

## Trump's Business Empire Isn't Just an Ethical Disaster

By RICHARD W. PAINTER DEC. 1, 2016

President-elect [Donald J. Trump](#) said on Wednesday that he would separate himself from his businesses before he enters the White House. More details about the arrangement will be announced in mid-December, but it sounds as if he plans to step away from only the management of his business, which presumably will be turned over to his children, while retaining ownership.

This is not enough. There has been much discussion of Mr. Trump's business dealings' putting him in violation of the Emoluments Clause of the Constitution, which prohibits government officials from accepting gifts and payments from foreign governments or corporations controlled by foreign governments. But there are other conflict-of-interest issues that have gotten less attention and could cause Mr. Trump — and America — much trouble as well. To prevent this, he must sell or give away his ownership interest in his global business empire as soon as possible.

One of Mr. Trump's most lucrative initiatives has been the licensing of the Trump brand — and name. There are Trump-branded properties like towers and hotels in some 20 countries. .

This first presents an ethical problem: No president should allow his name to be put on commercial properties in return for payment. The presidency is not a branding opportunity. President Trump can't do this unless he wants to create the impression that he is being paid off.

Photo



Trump Tower in the Makati City district of Manila is being developed by Donald J. Trump's business partner Jose E.B. Antonio, who has just been named the Philippines' special trade envoy to the United States. Credit Hannah Reyes Morales for The New York Times

But it also presents a global security risk. A building branded with the name of an American president — any president, but perhaps especially Mr. Trump — would be a tempting target for terrorists and other enemies of the United States. Who is going to protect the buildings? Will the Trump organization hire a security firm to do the job, or will the American taxpayer be on the line for the bill? Will foreign governments offer to pay to secure the properties — a subsidy of the Trump organization that would probably violate the Emoluments Clause? If a terrorist attack, a botched security operation or some other tragedy happens on a Trump property, the United States could easily get drawn into a conflict abroad. And our adversaries know this. This is one of the most dangerous aspects of Mr. Trump's conflict-of-interest problem.

Then there is the litigation risk. In *Clinton v. Jones*, the Supreme Court ruled that the president can be sued in his personal capacity and required to testify in depositions and at trial. Sexual misconduct is a litigation magnet; extensive business operations are another. If Mr. Trump owns his businesses while he is president, it will be a lot easier for plaintiffs' lawyers to sue him on behalf of customers, counterparties, investors and others, and to require his testimony under oath.

The Trump University case settled for \$25 million shortly after the election, and lawyers will be looking for other quick and profitable settlements from a president who does not want to be embarrassed by litigation. As plaintiffs' lawyers pile on, they will be egged on, and perhaps subsidized by, the president's political opponents, as happened in the Paula Jones case against Bill Clinton. How can Mr. Trump focus on defending the country if he has to waste time defending himself in court?

The fundamental problem, of course, is one the founders envisioned: They did not want our government officials being paid off by foreign sovereigns. This is why the Constitution has the Emoluments Clause. We also have criminal statutes barring any quid pro quo involving public officials (bribery, solicitation of a bribe or offering of a bribe).

The possibility of quid pro quo will emerge every time somebody working for either the government or the Trump organization talks about government business and Trump business in the same conversation or with the same people. Nobody in the American government, including the president, should ask a foreign diplomat about any aspect of Trump business, including such matters as, for example, unsightly windmills that are too close to Mr. Trump's golf courses. Such conversations will inevitably suggest a link between official government action and benefits for the Trump businesses. In other words, a bribe.

Even absent a quid pro quo, the Emoluments Clause bans payments to an American public official from foreign governments. Yet they will arise whenever foreign diplomats stay in Trump hotels at their governments' expense; whenever parties are organized by foreign governments in Trump hotels (Bahrain just announced such a party in a Trump hotel this week); whenever loans are made to the company by the Bank of China or any other foreign-government-owned bank; whenever rent is paid by companies controlled by foreign governments with offices in Trump buildings; and whenever there is any other arrangement whereby foreign government money goes into the president's businesses.

This problem does not go away because someone else is managing the business. It is still his money, and if he is president, he can't take it. The only remedy for a serious violation of the Emoluments Clause is impeachment.

Finally, there are the broader policy issues. How can we expect a Trump administration to rein in loose lending practices, particularly in the real estate sector, when the president himself owes hundreds of millions of dollars to banks? What will he do when a foreign dictator acts up in a country where there is a Trump hotel? The American people should not have to worry about those conflicts of interest — and neither should President Trump. For the good of the country, he should divest from his business empire as soon as possible, put the cash proceeds into United States treasury securities, broadly diversified mutual funds or a blind trust managed by an independent trustee, and then focus on being a good president.

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