



**Request to Evaluate Divestment of CalPERS Investment that Pays President Trump's Business
in Likely Violation of the U.S. Constitution**

What are you asking CalPERS to do?

We are asking CalPERS to evaluate divesting from a real estate fund that appears to transfer fees that it receives from CalPERS directly to the Trump Organization in likely violation of the Domestic Emoluments Clause of the U.S. Constitution.

Who submitted the letter?

The letter was submitted by Free Speech For People, a national non-partisan, non-profit organization working to defend our Constitution and our democracy; the Courage Campaign, a California-based non-profit organization working to defend and extend economic justice, human rights, and political and corporate accountability; Ben T. Clements, partner in the Boston law firm of Clements & Pineault, LLP, and Board Chair of Free Speech For People; and Professor Jed Shugerman of Fordham University School of Law.

What is the Domestic Emoluments Clause?

The Domestic Emoluments Clause in Article II of the U.S. Constitution provides: "The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them."

This clause prohibits the President from receiving any additional sources of income or benefits from any state.

How is money from CalPERS making its way to the Trump Organization?

CalPERS pays quarterly management and performance fees to CIM Fund III. In 2015, CIM Fund III acquired Trump SoHo, and under the terms of its agreement, it pays 5.75% of the Trump SoHo's gross operating revenues (about \$3 million) to Trump International Hotels Management LLC for "managing and marketing" the hotel. CIM also pays roughly \$500,000 per month to Trump SoHo to cover common operating and overhead charges for the hotel's unsold units (roughly 2/3s of the units).

President Trump, through a trust called the Donald J. Trump Revocable Trust, owns Trump International Hotels Management LLC and receives its profits. Under the terms of the revocable trust, all assets are held for the exclusive benefit of Donald Trump, and he can access funds from the trust at any time.

How much money is CalPERS paying in fees to this real estate fund manager?

According to public records obtained by Reuters, CalPERS has paid \$6-9 million per year in management and performance fees to CIM Fund III over the last several years. Free Speech For People filed a public records request on June 26, 2017, Public Records Request #3239, asking for information about how much CalPERS has paid to CIM Fund III since Donald Trump was inaugurated. CalPERS responded that it has paid fees of \$1.7 million to CIM Group from January 1, 2017 through March 31, 2017.

How would divestment work?

CalPERS has at least two options to consider. First, CalPERS could approach the fund manager of CIM Fund III and demand that it divest the fund from Trump SoHo and end its arrangement with the Trump Organization to ensure that no state pension funds are paid in violation of the Domestic Emoluments Clause. If CIM Fund III refuses, then CalPERS could choose to divest from CIM Fund III to ensure that state pension funds are not being directed to the Trump Organization.

Has CalPERS ever divested for any other reasons?

CalPERS divested from tobacco in 2000, and voted to expand its tobacco investment ban to externally managed portfolios and to its affiliate funds in late 2016. As State Treasurer (and board member) John Chiang explained, “No public pension fund should associate itself with an industry that is a magnet for costly litigation, reputational disdain, and government regulators around the globe.”

Although CalPERS prefers to engage with investee companies to bring about change, in this case, where the investment is resulting in payments that run afoul of the Domestic Emoluments Clause of the U.S. Constitution and raise other serious legal and ethical risks, divestment is the only option.

How do you think CalPERS will respond?

Given CalPERS long track record of leadership on transparency and ethics, as well as its legal obligations, we would expect CalPERS to act quickly to divest now that these issues have been brought to its attention.