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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 8, 2017

Bobby R. Burchfield
King & Spalding LLP
1700 Pennsylvania Ave NW, Suite 200
Washington, D.C. 20006

George A. Sorial
The Trump Organization
725 Fifth Avenue
New York, NY 10022

Dear Mr. Burchfield and Mr. Sorial:

In a press conference on January 11, 2017, then-President-Elect Trump outlined policies designed to mitigate conflicts of interest stemming from his failure to divest his holdings in the Trump Organization. An accompanying memorandum from the law firm of Morgan, Lewis & Bockius LLP expanded on these policies and procedures, which include a pledge to vest Trump Organization decision-making authority in President Trump's sons and another Trump executive; prohibit any "new foreign deals" and subject new domestic deals to a "rigorous vetting process"; and donate all profits from "foreign governments' patronage" at President Trump's "hotels and similar businesses...to the U.S. Treasury."¹ The announced procedures also included the prospective appointment of an outside Ethics Advisor to vet domestic Trump-related transactions and a Chief Compliance Officer to ensure "that The Trump Organization businesses are operating at the highest levels of integrity."² As the individuals newly appointed to these positions, you now carry the responsibility of fulfilling President Trump's pledge that only "the American People [will] benefit from his term as President."³

Significant questions remain, however, concerning the terms and policies outlined in the Morgan Lewis memorandum, particularly with regard to President Trump's pledge to donate profits to the Treasury, bar new foreign deals involving the Trump Organization, and subject new domestic deals to rigorous vetting.

The memorandum states, for example, that "the President-elect is announcing he will donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury." Nearly every element of this pledge is subject

¹ Morgan Lewis & Bockius LLP, *Conflicts of Interest and the President* (Jan. 11, 2017).

² *Id.*

³ *Id.*

to interpretation and a variety of potential definitions. The definition of “profit,” for example, could encompass any amounts received above the actual costs associated with goods and services,⁴ yet the process for determining these costs is unclear. And as Steve Carvell, an expert in hotel administration has explained, it is a “monumental task” to calculate “profit” for individual hotel rooms or venues.⁵ In any event, given that the average net profit margin in the hotel industry stands at less than 5%, according to a 2014 industry analysis, 95% of income from foreign government patronage at Trump Organization properties may never reach the Treasury.⁶ Similarly, it is unclear how the Trump Organization will define “foreign governments’ patronage.” Defined narrowly, this term could “overlook governments that use a third-party vendor to do business with” the Trump Organization.⁷ In the case of Chinese business entities, for example, “the extent of state ownership is not always clear.”⁸ And, as the *Associated Press* has explained, the undefined term “hotels and similar businesses” leaves “open questions about foreign governments that may purchase condos in his buildings or spend money on Trump golf courses.”⁹

Likewise, while the memorandum included a complete ban on “new foreign deals” for the Trump Organization, President Trump and the Trump Organization have seemingly contradicted the plain meaning of this ban by entertaining a \$2 billion offer from a businessman from the United Arab Emirates,¹⁰ meeting with Indian business partners planning a luxury apartment complex near Mumbai,¹¹ and moving forward with new investments in a Scottish golf resort.¹²

⁴ *Emoluments: Trump's Coming Ethics Trouble*, The Atlantic (Jan. 18, 2017).

⁵ *Trump Plan to Donate Foreign Hotel Profits Can't Be Checked*, Associated Press (Jan. 12, 2017).

⁶ *How U.S. Hotels Are Faring*, Forbes (Jan. 5, 2014).

⁷ *Trump Plan to Donate Foreign Hotel Profits Can't Be Checked*, Associated Press (Jan. 12, 2017).

⁸ *Chinese Investments in U.S. Hotel Companies Spur National Security Scrutiny*, Los Angeles Times (March 18, 2016).

⁹ *Trump Plan to Donate Foreign Hotel Profits Can't Be Checked*, Associated Press (Jan. 12, 2017).

¹⁰ *Trump Says Foreign Billionaire Offered Him a \$2 Billion Business Deal This Week*, Forbes (Jan. 11, 2017).

¹¹ *Donald Trump Meeting Suggests He is Keeping Up His Business Ties*, New York Times (Nov. 19, 2016).

¹² *Trump's Scotland Golf Resort Proceeds With Expansion Despite Business Pledge*, The Guardian (Jan. 14, 2017).

Additionally, while the memorandum promised a “rigorous vetting process” for new domestic deals, within days of President Trump’s inauguration, and before your appointments, Trump Hotels Chief Executive Officer Eric Danziger announced a major expansion of Trump Hotels within the United States. The press accounts of this announcement did not include any discussion of whether the expansion had been subject to the vetting process President Trump and the Trump Organization had established.¹³

Finally, President Trump’s refusal to release his tax records or otherwise divulge his full financial holdings and debts significantly complicates any effort to police his conflicts of interest. The recent executive order banning travel from seven majority Muslim countries to the United States, for example, pointedly does not apply to “ones where Donald Trump has done business,” raising the appearance—if not the fact—of a conflict of interest directing U.S. immigration policy.¹⁴ Not only does the lack of information on Trump holdings obscure a full view of the conflicts involved in this recent order, but it also will cloud the ability of ethics advisers to predict and resolve conflicts in future actions.

These issues have led ethics experts and constitutional scholars from across the political spectrum to raise serious concerns with the arrangements President Trump and his advisers have proposed. Noted constitutional expert Erwin Chemerinsky, for example, has described the ethics plans described above as “laughable,” explaining that President Trump simply receiving money from foreign entities—as opposed to “profit,” specifically—would violate the Emoluments Clause of the U.S. Constitution.¹⁵ Moreover, “[f]ocusing on profits...ignores the countless ways that [the President’s] businesses can benefit from foreign governments that would never show up on a balance sheet.”¹⁶ Walter M. Shaub Jr., director of the Office of Government Ethics, has also explained that the “notion that there won’t be new deals doesn’t solve the problem of all the existing deals and businesses.”¹⁷ Perhaps most importantly, inherent conflicts will arise from the simple fact that President Trump will “continue to own the Trump Organization, and any benefits it reaps during his presidency will appear in his pocket the moment he finishes his presidential term.”¹⁸ Bolstering this conclusion is the fact that President Trump has placed his

¹³ *Trump Hotels, Amid Calls to Divest, Instead Plans U.S. Expansion*, Bloomberg (Jan. 25, 2017).

¹⁴ Richard W. Painter and Norman L. Eisen, *Who Hasn’t Trump Banned? People From Places Where He’s Done Business*, New York Times (Jan. 29, 2017).

¹⁵ Erwin Chemerinsky, *Trump May Violate the Constitution on Day One*, Los Angeles Times (Jan. 12, 2017).

¹⁶ *Id.*

¹⁷ *It “Falls Short in Every Respect”: Ethics Experts Pan Trump’s Conflicts Plan*, New York Times (Jan. 12, 2017).

¹⁸ David Post, *Trump, Trump(tm) and Trump’s Conflicts Plan*, Washington Post (Jan. 23, 2017).

assets into a trust for his “exclusive benefit,” and he retains the power to revoke the trust at any time.¹⁹

In light of these significant concerns, I request you answer the following questions, which seek to clarify the nature of the ethical commitments President Trump has made to the American people:

- 1) How will you define the “profits” President Trump will donate to the Treasury? If you plan to calculate profits according to amounts received above actual costs of goods and services, how will these costs be determined?
- 2) Will your definition of “profits” include income President Trump or the Trump Organization has received that, while not exceeding the cost of goods and services, nevertheless reduces company losses? If not, please explain how the receipt of this income will not violate the Emoluments Clause.
- 3) Will you or the Trump Organization engage an accounting firm to undertake the “monumental task” of determining “profits” for the rental of individual hotel rooms or venues? If so, please name the firm to be engaged and describe the nature of the engagement.
- 4) Will President Trump choose to seek to classify his transfer of “profits” to the Treasury as a tax-deductible contribution? Alternatively, will President Trump simply choose to ignore transferred profits for income tax purposes?
- 5) The ethics plan outlined in the Morgan Lewis memorandum limits President Trump’s Treasury donations to profits from “hotels and similar businesses.” Which portions of the Trump Organization are excluded from that definition? Please list the specific excluded entities.
- 6) How will you determine whether “profits” received from foreign businesses at Trump hotels and similar properties constitute “foreign governments’ patronage”? How will you conduct due diligence to determine whether foreign parties are, in fact, acting in the place of foreign governments?
- 7) How will you define the term “new foreign deal”? Will this definition include the expansion or redevelopment of existing foreign properties or projects?
- 8) Will you define profits received from hotels and similar business to include rent from tenants in Trump properties? As Professor Chemerinsky has noted, the largest tenant

¹⁹ *Trust Records Show Trump is Still Closely Tied to His Empire*, New York Times (Feb. 3, 2017).

in Trump Tower is the Industrial and Commercial Bank of China, which the Chinese government owns—and which will pay rent to the Trump Organization in violation of the Emoluments Clause.²⁰

- 9) What policies and procedures will you establish to convey profits from the patronage of foreign governments at Trump Organization hotels and similar properties to the Treasury, and what details will accompany the funds conveyed?
- 10) How will you define the terms “foreign country, agency, or instrumentality thereof” when determining whether to bar a new transaction? Will this definition include transactions with state-owned enterprises or the issuance of loans to the Trump Organization by state-owned banks? How will you conduct due diligence to determine whether foreign parties to a proposed transaction maintain ties to foreign governments?
- 11) Did the domestic expansion of Trump Hotels undergo the “rigorous vetting process” described in the Morgan Lewis memorandum? If so, please provide all documents related to that process. If not, explain why that process was not followed or did not apply.
- 12) What efforts are you undertaking to determine the full extent of President Trump’s international holdings and debts, and what cooperation in this effort have you received or will you receive from the Trump Organization and the White House?
- 13) What guidance have you received from the White House, the Treasury, or any other government agency concerning the ethical concerns outlined above? Please produce any communications from these entities containing such guidance, as well as any written requests for guidance you have submitted to government agencies.

Please provide your responses as soon as possible, but in no event later than March 1, 2017. If you have any questions related to this request, please contact Brandon Reavis of the Committee staff at Brandon_Reavis@hsgac.senate.gov or (202) 224-2627. Please send any official correspondence relating to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

²⁰ Erwin Chemerinsky, *Trump May Violate the Constitution on Day One*, Los Angeles Times (Jan. 12, 2017).

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cc: Ron Johnson
Chairman