



Congress of the United States
House of Representatives

April 30, 2020

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Esper,

We request information about Section 1041 of the Department of Defense (DoD) legislative proposal for this year's National Defense Authorization Act. This proposal would weaken limits on DoD lobbying by retired generals, admirals, and senior civilians. We believe these limits, which were passed into law thanks to the tireless work of the late Senator John McCain, are in the public interest and should be left wholly intact.

Under current law, generals, admirals, and equivalent civilians who retire at grade O-6 or O-7 have a one year "cooling off" period before they are allowed to lobby any part of DoD. Those who retire at grade O-8 or O-9 wait two years. The law applies to a range of activities, including coordinating meetings, conducting research, and developing lobbying strategy.

Under the new proposal, the lobbying ban would be reduced to one year across the board—even for those who retire at the highest levels. And, significantly, the lobbying restriction would only apply to a person's former service or agency.¹ Under your proposal, a senior military leader in the Army could immediately begin lobbying the Navy, exploiting relationships to help a private corporation profit. The definition of lobbying also would be narrowed. Per the justification you submitted to Congress, the proposed definition would "bar direct communication with or appearance before a departed official's former agency but permit former personnel to work behind-the-scenes."²

As an example of why this is not in the public interest, recall the work of former Secretary of Defense and Theranos board member General James Mattis. In 2012, as head of Central Command, General Mattis advocated repeatedly for a pilot program using Theranos technology in Afghanistan. Mattis retired from the Marine Corps in March 2013 and joined the board of Theranos in July 2013. DoD ethics officials told Mattis he should "not to represent Theranos before the DOD and DON [Department of the Navy] on that particular matter for the lifetime of

¹ DoD FY21 NDAA Legislative Requests. Retrieved at: <https://fas.org/man/eprint/ndaa-2021-prop/03062020-analysis.pdf>

² Legislative Requests, as cited.

the matter,” referring to the pilot program.³ The McCain reforms closed the loophole whereby Mattis could, hypothetically, open doors to decision makers, give strategic advice, and lobby some DoD components without violating ethics rules. As we now know, Theranos’ blood tests were utterly useless and could have jeopardized the lives of servicemembers had they ever been put into the field.⁴ This illustrates the importance of ethics laws, which safeguard against waste, fraud, and abuse, and protect public trust in government. Attempting to undo such laws via secret requests to the Armed Services Committees appears contrary to these goals.⁵

If anything, existing laws should be strengthened. A recent Project On Government Oversight (POGO) investigation found that a number of senior Pentagon officials were skirting the law by designating themselves as “business development” executives in order to go through the revolving door and work for defense contractors.⁶ For example, in August 2013, the head of Middle East planning for the Office of the Secretary of Defense left government service and that month started working for Raytheon, where he led business development activities and government client relations across Middle East and North Africa until 2015.^{7,8} Though not technically lobbying, such practices clearly violate the spirit of the law and were acknowledged by President Donald Trump on the campaign trail, when he promised to “close all the loopholes that former government officials use by labeling themselves consultants and advisors when we all know they are lobbyists.”⁹

Despite the defense budget being funded to near-World War II levels, DoD has consistently told Congress that it lacks sufficient funding. The 2018 National Defense Strategy warns: “Our backlog of deferred readiness, procurement, and modernization requirements has grown in the last decade and a half and can no longer be ignored.”¹⁰ And, as you wrote in a DoD-wide memo earlier this year, “I expect leaders at all levels to ruthlessly prioritize to ensure your time, money, and manpower are put into the right efforts and activities.”¹¹ It is unclear how developing and

³ “E-mails reveal concerns about Theranos’s FDA compliance date back years,” Carolyn Johnson, The Washington Post, December 2, 2015. Retrieved at: <https://www.washingtonpost.com/news/wonk/wp/2015/12/02/internal-emails-reveal-concerns-about-theranos-fda-compliance-date-back-years/>

⁴ “Agony, Alarm and Anger for People Hurt by Theranos’s Botched Blood Tests,” Christopher Weaver, The Wall Street Journal, October 20, 2016. Retrieved at: <https://www.wsj.com/articles/the-patients-hurt-by-theranos-1476973026>

⁵ We note that covered DoD officials are still able to solicit outside expertise as needed under the current law because responses to requests for information are excluded from the definition of lobbying contact. See:

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100032p.PDF?ver=2020-03-26-142804-367>

⁶ “Brass Parachutes: Defense Contractors’ Capture of Pentagon Officials Through the Revolving Door,” Project On Government Oversight, November 5, 2018. Retrieved at:

https://s3.amazonaws.com/docs.pogo.org/report/2018/POGO_Brass_Parachutes_DoD_Revolving_Door_Report_2018-11-05.pdf

⁷ Jason Closky, Project On Government Oversight Pentagon Revolving Door Database. Retrieved at:

<https://www.pogo.org/database/pentagon-revolving-door/people/jason-colosky/>

⁸ Jason Closky, LinkedIn. Retrieved at: <https://www.linkedin.com/in/jason-m-colosky/>

⁹ “Trump proposes ethics plan to ‘drain the swamp in Washington’,” Ryan Lovelace, The Washington Examiner, October 17, 2016. Retrieved at: <https://www.washingtonexaminer.com/trump-proposes-ethics-plan-to-drain-the-swamp-in-washington>

¹⁰ “Summary of the 2018 National Defense Strategy,” U.S. Department of Defense, 2018. Retrieved at:

<https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>

¹¹ “Message to the Force – Reform through Focused Prioritization,” Secretary Mark Esper, January 2 2020.

Retrieved at: <https://www.airforcemag.com/app/uploads/2020/01/MESSAGE-TO-THE-FORCE-REFORM-THROUGH-FOCUSED-PRIORITIZATION.pdf>

delivering this relaxed lobbying proposal to Congress fits within these priorities or is in the best interests of the taxpayers who fund the DoD. If anything, looser lobbying rules could bloat military spending that is unnecessary to protect our country.

Given these concerns, we request all documents associated with the creation of this proposal, as well as an estimate of the costs entailed. DoD routinely estimates the costs associated with fulfilling requests under the Freedom Of Information Act and reports to Congress and so should have no difficulty doing so in response to this request.¹² Additionally, we request information about the date that this proposal originated and all correspondence with the DoD Standards of Conduct Office.

It is imperative to our national security that the public has faith in government and that DoD spends taxpayer dollars wisely. We look forward to your response no later than Friday, May 29.

Sincerely,

Katie Porter
MEMBER OF CONGRESS

Dean Phillips
MEMBER OF CONGRESS

Harley Rouda
MEMBER OF CONGRESS

Jackie Speier
MEMBER OF CONGRESS

Joaquin Castro
MEMBER OF CONGRESS

¹²For example, the estimated cost of the 2019 China Military Power Report was \$181,000. See: https://media.defense.gov/2019/May/02/2002127082/-1/-1/1/2019_CHINA_MILITARY_POWER_REPORT.pdf