



August 29, 2017

The Honorable Neil M. Gorsuch
Associate Justice
United States Supreme Court
One First Street NE
Washington, DC 20543

Dear Justice Gorsuch,

We write to express our concerns about your keynote appearance next month at the Fund for American Studies' "Defending Freedom Luncheon" to be held at the Trump International Hotel.¹ The Fund for American Studies describes the luncheon as part of the Fund's "50th Anniversary Celebration."²

Your participation in the luncheon raises ethical matters that bear on the public's confidence in the Supreme Court and its impartial administration of justice.

First, if the luncheon and associated activities involve fundraising for the Fund for American Studies ["TFAS"], then your keynote address violates Canon 4 of the Judicial Code of Conduct. TFAS' website describes your keynote speech as "an invite-only event, exclusive to members of the TFAS President's Society," and provides contact information to those who want to learn more.³ If a financial contribution to TFAS is a criterion for "President's Society" membership, then TFAS is using access to your keynote address as a fundraising incentive. Admission to your keynote is "exclusive" to a select group of TFAS supporters and part of TFAS' "50th Anniversary Celebration" agenda that includes a gala dinner with numerous corporate sponsors.⁴

Canon 4 of the Code of Conduct for United States Judges provides that while judges "may engage in extrajudicial activities that are consistent with the obligations of judicial office," they should not "use or permit the use of the prestige of judicial office" for fundraising activities.⁵ The Code's corresponding commentary explains that "[a] judge may attend fund-raising events of law-related and other organizations although the judge *may not be a speaker, a guest of honor, or featured on the program of such an event.*"⁶

¹ Adam Liptak, "Neil Gorsuch Speech at Trump Hotel Raises Ethical Questions," N.Y. TIMES, Aug 17, 2017, <https://www.nytimes.com/2017/08/17/us/politics/gorsuch-speech-trump-hotel-ethics.html>.

² The Fund for American Studies, Defending Freedom Luncheon, <https://tfas.org/event/defending-freedom-luncheon/> (last accessed Aug. 22, 2017).

³ *Id.*

⁴ The Fund for American Studies, TFAS 50th Anniversary Gala, <https://tfas.org/event/tfas-50th-anniversary-celebration-gala/> (last accessed Aug. 22, 2017).

⁵ Code of Conduct for United States Judges, *available at* <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#e>

⁶ *Id.* (emphasis added).

Although the Code of Conduct only applies to the lower federal courts, Chief Justice Roberts wrote in his 2011 Year-End Report on the Federal Judiciary that Members of the Supreme Court “do in fact consult the Code of Conduct in assessing their ethical obligations,” and that it “remains the starting point and a key source of guidance for the Justices.”⁷ The American people correctly hold Members of the Supreme Court to the highest ethical standards, and voluntary compliance with the Code is the best practice absent more definitive and transparent Supreme Court guidelines.

The Trump International Hotel as the venue for your speech is also deeply troubling. President Trump has substantial financial interests in the hotel and its success or failure.⁸ Your scheduled appearance has already attracted significant publicity for the hotel and President Trump’s businesses.⁹ The Trump hotel is the subject of at least three federal lawsuits alleging violations of the Emoluments Clause—cases that you may hear.¹⁰ The Trump hotel has also been subject to controversy due to its lease with the General Services Administration, which prohibits elected officials from benefiting from the lease.¹¹ Moreover, the Trump hotel is closely tied to the President’s re-election campaign and other partisan political causes, including fundraisers that involve payments to the President’s companies from which he has refused to divest.¹² These substantial conflicts of interest undermine principles of judicial independence and high ethical standards that Americans expect you to uphold as an Associate Justice of the Supreme Court.

We respectfully urge you to re-consider your decision to headline this event unless the Fund for American Studies confirms that your appearance is not being used to solicit funds and the event is moved to a different location that does not raise the same conflicts-of-interest as the Trump International Hotel.

Sincerely,



Karen Hobert Flynn
President
Common Cause

⁷ CHIEF JUSTICE ROBERTS, 2011 YEAR-END REPORT ON THE FEDERAL JUDICIARY 4, 5 (*available at* <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>).

⁸ See Jonathan O’Connell, “How the Trump Hotel Changed Washington’s Culture of Influence,” WASH. POST, Aug. 7, 2017, https://www.washingtonpost.com/graphics/2017/politics/trump-hotel-business/?utm_term=.c28b82060030; Alex Altman, “Donald Trump’s Seat of Power,” TIME MAGAZINE, June 8, 2017, <http://time.com/magazine/us/4810463/june-19th-2017-vol-189-no-23-u-s/>.

⁹ See Liptak, *supra* note 1; Matthew Nussbaum, “Gorsuch to Headline Event at Trump Hotel,” POLITICO, Aug. 17, 2017, <http://www.politico.com/story/2017/08/17/neil-gorsuch-trump-hotel-event-241738>; Lydia Wheeler, “Justice Gorsuch to Speak at Trump Hotel Next Month,” THE HILL, Aug. 17, 2017, <http://thehill.com/regulation/court-battles/346994-justice-gorsuch-to-speak-at-trump-hotel-next-month>;

¹⁰ Complaint, Blumenthal et al. v. Trump, No. 17-cv-01154 (D.D.C. June 14, 2017); Complaint, District of Columbia and the State of Maryland v. Trump, No. 17-cv-01596-PJM (D. Md. June 12, 2017); Complaint, CREW v. Trump, No. 17-cv-00458-GBD (S.D.N.Y. Jan. 23, 2017).

¹¹ Jonathan O’Connell, “Lawmakers Question GSA Chief Over Trump’s Hotel Lease, Failed FBI Headquarters,” WASH. POST, July 12, 2017, https://www.washingtonpost.com/news/business/wp/2017/07/12/lawmakers-question-gsa-chief-over-trumps-hotel-lease-failed-fbi-headquarters/?utm_term=.7bb5e8cc6221.

¹² See O’Connell, *supra* note 8.