

January 10, 2017

Honorable John McCain, Chairman
U.S. Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Honorable Jack Reed, Ranking Member
U.S. Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Dear Chairman McCain and Ranking Member Reed:

As this Committee considers the nomination of General James Mattis (USMC, Ret.) for Secretary of Defense, the Project On Government Oversight urges you to closely examine any potential conflicts and ensure ethics agreements made with this Committee are comprehensive. This should include a commitment from him to follow the current ethics executive order to recuse himself for two years from any decisions that would impact any companies for which he had a financial interest.¹ We are concerned that the current agreement with the Office of Government Ethics is not sufficient to prevent potential conflicts of interest.²

This letter is not meant to suggest that General Mattis is not qualified for the position. But we do think as part of this Committee's oversight efforts, due diligence is necessary to ensure that if confirmed he will act solely in the best interest of the nation, not any companies he previously represented. Federal law requires executive branch officials to recuse themselves from matters in which they have a financial conflict of interest for one year.³ Federal

¹ Executive Order 13490, January 21, 2009. <https://www.whitehouse.gov/the-press-office/ethics-commitments-executive-branch-personnel>.

² "Ethics Agreement," January 5, 2017.

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/2EB12A932B2A7958852580A1002C7CAB/\\$FILE/MATTIS%20James%20%20Ethics%20Agreement.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/2EB12A932B2A7958852580A1002C7CAB/$FILE/MATTIS%20James%20%20Ethics%20Agreement.pdf)

³ 18 U.S.C. § 208; Anthony Capaccio and Anders Melin, "Pentagon Chief May Have to Steer Clear of \$10 Billion Contractor," Bloomberg, December 15, 2016. <https://www.bloomberg.com/news/articles/2016-12-15/pentagon-chief-may-have-to-steer-clear-of-10-billion-contractor>; Avi Asher-Schapiro and David Sirota, "Donald Trump Pentagon Pick Mattis Made Nearly \$1,000,000 on Board of Defense Contractor," *International Business Times*,

regulations also mirror the one-year cooling off period, and also make clear that General Mattis would have to divest himself of financial interests tied to companies with business before the Department.⁴

The Project On Government Oversight appreciates this Committee's, and particularly Chairman McCain's, leadership on the revolving door, including requiring the Department of Defense to track the movement of public officials as they move through the revolving door.⁵ This Committee has recognized how Defense officials leaving the Department to work for the very contractors they were supposed to be overseeing undermines public confidence in the integrity of the procurement system. There should be similar concern about those leaving the defense industry to run the Department of Defense.

To address this shortfall, the Committee has worked to restore the public's confidence through procurement reforms and improved ethical standards. In order to be confirmed, for instance, nominees are prohibited from holding stock in companies identified on the Department of Defense's contractors list. Specifically, it was an important step forward when this Committee required former Raytheon lobbyist William Lynn to promise that as Deputy Secretary of Defense he would recuse himself and not seek a waiver from participating in six major weapons programs he lobbied for on behalf of Raytheon.⁶

Unfortunately General Mattis's decisions to join the boards of General Dynamics and Theranos appear to conflict with the obligations of federal conflict-of-interest laws.⁷ He joined the board of General Dynamics five months after retiring from the Marine Corps,⁸ and has received approximately \$1 million in compensation.⁹ Additionally, according to the company's most recent proxy statement, General Mattis's brother is an employee of a

December 2, 2016. <http://www.ibtimes.com/political-capital/donald-trump-pentagon-pick-mattis-made-nearly-1000000-board-defense-contractor>

⁴ 5 C.F.R. § 2635.502(b)(1)(iv).

⁵ National Defense Authorization Act for FY 2008, Public Law 110-181, Sec. 847.
<https://www.gpo.gov/fdsys/pkg/PLAW-110publ181/html/PLAW-110publ181.htm>

⁶ Specifically Lynn committed to not seeking a waiver from Section 502 of the Federal Standards of Ethical Conduct for the DDG-1000 surface combatant, the AMRAAM air-to-air missile, the F-15 airborne radar, the Patriot Pure Fleet program, the Future Imagery Architecture, and the Multiple Kill Vehicle. Letter from William J. Lynn III to Ranking Member Senator John McCain, January 30, 2009. <http://pogoarchives.org/m/gc/lynn-letter-20090130.pdf>.

⁷ 5 C.F.R. § 2635.101.

⁸ General Dynamics, "General Dynamics Elects James N. Mattis to Board of Directors," August 7, 2013.
<http://www.generaldynamics.com/news/press-releases/2013/08/general-dynamics-elects-james-n-mattis-board-directors>

⁹ General Dynamics Corporation, "Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934," March 18, 2014, p. 18.
https://www.sec.gov/Archives/edgar/data/40533/000119312514103696/d612943ddef14a.htm#toc612943_19;
General Dynamics, "Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934," March 20, 2015, p. 24.
<https://www.sec.gov/Archives/edgar/data/40533/000119312515100185/d846114ddef14a.htm>; General Dynamics, "2016 Proxy Statement," March 18, 2016, p. 24. <http://investorrelations.gd.com/~media/Files/G/General-Dynamics-IR/documents/annual-reports/GD-Proxy-2016.pdf>

subsidiary of General Dynamics, raising concerns about additional conflicts that must be prevented even if General Mattis divests his current holdings.¹⁰ According to the Federal Procurement Data System, General Dynamics was the fourth largest contractor for the Department of Defense in Fiscal Year 2015, receiving \$11.8 billion in contracts.¹¹ The company is also the lead contractor for a number of major weapons programs for the Department, including the *Columbia* class nuclear missile submarine program, which the Department estimates will cost \$126 billion over the program's lifetime.¹² We hope the Committee will examine in detail General Mattis's role in the contracts between General Dynamics and the Department of Defense and any policy changes advocated by the company. Additionally, we hope you will go beyond the ethics agreement posted on the Office of Government Ethics website to ask that he commit to a two-year recusal period during which he will not seek waivers to participate in Department of Defense programs that he had substantially participated in.

General Mattis's decision to join the board of Theranos, a controversial blood-testing company he advocated for while in the Marine Corps, raises additional concerns about his judgment and ethics. According to news reports, as Commander of Central Command (CENTCOM) General Mattis personally pressed the Army to procure and deploy equipment from Theranos. An Army health unit later "found Theranos wasn't prepared to meet requirements and halted the procurement."¹³ POGO is concerned about the propriety of him involving himself so directly in the procurement process. Due to Mattis's substantial personal involvement, medical staff at CENTCOM reportedly felt "caught in the middle of something that feels quite political." As he prepared to leave the Marine Corps, General Mattis sought an ethics opinion concerning future employment with Theranos. His counsel advised him not to represent Theranos before the Department of Defense and the Department of Navy.¹⁴ We are concerned that Mattis chose to join the company's board anyway. While not an explicit violation of the legal opinion, it certainly appears to violate the spirit of the ethical advice he received. Although Mattis has already stepped down from Theranos's board, we hope the Committee's confirmation hearing will evaluate his thinking on his involvement in this matter, including whether he discussed joining the Theranos board while

¹⁰ General Dynamics, "2016 Proxy Statement," March 18, 2016, p. 16.

<http://investorrelations.gd.com/~media/Files/G/General-Dynamics-IR/documents/annual-reports/GD-Proxy-2016.pdf>

¹¹ FPDS-NG, *Top 100 Contractors Report Fiscal Year 2015*, no date provided.

https://www.fpds.gov/downloads/top_requests/Top_100_Contractors_Report_Fiscal_Year_2015.xls

¹² Anthony Capaccio, "Fleet of 12 Nuclear Submarines in Line for Pentagon Approval," Bloomberg, January 4, 2017. <https://www.bloomberg.com/news/articles/2017-01-05/new-nuclear-armed-subs-win-pentagon-approval-before-obama-leaves>

¹³ Christopher Weaver, "Gen. James Mattis Has Ties to Theranos," *The Wall Street Journal*, December 2, 2016. <http://www.wsj.com/articles/gen-james-mattis-has-ties-to-theranos-1480651171>

¹⁴ Carolyn Y. Johnson, "Trump's pick for defense secretary went to the mat for the troubled blood-testing company Theranos," *The Washington Post*, December 1, 2016. https://www.washingtonpost.com/news/work/wp/2016/12/01/trumps-pick-for-defense-secretary-went-to-the-mat-for-the-troubled-blood-testing-company-theranos/?utm_term=.134772427065

still in the Marine Corps, and his understanding of how federal conflict-of-interest laws apply to the operations of the Department of Defense.¹⁵

POGO supported President Obama's new ethics standards regarding the revolving door and has urged President-Elect Donald J. Trump to expand those standards to drain the swamp.¹⁶ The American people deserve public servants with undivided interests and who will act in the best interests of the United States. Given the urgent need for reform at the Pentagon, and the significant conflicts General Mattis could face, we hope the Committee will make every effort to prevent actual or perceived improper influence at the Department.

Sincerely,



Danielle Brian
Executive Director

¹⁵ Christopher Weaver, "Trump Defense Nominee James Mattis Resigns from Theranos Board," *The Wall Street Journal*, January 5, 2017. <http://www.wsj.com/articles/trump-defense-nominee-james-mattis-resigns-from-theranos-board-1483649696>

¹⁶ Sean Moulton, "Strengthening Government Accountability and Transparency: Recommendations for the Next President," Project On Government Oversight, November 3, 2016. <http://www.pogo.org/our-work/reports/2016/strengthening-government-accountability-transparency.html>