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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*

August 10, 2017

VIA ELECTRONIC TRANSMISSION

Ambassador Norman L. Eisen
Chair, Board of Directors
Richard W. Painter
Vice Chair, Board of Directors
Citizens for Responsibility and Ethics in Washington
455 Massachusetts Avenue, N.W., 6th Floor
Washington, DC 20001

Dear Ambassador Eisen and Mr. Painter,

I read with interest the lawsuit you filed against President Trump regarding his alleged violations of the Emoluments Clause. Since March 2016, I have been asking about Secretary Clinton's receipt of money from foreign governments and foreign instrumentalities, without the consent of Congress, during her tenure as Secretary of State. Secretary Clinton's actions raise nearly identical concerns about compliance with the Clause as those you identified related to President Trump, but you did not acknowledge them in your complaint or Brookings article.¹ Any violations of the Clause should be pursued and remedied in an evenhanded and objective manner, regardless of who may have committed them.

I also read with interest your Brookings article about the application of the Clause to President Trump, in which you did not analyze its application to Secretary Clinton despite evidence of violations in her public financial filings.² Your article states that "the underlying purpose of the Clause strongly favors covering immediate family of a federal officeholder, lest formalism and paper walls eviscerate the Framers' design."³ You later expound in a footnote why the application of the Clause should extend to immediate family members, noting, "[j]ust imagine if an officeholder's *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

¹ Your complaint sets forth a history and purpose of the Clause that is clearly implicated by Secretary Clinton's receipt of foreign money: "Defendant's violations of the Foreign Emoluments Clause pose a grave threat to the United States and its citizens. As the Framers were aware, private financial interests can subtly sway even the most virtuous leaders, and entanglements between American officials and foreign powers could pose a creeping insidious threat to the Republic." Second Amended Complaint at 1-2, Citizens for Responsibility and Ethics in Washington v. President Donald J. Trump, No. 1:17-cv-00458-RA (S.D.N.Y. 2017) [hereinafter Citizens for Responsibility and Ethics Complaint]. In addition, your complaint noted that, "[t]he Foreign Emoluments Clause covers not only a transfer from a king, prince, or foreign State individually, but also any transfer from their instrumentalities and controlled entities." *Id.* at 12.

² 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). That article was cited in, First Complaint at 1, Citizens for Responsibility and Ethics in Washington v. President Donald J. Trump, No. 1:17-cv-00458-RA (S.D.N.Y. 2017).

³ 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).

that circumstance, divided loyalty appears virtually inevitable.”⁴ You made no mention of Secretary Clinton’s joint receipt of extravagant payments for her spouse’s speeches from foreign governments and foreign instrumentalities—even though she shared in those foreign payments direct, personal, joint income and even though they were substantially more than her income from the State Department.⁵

Moreover, the extension of financial ownership of income to both spouses due to the filing of joint taxes is not novel. The Office of Government Ethics has held in its advisory opinions that [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.”⁶ Since Secretary Clinton filed joint tax returns with her husband, she received a direct financial and economic benefit from his income. Accordingly, based on the scope of the Clause outlined in your complaint, Secretary Clinton appears to have received emoluments that were not validated by congressional consent.

Specifically, according to Secretary 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.⁷ These were direct payments—not through the Clinton Foundation or a vast web of businesses run by family members. 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.⁸ 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.⁹

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 created by Sheikh Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates and Emir of Abu Dhabi.¹⁰

⁴ *Id.* citing footnote 81. (emphasis added).

⁵ For example, according to Secretary Clinton and former President Bill Clinton’s tax returns for 2011, her salary from the State Department was approximately \$160,000. During her tenure, money received from foreign governments exceeded her State Department salary and her annual income with former President Clinton was in the millions of dollars.

⁶ U.S. Office of Government Ethics, *04x16 Disclosure of Assets of a Spouse and Dependents*, Nov. 16, 2004.

⁷ 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).

⁸ Public Financial Disclosure Report, 2011.

⁹ 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.”).

¹⁰ Public Financial Disclosure Report, 2011. Public Financial Disclosure Report, 2011. See also James V. Grimaldi and Rebecca Ballhaus, *Speaking Fees Meet Politics for Clintons*, The Wall Street Journal (Dec. 30, 2015). 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

In an August 2011 email, State Department officials described AGEDI as “a government-incubated initiative launched in 2002 through the Environmental Agency Abu Dhabi.”¹¹ Recently, the Inspector General for the Defense Department informed the Committee that Lt. Gen. Michael Flynn is under investigation for violating the Clause after receiving over \$30,000 from Russia Today (RT) for attending a meeting in Moscow. The Director of National Intelligence has noted that RT was created and financed by the Russian government, and every year the government spends hundreds of millions of dollars supporting it.¹² AGEDI is similar to RT in the nature of its creation, connections, and support from its parent government—it was created and is apparently supported by the state.

In addition, in June 2010, she also received \$500,000 from Renaissance Capital jointly with her husband for one of former President Clinton’s speeches in Moscow.¹³ Renaissance is a Russian investment bank whose senior officers include former FSB (Russian intelligence) personnel. As such, sources have described the Bank as an extension of the Russian government, as most all of the banks in Russia are controlled in some manner by the Kremlin.¹⁴ At the Committee’s recent oversight hearing on the Foreign Agents Registration Act, a witness described Renaissance Bank as follows:

The Chairman was – or I should say another senior official was a British citizen of Russian origin named Igor Sagiryan. On their staff at Renaissance Capital, they trumpeted the fact that they had a number of former FSB officers on their staff. I should point out that there is no such thing as a former FSB officer. It is a lifetime commitment. And in the Department of Justice investigation into Prevezon Holdings, they determined that \$13 million from the crime that Sergei Magnitsky uncovered, exposed, and was killed over went to the bank accounts of Renaissance Capital in the United Kingdom.¹⁵

Given the apparent links to the Kremlin, this payment should be examined in light of the Emoluments Clause. Moreover, in the same month as the speech, Uranium One and the Russian government notified the Committee on Foreign Investment in the United States (CFIUS) of the Russian government’s intent to acquire 20 percent of the United States’ uranium assets. The

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>.

¹¹ Email from Patrick J. Fischer to Kathryn Youel Page, “RE: ethics check.” (Aug. 3, 2011).

¹² 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

¹³ Public Financial Disclosure Report, 2010.

¹⁴ According to the OLC, one of the factors used to determine whether an entity is an instrumentality of a foreign government is whether it is susceptible to becoming one. See *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 121 (1993). Having multiple former FSB officers involved in running the bank weighs in favor of finding the entity to be an instrumentality. Of course, it’s also common knowledge that there is no such thing as a “former” FSB officer.

¹⁵ Senate Comm. on the Judiciary, *Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations*, Testimony from Mr. Bill Browder at 20-21 (July 27, 2017).

next month, in July 2010, Renaissance Bank assigned Uranium One a “buy” rating, a move that would principally benefit its Russian investors.

Secretary Clinton’s public financial forms only disclose the primary sponsors of these paid speeches, but a closer examination reveals additional government-owned and funded sponsors. For example, Secretary Clinton disclosed that in October 2010, President Clinton received a \$250,000 fee for a speech in Egypt from the American Chamber of Commerce in Egypt.¹⁶ However, according to State Department records, the event was also sponsored by Etisalat,¹⁷ a Middle Eastern telecommunications company that is reportedly majority-owned by the United Arab Emirates government.¹⁸ As such, the portion of that speech paid for by Etisalat appears to violate the Clause. A \$200,000 speech on September 9, 2011 in Santa Clara, California also included the Suzhou People’s Government, a Chinese government entity, as a sponsor.¹⁹ Accordingly, the amount contributed by the Chinese government similarly appears to violate the Clause.

These facts demonstrate a *direct* transfer of money from foreign governments and foreign instrumentalities to Secretary Clinton, as joint income with her husband. As you have stated in your complaint, the intent of the Clause is to prevent foreign influence of government officials.²⁰ That influence is highly likely when the recipient has actual knowledge of a direct benefit received. Given the “sprawling business empire”²¹ you described in your complaint, it could be a challenge to demonstrate President Trump’s actual knowledge of a particular foreign government official’s purchase of a hotel booking or restaurant meal. However, in light of her agreement to an extensive ethics review process, it seems highly likely that Secretary Clinton knew when, why, and how she and her husband received foreign government funds for his speeches. Her senior staff reviewed and approved individual speaking engagements and she listed them on her public disclosure forms.²² Yet, despite all the hard fought public disclosure of State Department emails, not one shows that the Emoluments Clause was ever identified or analyzed as a potential issue. There is no memo from the State Department, the Justice Department, or even her own lawyers explaining why her receipt of these foreign government funds as Secretary would have been constitutionally permissible.

Finally, your complaint noted that the Framers “...created a broad constitutional prophylactic applicable to anything of value given by any foreign government to any officer of the United States.”²³ I have raised multiple examples of potential corruption in the relationship between Clinton Foundation donors—both foreign and domestic—and the State Department

¹⁶ Public Financial Disclosure Report, 2010.

¹⁷ Rosalind S. Helderman, *For Clintons, speech income shows how their wealth is intertwined with charity*, Washington Post (April 22, 2015). See also, Memorandum from James Thessin, Designated Agency Ethics Advisor, Dep’t of State, to Terry Krinvic, Director of Scheduling and Advance for William Jefferson Clinton (June 1, 2010).

¹⁸ *Id.*

¹⁹ Memorandum from Kathryn Youel Page, Alternate Designated Agency Official, Dep’t of State, to Terry Krinvic, Director of Scheduling and Advance for William Jefferson Clinton (June 8, 2011). State Department records list the speech was to occur on September 9, 2011. Secretary Clinton’s public financial forms list the speech October 21, 2011.

²⁰ Citizens for Responsibility and Ethics Complaint at 11.

²¹ *Id.* at 14.

²² Letter from David Kendall, Attorney for President Clinton and Secretary Clinton, to Jim Thessin, Designated Agency Ethics Official, U.S. Dep’t of State (Jan. 5, 2009).

²³ Citizens for Responsibility and Ethics Complaint at 11.

during Secretary Clinton's tenure. Specifically, in August 2016, I noted that foreign governments donated heavily to the Clinton Foundation while simultaneously lobbying the State Department. For example, prior to Secretary Clinton's tenure, Qatar was the recipient of approximately \$271 million in military-related export deals.²⁴ During her tenure, Qatar was the recipient of approximately \$4.3 billion – a 1,482% increase.²⁵ Notably, Qatar donated \$1 million to the Clinton Foundation in honor of President Bill Clinton's birthday in 2011.²⁶

Likewise, the United Arab Emirates donated \$1 million to the Foundation, and then saw approved military exports deals increase from \$2.2 billion to \$25 billion – a 1,005% increase.²⁷ Saudi Arabia, Norway, and Australia each have donated \$10 million, and received a 97% increase, 23% increase, and 198% increase, respectively.²⁸

Additionally, the American Chamber of Commerce in Egypt paid President Clinton \$250,000 to speak at an event in Egypt in 2010. That speech reportedly included payment from a United Arab Emirates owned company, Etisalat.²⁹ Lockheed Martin is a member of the Chamber and reports indicate that three days before the speech, the State Department approved two weapons export deals involving Lockheed as the primary contractor.³⁰ In 2010, the State Department also approved 17 contracting deals with Lockheed and the Pentagon.³¹ The *International Business Times* reported that Lockheed stated that its "support" for the Clinton Foundation began in 2010.³²

In total, according to the *Wall Street Journal*, a dozen entities paid President Clinton "more than \$8 million to give speeches around the time they also had matters before Mrs. Clinton's State Department..."³³ The donations to the Clintons personally and to their Foundation inured to their benefit. President Clinton, and thereby Secretary Clinton, earned millions of dollars in speeches attendant to donations made to the Clinton Foundation showing that the Clintons leveraged the Foundation for their benefit as a joint economic unit. Thus, under your interpretation of the Clause and to the extent the payments were from foreign governments and foreign instrumentalities, Secretary Clinton received a benefit from her affiliation with the Clinton Foundation that could be considered an emolument.

The Clause must be enforced impartially, without regard for power, privilege, or party. Selective efforts to enforce the Clause smacks of partisan political bias. A fair examination of Secretary Clinton's financial benefits from foreign government entities and instrumentalities, by

²⁴ U.S. Office of Government Ethics, *04x16 Disclosure of Assets of a Spouse and Dependents*, Nov. 16, 2004.

²⁵ David Sirota and Andrew Perez, *Clinton Foundation Donors Got Weapons Deals From Hillary Clinton's State Department*, INTERNATIONAL BUSINESS TIMES (May 26, 2015).

²⁶ *Id.* See also, Jonathan Allen, *Clinton's charity confirms Qatar's \$1 million gift while she was at State Dept.*, Reuters (Nov. 4, 2016).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ James V. Grimaldi and Rebecca Ballhaus, *Speaking Fees Meet Politics for Clintons*, The Wall Street Journal (Dec. 30, 2015).

your reasoning, plainly shows that those benefits implicate the Clause. Yet your complaint raised none of these concerns about Secretary Clinton.

Accordingly, please explain what steps your organization is taking to seek a remedy for the apparent violations by Secretary Clinton. If none, please explain why not. Please respond no later than August 25, 2017. If you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman
Committee on the Judiciary