



Request to Evaluate Divestment of New York State Common Retirement Fund Investment that Pays President Trump's Business in Likely Violation of the U.S. Constitution

What are you asking the New York State Comptroller to do?

As the sole trustee of the New York State Common Retirement Fund, we are asking Comptroller DiNapoli to evaluate divesting from a real estate fund that appears to transfer fees that it receives from the New York State Common Retirement Fund 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; Jonathan S. Abady, partner in the New York City law firm of Emery Celli Brinckerhoff & Abady LLP; 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 New York State Common Retirement Fund making its way to the Trump Organization?

New York State Common Retirement Fund 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 New York State Common Retirement Fund paying in fees to this real estate fund manager?

In fiscal years 2015 and 2016, respectively, the New York State Common Retirement Fund paid \$7.5 million and \$5.3 million in management fees to CIM Group LP, the manager of the CIM Fund III.¹

How would divestment work?

Comptroller DiNapoli has at least two options to consider. First, the Comptroller 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 the Comptroller could choose to divest from CIM Fund III to ensure that state pension funds are not being directed to the Trump Organization.

Has New York State Common Retirement Fund ever divested for any other reasons?

Comptroller DiNapoli took action in 2009 to divest holdings worth \$86 million in nine companies because of their involvement in Iran and Sudan. Although New York State Common Retirement Fund 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 Comptroller DiNapoli will respond?

Given Comptroller DiNapoli's long track record of leadership on transparency and ethics, as well as his legal obligations, we would expect the Comptroller to act quickly to divest now that these issues have been brought to his attention.

¹ See New York State and Local Retirement System, 2015 Comprehensive Annual Report, 108 (2015); New York State and Local Retirement System, 2016 Comprehensive Annual Report, 112 (2016). Free Speech For People filed a public records request on June 26, 2017, FOIL Request 2017-353, asking for information about how much New York State Common Retirement Fund has paid to CIM Fund III since Donald Trump was inaugurated. New York State Common Retirement Fund has not yet provided that information.