

A Panel Examining the Constitutional, Ethical, and National Security Implications of the Trump Administration

Opening Statement of Susan Hennessey

Thank you to the members of the Congressional Black Caucus for having me here today to discuss some of the constitutional, ethical, and national security implications of the current administration. My name is Susan Hennessey and I am a Fellow of National Security Law in Governance Studies at the Brookings Institution. Previously, I was an attorney with the National Security Agency.

I am heartened to see the many members of Congress committed to fulfilling the constitutional prerogatives of the legislative branch in undertaking meaningful oversight and investigation of the executive. It is critical for Congress to recognize the particular role it plays with respect to questions arising at the intersection of ethics and national security.

The purpose of congressional investigations is not to replicate or validate criminal or counterintelligence investigations within the executive branch. Unlike the executive, Congress is charged with ascertaining information related to legislative purposes—including the imposition of sanctions in response to the activity of a hostile foreign power, the discharging of its oversight function with regard to fraud, abuse, or corruption in the executive branch, and legislative measures that might be necessary to protect the American electoral system.

Congress also has a duty to publicly address major questions the political system is struggling with in a fashion the public can absorb and process: What are the President's business or personal relationships with foreign governments? And is there reason to be concerned about them?

Before turning to how congressional investigations might address some of the specific questions regarding Russian activity, I'd like to briefly discuss the relationship between ethics rules and national security. While the connection may not be immediately apparent, the ethics policies governing the executive are fundamentally national security protections. Republicans and Democrats often have different policy views and security priorities, but both share the common understanding that a President's decisions must be guided by the best interests of the United States as the Commander-in-Chief understands them. Ethical transparency is critical to national security because it ensures that personal financial interests are not placed before the interests of the country.

President Trump has refused to divest from his businesses in any meaningful sense. He has refused to release his tax returns, despite a White House petition that has received in excess of one million signatures. He has insisted that federal anti-nepotism law will not bar his family members—who themselves retain private business interests—from serving in his White House. He also resists the application of the foreign emoluments clause of the US constitution.

President Trump asserts that a President cannot have legally cognizable conflicts. That is a controversial legal argument, but it also fails to recognize the distinction between a legal conflict

and a conflict in fact. Because of his multinational business interests, President Trump will eventually face a decision where the interests of the nation run contrary to his personal financial interests. The White House is charged with immensely consequential decisions; not infrequently, it determines matters of life and death. The President's failure to abide by norms of basic transparency make it impossible for Congress or the American people to assess whether and how those financial interests may be influencing his decision making.

When the President's conduct raises questions in this regard, it is incumbent upon Congress to exercise its constitutional mandate of oversight and investigation. While President Trump's potential conflicts of interests span the globe, there is no greater area of concern than those of his and his associates alleged ties to Russia. The wide-ranging issues here complicate the ability to identifying what should be considered part of single or overlapping inquiries.

First, there is the matter of the Russian hacking and active measures campaign during the election. The US intelligence community assessed with high confidence that Russia was responsible for hacks against various organizations and individuals related to political campaigns for the purpose of helping Donald Trump. In the final days of his administration, President Obama issued a series of responsive measures in order to deter Russia from such conduct in the future, both here and against our allies. Those measures were met with bipartisan support in Congress, where members recognized preserving the integrity of elections was not a partisan issue.

Revelation of contacts between National Security Advisor Michael Flynn and the Russian ambassador to the United States raised the specter Flynn had offered assurances of tempering those measures once President Trump took office. The White House—including the Press Secretary and Vice President—repeatedly denied that sanctions were discussed on those calls. Those claims turned out to be false. Communications intercepts—likely obtained from routine collection against a foreign power—revealed that Flynn did in fact discuss sanctions.

General Flynn's resignation leaves many questions unanswered. In particular, questions remain regarding the President's apparent knowledge that his White House was making materially false statements, both internally and to the American public. More importantly, the Administration has made no real attempt to justify or explain how US interests would be advanced by undercutting the Obama Administration's election-related sanctions nor the reversal of sanctions policy generally.

Additionally, there are numerous allegations related to ties between Trump associates and Russian figures, including reports that multiple members of Trump's team had repeated contacts with Russian intelligence in the year leading up to his election. The nature of those contacts must be fully investigated, both as a matter of counterintelligence and in order to determine if any activity amounted to criminal conduct. It is critical that those leading these investigations—which will proceed in parallel in the executive and legislative branches—do not prejudge the conclusions and instead allow the evidence to come forward.

There are currently a number of investigations underway in Congress, the principal of which is within the Senate Select Committee on Intelligence. There is now a need for a new select

committee dedicated to investigating the wide-ranging issues at stake. Reports of White House interference have undermined perceptions of legitimacy and independence of the SSCI investigation. Additionally, there are jurisdictional and staffing challenges that can only be addressed by the formation of a new select committee.

The scope of the investigation at issue exceeds the jurisdiction of any one committee and implicates the jurisdictions of multiple committees. It involves investigation into Russian active measures generally, specific hacks, the conduct of multiple individuals and their relationships with foreign governments, and evidence of financial and personal relationships that might explain motivations and degrees of influence or control. It is impossible to shoehorn such complex and cross-cutting matters into the existing jurisdictions of the intelligence committees.

Additionally the SSCI, which already has a full time oversight role, is not staffed at the level or in the manner necessary to also conduct a highly complex and time-consuming investigation on a matter of critical national importance. Over the long term, this project needs a large staff devoted to it and it alone.

While some have called for a bipartisan commission, I believe a select committee is the better alternative. First, a select committee avoids the need for legislation passed by a veto-proof majority. In practical terms, this means that a select committee is currently achievable, while a bipartisan commission is probably not. Second, the commission model works well when it has the strong support and cooperation of both the executive and Congress, as was the case with the 9/11 Commission. Given the current atmosphere, it is likely a serious and credible investigation into Trump and his associates will be met with substantial resistance by the White House and administration appointees. In the context of that kind of engagement with the executive, a select committee will be better able to assert the constitutional authorities of the legislature, weigh complex political equities regarding immunity, and wield congressional powers of appropriation and authorization to incentivize cooperation.

Thank you for allowing me to share my thoughts on these matters of critical national interest. I look forward to answering your questions.