

Donald Trump Hasn't Solved Any of His Conflicts of Interest. He Could Have. He Chose Not To.

01.11.2017

The Washington Post

There is a good reason that the Justice Department has always taken the position that presidents should abide by the provisions of the Ethics in Government Act, even though they are exempted from it for constitutional reasons: Doing that saves the president and his administration a lot of potential troubles.

But President-elect Donald Trump's announcement Wednesday that he will retain full personal ownership of the Trump Organization's hundreds of companies and worldwide business interests, while setting up a structure for his children and trusted executives to manage the organization, invites just the sort of trouble the law is designed to avoid.

Trump made the point that nothing legally prevented him from running his business from the Oval Office. That's true, but it is also a red herring: He is smart enough to know that his supporters would have been just as unhappy with such a diversion of his time and energy as everyone else would have been offended by the idea. Trump was elected president to concentrate on the demands of the office, which have overwhelmed some of its occupants. So he did not have a practical option — he had to turn the running of the business over to someone else while he concentrates on “making America great again.”

The question before now, however, was whether Trump would take a path that would free him and his administration from battles over conflicts of interest and the appearance of acting to enrich himself from the White House. And he chose not to do so.

[How President Trump could use the White House to enrich himself and his family]

By turning the operations of the company over to family and executives while retaining full ownership, Trump leaves himself open to charges that his decisions as president are calculated to benefit his own financial well-being. There will be no blind trust, a setup where Trump would not know what he owns. Instead, he will know exactly what assets he has turned over to his family to run.

Although he has announced that the company will not do “new” foreign deals, he will know exactly which existing foreign deals will be affected by administration actions and international incidents, and so will foreign officials looking to influence the president. Nothing Trump said Wednesday appears to address the existing foreign business operations of his organization, which will continue to present potential conflicts of interest.

Further, the companies are free to pursue new business arrangements in the United States, which may put them in contact with federal agencies and state regulatory bodies, as well as investors seeking influence in Washington. For example, golf course developments may be regulated by the Environmental Protection Agency or the U.S. Army Corps of Engineers, both of which report to the president.

Appointing an “ethics official” at the Trump Organization does nothing to solve this problem: The issue is less about what the company does and more about what President Trump and his administration do to advance the company’s known (and some publicly unknown) worldwide interests.

In response to objections that the Constitution’s emoluments clause prohibits Trump’s hotel in Washington from receiving payments from foreign governments, Trump also plans to donate to the U.S. Treasury any profits from such transactions. But it’s not at all clear how “profits” will be defined. And that arrangement does nothing to address potential emoluments clause issues with deals between other Trump interests and foreign governments or entities.

[Trump leases his D.C. hotel from a government agency he’ll soon be in charge of]

The sad fact is that Trump’s decision to retain ownership of the Trump Organization is unnecessary, as we know from the divestitures and blind trusts currently being undertaken by the other billionaires going into his administration. It is true that they do not have a choice, since the Ethics in Government Act clearly applies to them. But the fact that they’ve taken these steps demonstrates the wisdom of the law: They will avoid the ethics conflicts questions and the constitutional emoluments clause questions that will continue to plague President Trump.

And contrary to the claims of the Trump team, the sky did not fall when these people divested and created blind trusts — even in the case of Trump’s son-in-law Jared Kushner, a New York real estate mogul of at least Trumpian financial proportions. This tells us it can be done and that President Trump will soon regret not having taken that course.

[Jared Kushner’s White House job may be legal. But history shows it’s a bad idea.]

Instead, we will be treated to disputes (perhaps in court) over what the correct definition is of “profit” from foreign government spending at Trump hotels and resorts, and what benefit those governments hoped to gain. Worse, we will face unprecedented questions of whether a foreign government or government-controlled commercial entity is simply transacting ordinary arms-length business transactions with the Trump Organization, or whether instead they are attempting to curry favor with the president or enrich him. This will be more complicated if U.S. foreign policy interests intersect with existing Trump investments and properties in dangerous corners of the world — and the public won’t know whether the administration’s response is guided by the national interest or the interests of the Trump Organization.

The policies advanced by the Ethics in Government Act have served us well as a country for decades. The Justice Department’s consistent advice to presidents that they should voluntarily follow the same rules applicable to all other administration officials to avoid conflicts and the appearance of conflicts — to be at least as ethical as their appointees are required to be — has been a benefit to those presidents and administrations. Departing from that norm is ill-advised, and it’s likely to backfire on President Trump, creating an ongoing distraction that will make it harder for him to concentrate attention on his policy objectives. His announcement Wednesday was an unforced error of as yet unknown consequences.

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