

### Dissenting Views

To date, the Majority refuses to conduct even basic oversight on President Donald J. Trump’s pervasive conflicts of interest, or to examine extensive and apparently ongoing ties between the Russian government and the President’s advisers. H. Res. 111 directs the Attorney General to provide the House of Representatives with information related to these matters so that interested Members can conduct their official responsibilities even if the Majority will not. By rejecting this resolution, the Majority has abdicated its responsibility to ensure that the White House is not beholden to private interests or a foreign adversary.

#### I. GENERAL BACKGROUND

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed at the President of the United States or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.<sup>1</sup> As a “simple resolution,” designated by “H. Res.,” a resolution of inquiry does not carry the force of law. “Compliance by the executive branch with the House’s request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates.”<sup>2</sup>

House Rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.<sup>3</sup> In practice, even when the Majority opposes a resolution of inquiry, a committee may mark it up and report it—perhaps adversely—to prevent its sponsor from making a privileged motion to call up the legislation on the House floor.<sup>4</sup>

#### II. SECTION-BY-SECTION EXPLANATION OF H. RES. 111

Rep. Jerrold Nadler (D-NY) introduced H. Res. 111 on February 9, 2017. The resolution directs the Attorney General to transmit to the House, not later than 14 days after enactment of the resolution, copies of any document, record, memo, correspondence, or other communication of the Department of Justice, including the Office of Legal Counsel, that refers or relates to:

- (1) Any criminal or counterintelligence investigation targeting President Trump, former National Security Advisor Michael Flynn, Paul Manafort, Carter Page, Roger Stone, or any employee of the Executive Office of the President;
- (2) Any investment by any foreign government or agent of a foreign government in any entity owned in whole or in part by President Trump;

<sup>1</sup> Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011*, CONG. RESEARCH SERVICE, May 15, 2012 (R40879).

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

<sup>3</sup> House Rule XIII, clause 7.

<sup>4</sup> Davis, *supra* note 1, at 1.

## H. Res. 111 Dissenting Views (Final)

2

- (3) President Trump's proposal to maintain an interest in his business holdings, while turning over day-to-day operation of those interests to his sons Donald J. Trump, Jr., and Eric Trump;
- (4) President Trump's plan to donate the profits of any foreign governments' use of his hotels to the United States Treasury, including the decision to exclude other payments by foreign governments to any other business holdings of the Trump Organization from that arrangement;
- (5) The Foreign Emoluments Clause of the U.S. Constitution, as it may pertain to President Trump or any employee of the Executive Office of the President; and
- (6) Any of several Federal statutes governing conflicts of interest as they may pertain to President Trump or any employee of the Executive Office of the President.

H. Res. 111 expressly permits the Attorney General to transmit this information in a classified format if necessary.

### III. NEED FOR THE LEGISLATION

H. Res. 111 is a simple request for information from the Department of Justice. By its nature, a resolution of inquiry cannot draw conclusions about the Trump Administration. It can only help the House of Representatives to obtain documents, correspondence, and other communications related to matters properly within the purview of our constitutional mandate to exercise oversight of the executive branch.

Two areas of concern merit immediate investigation by the Committee. First, President Trump and some of his closest associates are tangled in a bizarre set of relationships with the Russian government. Second, President Trump has failed to remove himself from his business interests in any meaningful way, likely subjecting himself to liability under a long list of Federal statutes and the Foreign Emoluments Clause of the Constitution. H. Res. 111 would have helped the Committee to begin its investigation of these matters.

As Rep. Nadler stated to the Committee: "It is unfortunate that we must resort to a resolution of inquiry to learn the truth about these serious issues; however, the House has, so far, abnegated its constitutional responsibility to provide meaningful oversight to the Trump administration, and it is time we do our duty."<sup>5</sup> By voting to report the resolution unfavorably, the Majority has refused to conduct meaningful oversight of President Trump.

#### *A. President Trump's connections to the Russian government merit immediate investigation.*

H. Res. 111 directs the Attorney General to transmit to the House information related to "any criminal or counterintelligence investigation targeting President Donald J. Trump, National Security Advisor Michael Flynn, Paul Manafort, Carter Page, Roger

<sup>5</sup> Unofficial Tr. of Markup of H.R. 372; H.R. 1215; and H. Res. 111 before the H. Comm. on the Judiciary, 115th Cong. (Feb. 28, 2017) (statement of Rep. Jerrold Nadler) [hereinafter Markup Tr.].

Stone, or any employee of the Executive Office of the President.” The resolution also asks for any information the Department of Justice has related to “any investment by any foreign government or agent of a foreign government in any entity owned in whole or in part by President Donald J. Trump.” These two lines of inquiry are designed to help Members further examine one of the more troubling aspects of the Trump Administration: the persistent and pervasive connections between President Trump and the government of Vladimir Putin.

*1. Trump campaign advisers had repeated contact with Russia—and denied it until they got caught.*

It has been extensively reported that, in the months leading up to the recent election, senior Russian officials authorized “compromises of emails from U.S. persons and institutions,” including the Democratic National Committee.<sup>6</sup> The intelligence community has since reached the unanimous conclusion that these actions were part of a massive effort to influence the election on behalf of President Trump.<sup>7</sup>

During markup, Rep. Steve King (R-IA) suggested that Members should discount this unanimous conclusion because it was reached by “the Obama intelligence community.”<sup>8</sup> We note only that President Trump has been in office since January 20, 2017, and that not one of the intelligence community components that took part in the initial review has since retracted, amended, or otherwise conditioned its assessment of the evidence.

It has also been reported that senior members of President Trump’s presidential campaign have had repeated contacts with the Russian government.<sup>9</sup> On December 29, 2016, the same day that President Obama imposed sanctions on certain Russian officials in response to Russian interference in the presidential campaign, former National Security Advisor Michael Flynn spoke with the Russian ambassador to the United States about lifting those sanctions once Mr. Trump took office.<sup>10</sup> Acting Attorney General Sally Yates advised the White House of the content of these conversations before leaving office in January 2017.<sup>11</sup>

In public—and apparently also in private conversations with Vice President Mike Pence—Mr. Flynn flatly denied having any such discussions. On February 9, 2017, *The Washington Post* reported that Mr. Flynn had, in fact, discussed lifting sanctions in his conversations with the Russian ambassador.<sup>12</sup> Three weeks after the

<sup>6</sup>Press Release, *Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security*, Dept. of Homeland Security, Oct. 7, 2016.

<sup>7</sup>*Background to “Assessing Russian Activities and Intentions in Recent US Elections”*: *The Analytic Process and Cyber Incident Attribution*, Office of the Director of Nat’l. Intelligence, Jan. 6, 2017.

<sup>8</sup>Markup Tr. (statement of Rep. Steve King).

<sup>9</sup>Michael S. Schmidt *et al.*, *Trump Campaign Aides Had Repeated Contacts with Russian Intelligence*, N.Y. TIMES, Feb. 14, 2017.

<sup>10</sup>Adam Entous *et al.*, *Justice Department warned White House that Flynn could be vulnerable to Russian blackmail, officials say*, WASH. POST, Feb. 13, 2017.

<sup>11</sup>*Id.*

<sup>12</sup>Greg Miller *et al.*, *National security adviser Flynn discussed sanctions with Russian ambassador, despite denials, officials say*, WASH. POST, Feb. 9, 2017.

White House learned of this duplicity, Mr. Flynn resigned.<sup>13</sup> His 24-day tenure as National Security Adviser is the shortest in the history of the office.

In a separate matter, the Army is investigating whether Mr. Flynn received money from the Russian government during a trip he took to Moscow in 2015. That payment might violate the Foreign Emoluments Clause of the U.S. Constitution, which prohibits retired military officers from receiving payments from a foreign government.<sup>14</sup>

Former Trump campaign manager Paul Manafort once worked as a pro-Kremlin political consultant in Ukraine.<sup>15</sup> He reportedly oversaw the softening of the Republican National Committee's platform on Russia.<sup>16</sup> While working for the Trump campaign, he appears to have been the target of a blackmail attempt by a Ukrainian politician—who claimed to have “bulletproof” evidence related to certain financial arrangements between Mr. Manafort and Ukraine's former president, pro-Russian strongman Viktor Yanukovich.<sup>17</sup> The FBI has been investigating his business dealings in Russia and Ukraine for some time.<sup>18</sup>

According to reports, the FBI has also questioned Carter Page, a foreign policy advisor to the Trump campaign, for his frequent trips to Moscow and alleged contacts with Russian officials subject to U.S. sanctions.<sup>19</sup> In an interview on February 15, 2017, Mr. Page claimed that he had participated in “no meetings” with Russian officials in the past year.<sup>20</sup> On March 2, 2017, *USA Today* reported that both Mr. Page and J.D. Gordon, director of the national security advisory committee for the Trump campaign, met with the Russian ambassador at the Republican National Convention in July 2016.<sup>21</sup> Mr. Page admitted his earlier misstatement in an interview broadcast later that evening.<sup>22</sup>

Trump campaign advisor Roger Stone has also been swept into these investigations.<sup>23</sup> During the campaign, he bragged about “back-channel” communications with WikiLeaks and appeared to know that WikiLeaks would publish emails from Clinton campaign chairman John Podesta—emails exfiltrated from the Democratic National Committee by Russian state actors—months before those

<sup>13</sup> Maggie Haberman *et al.*, *Michael Flynn Resigns as National Security Adviser*, N.Y. TIMES, Feb. 13, 2017.

<sup>14</sup> *Id.*; see also letter from Ranking Member Elijah Cummings, H. Comm. on Oversight and Gov't. Reform, *et al.*, to Secretary of Defense James Mattis, Feb. 1, 2017.

<sup>15</sup> Amber Philips, *Paul Manafort's complicated ties to Ukraine, explained*, WASH. POST, Aug. 19, 2016.

<sup>16</sup> Josh Rogin, *Trump campaign guts GOP's anti-Russia stance on Ukraine*, WASH. POST, July 18, 2016.

<sup>17</sup> Kenneth P. Vogel *et al.*, *Manafort faced blackmail attempt, hacks suggest*, POLITICO, Feb. 23, 2016.

<sup>18</sup> Ken Dilanian *et al.*, *FBI Making Inquiry into Ex-Trump Campaign Manager's Foreign Ties*, NBC NEWS, Nov. 1, 2016.

<sup>19</sup> Michael Isikoff, *U.S. intel officials probe ties between Trump advisor and Kremlin*, YAHOO! NEWS, Sept. 24, 2016.

<sup>20</sup> *Former Trump adviser says he had no Russian meetings in the past year*, PBS NEWS HOUR, Feb. 15, 2017.

<sup>21</sup> Steve Reilly, *Exclusive: Two other Trump advisers also spoke with Russian envoy during GOP convention*, USA TODAY, Mar. 2, 2017.

<sup>22</sup> “I am not going to do deny that I talked him. I will say I never met him anywhere outside of Cleveland.” *All in with Chris Hayes*, MSNBC, broadcast Mar. 2, 2017 (interview with Carter Page).

<sup>23</sup> Michael S. Schmidt, *Intercepted Russian Communications Part of Inquiry into Trump Associates*, N.Y. TIMES, Jan. 29, 2017.

emails became public.<sup>24</sup> On March 4, 2017, Mr. Stone again claimed a “perfectly legal back channel” to WikiLeaks founder Julian Assange—and then deleted the statement from Twitter.<sup>25</sup>

U.S. Attorney General Jeff Sessions was one of the earliest elected officials to support the candidacy of President Trump. For months, Democrats and Republicans alike have called for his recusal from any pending investigation of the Trump Administration’s ties to the Russian government.<sup>26</sup> At the markup of H. Res. 111, Rep. Hakeem Jeffries (D-NY) offered an amendment that would have directed the Department of Justice to turn over information related to the regulations governing when it is appropriate for the Attorney General to recuse himself.<sup>27</sup> Chairman Bob Goodlatte (R-VA) spoke in opposition to the amendment, arguing that “this is based on nothing more than a supposition that there may be something improper there, which could be used to damage the administration politically.”<sup>28</sup>

One day later, *The Washington Post* reported that then-Senator Jeff Sessions “spoke twice last year with Russia’s ambassador to the United States, . . . encounters he did not disclose when asked about possible contacts between members of President Trump’s campaign and representatives of Moscow” during his confirmation hearings.<sup>29</sup> One day after that, Attorney General Sessions recused himself from “any existing or future investigation involving President Trump’s 2016 campaign.”<sup>30</sup> The scope of that recusal may or may not be sufficient to address the Attorney General’s personal and political ties to the Trump campaign—but the amendment offered by Rep. Jeffries was clearly based on more than just a “supposition.”

## 2. *Contacts with the Russian government still preoccupy the White House.*

Although some of the Trump advisers named in H. Res. 111 have been at least temporarily removed from the President’s immediate orbit, the Administration’s relationships with the Russian government still preoccupy the White House. For example, Michael D. Cohen, President Trump’s private attorney, and Felix Sater, a business associate of the President, are working to bring “peace” to Ukraine through a Ukrainian lawmaker associated with former campaign manager Paul Manafort.<sup>31</sup> The peace plan, which Mr. Cohen reportedly hand-delivered to Michael Flynn in the days before his resignation, appears to turn on lifting sanctions on the

<sup>24</sup> Alexa Ard, *Donald Trump ally Roger Stone admits “back-channel” tie to WikiLeaks*, McCLATCHY, Oct. 12, 2016.

<sup>25</sup> Marina Fang, *Former Trump Advisor Roger Stone Admits Collusion with WikiLeaks, Then Deletes It*, HUFFINGTON POST, Mar. 5, 2017.

<sup>26</sup> See, e.g., Melanie Mason, *GOP Rep. Darrell Issa tells Bill Maher a special prosecutor should investigate Russian election interference*, L.A. TIMES, Feb. 24, 2017.

<sup>27</sup> See 28 C.F.R. § 45.2.

<sup>28</sup> Markup Tr. (statement of Chairman Bob Goodlatte).

<sup>29</sup> Adam Entous et al., *Sessions met with Russian envoy twice last year, encounters he later did not disclose*, WASH. POST, Mar. 1, 2017.

<sup>30</sup> Karoun Demirjian et al., *Attorney General Jeff Sessions will recuse himself from any probe related to 2016 presidential campaign*, WASH. POST, Mar. 2, 2016.

<sup>31</sup> Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates*, N.Y. TIMES, Feb. 19, 2017.

Russian government and recognizing Crimea as part of Russia—both to the obvious gain of Vladimir Putin.<sup>32</sup>

The White House is apparently uncomfortable with reports of this nature becoming public. On February 14, 2017, *The New York Times* reported that Trump campaign aides “had repeated contacts with senior Russian intelligence officials in the year before the election.”<sup>33</sup> White House Chief of Staff Reince Priebus then called FBI Director James Comey and FBI Deputy Director Andrew McCabe to ask the Bureau to dispute the report.<sup>34</sup> Director Comey rejected that request, “because the alleged communications between Trump associates and Russians known to US intelligence are the subject of an ongoing investigation.”<sup>35</sup> It also appears that White House Press Secretary Sean Spicer asked both Senator Richard Burr (R-NC), Chair of the Senate Select Intelligence Committee, and Rep. Devin Nunes (R-CA), Chair of the House Permanent Select Committee on Intelligence, to discredit these reports.<sup>36</sup>

At the markup of H. Res. 111, Rep. Ted Deutch (D-FL) offered an amendment that would have directed the Department of Justice to transmit information related to such communications between the White House and the FBI. Every Department of Justice since the Carter Administration has had guidelines in place to restrict communications between the White House and career investigators and prosecutors, “to insure, to the extent possible, that improper considerations will not enter into our legal judgments.”<sup>37</sup> Rep. Deutch’s amendment makes explicit reference to the standing guidance on this topic, issued on May 11, 2009.<sup>38</sup> The sitting Attorney General is free to revise or replace this guidance—but Attorney General Sessions has not yet done so.

The 2009 memorandum states: “The Justice Department will advise the White House concerning any pending or contemplated criminal or civil investigations on cases when, *but only when*, it is important for the performance of the President’s duties and appropriate from a law enforcement perspective.”<sup>39</sup> Communications between the White House Chief of Staff and the FBI about a pending investigation are clearly covered by this guidance. Communications between the White House Chief of Staff and the FBI about a pending investigation *targeted at associates of the President* are inappropriate in almost any circumstance.

Speaking in opposition to Rep. Deutch’s amendment, Chairman Goodlatte argued that the amendment merely attempts to cast “an even wider net in hopes of discovering illicit activity.”<sup>40</sup> But Rep. Deutch’s amendment was a *response* to illicit activity—and to behavior that the Majority continues to ignore. By rejecting this

<sup>32</sup> Julia Ioffe, *The Mystery of the Ukraine Peace Plan*, THE ATLANTIC, Feb. 20, 2017.

<sup>33</sup> Michael S. Schmidt *et al.*, *Trump Campaign Aides Had Repeated Contacts with Russian Intelligence*, N.Y. TIMES, Feb. 14, 2017.

<sup>34</sup> Jim Sciutto *et al.*, *FBI refused White House request to knock down recent Trump-Russia stories*, CNN, Feb. 24, 2017.

<sup>35</sup> *Id.*

<sup>36</sup> Mike Allen, *Exclusive: Spicer arranged CIA, GOP intelligence push-back*, AXIOS, Feb. 27, 2017.

<sup>37</sup> *Remarks by the Hon. Griffin B. Bell, Attorney General of the United States*, U.S. Dept. of Justice, Sept. 6, 1978.

<sup>38</sup> See Memorandum from U.S. Attorney General Eric Holder, *Communications with the White House and Congress*, U.S. Dept. of Justice, May 11, 2009.

<sup>39</sup> *Id.* (emphasis added).

<sup>40</sup> Markup Tr. (statement of Chairman Bob Goodlatte).

measure, the Majority joins Attorney General Sessions in refusing to take action to preserve the independence and integrity of the Department of Justice.

3. *President Trump appears to have direct and personal connections to the regime of Vladimir Putin.*

Although President Trump denies having any business dealings in Russia, multiple news outlets have reported that he “sought and received funding from Russian investors for his business ventures, especially after most American banks stopped lending to him following his multiple bankruptcies.”<sup>41</sup> Prior to his election, the President boasted about meeting with Russian financiers close to Vladimir Putin—stating after one trip to Moscow, “I have a great relationship with many Russians, and almost all of the oligarchs were in the room.”<sup>42</sup> Donald Trump, Jr., who now runs day-to-day business operations for his father’s companies, has discussed the organization’s reliance on this source of funding: “Russians make up a pretty disproportionate cross-section of a lot of our assets. We see a lot of money pouring in from Russia.”<sup>43</sup>

Throughout the campaign and into his first month of office, President Trump has sought to downplay Russian aggression and praise Vladimir Putin. For months, even after repeated briefings on the subject, the President denied that Russia had attempted to hack the Democratic National Committee or influence the election:

I don’t think anybody knows it was Russia that broke into the DNC. [Clinton is] saying Russia, Russia, Russia, but I don’t—maybe it was. I mean, it could be Russia, but it could also be China. It could also be lots of other people. It could also be somebody sitting on their bed that weighs 400 pounds, okay?<sup>44</sup>

In a December 2015 interview with talk show host Joe Scarborough, he defended Putin’s killing of dissident journalists: “at least he’s a leader, unlike what we have in this country.”<sup>45</sup> Asked a similar question by talk show host Bill O’Reilly in 2017, the President responded: “There are a lot of killers. We have a lot of killers. Well, you think our country is so innocent?”<sup>46</sup> This odd predilection for the Russian autocrat is even more baffling given President Trump’s willingness to antagonize longtime allies—like Mexico,<sup>47</sup> Australia,<sup>48</sup> and Sweden<sup>49</sup>—for little or no discernable reason.

<sup>41</sup>Max Boot, *Trump’s Opposition Research Firm: Russia’s Intelligence Agencies*, L.A. TIMES, July 25, 2016.

<sup>42</sup>Jeff Nesbit, *Donald Trump’s Many, Many, Many, Many Ties to Russia*, TIME, Aug. 2, 2016.

<sup>43</sup>*Executive Talk: Donald Trump Jr. Bullish on Russia and Few Emerging Markets*, ETURBONNEWS, Sept. 15, 2016.

<sup>44</sup>Aaron Blake, *The first Trump-Clinton presidential debate transcript, annotated*, WASH. POST, Sept. 26, 2016.

<sup>45</sup>*Morning Joe*, MSNBC, broadcast Dec. 18, 2015.

<sup>46</sup>*Bill O’Reilly Interviews Trump before Super Bowl LI on FOX*, FOXNEWS, broadcast Feb. 5, 2017.

<sup>47</sup>Robin Abcarian, *South of the border, Mexicans are puzzled by Trump’s relentless and point-less antagonism*, L.A. TIMES, Feb. 5, 2017.

<sup>48</sup>Greg Miller & Philip Rucker, *“This was the worst call by far”: Trump badgered, bragged, and abruptly ended phone call with Australian leader*, WASH. POST, Feb. 2, 2017.

<sup>49</sup>Christina Anderson & Sewell Chan, *Clashes in Stockholm Suburb Draw Attention to Trump’s Remarks*, N.Y. TIMES, Feb. 21, 2017.

The President's erratic statements, his foreign business interests, and his decision to surround himself with advisors who have come into repeated contact with the Russian government all warrant closer examination. H. Res. 111 would have enabled the Committee to begin its investigation of these matters in earnest. By rejecting the resolution, the Majority has abdicated its responsibility to ensure that the White House is not beholden to a foreign adversary.

*B. President Trump has failed to address his conflicts of interest.*

H. Res. 111 also directs the Attorney General to produce information related to President Trump's ongoing conflict-of-interest problem. The legislation asks for documents and communications related to foreign investment in the President's business interests; his proposal to maintain a stake in his business holdings while turning over operation of the Trump Organization to his children; his plan to donate the profits of any foreign governments' use of his hotels to the United States Treasury, but not other payments he receives from foreign countries; and any discussion or analysis by the Department with respect to the Foreign Emoluments Clause or a long list of Federal ethics statutes.

For months, President Trump has argued that "the president can't have a conflict of interest."<sup>50</sup> Even when read in a favorable light, this claim is deeply inaccurate. It is true that Congress has exempted the President and the Vice President from one criminal statute that otherwise prohibits executive branch employees from working on matters in which they might have a financial interest.<sup>51</sup> It is also true, however, that a long list of ethics and conflict-of-interest laws apply to the office of the President. The Congressional Research Service identified each of the statutes outlined in H. Res. 111 as conflict-of-interest rules that apply to President Trump.<sup>52</sup>

Even the mere appearance that the President bases his decisions on his own financial interest, rather than on the best interest of the nation, erodes the public's trust in government—whether or not the President's conduct is prohibited by statute. As then-Assistant Attorney General Antonin Scalia wrote for the Office of Legal Counsel in 1974, although certain ethics rules may not technically bind the White House, "it would obviously be undesirable as a matter of policy for the President" to engage in unethical conduct.<sup>53</sup> He warned: "Failure to observe these standards will furnish a simple basis for damaging criticism."<sup>54</sup>

At a January 2017 press conference, President Trump announced: "I could actually run my business and run government at the same time . . . I would be the only one to be able to do that."<sup>55</sup> Nevertheless, the President has handed day-to-day operation of the

<sup>50</sup> Donald Trump's New York Times Interview: Full Transcript, N.Y. TIMES, Nov. 23, 2016.

<sup>51</sup> 18 U.S.C. § 208 (2017).

<sup>52</sup> Memorandum, *Conflict of Interest and "Ethics" Provisions that May Apply to the President*, Cong. Research Service, Nov. 22, 2016; see also Letter from Ranking Member John Conyers, Jr., H. Comm. on the Judiciary, *et al.*, to Chairman Bob Goodlatte, H. Comm. on the Judiciary, Nov. 30, 2016.

<sup>53</sup> Memorandum for Hon. Kenneth A. Lazarus, Assoc. Counsel to the President, *Re: Applicability of 3 C.F.R. Part 100 to the President and Vice President*, Office of Legal Counsel, U.S. Dept. of Justice, Dec. 19, 1974, at 3.

<sup>54</sup> *Id.*

<sup>55</sup> Donald Trump's News Conference: Full Transcript and Video, N.Y. TIMES, Jan. 11, 2016.

Trump Organization over to his two adult sons, Donald Trump, Jr. and Eric Trump. To address concerns about foreign governments currying favor with the Administration by doing business with the Trump Organization, he plans to donate the profits from the use of his hotels by foreign dignitaries to the U.S. Treasury.<sup>56</sup> A few days later, it was reported that President Trump resigned from the management of “more than 400” business entities.<sup>57</sup>

These attempts to address the President’s conflicts of interest are simply inadequate. They do nothing to change his financial interest in his businesses, to limit his ability to advise them, or to prevent other interests from currying favor with the White House by doing business with companies that might benefit the President’s bottom line.

We are not alone in reaching this conclusion. Richard Painter and Norman Eisen, former ethics counsels to Presidents George W. Bush and Barack Obama, respectively, describe the President’s ethics plan as “porous and insufficient.” With respect to the plan to donate foreign profits from his hotels, they ask:

[W]hy only hotels? What about foreign sovereign payments to buy his condos or apartments, for use of his office buildings or his golf courses, not to mention his massive foreign government bank loans, and other benefits? And why only profits, when the Justice Department has long held that the emoluments clause covers any revenue from foreign governments—not simply profits?<sup>58</sup>

Director Walter M. Shaub, Jr., head of the U.S. Office of Government Ethics, has expressed similar concerns. Evaluating President Trump’s proposal to distance himself from his business holdings, Director Shaub concluded that “the plan does not comport with the tradition of our Presidents over the past 40 years” and risks “creating the perception that government leaders would use their official positions for profit.”<sup>59</sup>

Some in the Majority reacted poorly to this criticism. Rep. Jason Chaffetz (R-UT), Chairman of the House Committee on Government and Oversight Reform, accused Director Shaub of “blurring the line between public relations and official ethics guidance,” hinting at a congressional investigation into his conduct and threatening to shut down the Office of Government Ethics.<sup>60</sup> White House chief of staff Reince Priebus later appeared on national television to warn Director Shaub to “be careful” with his comments.<sup>61</sup> Director Shaub has served presidents of both parties with distinction for nearly twenty years. We ought to listen to his advice, not threaten his office or disparage his reputation.

<sup>56</sup> *Id.*

<sup>57</sup> Jill Disis *et al.*, *Trump Organization documents say he has resigned from more than 400 businesses*, CNN MONEY, Jan. 23, 2017.

<sup>58</sup> Richard Painter & Norman Eisen, *Just when you thought the Trump ethics disaster couldn’t get worse, it did*, WASH. POST, Jan. 16, 2017.

<sup>59</sup> Walter M. Shaub, Jr., Director, U.S. Office of Gov’t. Ethics, *Remarks at the Brookings Institution*, Jan. 11, 2017.

<sup>60</sup> Letter from Chairman Jason Chaffetz, H. Comm. on Oversight & Gov’t. Reform, to Walter M. Shaub, Jr., Director, U.S. Office of Gov’t. Ethics, Jan. 12, 2017.

<sup>61</sup> *This Week with George Stephanopoulos*, ABC NEWS, broadcast Jan. 15, 2017 (remarks of Reince Priebus).

As Director Shaub and others have cautioned, President Trump's continued insistence that ethics norms and laws do not apply to his office presents a liability to the entire Administration. First among these laws is the Foreign Emoluments Clause of the U.S. Constitution, which prohibits the President from receiving anything of value from any foreign government without Congressional consent.<sup>62</sup> The Foreign Emoluments Clause is a strict and absolute rule—it “operates categorically, governing transactions even when they would not necessarily lead to corruption, and establishing a clear baseline of unacceptable conduct.”<sup>63</sup>

Because he has failed to step away from his business holdings in any meaningful way, President Trump may have been in violation of the Foreign Emoluments Clause from the moment he took his oath of office. For example, President Trump sought and received funding for his business from Russian financiers.<sup>64</sup> This fact would be cause for concern in any respect, given the conclusion of the intelligence community that Russia worked to sway the recent election in President Trump's favor. If still ongoing, these financial ties also represent foreign emoluments.

The Industrial and Commercial Bank of China—which is owned by the People's Republic of China—is the largest tenant in Trump Tower.<sup>65</sup> It is also a major lender to the Trump Organization. Its lease is slated to end in October 2019.<sup>66</sup> The bank's rental payments, its ongoing extension of credit to the President's business, and any financial benefit that may accrue to President Trump during renegotiation of the lease also constitute foreign emoluments.

Foreign diplomats and other representatives of foreign governments have moved their business to the President's Washington, D.C. hotel.<sup>67</sup> At least one report suggests that a foreign embassy was pressured to move their event to the Trump property.<sup>68</sup> Even without an element of coercion, payments by foreign diplomats for lodging, meeting space, and food at the hotel are also emoluments received in violation of the Constitution.

In the context of private business, these transactions may be entirely legitimate. For the President of the United States, however, they present an inescapable conflict of interest—shading many of his decisions with questions about personal enrichment and foreign entanglement. This erosion of trust “is *exactly* what the Emoluments Clause is meant to head off at the pass.”<sup>69</sup>

The Framers of the Constitution created an explicit role for Congress in the enforcement of the Foreign Emoluments Clause. Our Committee oversees the Ethics in Government Act, the Office of

<sup>62</sup> See David J. Barron, *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 (2009).

<sup>63</sup> Norman L. Eisen *et al.*, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, GOVERNANCE STUDIES AT BROOKINGS, Dec. 16, 2016, at 13.

<sup>64</sup> Franklin Foer, *Putin's Puppet*, SLATE, July 4, 2016; Tom Hamburger *et al.*, *Inside Trump's Financial Ties to Russia and His Unusual Flattery of Vladimir Putin*, WASH. POST, June 17, 2016.

<sup>65</sup> Caleb Melby *et al.*, *When Chinese Bank's Trump Lease Ends, Potential Conflict Begins*, FORBES, Nov. 28, 2016.

<sup>66</sup> *Id.*

<sup>67</sup> Jonathan O'Connell, *Conservative groups, foreign leaders flock to Trump's D.C. hotel*, WASH. POST, Dec. 7, 2016.

<sup>68</sup> Paulina Firozi, *Report: Embassy of Kuwait moves major event to Trump's DC hotel*, THE HILL, Dec. 12, 2016.

<sup>69</sup> Eisen, *supra* note 63.

Government Ethics, and matters of criminal and constitutional law. It is our responsibility to investigate the President's apparent conflicts of interest. H. Res. 111 would have helped us to obtain basic information related to these troubling reports. By voting to dispose of the resolution, the Majority has failed in its responsibilities in this area as well.

*C. The Majority has refused to conduct even basic oversight of President Trump.*

It is not surprising that the Majority voted to adversely report this simple request for information.

On November 30, 2016, every Democratic Member of the House Judiciary Committee wrote to Chairman Goodlatte to request hearings on “the federal conflict-of-interest and ethics provisions that may apply to the President of the United States.”<sup>70</sup> We took note of President Trump's repeated insistence that the President cannot have a conflict of interest—and enclosed a long list of Federal ethics and conflict-of-interest statutes that, in fact, apply to the President.<sup>71</sup> To date, we have received no reply to this letter.

On January 24, 2017, every Democratic Member of the House Judiciary Committee again wrote to the Chairman, insisting that “the Committee hold hearings on President Trump's conflicts of interest, at home and abroad, in possible violation of federal law.”<sup>72</sup> Citing to the analysis of legal experts across the political spectrum, we showed that “[t]he Administration's attempts to address its ongoing conflict of interests are, so far, wholly inadequate.”<sup>73</sup> To date, we have received no reply to this letter either.

On February 15, 2017, at a markup of the Committee's annual oversight plan, Chairman Goodlatte announced that he had “requested, for the benefit of the full committee, a briefing by the Department of Justice and the Federal Bureau of Investigation for the matter involving Mr. Flynn in the White House, both what took place and how that that was leaked.”<sup>74</sup> To date, no such briefing has been scheduled.

At that same February 15 meeting, the Committee considered several amendments to the Committee's annual oversight plan. One amendment offered by Chairman Goodlatte, as subsequently amended by Rep. David Cicilline (D-RI), stated the Committee's intention to conduct oversight into allegations of misconduct by executive branch officials and to continue oversight into allegations of foreign interference with Federal elections.<sup>75</sup> We took this initial step as a positive sign. The Majority then proceeded to reject amendments that would have focused the Committee's attention on a number of urgent matters—including enforcement of the Foreign Emoluments Clause,<sup>76</sup> allegations of contact between the Russian

<sup>70</sup> Letter from Ranking Member John Conyers, Jr., H. Comm. on the Judiciary, *et al.*, to Chairman Bob Goodlatte, H. Comm. on the Judiciary, Nov. 30, 2016.

<sup>71</sup> *Id.* at 2.

<sup>72</sup> Letter from Ranking Member John Conyers, Jr., H. Comm. on the Judiciary, *et al.*, to Chairman Robert Goodlatte, H. Comm. on the Judiciary, Jan. 24, 2017.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> Unofficial Tr. of Markup of Authorization and Oversight Plan; H.R. 985; H.R. 906, before the H. Comm. on the Judiciary, Feb. 15, 2017 (statement of Chairman Robert Goodlatte).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* (amendment offered by Rep. Jamie Raskin).

government and the Trump campaign,<sup>77</sup> and the specific conclusion of the intelligence community that the Russian government engaged in a massive effort to influence the presidential election in favor of President Trump.<sup>78</sup>

At the markup of H. Res. 111, Chairman Goodlatte argued that he planned to send, “along with any willing members of this committee, a letter requesting that the Attorney General proceed with investigations into any criminal conduct involving these matters.”<sup>79</sup> Rep. Darrell Issa (R-CA) argued that, although he could not support the resolution, “there is a letter that is in draft form that I have already looked at and made comments on that asks for information and cooperation by the Attorney General.”<sup>80</sup> As more in the Majority indicated their support for this letter, the Chairman assured the Committee that he would send the letter “this week.”<sup>81</sup> To date, no such letter has been shared with the Minority or sent to the Department of Justice.

#### IV. CONCLUSION

In debate over H. Res. 111, Rep. Matt Gaetz (R-FL) suggested that the resolution was unnecessary because “[w]e have already, as the Judiciary Committee, amended our oversight plan to include a thorough review of that which is under our jurisdiction relating to the executive branch.”<sup>82</sup> As Rep. Cicilline pointed out, “the adoption of that oversight plan mandates that we begin the work of doing oversight, and this resolution of inquiry is the first step: to gather information, to ask questions.”<sup>83</sup>

The Committee must begin the work of doing oversight. We have reasoned with our colleagues in the Majority, we have written letters, and we have offered H. Res. 111. We are not deterred by the Majority’s reluctance to do the hard work of holding this Administration accountable for its actions. We will look for every opportunity to persuade them to join us in our efforts.

Nevertheless, when given the opportunity to ask the Department of Justice for information about the Trump Administration’s ties to Russia and the President’s refusal to address his conflicts of interest, the Majority has looked the other way. These matters have the potential to do real and lasting harm to our democracy. If the crisis comes, when the damage is done, the Majority will be every bit as complicit as President Trump.

MR. CONYERS, JR.  
MR. NADLER.  
MS. LOFGREN.  
MS. JACKSON LEE.  
MR. COHEN.  
MR. JOHNSON, JR.  
MR. DEUTCH.  
MR. GUTIERREZ.

<sup>77</sup> *Id.* (amendment offered by Rep. Sheila Jackson Lee).

<sup>78</sup> *Id.* (amendment offered by Rep. Eric Swalwell).

<sup>79</sup> Markup Tr. (statement of Chairman Bob Goodlatte).

<sup>80</sup> *Id.* (remarks of Rep. Darrell Issa).

<sup>81</sup> *Id.* (remarks of Chairman Bob Goodlatte).

<sup>82</sup> *Id.* (remarks of Rep. Matthew Gaetz).

<sup>83</sup> *Id.* (remarks of Rep. David Cicilline).

**H. Res. 111 Dissenting Views (Final)**

13

MS. BASS.  
MR. RICHMOND.  
MR. JEFFRIES.  
MR. CICILLINE.  
MR. SWALWELL  
MR. LIEU  
MR. RASKIN  
MS. JAYAPAL

