

RALPH NADER & MARK GREEN

Open Letter to Donald J. Trump

Dear Mr. President Elect:

We urge you to announce on December 15 that you'll divest yourself of all interests in the Trump Organization in order to avoid a) daily violations of the Constitution barring foreign "emoluments" and b) the risk of later impeachment. A For-Profit-Presidency would be blatantly unethical, unprecedented and unconstitutional.

Neither the president nor public should tolerate the built-in-bribery of foreign governments quietly lining the pockets of a person they are seeking to influence on policy. That's why we have an Emoluments Clause in Article One, Section 9 of the U. S. Constitution. It says that "no person holding any office...shall, without the consent of the Congress, accept any present, emolument [profit, gain], office, or title, of any kind whatever, from any king, prince or foreign state."

This prohibition became a part of the Articles of Confederation for its entire eight year existence, then was included intact by the Constitutional Convention in 1787. Alexander Hamilton in *Federalist* 22 worried that Republics "have too easy an inlet to foreign corruption."

An article in *ProPublica.org* summarizes its subsequent development:

"In 1902, an attorney general's opinion said it is 'directed against every kind of influence by foreign governments upon officers of the United States.' In 1970, a comptroller general opinion declared that the clause's 'drafters intended the prohibition to have the broadest possible scope and applicability.' A 1994 Justice Department opinion said 'the language of Emoluments Clause is both sweeping and unqualified.'" (<https://www.propublica.org/article/trump-would-be-violating-constitution-if-he-continues-to-own-his-businesses>)

You appear to have ambivalent views of this provision and problem. On the one hand, you repeatedly attacked Democratic Nominee Hillary Clinton for what you regarded as clashing interests between her public role as Secretary of State and her husband's Clinton Foundation. Last month you said that "I will be leaving my great business *in total* in order to fully focus on running the country...[because] it is visually important, as President, to *in no way* have a conflict of interest with my various businesses"; you later tweeted that "legal documents are being crafted which take me *completely out of business operations*" [emphases added].

On the other hand, there have been numerous reports how you have put yourself in just such conflicting situations. Presumably, old habits die hard and you've spent your entire adult life in the pursuit of profit and the "art of the deal." But what's customary in business can be corrupt once in public office.

For example:

***Of the first 29 foreign leaders you spoke with, you had properties in eight of their countries.**

***In a post-election call with Nigel Farage, then the leader of the British UK Independent Party, you two apparently discussed your opposition to windmills near a golf course that you own in Scotland...Your company reportedly researched a string of hotels in Taoyan, Taiwan before you had a controversial phone call with Taiwan president Tsai Ing-wen...In your first meeting with a foreign leader, Prime Minister Shinzo Abe of Japan, your daughter attended even though she has no formal portfolio or experience in international diplomacy and was then negotiating a licensing deal with a giant Japanese retailer backed by the government-owned development bank....**

...You praised Turkey President Erdogan's crackdown this year following a failed coup attempt at the same time that you were managing the massive Trump Towers in Istanbul...Your partner in a 57 story building in Manila recently visited you, as an official Philippine envoy, before you spoke with and lauded President Duterte, who has killed several thousand people who he suspected of selling drugs (see generally, Paddock, et. al., "Potential Conflicts Around the World for Trump, the Businessman President", *New York Times*, Nov. 26, 2016).

"Oligarchs" are rich dictators and the super-wealthy in countries such as Russia who exploit public office for private gain at the expense of their citizenry. This is neither an American nor a Constitutional value in our democracy, as our founding document makes clear. Yet you and some supporters appear disdainful or dismissive of the principles behind conflicts laws and the Emoluments Clause:

^You have tweeted that "only the corrupt media makes this a big deal." (Actually, a recent CNN/ORC poll found that 59 percent thought that turning over management to your children was insufficient to protect against conflicts.)

^Kellyanne Conway said on *Meet the Press* that divestment would be unfair to your adult children who are entitled to work. Obviously, however, when you chose to seek the Presidency, you understood that you might put your family firm in precisely this predicament. You created this situation and now only you can cure it.

^Homer Jenkins Jr., writing in the *Wall Street Journal* and repeating your view, argued that this issue "was simply part of the bargain when voters elected Mr. Trump, in full view of his business interests." Really in "full view"? As everyone knows, you refused to disclose either your tax returns or portfolio of loans and partnerships that could have shed light on possible entanglements with your world-wide holdings.

Nor can it be persuasively contended that the minority of voters who chose you as President-Elect should now simply trust your voluntary adherence to your own rules. It's a basic premise of the Rule of Law that "no man can judge his own case." In any event, even voters cannot overrule the Constitution except through a process of amendment specified in that document.

^Putting your assets in your suggested "blind trust" to be run by your adult children ignores the reality that a) you talk to your children and b) you'd know about the possible impact on your family holdings whenever you made presidential decisions, especially since your name of course is emblazoned on so many of your physical assets. (When you grouched that some critics prefer that you "never ever see my daughter Ivanka again," we assume that you didn't intend this *reductio ad absurdum* to be taken literally.)

http://www.nytimes.com/2016/12/04/us/politics/trump-family-ivanka-donald-jr.html?_r=0http://www.nytimes.com/12/04/us/politics/trump-family-ivanka-donald-jr.html?_r=02016/

^Political commentators understandably discount any mention of impeachment pre-Inauguration because, among other reasons, there will be a GOP majority on the House Judiciary Committee and Chamber for at least two years. While we may anticipate that Congress will now be your "shut-eyed sentry", in Kipling's phrase, we are here discussing morality and constitutionality, not political probabilities. Indeed, within two years of an actual presidential landslide, Richard Nixon was impeached in 1974 after Republican senator Barry Goldwater supported his removal from office.

^Supporters such as Rudy Giuliani contend that your holdings are so large that divestment is just unrealistic. But size does not erase principle. Self-enrichment is wrong whether an office holder is of modest or great wealth -- indeed, if anything, the greater the amount, the worse the problem. We should not apply the much criticized banking ethic of "too big to fail" in this circumstance.

^Other supporters like House Majority Leader Kevin McCarthy dismiss the problem as merely hypothetical, adding that should problems arise, they can be dealt with later. But of course "later" such political enthusiasts may argue that it's really *too* late once you're president...which is precisely why all your modern predecessors resolved this problem early before bad practices were set in concrete.

But the reality of [#DivestOrImpeach](#) cannot be discounted or dismissed. There's nothing strange about warning someone about to hit the gas that if they drive 80 mph into a crowded intersection, there is likely to be deadly results. Actions have consequences.

Indeed, calls for divestment are bipartisan. Former Reagan speechwriter Peggy Noonan wrote a *Wall Street Journal* column titled "No More Business as Usual, Mr. Trump" (Nov. 26). It concluded that "...he can't, however offhandedly, both do business and be president. Future and credible reports that he had engaged in such a conflict of interest would doom his presidency." President George W. Bush's ethics counsel, Richard W. Painter, recently

argued that “no president should allow his name to be put on commercial properties in return for payment. The presidency is not a branding opportunity.”

In effect, this letter takes the form of a citizen demand to avoid a situation that would be untenable for you and the country. It cannot be in either your legal or political interest to be regularly probed by investigative journalists and prosecutors or accused of self-enrichment whenever a White House decision, intentionally or not, affects your family’s fortune. And it certainly is not in the national interest for Americans to regularly wonder if their president is engaged in public service or self-service.

Nor can mere disclosure rule suffice, not when a foreign power knows it can favor your family’s bottom line somewhat effortlessly -- such as sending their delegations abroad to Trump Hotels -- hoping that you’ll get the message. You would become, in Harvard law professor Lawrence Tribe’s phrase, “an emoluments magnet.” This bias toward bribery was explained in a petition from 13 public interest groups and experts sent to you on November 17th: “Every time any foreign government or company controlled by a foreign government does business with a Trump entity, you could be accused of accepting a payment in violation of the emoluments clause of the Constitution.”

All of us are accountable to others, including presidents. In such situations, it is not enough to say or imply, as you have done and Richard Nixon explicitly did, that “if the President does it, that means it’s not illegal.”

True, your conflict cannot be solved by the easy sale of stock on a public open market. But compliance with the Constitution and our country’s laws do not depend on degree-of-difficulty. **The only convincing cure to a situation that you knowingly entered is to have an independent trustee sell off all your holdings -- your corporations, partnerships, any remaining stocks and bonds (but of course not homestead properties such as residences, yachts, planes...) -- and place the proceeds in a true blind trust or treasury note that presents no ongoing conflicts since you will be unaware of the investment.**

Already, White House ethics counsel insist that no company put the name “Barack Obama” on products for fear that gullible people would think that he was in fact associated with the enterprise. That should be doubly true when your name indeed *has* been associated with the properties involved

You ran for president with the Constitution we have, not the Constitution you may want. Given the importance of this public matter, may we respectfully request that you respond not with a diversionary or denunciatory tweet or a hair-splitting memorandum that distinguishes between operations and ownership. Each alone only continues the problem of self-dealing. The cliché that ‘you can’t be half pregnant’ comes to mind.

The only appropriate response is to completely divest on December 15 and therefore avoid potentially becoming a walking Article of Impeachment

**beginning on January 20. So: will it be America First or Trump First? The choice is yours, at least for now.
Sincerely yours,**

**Ralph Nader
Mark Green**