

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fifteenth Congress

January 24, 2017

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte:

On November 30, 2016, every Democratic member of the House Judiciary Committee wrote to you, urging you to hold hearings on the conflict-of-interest and ethics laws that apply to the President of the United States.

We write again to ask that the Committee hold hearings on President Trump's conflicts of interest, at home and abroad, in possible violation of federal law.

We believe that the Committee has an obligation to examine the application of these conflict-of-interest laws to both the President and his cabinet. Because President Trump insists on maintaining an interest in his business holdings, we also request an investigation of the legal structure and practices of the so-called "trust" managed by his two oldest sons, Donald Trump, Jr. and Eric Trump. Similarly, the Committee should investigate newly-created White House positions for Jared Kushner, the President's son-in-law, and "unpaid advisors" like investor Carl Icahn. These decisions may violate federal nepotism rules and the Anti-Deficiency Act.

We are aware that President Trump has apparently resigned from the management of "more than 400" business entities.¹ This serial resignation does nothing to change his financial interest in these 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.

¹ Jill Disis, *et al.*, *Trump Organization documents say he has resigned from more than 400 businesses*, CNN MONEY, Jan. 23, 2017.

We are also aware that the Office of Legal Counsel has issued an opinion arguing that the federal anti-nepotism statute does not apply to Executive Office of the President.² The memorandum notes that OLC has addressed this subject matter before, and that its conclusion “departs from some of that prior work.”³ In fact, this opinion is a stark departure from its prior findings. In similar memoranda from 1972, 1977, 1983, and 2009, OLC reviewed the same statute and concluded that the President is barred from appointing a relative “to permanent or temporary employment as a member of White house staff.”⁴ We fear that additional departures from settled ethics rules may also be in development.

It is not too late for the Administration to adhere to more the practical advice issued by the OLC in 1974. Then-Assistant Attorney General Antonin Scalia wrote that, 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.⁵ He warned: “[f]ailure to observe these standards will furnish a simple basis for damaging criticism.”⁶

The Administration’s attempts to address its ongoing conflicts of interest are, so far, wholly inadequate—and we are not alone in reaching this conclusion. For example, President Trump’s private lawyers argue that the President can sidestep the Foreign Emoluments Clause of the Constitution by donating the profits of any foreign governments’ use of his hotels.⁷ Former ethics counsels to Presidents George W. Bush and Barack Obama described this plan as “porous and insufficient,” asking:

² *Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, Office of Legal Counsel, U.S. Dept. of Justice, Jan. 20, 2017.

³ *Id.* at 8.

⁴ Memorandum for John W. Dean, III, Counsel to the President, *Re: Applicability to President of Restriction on Employment Relatives*, Nov. 14, 1972, at 1. *See also* Memorandum for Douglas B. Huron, Assoc. Counsel to the President, *Re: Possible Appointment of Mrs. Carter as Chairman of the Commission on Mental Health*, Feb. 18, 1977; Memorandum for the Attorney General, *Re: Employment of Relatives Who Will Serve Without Compensation*, Mar. 23, 1977; Memorandum for David B. Waller, Senior Assoc. Counsel to the President, *Re: Appointment of Member of President’s Family to Presidential Advisory Committee on Private Sector Initiatives*, Feb. 28, 1983; Memorandum for Gregory B. Craig, Counsel to the President, *Re: Application of 5 U.S.C. § 3110 to Two Proposed Appointments by the President to Advisory Committees*, Sept. 17, 2009.

⁵ 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.

⁶ *Id.*

⁷ Susanne Craig and Eric Lipton, *Trump’s Plan on Business May Fall Short*, N.Y. TIMES, Jan. 11, 2017. *See also* U.S. Const. art. I, § 9, cl. 8. The President may not, “without the consent of Congress, accept any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state.”

[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?⁸

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.”⁹

Some in the Majority have reacted poorly to this criticism. Rep. Jason Chaffetz, 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.¹⁰ White House chief of staff Reince Priebus later appeared on national television to warn Director Shaub to “be careful” with his comments.¹¹ 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.

Our November 30 letter outlined just some of the federal ethics and conflict-of-interest laws that might apply to the President of the United States. As Director Shaub and others have cautioned, President Trump’s continued insistence that these laws and norms 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.¹² The Foreign Emoluments Clause is a strict and absolute rule—it

⁸ Richard Painter and Norman Eisen, *Just when you thought the Trump ethics disaster couldn’t get worse, it did*, WASH. POST, Jan. 16, 2017.

⁹ Walter M. Shaub, Jr., Director, U.S. Office of Gov’t. Ethics, Remarks at the Brookings Institution, Jan. 11, 2017.

¹⁰ 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.

¹¹ *This Week with George Stephanopoulos* (ABC News broadcast Jan. 15, 2017) (remarks of Reince Priebus).

¹² 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).

“operates categorically, governing transactions even when they would not necessarily lead to corruption, and establishing a clear baseline of unacceptable conduct.”¹³

Because he has failed to meaningfully step away from his business holdings, President Trump may have been in violation of the Foreign Emoluments Clause since the moment he took his oath of office. Consider just a sample of recent reporting:

- President Trump has sought and received funding for his business from Russian financiers.¹⁴ Donald Trump, Jr., who presumably manages day-to-day business for the Trump Organization, has confirmed that “Russians make up a pretty disproportionate cross-section of a lot of our assets.”¹⁵ These facts are 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. It is also a major lender to the Trump Organization. Its lease is slated to end in October 2019.¹⁶ The bank’s rent 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 appear to constitute foreign emoluments.
- Foreign diplomats and other representatives of foreign governments have moved their business to the President’s Washington, D.C. hotel.¹⁷ At least one report suggests that a foreign embassy was pressured to move their event to the Trump property.¹⁸ Even without an element of coercion, payments by foreign diplomats for lodging, meeting space, and food at the hotel are likely emoluments in violation of the Constitution.

¹³ 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, Dec. 16, 2016, at 13.

¹⁴ 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.

¹⁵ Hazel Heyer, *Executive Talk: Donald Trump, Jr. Bullish on Russia and Few Emerging Markets*, ETURBONNEWS, Sept. 15, 2008.

¹⁶ Caleb Melby *et al.*, *When Chinese Bank’s Trump Lease Ends, Potential Conflict Begins*, FORBES, Nov. 28, 2016.

¹⁷ Jonathan O’Connell, *Conservative groups, foreign leaders flock to Trump’s D.C. hotel*, WASH. POST, Dec. 7, 2016.

¹⁸ Paulina Firozi, *Report: Embassy of Kuwait moves major event to Trump’s DC hotel*, THE HILL, Dec. 12, 2016.


In the context of private business, these transactions may be entirely legitimate. For the President of the United States, they present an inescapable conflict of interest—shading his decisions with questions about personal enrichment and foreign entanglement. “This is *exactly* what the Emoluments Clause is meant to head off at the pass.”¹⁹

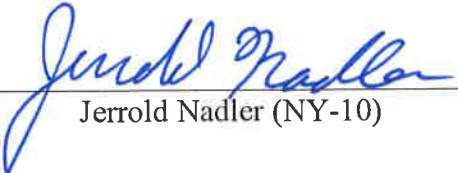
The Framers of the Constitution created an explicit role for Congress in the enforcement of this rule. Because our Committee oversees matters of criminal and constitutional law in the House of Representatives, that responsibility falls to us.


Accordingly, we ask that you schedule hearings on these topics as soon as possible.

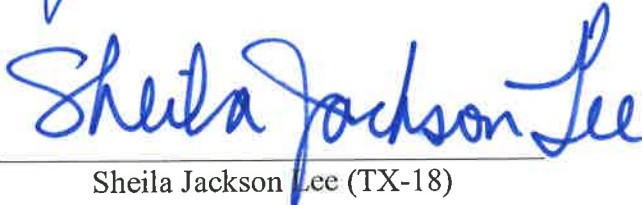
Thank you for your prompt attention to this matter.

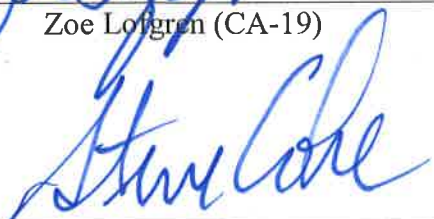
Sincerely,


John Conyers, Jr. (MI-13)


Jerrold Nadler (NY-10)



Zoe Lofgren (CA-19)


Sheila Jackson Lee (TX-18)


Steve Cohen (TN-09)


Henry C. “Hank” Johnson, Jr. (GA-04)


Judy Chu (CA-27)


Ted Deutch (FL-22)

¹⁹ 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, Dec. 16, 2016, at 7.



Luis Gutierrez (IL-04)



Karen Bass (CA-37)



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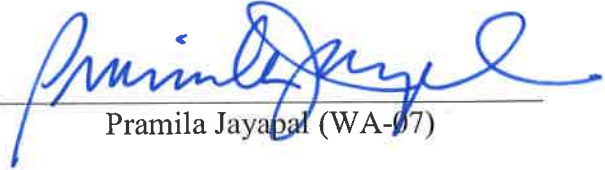
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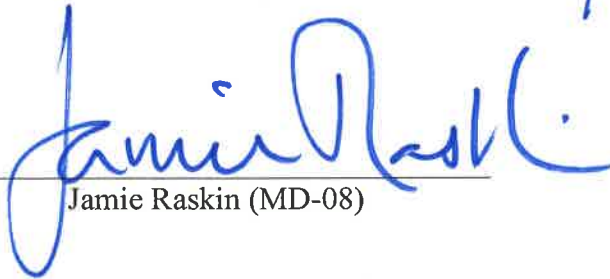
Eric Swalwell (CA-15)



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