



Top 10 Risks and Remedies for Trump's Conflicts of Interest

By Liz Kennedy and Danielle Root

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Introduction and summary

President Donald J. Trump's dangerous, unprecedented, and unconstitutional business conflicts of interest pose grave risks to America's interests at home and abroad. The full extent of Trump's indebtedness and foreign entanglements remain unknown while he continues to hide his tax returns. Moreover, because his business and financial ties are largely undetermined there is every reason to fear that Trump will provide favors and special treatment to his business partners and that foreign states and businesses will have too much power over the Trump administration and its decisions. The public will rightly question whether Trump's actions are made for the benefit of the American people or to further his own financial gains.

This occurs even while there is a textual prohibition in the U.S. Constitution against payments to American officials from foreign governments, in order to prevent foreign corruption. Yet the Trump family continues to promote their private business interests at home and abroad. The administration has even used the White House itself to hawk family products in an outlandish display of profiting off of the presidency. Americans' faith in our democratic institutions and the rule of law are being tested like never before.

This report takes a close look at the risks to America's national security, economy, and democracy posed by Trump's conflicts of interest and constitutional violations. It also explores the remedies and avenues for oversight and accountability.

Top risks

1. Risk to national security

Trump's international businesses and business dealings endanger national security and America's place in the world. As noted by Susan Hennessey, a national security fellow at the Brookings Institution, "Fundamentally, ethics policies governing the Executive and his cabinet are national security protections."¹ Since Trump was elected president, security experts have warned that Trump-branded businesses around the globe face increased risk of attack.² While American-owned companies located overseas have been targeted before, the Trump presidency represents the first time that the leader of the free world's name is attached to any number of buildings and entities around the world.³

Trump has business interests or plans to develop projects in at least 11 countries, any one of which may become a target for acts of violence.⁴ The Trump Organization is already looking to expand these interests, taking promotional meetings in Uruguay⁵ and Dubai⁶ since the election. Security experts have warned of the danger that a group might "kidnap a Trump worker" at one of these sites or threaten to wage an attack on one of Trump's many businesses.⁷ Demands could be made for large sums of money or for the United States to alter strategic foreign policy initiatives. At the same time, groups without financial motive may target Trump businesses given the fact that he has insulted religious and ethnic groups and foreign leaders, both during his campaign and since being elected president.⁸

How would Trump respond to such an attack? The president has shown a disturbing lack of self-control that calls into question his temperament.⁹ Seemingly every slight Trump perceives has led him to lash out against the offending party. Prior to the election, senior national security officials warned that Trump "would be the most reckless president in American history" and noted, "He lacks self-control and acts impetuously. ... All of these are dangerous qualities in an individual who aspires to be president and commander in chief, with command of the U.S. nuclear arsenal."¹⁰ European allies find him to be "erratic and incalculable."¹¹

2. Risk to U.S. foreign policy, international alliances, and standing in the world

Eighty-one percent of Americans worry that President Trump will allow his business interests to influence his decision-making while in office.¹² To establish and maintain democratic legitimacy, our elected officials must be transparent and without personal bias. The risk that Trump will allow his business interests in places where he has named businesses—countries such as Turkey, the United Arab Emirates, and the Philippines, to name a few—to affect his decision-making is already cause for concern. Trump’s business partner in Indonesia, for example, has bragged about his access to the president, saying, “If other people have difficulty getting to him, I can do it easily.” This partner has specifically cited his close working relationship with the Trump children.¹³ The brutal president of the Philippines, Rodrigo Duterte, went so far as to name Trump’s Filipino business partner as a special envoy to the United States.¹⁴

Beyond this risk however, Trump owes millions of dollars to the Chinese. The president is the recipient of a \$950 million loan from the Bank of China.¹⁵ On February 14, 2017, China awarded Trump the trademark rights to his name in China, a move that Norman Eisen, former chief White House ethics lawyer for President Barack Obama, has described as an effort on the part of the Chinese government to influence Trump.¹⁶ China’s decision to award President Trump his trademark rights came only four days after he agreed to honor the longstanding one-China policy—a policy violated when then-President-elect Trump spoke directly with the Taiwanese president in December 2016.¹⁷ China is also the largest tenant in Trump Tower, and its lease is set to expire and be renegotiated during Trump’s term as president.¹⁸

Trump’s businesses have also reportedly received significant funding from Russian investors. In 2008, Donald Trump Jr. told a real estate conference that “Russians make up a pretty disproportionate cross-section of a lot of our assets. ... We see a lot of money pouring in from Russia.”¹⁹

Trump’s administration is already shaping up to be one of the most pro-Russian administrations in U.S. history.²⁰ Trump, before assuming office and since becoming president, has often agreed with the policies and preferences of Russian President Vladimir Putin, even, at times, over members of his own party, cabinet members, the U.S. intelligence community, and military. While Secretary of Defense James Mattis and high-standing members of the international community refer to NATO—the longstanding military alliance of countries from North America and Europe—as “central to our defense”²¹ and “as relevant as ever,”²²

Trump agrees with Putin that the institution is “obsolete.”²³ Then there is President Bashar al-Assad, the Syrian dictator: Despite widespread condemnation, Trump, just like Putin, seems unconcerned with Assad’s brutal reign, saying, “I’m sure Assad is a bad guy, but you can have worse.”²⁴ And despite consensus among high-ranking current and former military personnel that U.S. sanctions against Russia for its 2013 invasion of Ukraine are good policy, Trump has been quoted as saying, “If you get along and if Russia is really helping us, why would anybody have sanctions if somebody’s doing some really great things?”²⁵ Trump staffers even played a hand in ensuring that the GOP platform, written at the Republican convention, did not support giving weapons to Ukraine, which Russia still partially occupies.²⁶

Foreign countries are taking note of the fact that President Trump is easily influenced and are acquiring Washington lobbyists at a frenzied rate since the election.²⁷ Even in the event that Trump does not allow his judgment to be clouded by his indebtedness to foreign countries and actors, the mere appearance of corruption on the part of the president and his dealings with foreign entities is enough to do lasting damage to the United States’ reputation on the world stage. In a February 17, 2017, press conference, Sen. John McCain (R-AZ), warned that people “are giving up on the West.”²⁸

3. Risk to the integrity of U.S. elections and democracy

Free and fair elections are a bedrock of democracy. Foreign interference in America’s electoral process is an assault on democratic institutions and the ability to govern ourselves freely.

After the 2016 presidential election, the Office of the Director of National Intelligence released a report that included findings by the CIA, FBI, and National Security Agency showing that President Putin ordered covert intelligence operations and propaganda to interfere in the U.S. elections in such a way that would “undermine public faith in the US democratic process” and help elect now-President Trump.²⁹ That report found that Russia’s military intelligence unit, the GRU, sought to “denigrate Secretary Clinton, and harm her electability and potential presidency” by leaking sensitive information it had acquired from hacking Democratic National Committee, or DNC, servers.³⁰ While there is no evidence that Russia manipulated actual vote tallying, the intelligence community did find that the Russian government had obtained access to “elements of multiple U.S. state or local electoral boards.”³¹ Further, advisers from the Trump campaign are reported to have been in constant communication with the Russians during the 2016 campaign cycle.³²

A majority of Americans—a full 72 percent—believe that Russia was “definitely” or “probably” responsible for hacking DNC servers and the emails of aides to the Hillary Clinton presidential campaign.³³ And yet rather than ordering a full independent investigation into Russia’s interference in U.S. elections, President Trump has refused to respond in any meaningful way.

In addition to the election threats, American democracy is further threatened by the access that those with wealth and influence are afforded by the Trump administration. President Trump has reportedly discussed policy matters with guests at his private clubs.³⁴ In February 2017, Trump allegedly engaged in talks over how to respond to North Korea’s missile test within earshot of guests at his private Mar-a-Lago resort in Palm Beach, Florida, with one guest posting about the experience on social media.³⁵ As noted by historian Jon Meacham, “Presidents have always spent time with the affluent. ... but a club where people pay you as president to spend time in his company is new. It is kind of amazing.”³⁶ Already, at least three Trump private club members are reportedly being considered for ambassadorships.³⁷ It is no surprise that members have admitted that the president has made their memberships in the Mar-a-Lago Club more valuable.³⁸ Since the election, the membership fee for the Florida resort has increased two-fold from \$100,000 to \$200,000.³⁹ In fact, Mar-a-Lago can bring in \$8 million dollars per year from membership fees alone by selling this kind of up-close-and-personal access to the president.⁴⁰

The appearance of corruption undermines trust in government almost as much as clear and continuing corruption. It increases cynicism and breathes life into the notion that everyone is stealing or on the take and that no one is fairly representing the interests of all Americans as an honest broker. Already, 75 percent of Americans think that corruption is widespread in American government.⁴¹ This is a cancer that attacks people’s belief that they are being fairly represented, thus undermining the legitimacy and integrity of American democracy.

4. Risk to the integrity of the U.S. economy

Trump has been called “America’s ultimate crony capitalist” for his apparent willingness to stifle competition and bully companies into doing what he wants.⁴² In December 2016, then-President-elect Trump announced that he had saved more than 1,000 American jobs at air conditioner manufacturer Carrier Corp.

from being shipped off to Mexico, although the accuracy of this number is still being debated.⁴³ Trump's announcement came after he said there would be "consequences" for U.S. companies moving jobs out of the country.⁴⁴ However, in exchange for Carrier keeping jobs in Indiana, the company was reportedly promised favorable regulatory treatment in the future.⁴⁵

On other occasions, Trump's erratic behavior since being elected has impacted the markets. In January, Trump promoted L.L. Bean on Twitter after one of the company's board members donated large sums of money to a pro-Trump political action committee.⁴⁶ On another occasion, stock for the aerospace company Boeing fell nearly \$2 per share after President Trump tweeted that he planned to cancel an order with the company to build new 747 Air Force Ones because he was unhappy with their price.⁴⁷ Boeing's stock has since recovered. In fact, the Boeing share prices reached a record high rate of nearly \$172.71 on February 17, the same day Trump visited one of the company's plants in South Carolina.⁴⁸ These actions demonstrate that Trump has no compunction about using his position to favor friends and to bully those companies he disagrees with. Moreover, Trump could even use his position to target his business competitors, which is complicated by the fact that Americans do not know the full extent of Trump's business interests since he has doggedly refused to release his tax returns.

It is highly inappropriate that the president of the United States would seek to intervene in such specific business dealings. Despite this however, the Trump administration has said that it plans to make decisions on whether to interfere in private corporate transactions "on a day-by-day basis."⁴⁹

Cronyism is dangerous to the economy because it results in great uncertainty in the marketplace.⁵⁰ It creates an environment where the price of a particular stock or success of a company is dependent on the mood of the president at any given moment. In addition, as noted by Scott Ross Baker, an economist at Northwestern University's Kellogg School of Management, Trump's approach, or "Trumponomics" to some,⁵¹ could "really change the incentives of firms. ... They can start to think about, the way they can make the most money in the future is not to make the best products but to ingratiate themselves."⁵² Corporate America may alter its behavior to prioritize rent-seeking over healthy economic competition.⁵³ This type of change in market behavior, according to a Vox news report, has been associated with "lower investment and less hiring," which is bad for U.S. companies and the American people.⁵⁴ As noted by Wall

Street hedge fund manager Seth Klarman, “Market confidence is threatened when the norms of a democratic society are under attack.”⁵⁵ Small businesses would likely be particularly vulnerable, since they typically cannot afford to withstand financial risk or obtain lobbyists to advance their interests to the same extent as large, multi-million dollar corporations such as Boeing.

It is difficult to maintain the appearance that Trump’s administration and business are not inextricably linked when the U.S. government’s imprimatur is put on the private business dealings of the president’s family. One example is when the U.S. secret service accompanies members of the Trump family on business trips that will benefit the president, as occurred with recent Trump Organization trips to Uruguay and Dubai. Eric Trump’s trip to Uruguay in January 2017 to promote the Trump brand cost American taxpayers nearly \$98,000 in hotel costs for the U.S. Secret Service and embassy staff.⁵⁶ The Trump brothers flew to the United Arab Emirates in February to attend the ribbon cutting ceremony at the new Trump International Golf Club located in Dubai.⁵⁷ And recently, a member of the administration, White House Counselor to the President Kellyanne Conway, used the White House to “give a free commercial” and urge the public to buy Trump family merchandise from the briefing room, in violation of ethical rules for executive staff.⁵⁸

5. Risk of Trump’s distracted and divided loyalties

As long as he owns his businesses, Trump has divided loyalties. No one can serve two masters. Americans are at risk that Trump will privilege his own interests over the American people’s well-being and safety. So far since taking office, Trump has begun to dismantle important checks on Wall Street and protections for consumers, giving as a reason that his friends “can’t get any money ... because of the rules and regulations in Dodd-Frank.”⁵⁹ Those rules and regulations have helped protect ordinary Americans from predatory banking practices and companies from “systematically and illegally failing” student loan borrowers, among other things.⁶⁰

Trump has also decided to move forward with approving the controversial Dakota Access oil pipeline, which the Standing Rock Sioux argue would endanger the tribal nation’s drinking water supplies.⁶¹ The Obama administration halted the pipeline project in December 2016 to enable the government to conduct a more rigorous environmental analysis of the project and to consider alternative routes.

A 2015 financial disclosure form showed that Trump owned stock in the company seeking to build the pipeline, Energy Transfer Partners, though a Trump spokesperson claims that Trump has since sold off his shares.⁶² Still, Trump was the recipient of a very generous campaign donation from one of Energy Transfer's chief executives.⁶³ Energy Transfer stock has soared since Trump made his announcement to move forward with the pipeline—without further environmental review and without addressing the concerns of tribal nations—in January.⁶⁴

Part of the reason it is important for the president of the United States to divest his business interests is to ensure that he or she is not distracted while conducting the peoples' business. Since being elected, Trump has commented about the dismal ratings of the television show "Celebrity Apprentice," of which he is still the executive producer, asking attendees at the National Prayer Breakfast this month to pray for better ratings.⁶⁵ Meanwhile, Trump continues to brag about receiving business offers, although he insists that he has turned them down.⁶⁶ In January, Trump said he was approached for a \$2 billion development deal by Hussain Sajwani, a major real estate developer in Dubai.⁶⁷ In talking about turning down the offer, Trump said, "I didn't have to turn it down, because as you know, I have a no conflict situation because I'm president."⁶⁸ The president has also taken time to tweet his disappointment over Nordstrom's decision to stop selling Ivanka Trump products.⁶⁹

Being the president is a full-time job, and there is simply no room for distractions related to one's personal bottom-line. Every moment that Trump is distracted by his business interests is a moment where he risks making a critical mistake by overlooking an important detail that could cost lives and treasure.⁷⁰ These questions become urgent when, for example, reports reveal that President Trump may not have been proceeding with due care when deciding to launch the raid in Yemen that killed children and a Navy Seal.⁷¹ During his first month in office, Trump spent only six hours on intelligence briefings, compared with the 13 hours that he spent tweeting, according to new analysis by the *The Washington Post*.⁷²

6. Risk of hidden dangers

By refusing to release his tax returns, President Trump has gone against a tradition spanning 40 years.⁷³ This, combined with his failure to fully divest from his interests in the Trump Organization, leaves Americans and ethics experts in the dark about the true extent of his conflicts.⁷⁴ Simply put, Trump is not being honest with the public about his conflicts by refusing to share his tax returns.

In a January 22 article for the *New York Daily News*, Michael Cohen issued the following warning: “America may be the oldest democracy in the world, but we’ve held that honor because of an adherence to basic and agreed-upon customs and norms. A democracy that cuts itself off from those traditions is a democracy on a slippery slope to oblivion.”⁷⁵ A poll conducted by ABC News found that 74 percent of Americans think that President Trump should release his tax returns.⁷⁶

Trump’s lack of transparency in withholding his tax returns, combined with his unprecedented and deeply entangled business holdings around the world, go against well-established norms and expectations that have thus far kept our democracy intact.⁷⁷ As president of the United States, Trump is in a position to change the shape of world diplomacy—even the path of history. Yet without real financial disclosures through the release of his tax returns, there is no comprehensive transparency into his financial relationships; as a result, effective oversight of his use of public power for private gain and the enrichment of his “special people” is critically compromised.⁷⁸

7. Risk to the rule of law

As of February 4, Trump was still benefitting from his company.⁷⁹ A January letter to the Washington liquor licensing board showed that the president remained the sole beneficiary of the Donald J. Trump Revocable Trust. The trust holds money from stocks Trump sold during the campaign, as well as his “physical and intellectual property,” namely “Trump Tower New York, Mar-a-Lago in Florida, and branding rights” to his name.⁸⁰

By failing to resolve his conflicts of interest and instead maintaining ownership over his companies, Trump has shown that he believes himself above the rule of law. The Foreign Emoluments Clause of the U.S. Constitution—states, “No person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”⁸¹ The word “emoluments,” as used in the Constitution, has been interpreted to mean anything of value, including monetary payments as well as government issued licenses or building permits.⁸²

In continuing to receive payments and other benefits from foreign governments, either from his properties abroad or by accepting payments from foreign emissaries to host events at his domestic holdings such as his Washington hotel, Trump violates the Foreign Emoluments Clause. Since being elected, foreign governments have paid money to host events at Trump’s Washington hotel. After the election,

Bahrain held its National Day at the hotel,⁸³ while Azerbaijan hosted a Hanukkah party there in December 2016.⁸⁴ The first reported post-inauguration example of a foreign emolument flowing to Trump occurred when the Kingdom of Saudi Arabia paid for rooms at the hotel in January 2017.⁸⁵ The Embassy of Kuwait will host its National Day celebration at the hotel on February 26, 2017.⁸⁶

Trump also acts unconstitutionally when he accepts payments and other benefits from business transactions related to his properties in places such as New York and Florida, violating what is known as the Domestic Emoluments Clause. This clause states: “The President ... shall not receive ... any other Emolument from the United States, or any of them.”⁸⁷ The Trump Organization has said that it plans to triple their domestic business and open more Trump properties—in places such as Denver, Seattle, and San Francisco—over the next several years.⁸⁸

U.S. conflicts of interest law prohibits executive branch employees from participating in matters in which they have a personal financial interest.⁸⁹ A violation of these rules can result in criminal penalties.⁹⁰ By maintaining the position that “the president can’t have conflicts of interest,” President Trump attempts to minimize a serious problem with a legalistic parsing that shows little respect for the spirit of the law.⁹¹

Indeed, corruption of the president, especially by way of foreign interference, was something the founders had a particular eye to when drafting our nation’s Constitution.⁹² In speaking at the Virginia Ratifying Convention, Edmund Jennings Randolph described the Emoluments Clause as a “provision against the danger ... of the president receiving emoluments from foreign powers. ... This restriction is provided to prevent corruption. It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”⁹³ The Founders knew, for example, that any benefit bestowed upon an elected leader from a foreign entity could have dire consequences for the legitimacy of the office and the policies created therein.

Steven L. Schooner and Daniel I. Gordon, professors in government procurement at the George Washington University Law School, warned, “If the president discounts the importance of avoiding conflicts, disrespects transparency and disparages the importance of compliance with contractual and regulatory requirements, the government’s credibility is at risk.”⁹⁴ If the president is disregarding the highest law in the land, who will respect and enforce it?

Key remedies

Fortunately, there are real steps that can be taken to exercise accountability and oversight and to rein in some of the most objectionable behavior related to Trump's conflicts of interest. The judiciary and Congress, co-equal branches to the presidency with their own constitutional duties, can take actions to remedy the situation.

8. Legal actions

The president and his administration and businesses are subject to the law. Therefore, it is important that the nation's courts not shirk their own constitutional duty to exercise accountability over the president. David Cole, professor and national director of the American Civil Liberties Union, writes:

*If courts could order President Bush, in an ongoing armed conflict, to subject his detentions of "enemy combatants" to legal review, surely they can order President Trump to conform his business interests to the express demands of the Constitution.*⁹⁵

Foreign emoluments

As discussed above, Trump violates Article 1, Section 9 of the U.S. Constitution each time the businesses he owns receives a payment or present from a foreign state that has not been authorized by Congress. The emoluments clause⁹⁶ was "provided to prevent corruption," according to Edmund Jennings Randolph at Virginia's constitutional ratifying convention in 1788.⁹⁷ It would "preserv[e]... officers of the US independent of external influence," according to Charles Pinckney, who proposed it at the Constitutional Convention.⁹⁸

President Trump is already being sued for violating the emoluments clause by the watchdog group Citizens for Responsibility and Ethics in Washington, led by bipartisan ethics and constitutional law scholars.⁹⁹ Businesses who suffer competitive injuries are also in a position to bring suit alleging that Trump's continuing conflicts are illegal. For example, real estate developers, hoteliers, or golf course owners could become aggrieved at losing business to Trump's businesses from anyone seeking to curry favor with the Trump administration.

Domestic emoluments

As discussed above, the Constitution contains a second prohibition against the president accepting payments, this time in the domestic context. Article II, Section 1 pronounces that the president's salary will not be changed during his term and that "he shall not receive within that Period any other Emolument from the United States, or any of them."¹⁰⁰ When President Trump still owns Trump Tower in New York City, it is a constitutional problem that the U.S. Department of Defense is reportedly looking to lease space there—"a move that could directly funnel government money into the president's business interests," according to *The Washington Post*.¹⁰¹ Richard Painter, ethics expert and former counsel to President George W. Bush, was quoted as saying, "I have never heard of a president charging rent to the DOD or any other part of the government so they can be near him on his travels."¹⁰²

Quo warranto

State attorneys general have a crucial role in enforcing the rule of law and exercising accountability. Much of the Trump Organization is incorporated through a web of limited liability corporations. State attorneys general have the power to bring actions against a corporation if it is acting as a conduit for illegal activity. New York, where Attorney General Eric Schneiderman is reviewing a request for this type of quo warranto action, provides statutory authority for these actions in its business incorporation law.¹⁰³ The basis in law is that a state is the authority for granting a corporate charter to a business seeking to incorporate, and to maintain that incorporated status the business must be operated within the law.

A quo warranto proceeding could be used to determine whether Trump's incorporated businesses are funneling emoluments to President Trump in violation of the constitution.¹⁰⁴ As a remedy, a court could enjoin the Trump Organization from engaging in business with foreign states, require it to sell certain assets, or exercise the full power of the law to require dissolution of the corporations engaged in illegal activity.

But as a legal tool it is not limited to challenging corporations for abetting unconstitutional behavior. For example, as discussed below, the Trump International Hotel in Washington appears to be in violation of its lease with the General Services Administration, or GSA. The lease bars elected officials from benefitting from the lease of the building.¹⁰⁵ Washington's attorney general could consider bringing a quo warranto proceeding against the Trump Organization for violating the terms of the lease. In California, for example, "any county or city" may bring an action against a corporation alleged to be acting outside of the law."¹⁰⁶

9. Legislative actions

Congress could pass a variety of reform measures and take other steps to hold Trump accountable for his continuing conflicts. According to Hart Research polling, 54 percent of Americans in 2018 battleground states want Congress to act to get Trump to address his conflicts of interest.¹⁰⁷

Legislation

Congress can pass a law to require that the president, vice president, and their families divest financial conflicts of interest and publicly release their tax returns. A law could also require presidential appointees to recuse themselves when matters involving the president's financial conflicts come before them. Sen. Elizabeth Warren (D-MA) introduced the Presidential Conflicts of Interest Act of 2017, with very strong support from other senators.¹⁰⁸ Reps. Katherine Clark (D-MA), John Conyers (D-MI), Elijah Cummings (D-MD), Peter Welch (D-VT), and David Cicilline (D-RI) have a companion bill in the House.¹⁰⁹ Sen. Ron Wyden (D-OR) has introduced the Presidential Tax Transparency Act to require the president, current and future, to release his or her tax returns.¹¹⁰ Every presidential candidate, and sitting president, for 40 years has released his taxes, and this bill would codify that practice as a requirement.¹¹¹ Sen. Wyden and others have

also introduced the Presidential Trade Transparency Act of 2017, which would require the president to disclose financial conflicts in countries with which the United States is negotiating trade and investment deals.¹¹² Rep. Jerry Nadler (D-NY) has introduced a resolution of inquiry which would require disclosure of Trump's potential ties to Russia and business conflicts of interest, but for now that is being prevented from coming to a vote on the floor of the U.S. House of Representatives.¹¹³ In November, Democratic senators filed a resolution to express the Senate's expectation that Trump would act to resolve his conflicts of interest and express that they are not consenting to his receipt of emoluments.¹¹⁴

Ways and Means Committee acts under current law

Certain congressional committees are empowered to request Trump's tax records. Congressional committees that set tax policy are empowered to examine tax returns. This power, granted by a 1924 law, was used to look at President Richard Nixon's tax returns in 1974.¹¹⁵ It was also used more recently when the House Committee on Ways and Means investigated the Internal Revenue Service's handling of applications for potentially political groups that were seeking tax-exempt status, and released confidential tax information in 2014. Democrats on the Ways and Means Committee, led by Rep. Bill Pascrel (D-NJ), have recently requested that the committee request President Trump's tax returns from the Treasury Department, but the request failed 23-15 on a party-line vote.¹¹⁶

States

State legislatures are also capable of acting in this arena, and at least one state has a bill to require presidential candidates to publically disclose their tax returns as a qualification for access to the ballot.¹¹⁷

10. Agency and watchdog oversight

Office of Government Ethics

The Office of Government Ethics, or OGE, advises executive branch officials how to avoid conflicts and is essential for its “overall leadership and oversight of the executive branch ethics program.”¹¹⁸ OGE director Walter Shaub called Trump’s plans for transferring daily control of the business while maintaining ownership “wholly inadequate.”¹¹⁹ Recently, after counselor to the president Kellyanne Conway used the White House briefing room to give “a free commercial” for Ivanka Trump’s merchandise,¹²⁰ the OGE sent a letter to the White House stating that Conway’s actions appeared to be “a clear violation of the prohibition against misuse of position.”¹²¹ In addition, the letter said, “There is strong reason to believe that Ms. Conway has violated the standards of conduct and that disciplinary action is warranted.” In a phrase with broad application, the OGE wrote, “Executive branch officials should use the authority entrusted to them for the benefit of the American people and not for private profit.” However, the OGE currently lacks the authority to investigate complaints of ethics violations, or to require disciplinary actions when violations are found. The OGE Conway letter requests that the office be made aware of what disciplinary steps have been taken by February 28.¹²²

The OGE receives financial disclosures and ethics pledges for executive branch officials, in addition to many other filings related to ethics compliance.¹²³ The Project on Government Oversight catalogues the following:

... signed ethics pledges pursuant to Executive Order 13770, ethics pledge waivers pursuant to Executive Order 13770, waivers under 18 U.S.C. § 208, authorizations under 5 CFR § 2635.502, waivers under 5 CFR § 2635.503, Certificates of Divestiture and requests for Certificates of Divestiture, financial disclosure reports, ethics training records, authorizations to accept gifts of free attendance at widely attended gatherings, STOCK Act notices of employment negotiations ... disciplinary actions and reprimands related to ethics violations, and any documents demonstrating compliance with ethics agreements.

It would greatly facilitate accountability and oversight if these filings from high-level officials were regularly made public.

GSA and the Trump International Hotel D.C. lease

The Trump Organization has a 60-year lease to operate a hotel in the Old Post Office building in downtown Washington, D.C., administered by the federal government's General Services Administration.¹²⁴ However, a clause in the lease prevents the leaseholder from holding elected office.¹²⁵ Since Trump maintains ownership of the hotel, he is benefiting from holding the lease with the government while he runs the executive branch.

Elected representatives have contacted the GSA repeatedly about this problem. Sens. Warren and Tom Carper (D-DE) have written letters, including one stating, "This scenario is in breach of the plain language of the lease agreement and presents unmanageable conflicts of interests for career GSA officials and President Trump."¹²⁶ Rep. Jason Chaffetz (R-UT), chair of the House Oversight and Government Reform Committee, has asked the GSA for information on how it plans to mitigate this potential violation.¹²⁷ Rep. Elijah Cummings (D-MD), ranking member of the Oversight Committee, has been seeking more information on the GSA's review, including the Trump hotel's business information and communications between Trump's transition team and GSA.¹²⁸ The acting GSA Associate Administrator, Saul Japson, says that once "GSA has a full and complete understanding of the tenant's structure, GSA will determined [sic] whether the tenant remains in compliance with the contract."¹²⁹

The Trump International Hotel in Washington is a pointed example of Trump's conflicts of interest and how his intertwined business and administrative power operate in the real world. Trump is responsible for appointing the head of the GSA, which in turn will issue an opinion on whether Trump is in compliance or is violating the lease. The GSA would also be in charge of determining the remedies, in the first instance. Yet Trump being on both sides of this deal means that the boss is on both sides of the negotiating table. Which interests will he prioritize? Trump has denied any wrongdoing, pointing to the fact that he was not a government official at the time he entered the contract. Rep. Cummings, however, says that the GSA told him and other lawmakers that the prohibition still applies to Trump's situation.¹³⁰

Civil society and the press

The role of civil society and a free press cannot be overstated. A majority of Americans believe Trump is acting illegally or unethically by continuing to own his businesses while serving as president.¹³¹ More than a million concerned citizens have signed a petition on the We the People platform on the White House website calling on Trump to release his tax returns.¹³² At the same time, new Pew numbers indicate that 59 percent of Americans think Trump is not separating his business interests from his administration.¹³³ Clearly, public accountability and pressure is a crucial ingredient to making other avenues for accountability work.

Investigative reporting—including on the Michael Flynn story, the former national security adviser who was forced to resign, and the larger network of ties to Russia in Trump’s circle—has already led to real breakthroughs in this still new administration. National Public Radio has reportedly set up a team to cover and investigate Trump’s conflicts.¹³⁴ One of the first questions the team should ask is: What does Trump’s representation that he will direct proceeds from foreign dignitaries to the Treasury mean? And is that happening? So far since the election, the press has been diligent in its investigations into and reporting on Trump’s conflicts, breaking new revelations on almost a daily basis. This must continue if the American people are to fully understand the extent of their president’s divided loyalties and hold him accountable for his dangerous, unprecedented, and unconstitutional conflicts of interest.

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