering immediate family of a federal officeholder, lest formalism and paper walls eviscerate the Framers' design."¹⁰ The authors later footnote an example of why the application of the Clause should extend to immediate family members noting, "[j]ust imagine if an officeholder's

⁸ Public Financial Disclosure Report (2009) (2010) (2011) (2012). See Alexander Marlow, *Chinese Government Paid Bill Clinton Lucrative Speaking Fee as Sec. State Hillary Made 'Asia Pivot,'* Breitbart (May 11, 2015), <http://www.breitbart.com/national-security/2015/05/11/chinese-govt-paid-bill-clinton-lucrative-speaking-fee-as-sec-state-hillary-made-asia-pivot/> (noting that funding for President Clinton's speech to the Silicon Valley Business Information Council in California came from a coalition of Chinese government entities and organizations); Public Financial Disclosure Report (2011) at 10; see generally, *President Clinton to Keynote at Major U.S./Mid East Business Conference*, Business Wire (Sept. 10, 2012), <http://www.businesswire.com/news/home/20120910006060/en/President-Clinton-Keynote-Major-U.S.Mid-East-Business> (noting that Premier Paula A. Cox, JP, MP on behalf of the country of Bermuda was co-chairing the C3 Summit in New York); see also, C³ Summit 2012, <http://www.c3business2012.com/> (last visited Feb. 3, 2016) ("We would like to thank our sponsors and our affiliates Government of Bermuda [. . .]"); Public Financial Disclosure Report (2012) at 10. Public Financial Disclosure Report (2011) at 11 (listing the sponsor as the "Abu Dhabi Global Environmental Data Initiative (AGEDI)"); see James V. Grimaldi and Rebecca Ballhaus, *Speaking Fees Meet Politics for Clintons*, The Wall Street Journal (Dec. 30, 2015), <http://www.wsj.com/articles/speaking-fees-meet-politics-for-clintons-1451504098>. According to the Wall Street Journal, "the invitation came from the Abu Dhabi Global Environmental Data Initiative (AGEDI), a group created by Sheikh Khalifa bin Zayed Al Nahyan, president of the United Arab Emirates and emir of Abu Dhabi, according to Mr. Clinton's request to the State Department." Notably, AGEDI was founded by the Environmental Agency-Abu Dhabi, a governmental agency of the Emirate of Abu Dhabi. See <https://agedi.org/who-we-are/> listing "AGEDI Brochures" which states, "AGEDI works closely with its founders, the United Nations Environment Programme (UNEP) and Environment Agency- Abu Dhabi (EAD) towards achieving sustainable development." See also, Law No. 16 of 2005 pertaining to the Reorganization of the Abu Dhabi Environmental Agency, <https://www.ead.ae/Documents/PDF-Files/Law-No.-16-of-2005-Eng.pdf>. Public Financial Disclosure Report (2011) at 5 (listing the source as the "Tanmiah Commercial Group"); see also, Memorandum from Terry Krinvic, Director of Scheduling and Advance for William Jefferson Clinton, to Jim Thessin, Designated Agency Ethics Official, U.S. Dep't of State (Jan. 7, 2011) (accessed at <http://www.judicialwatch.org/wp-content/uploads/2015/04/85-86-and-121-pgs..pdf>) SAGIA is a governmental agency and the Tanmiah Commercial Group is owned by the Al-Dabbagh Group, which was founded by a former Saudi minister and its current Chairman and CEO, His Excellency Amr Al-Dabbagh, is a former Governor of SAGIA. Given the closeness of these relationships to the Saudi government, Tanmiah could be seen as making efforts on behalf of the Saudi government, and thus potentially becoming susceptible of becoming an agent of a foreign state – a standard articulated by the OLC.

⁹ U.S. Office of Government Ethics, *04x16 Disclosure of Assets of a Spouse and Dependents*, Nov. 16, 2004.

¹⁰ Norman L. Eisen, Richard Painter, and Laurence H. Tribe, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, Governance Studies at Brookings at 21 (December 16, 2016).

spouse and children received large payments on a regular basis from Russia, constituting a much larger share of the family's income than the officeholder's salary; in that circumstance, divided loyalty appears virtually inevitable."¹¹ Yet, the authors made no mention, nor did any analysis of Secretary Clinton's joint receipt of extravagant levels of income from foreign governments or foreign controlled entities, such as Saudi Arabia, for her husband's speeches.

When an Emolument Clause violation takes place, executive agencies have imposed a remedy. It has required the recipient to disgorge the emolument to the federal government.¹² The Government Accountability Office has held with respect to the Clause:

[i]n considering the language of the Constitutional provision, it seems clear that actions contrary to its mandate may not be ignored even though the Constitution itself does not provide for a specific sanction.¹³

The Department of Defense (DoD) does exactly that and prohibits military personnel from accepting emoluments from foreign states. Congress has consented to retired military personnel accepting foreign emoluments, subject to advance approval, but nevertheless applies a remedy when emoluments are received without such approval.¹⁴

According to DoD regulation, "if the compensation received from a foreign government without approval is considered received by the retired member for the United States, a debt in favor of the Federal Government is created which is to be collected by withholding from retired pay" in the amount of the emolument received.¹⁵ There are multiple cases in which the Comptroller General ruled that otherwise eligible retired military members were to have their retirement pay suspended because they had not received approval for the emolument.¹⁶

If military personnel are required to comply with the Clause, so should Secretary Clinton.

Despite the lack of a statutory penalty for violations of the Emoluments Clause, the DOJ nevertheless has a responsibility to uphold the Constitution. If the DOJ determines that Secretary Clinton received foreign government money during her tenure as Secretary of State in violation of the Emoluments Clause, then any emoluments received created a debt in favor of the Federal government that should be required to be balanced.

¹¹ *Id.* citing footnote 81.

¹² 65 Comp. Gen. 392 (March 10, 1986). The opinion holds that member of the military will have his or her retirement payments suspended while employed by a foreign government. A reasonable corollary to this analysis is that if the individual is not in receipt of retirement pay but otherwise violates the Clause, he or she must disgorge the funds received.

¹³ GAO report, Department of Defense Military Pay and Allowance Committee Action No. 528

<http://www.gao.gov/products/103808#mt=e-report>

¹⁴ 37 U.S.C. § 908.

¹⁵ *Application of the Emoluments Clause to DoD Civilian Employees and Military Personnel*, available at http://www.dod.mil/dodgc/defense_ethics/resource_library/emoluments_clause_applications.pdf.

¹⁶ *Id.*

Accordingly, what steps is the Department taking to assess the apparent violations pointed out in my previous correspondence and seek a remedy? If none, please explain why the Department is failing to uphold this important Constitutional provision with regard to Secretary Clinton.

Thank you in advance for your cooperation with this request. Please respond no later than February 8, 2017 and if you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

March 27, 2017

VIA ELECTRONIC TRANSMISSION

Mr. Dana Boente
Acting Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Boente:

On two separate occasions the Committee has written the Justice Department regarding the steps it took to enforce the Emoluments Clause with respect to Secretary Clinton and her receipt of hundreds of thousands of dollars from foreign governments or instrumentalities of foreign governments during her time at State. Thus far, the DOJ has failed to adequately describe those steps and so it appears that no steps have been taken. In those letters, the Committee has made clear that Congress has consented to the receipt of gifts under the Foreign Gifts and Decorations Act but *has not consented* to the receipt of other types of emoluments, such as speaking fees. Separate from Secretary Clinton's conflicts with the Clause, the House Minority on the Committee on Oversight and Government Reform (HOCR) raised an additional Clause-related issue. On March 16, 2017, the minority on HOCR sent a letter to the administration regarding Lt. Gen. Michael Flynn's apparent violation of the Clause. That letter references specific payments made to General Flynn's speakers' bureau from a pro-Russian media outlet called RT.

The HOCR documents show that General Flynn was paid approximately \$33,750 by RT to attend a December 2015 speaking event in Moscow.¹ The Director of National Intelligence has noted that RT was created and financed by the Russian government and every year the government reportedly spends hundreds of millions of dollars supporting it.² The minority on HOCR believe that RT is an instrumentality of the Russian government and based on DNI's assessment, that may be the case.

¹ Documents available here: <https://democrats-oversight.house.gov/news/press-releases/cummings-releases-new-documents-confirming-that-flynn-received-funds-from>

² Office of the Director of National Intelligence, Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Intrusion, Annex A (Jan. 6, 2017). Available at https://www.intelligence.senate.gov/sites/default/files/documents/ICA_2017_01.pdf

When an Emoluments Clause violation takes place, executive agencies have imposed a remedy, such as requiring the recipient to disgorge the emolument to the federal government.³ The Department of Defense does exactly that and prohibits military personnel from accepting emoluments from foreign states. Further, even when military personnel retire, they are still considered part of the government and subject to the Uniform Code of Military Justice. Therefore, military personnel in retirement are still subject to the confines of the Clause. Accordingly, Congress has consented to retired personnel accepting foreign emoluments in the form of compensation, subject to advance approval by the Secretaries of Defense and State, but nevertheless applies a remedy when emoluments are received without such approval. That remedy is disgorgement.⁴

According to DoD regulation, “if the compensation received from a foreign government without approval is considered received by the retired member for the United States, a debt in favor of the Federal Government is created which is to be collected by withholding from retired pay” in the amount of the emolument received.⁵ There are multiple cases in which the Comptroller General ruled that otherwise eligible retired military members were to have their retirement pay suspended because they had not received approval for the emolument.⁶

If military personnel are required to comply with the Clause, so should Secretary Clinton.

Secretary Clinton, by her own admission in her public financial disclosure reports, received foreign emoluments. For example, while Secretary Clinton was in charge of the State Department, she and her husband jointly received \$175,000 from a city in Canada for a speech. Notably, the Office of Legal Counsel has determined that the Clause’s application to a ‘foreign state’ would also include “a political governing entity within that foreign state,” such as a city.⁷

³ 65 Comp. Gen. 392 (March 10, 1986). The opinion holds that member of the military will have his or her retirement payments suspended while employed by a foreign government. A reasonable corollary to this analysis is that if the individual is not in receipt of retirement pay but otherwise violates the Clause, he or she must disgorge the funds received.

³ GAO report, Department of Defense Military Pay and Allowance Committee Action No. 528
<http://www.gao.gov/products/103808#mt=e-report>

⁴ 37 U.S.C. § 908.

⁵ *Application of the Emoluments Clause to DoD Civilian Employees and Military Personnel*, available at http://www.dod.mil/dodgc/defense_ethics/resource_library/emoluments_clause_applications.pdf.

⁶ GAO report, Department of Defense Military Pay and Allowance Committee Action No. 528
<http://www.gao.gov/products/103808#mt=e-report>; 65 Comp. Gen. 392 (March 10, 1986). *See also, Application of the Emoluments Clause to DoD Civilian Employees and Military Personnel*, available at http://www.dod.mil/dodgc/defense_ethics/resource_library/emoluments_clause_applications.pdf.

⁷ Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the Göteborg Award for Sustainable Development, 34 Op. O.L.C. 2 at fn 3 (2010) (citing Memorandum to Files from Rosemary Nidiry, Attorney-Adviser, *Re: Title of Honorary Village Chief from a Nigerian Village* at 2 (Jan. 19, 2001) (rejecting a “literal reading” of the term “foreign State” in the Emoluments Clause and noting that “just as ‘King’ and ‘Prince’ should be read to cover a foreign ‘Queen’ or ‘Princess’ or ‘Duke,’ ‘foreign State’ did not mean merely the ‘national government of that foreign State,’ but also should include any political governing entity within that foreign state”)) and citing the Comptroller General noting that it has also taken the position that the Emoluments Clause is not limited to the national government of a foreign state. *See Major James D. Dunn*, B-251084, 1993 WL 426335, at *3 (Comp. Gen. Oct. 12, 1993) (“Foreign governmental influence can just as readily occur whether a member is employed by local government within a foreign country or by the national government of the country. For this reason, we believe that the term ‘foreign State’ should be interpreted to include local governmental units within a foreign country as well as the national government itself.”).

Thus, unlike General Flynn's facts, Secretary Clinton received foreign government money directly from a foreign government.

During her time at State she also received \$500,000 jointly with her husband from the Abu Dhabi Global Environment Data Initiative (AGEDI), an organization that was created by Sheikh Khalifa bin Zayed Al Nahyan, president of the United Arab Emirates and emir of Abu Dhabi. AGEDI is similar to RT in the nature of its creation, connections, and support from its parent government – it was created and is supported by the state. If RT is to be considered an instrumentality of a foreign state, then it seems likely that AGEDI should be as well.⁸

The Committee's previous letters to the DOJ cite to the relevant publication from the Office of Legal Counsel, Government Accountability Office, and Office of Government Ethics, to illustrate the applicability of the Clause to Secretary Clinton. For your reference, all the previous letters are attached. DOJ has a responsibility to apply the Constitution and federal law equally without regard to party or position.

Accordingly, what steps is the Department taking to assess the apparent violations of the Clause with respect to Secretary Clinton and General Flynn? If none, please explain why the Department is failing to uphold the requirements of the Emoluments Clause. Please respond no later than April 10, 2017. Should you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

⁸ Public Financial Disclosure Report (2011) at 5 (listing the source as the "Tanmiah Commercial Group"); *see also*, Memorandum from Terry Krinovic, Director of Scheduling and Advance for William Jefferson Clinton, to Jim Thessin, Designated Agency Ethics Official, U.S. Dep't of State (Jan. 7, 2011) (accessed at <http://www.judicialwatch.org/wp-content/uploads/2015/04/85-86-and-121-pgs..pdf>) SAGIA is a governmental agency and the Tanmiah Commercial Group is owned by the Al-Dabbagh Group, which was founded by a former Saudi minister and its current Chairman and CEO, His Excellency Amr Al-Dabbagh, is a former Governor of SAGIA. Given the closeness of these relationships to the Saudi government, Tanmiah could be seen as making efforts on behalf of the Saudi government, and thus potentially becoming susceptible of becoming an agent of a foreign state – a standard articulated by the OLC.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 02 2017

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This responds to your letter to the Acting Attorney General dated January 25, 2017, and to your letter to the Acting Deputy Attorney General dated March 27, 2017, which requested information about steps the Department of Justice (the Department) can take to identify and remedy alleged violations of the Emoluments Clause of the United States Constitution by former Secretary of State Hillary Clinton and retired Lt. Gen. Michael Flynn.

The Emoluments Clause provides, in relevant part, that “no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Const. art. I, § 9, cl. 8. As we explained in our letter of May 2, 2016, Congress has not given the Department a law enforcement role in identifying or remedying alleged violations of the Emoluments Clause. We are not aware of any criminal statutes that authorize us to enforce the Clause, and there is no federal criminal common law, *see United States v. Hudson & Goodwin*, 11 U.S. 32, 34 (1812) (“The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offence.”). Thus, we are not authorized to prosecute violations of the Clause.

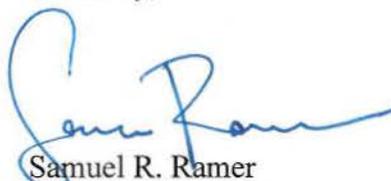
Similarly, with respect to civil enforcement, we believe that the only statute that provides a civil remedy for a violation of the Emoluments Clause is the Foreign Gifts and Decorations Act (FGDA), 5 U.S.C. § 7342. That Act provides congressional consent to the receipt of certain gifts of minimal value by federal employees, and it authorizes the Attorney General to bring a civil action in U.S. court to recover from federal employees the amount of any gifts (plus \$5,000) that they have solicited or received from foreign governments in violation of the Act. However, the Act covers only gifts and decorations and does not apply to the receipt of compensation for services rendered. *See id.* § 7342(a)(3); *Application of the Emoluments Clause of the Constitution and the Foreign Gifts and Decorations Act*, 6 Op. O.L.C. 156, 157 (1982) (stating that the FGDA “addresses itself to gratuities, rather than compensation for services actually performed”).

The Honorable Charles E. Grassley
Page Two

The FGDA separately authorizes individual employing agencies to take administrative actions for violations of the Act. *See* 5 U.S.C. § 7342(g)(2) (authorizing employing agencies to take “actions necessary to carry out the purpose of this [Act]”). The FGDA thus takes an approach that is consistent with longstanding Executive Branch practice regarding the Emoluments Clause. As a general matter, each Executive Branch agency exercises its own administrative authorities to ensure compliance by that agency’s employees who are subject to the obligations of the Emoluments Clause. For example, as you mentioned in both your January and March letters, the Department of Defense has promulgated regulations promoting compliance with the Emoluments Clause by retired members of the military. *See* DoD Fin. Mgmt. Regulation 7000.14-R, vol. 7B, ch. 5. Enforcing regulations like these is the province of the promulgating agency rather than the Department.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Samuel R. Ramer
Acting Assistant Attorney General

cc: The Honorable Dianne Feinstein
Ranking Member

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

April 12, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Rex W. Tillerson
Secretary
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Tillerson:

On June 29, 2016, Judiciary Committee staff met with Obama Administration officials regarding the State Department's process for analyzing and applying the Emoluments Clause to Department officials. During the course of that briefing, Committee staff asked about what compliance procedures, training, and other documents are used by the Department when making an Emoluments Clause determination. Department officials were unable to provide any records relating to those topics at the briefing. On July 6, 2016, the Committee followed up by email and requested those documents from the Department. It provided Office of Legal Counsel (OLC) opinions and no other documentation.

On March 22, 2017, the State Department Inspector General identified additional training and ethics material relating to the Clause. The Committee requested those additional documents via email on March 23, 2017. The Department has requested a Chairman's letter in order to produce the additional material. The Committee has also learned that the Defense Department's Inspector General has initiated an investigation of whether former Lt. General Michael Flynn violated Defense Department regulations implementing the Clause. Accordingly, please respond to the following:

1. Provide all State Department records pertaining to the Emoluments Clause, including all training, ethics, Department-wide announcements, and any other documents relating to the Clause.
2. Why has the State Department failed to issue regulations, as the Defense Department has done, to ensure compliance with the Clause?

3. What steps, if any, has the Department taken to determine whether Secretary Clinton violated the Clause in light of the evidence of payments from foreign governments in her financial disclosures? Has the Department referred those questions to the Inspector General? If not, why not?

Please number your answers according to their corresponding questions and respond by April 26, 2017. If you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



United States Department of State

Washington, D.C. 20520

JUN 12 2017

The Honorable
Charles Grassley, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your April 12, 2017, letter regarding Department of State practice with respect to the Emoluments Clause of the U.S. Constitution. Please find enclosed documents responsive to your request for records pertaining to the Emoluments Clause. As your letter notes, we have previously provided opinions from the Office of Legal Counsel at the Department of Justice, on which the Office of the Legal Adviser at the Department of State has relied when advising on questions related to the Emoluments Clause.

The Department of State has promulgated guidance related to the Emoluments Clause and the Foreign Gifts and Decorations Act (“FGDA”),¹ 5 U.S.C. § 7342, and accompanying federal regulations 22 C.F.R. § (2012), to foster compliance by Department personnel. The Foreign Affairs Manual at 11 FAM 613.2 details Department rules and procedures with respect to gifts and decorations from foreign governments, consistent with the Emoluments Clause and the FGDA. Additionally, ethics training provided to Department employees references the restrictions under the Emoluments Clause and the FGDA. Finally, the Department has addressed its approach to Emoluments Clause and FGDA issues to Congress in the past.²

Regarding former Secretary Clinton, the Office of the Legal Adviser and the Office of Government Ethics closely reviewed and certified each financial disclosure report she submitted. Any payments from foreign governments during her tenure as Secretary of State reflected on her financial disclosure reports were made to her spouse, President Bill Clinton. We have never taken the view that payments to a spouse are imputed to the government official for purposes of

¹ The Emoluments Clause, Art. I, Section 9, provides that “no Person holding any Office of Profit or Trust under them, shall, *without the Consent of the Congress*, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State” (emphasis added), and the FGDA provides Congressional consent for U.S. government employees to accept gifts from foreign governments in certain circumstances, e.g., when the gifts are valued at less than a specified amount.

² We provided additional details about the Department’s approach to Emoluments Clause and FGDA issues to your staff in a June 29, 2016 briefing. As noted at that briefing, advice to Department personnel from the Office of the Legal Adviser with regard to the Emoluments Clause is often fact-specific and individualized, and accordingly, Department employees are advised to reach out to the Office of the Legal Adviser with any Emoluments Clause-related questions or concerns as well as questions or concerns about acceptance of gifts in general.

the Emoluments Clause, and we are unaware of guidance to the contrary. Therefore, the Department did not refer questions related to these payments to the Inspector General.

Please protect the enclosed documents which contain information that is sensitive and for internal State Department use only. As a result, we note that the public release of any portion of the enclosed documents is not authorized by this communication and, should you wish to disclose any document or portions thereof, we ask that you provide the Department with a reasonable opportunity to work with the Committee to safeguard sensitive information.

We look forward to working with you and your staff on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Macmanus", with a long horizontal flourish extending to the right.

Joseph E. Macmanus
Bureau of Legislative Affairs

Enclosure:

As stated.

cc: Senator Dianne Fernstein

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

January 25, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Steve A. Linick
Inspector General
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

REFERRAL

Dear Mr. Linick:

I have been investigating Secretary Clinton's receipt of foreign government money during her tenure as Secretary of State. During the course of the investigation it has come to my attention that the State Department does not have a proper and adequate Emoluments Clause vetting procedure in place. This letter requests that you review the State Department's approach to the Emoluments Clause, review the Department's apparent programmatic failures to ensure compliance with the Clause, and review Secretary Clinton's receipt of money from foreign governments to determine if it violated the Clause.

By way of background, according to Secretary Hillary Clinton's public financial filings and her joint tax returns with former President Bill Clinton, it appears that they directly received money from foreign states as compensation for some of his personal speeches.¹ Given Secretary Clinton's position at the time, it raises considerable concern that her joint receipt of those payments violated the Emoluments Clause of the U.S. Constitution.² Article I, Section 9, Clause 8 of the Constitution states in pertinent part:

¹ U.S. Office of Gov't Ethics, OGE Form 278, Executive Branch Personnel Public Financial Disclosure Report: Hillary R. Clinton, (2009) (2010) (2011) (2012), [hereinafter Public Financial Disclosure Report]; U.S. Department of the Treasury-Internal Revenue Service, U.S. Individual Income Tax Return Form 1040: William J. Clinton & Hillary Rodham Clinton, (2010) (2011) (2012).

² U.S. Const. art. I, §9, cl. 8.

[N]o person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.³

In multiple letters to the Justice Department, I have made clear that Congress has consented to the receipt of gifts under the Foreign Gifts and Decorations Act but has not consented to the receipt of other types of emoluments, such as speaking fees. Astoundingly, the Justice Department's position appears to be that it has no power to enforce the Constitutional provision. Attached to this letter is my previous correspondence with the Justice Department that provides more detail with respect to the Constitutional analysis involved as well as specific examples which appear to show that Secretary Clinton did in fact receive money from foreign governments while Secretary of State.

On June 29, 2016, my staff met with State Department personnel regarding the Clause. In that meeting, the State Department officials represented that they lightly touch on the Clause during the course of employee training and were unable to provide any guidance, memoranda, or other documentary material to illustrate any substantive training or education relating to the Clause. In addition, during the course of the meeting, the Department noted that Clause-related questions have been raised by individual employees. However, the Department further noted that it does not have a "white paper" or similar "guide" to the Emoluments Clause that Department officials could use as a rubric to assist employees with questions. Instead, the State Department represented that it may refer to some Justice Department Office of Legal Counsel opinions as a guide.

This lack of focus on the Emoluments Clause is striking, especially in light of the fact the Clause was primarily focused on foreign ministers which are generally officials of the State Department. Accordingly, I urge you to begin a review of the manner in which the Department applies the Emolument Clause to employee training as well as how effectively the Department enforces the Clause and seeks to remedy violations. Based upon the representations provided by the Department thus far, it appears that it does not appropriately do either. Further, I request that you review the facts and circumstances pertaining to Secretary Clinton's compliance, or lack thereof, with respect to the Clause.

Please respond by February 8, 2017 to inform the Committee of your decision. Thank you in advance for your cooperation with this request. If you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

³ *Id.*