

The Chief Justice  
The Supreme Court  
One First Street, NE  
Washington, DC 20543

October 12, 2017

Dear Chief Justice:

On September 28, 2017, Justice Neil M. Gorsuch took the stage as the featured speaker at an invitation-only luncheon at the Trump International Hotel in Washington, D.C.<sup>1</sup> The hotel is predominantly owned, through various intermediary LLCs and trusts, by President Donald J. Trump; the rest is owned by three of his adult children.<sup>2</sup>

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.”<sup>3</sup> The Code does not directly apply to Supreme Court Justices, but you have written that the Code “plays the same role” for the Supreme Court as it does for other federal judges.<sup>4</sup> Similarly, as you noted in a recent opinion for the Court, there is a compelling interest in “preserving public confidence in the integrity of the judiciary.” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1660 (2015).

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<sup>1</sup> See Jackie Northam, *Supreme Court Justice Neil Gorsuch Criticized For Speech At Trump’s D.C. Hotel*, NPR, Sept. 28, 2017, <https://n.pr/2wYqO8q>; The Fund for American Studies, *Defending Freedom Luncheon*, <https://tfas.org/event/defending-freedom-luncheon/>.

<sup>2</sup> See Letter from Kevin M. Terry, GSA, to Trump Old Post Office LLC, Mar. 23, 2017, <https://www.gsa.gov/portal/getMediaData?mediaId=157798>. Mr. Trump owns 76.725% of the hotel; three of his adult children each own a 7.425% interest. See GSA, *GSA-2016-000896 - Aram Roston - Redacted by CO Legal - EXHIBIT G (2)\_Redacted*, available at <https://foiaonline.regulations.gov/foia/action/public/view/record?objectId=090004d280d6b788>.

<sup>3</sup> Code of Conduct for United States Judges, <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> (Mar. 2014). See also *id.* Canon 2A (requiring judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”).

<sup>4</sup> 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>; see also Nina Totenberg, *Bill Puts Ethics Spotlight on Supreme Court Justices*, NPR, Aug. 17, 2011 (noting statements of Justices Kennedy and Breyer that Justices follow Code of Conduct).

The ethical conflicts associated with Justice Gorsuch's appearance at President Trump's hotel include the following:

**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, Justice Gorsuch's appearance at the Trump International Hotel creates the appearance of a political endorsement. However implicit, and however Justice Gorsuch may not have desired to create such an impression, his appearance at a hotel owned by, and named after, a candidate for political office created the appearance of such an endorsement. This was not comparable to 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 the Court. These include three separate federal lawsuits involving the Constitution's Foreign Emoluments Clause and Domestic Emoluments Clause. Justice Gorsuch's appearance at the hotel conveys the impression that he has favorably resolved the legal and ethical concerns associated with the hotel. This message, though implicit, is inconsistent with Canon 3A(6)'s admonition that "[a] judge should not make public comment on the merits of a matter pending or impending in any court." Furthermore, it is likely to require Justice Gorsuch to recuse himself from this litigation.<sup>5</sup> Consequently, it is also inconsistent with Canon 4, which provides that "a judge should not participate in extrajudicial activities that . . . interfere with the performance of the judge's official duties, [or] reflect adversely on the judge's impartiality."

**3. 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. Justice Gorsuch's participation in an event that involved payments from the organizers to the hotel, and from there to the president himself, is inconsistent with Canon 2B's prohibition on "lend[ing] the prestige of the judicial office to advance the private interests of . . . others" and Canon 4's prohibition on "extrajudicial activities that detract from the dignity of the judge's office."

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<sup>5</sup> See Canon 3C (requiring that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"). As the late Justice Scalia once noted, while a personal relationship with a government official is typically not grounds for recusal in the more common litigation involving official action, it *is* "ground for recusal of a Justice where the personal fortune or the personal freedom of the friend is at issue." *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 541 U.S. 913, 916 (2004) (Scalia, J.) (in chambers).

For these reasons, we respectfully urge you to issue a letter of reprimand to Justice Gorsuch and to publish an official Court policy on the ethics issues involved with appearing at a venue owned by the president of the United States. Furthermore, we urge the Court to adopt its own formal code of conduct that incorporates the requirements of the Code of Conduct for United States Judges.

Sincerely,

Ronald A. Fein, Legal Director  
John C. Bonifaz, President  
Ben T. Clements, Chair, Board of Directors  
Free Speech For People