

An open letter to Justice Gorsuch:

Please don't deliver a speech at Trump's hotel

The Honorable Neil M. Gorsuch
United States Supreme Court
One First Street, NE
Washington, D.C. 20543

August 30, 2017

Dear Justice Gorsuch:

We write with grave concern about news reports that you have agreed to deliver a speech at the Trump International Hotel in Washington, D.C. at The Fund for American Studies' Defending Freedom Luncheon on September 28.¹

Under Canon 1 of the Code of Conduct for United States Judges, a judge should “maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.”² Similarly, the Court has recognized a compelling interest in “preserving public confidence in the integrity of the judiciary.” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1660 (2015).

As you may know, the Trump International Hotel is owned, through LLCs and a revocable trust, by President Trump. This creates several ethical conflicts associated with your appearance there:

- 1. Political activity.** Under Canon 5 of the Code of Conduct for United States Judges, a judge should refrain from “political activity.” President Trump has declared his candidacy for re-election in 2020. Consequently, your appearance at the Trump International Hotel creates the appearance of a political endorsement. However implicit, and however you may not desire to create such an impression, the appearance of such an endorsement is why you should not appear at a hotel owned by, and named after, a candidate for political office. This is not comparable to

¹ See The Fund for American Studies, *Defending Freedom Luncheon*,

<https://tfas.org/event/defending-freedom-luncheon/>.

² See Code of Conduct for United States Judges, <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> (Mar. 2014). The Code does not directly apply to Justices of the Supreme Court, but Chief Justice Roberts has stated that the Code “plays the same role” for the Supreme Court as it does for other federal judges. See U.S. Supreme Court, *2011 Year-End Report on the Federal Judiciary* 4 (Dec. 31, 2011), <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

appearing at the White House, or appearing with the president at an official presidential event.

2. **Subject of pending litigation.** Because the hotel is owned by the president, it is currently the subject of several legal disputes that could come before you. These include three separate federal lawsuits involving the Constitution's Foreign Emoluments Clause and the Domestic Emoluments Clause.
3. **Judicial imprimatur potentially leading to additional emoluments.** Your appearance at the Trump International Hotel will help to generate additional publicity for the hotel, and, more importantly, convey an imprimatur of legitimacy. That imprimatur of legitimacy will suggest to many, including foreign government officials, that you have favorably resolved all the legal or ethical concerns associated with the hotel. That, in turn, may lead to more business from foreign governments, resulting in what could later come before the Court as additional foreign emoluments.
4. **Judicial imprimatur for profiting from the presidency.** Setting aside the *legal* questions associated with the hotel, the fact that the president is using his office to enhance the booking and room rates at a for-profit hotel for his own personal profit presents an unprecedented corruption of the presidency. Your participation in an event that will involve payments from the organizers to the hotel, and from there to the president himself, is inconsistent with the high ethical standards for an Associate Justice of the United States Supreme Court. More broadly, your appearing at the hotel that has become one of the foremost symbols of the for-profit presidency is inconsistent with judicial independence and integrity.
5. **Judicial independence and pending litigation not involving the hotel.** As a Justice, you will hear many other cases involving the president's actions and policies. Your appearance at the president's hotel will convey the suggestion of an improper relationship with the president.
6. **Judicial imprimatur and president's recent inflammatory statements.** Much of the litigation that comes before you involves litigants who are members of what Justice Stone famously called "discrete and insular minorities," *United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 n.4 (1938), raising claims that ultimately sound in civil rights, civil liberties, and the principles of "liberty, equality, and justice for all." Unfortunately, at this point, the name "Trump" is now closely associated with the president's recent inflammatory statements on television and Twitter. (Some of his past inflammatory statements are already part of the evidentiary record in federal litigation that may soon come before you.)

Most shockingly, on August 15, he delivered extended remarks about the recent tragedy in Charlottesville, Virginia. Pressed to condemn a group composed entirely of violent white supremacists and neo-Nazis, he insisted that the group contained some "very fine people," and equated this group with an almost entirely peaceful group of counter-protesters who were there to protect the community from armed white supremacists. President Trump's remarks drew widespread condemnation across the political spectrum—except, unsurprisingly, from the white supremacists, who praised the president's words. The leaders of our nation's armed forces were so concerned that the service chiefs of the Army, Navy, Marines, Air Force, and National Guard took the step, previously not thought necessary after a presidential

speech, of publicly reaffirming our military's commitment to equality and opposition to racism.

At this point, your voluntary appearance at an event at the president's hotel would convey the impression that you, as a Justice of the Supreme Court who has sworn to administer justice "without respect to persons," do not find these statements problematic.

For these reasons, we urge you not to appear at this event at the Trump International Hotel. We respectfully request that you work with The Fund for American Studies to move the event to a different venue, or if that is not possible, decline to appear.

Sincerely,

Ron Fein, Legal Director
John Bonifaz, President
Ben Clements, Chair, Board of Directors
Free Speech For People

Every Voice

The Rootstrikers Project at Demand Progress

Money Out Voters In

Center for Biological Diversity

Sarah Chayes

Norm Ornstein