

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on Possible Domestic Emoluments Clause Violations at Trump Turnberry

Possible Violation of the Law

The Domestic Emoluments Clause of the United States Constitution bars federal officials from improperly profiting from the United States federal government or from individual state governments. Has President Donald Trump violated the Domestic Emoluments Clause by profiting from payments to the Trump Turnberry resort?

Introduction

Unlike past presidents,¹ Donald Trump refused to relinquish control and ownership of his business empire when he was sworn into office on January 20, 2017.² Despite claiming that he would step back and allow his sons to run the daily operations of his businesses, government ethics organizations largely panned the idea because of the potential conflicts business ownership might have during his presidency.³ Ignoring several instances where President Trump appeared to exert active control over his businesses' daily operations,⁴ various accusations have arisen regarding the impropriety of payments to Trump-owned businesses from the United States government and other foreign powers.⁵ Despite a well-documented list of possible violations, this report will focus solely on the payments made by the United States government to President Trump's Scottish resort, the Trump Turnberry, in order to ask if the payments were in violation of the Domestic Emoluments Clause.

Facts

The Trump Turnberry is "An experience like no other."⁶ The resort is one of the President's international commercial properties and is located in Scotland.⁷ It is a luxury resort, boasting rooms starting at \$336.70 a night all the way up to signature suites that are listed at \$1175.85 per night.⁸ Amenities include horseback riding, archery, and access to a golf course "recently named #16 in Golf Magazine's 'Top 100 Courses in the World'" in 2017.⁹ Sitting around 50 miles outside of Glasgow, the resort features a breathtaking view of the Scottish countryside and coastline from the property.¹⁰ While the Trump Turnberry would certainly make for a lovely vacation, there remain questions as to why the United States government has paid between \$124,578.96 and \$183,308.08 to the resort to lodge soldiers in the US Air Force as of September of 2019¹¹.

Initially reported in 2018, and again revisited heavily by the media in 2019, the Trump Turnberry has been a semi-frequent lodging location for US Air Force crews stopping to refuel on their way

to other locations.¹² During a congressional investigation into why military personnel were staying at a luxury resort during routine operations, it was discovered that \$124,578.96 of taxpayer money had been paid directly to the Trump-owned business.¹³ After several rounds of Congressional demands for documents related to the stays, it was found that the United States Air Force had paid for around 650 rooms between President Trump's inauguration and September of 2019¹⁴. Conflicting reports from the US Congress Committee on Oversight and Reform and from the United States Air Force raise questions about whether the amounts paid for the stays were within the bound of the usual per diem rate of \$166 for Air Force flight crews.¹⁵ Further taxpayer-funded payments amounting to nearly \$60,000 may have been made during the stays. It is unclear how the much of this money was spent at a Trump-owned business.¹⁶

Another point of concern has arisen from the use of the Prestwick Airport, the airport nearest the Trump Turnberry, as a refueling station for Air Force planes. The airport has a relationship and agreement with Trump Turnberry to allow for pickups by car and private helicopter for guests.¹⁷ The current contract between the US Air Force and the airport, which saw over \$16,647,664 made in payments for fuel,¹⁸ has largely kept the airport afloat.¹⁹ The airport, which was bought by the Scottish government, was losing significant amounts of money prior to President Trump's election and might have been at risk of closure.²⁰ The refueling that has taken place at Prestwick Airport could likely have been done for lesser cost to taxpayers at other US military bases throughout Europe and Air Force officials have not demonstrated any savings associated with this new fueling stop so close to the Trump Turnberry.²¹ Despite statements to the contrary from the resort, it seems likely the Trump-owned property benefits from the continued operations of a nearby airport with which it has a preexisting arrangement.

Analysis

Article II, Section 1, Clause 7 of the United States Constitution states that "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."²² Described as one of the United States' original anti-corruption laws, it is often called the Domestic Emoluments Clause and is usually interpreted to mean that federal and state governments cannot provide benefit to federal officials beyond their salaries. The definition of "emolument" goes beyond mere direct money payments, a point critical to understanding the scope of this constitutional prohibition. Black's Law Dictionary states an emolument is "the profit arising from office or employment; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private."

The direct payments made by the US Air Force to a property owned, and arguably currently controlled, by President Donald Trump might be an emolument. Considering that the Air Force has spent significant taxpayer money at a luxury hotel because of a refueling contract negotiated just before the president's inauguration, there are questions regarding whether the use of Prestwick Airport was designed to benefit the US Air Force or to personally enrich President Trump. If the decision to refuel at Prestwick was based upon the knowledge that President

Trump would appreciate the use of his property, it would be an advantage conferred because of his position as commander-in-chief and therefore likely be an emolument in violation of the law.

Similarly, while it would not have been of direct financial benefit to President Trump, it seems that the millions of dollars spent at Prestwick Airport to pay for fuel have benefitted the president by propping up a money-losing airport next to his property. The US Air Force has essentially ensured the continued operation previously failing foreign airport, using taxpayer monies provided by the federal government, to benefits President Trump's finances. As with the Trump Turnberry lodging, if the decision to refuel at the Prestwick Airport was made in an attempt to benefit the president, it would likely be in violation of the Domestic Emoluments Clause and its prohibition on using a federal office for "advantage" or "gain."

Legal Conclusions

President Trump's entanglement in foreign properties has cause Emolument Clause nightmares since his inauguration. The use of the President's private luxury resort by US Air Force crews almost inarguably benefitting the President Trump financially. Similarly, the use of taxpayer money to buy fuel from a previously failing airport that benefitted the resort has arguably provided great financial benefit to the President. Despite the clearly problematic optics of this situation, additional evidence is likely needed to substantiate that the use of the Trump Turnberry and Prestwick Airport by the US Air Force was done with the benefit of the President in mind. Even without substantiation, there are still deep implications and questions that arise from the millions of dollars of taxpayer money that has been spent in both direct and indirect benefit of a resort owned by President Donald Trump due to a contract negotiated just before his inauguration. Perhaps this was a standard renegotiation, but without cooperation from Secretary of Defense Esper into the events highlighting the use of the Prestwick Airport, there remains the obvious conclusion that at least some of the actions taken were done to benefit President Trump's business. If President Trump is being enriched by the United States government in order to benefit him personally, it is almost certainly a violation of the Domestic Emolument Clause of the United States Constitution.

¹ Courtney Buble, *Watchdog Group Tallies 2,310 Conflicts of Interest Associated With President Trump's Businesses*, Government Executive (August 19, 2020), <https://www.govexec.com/oversight/2019/08/watchdog-group-tallies-2310-conflicts-interest-associated-president-trumps-businesses/159281/>.

² *See Id.*

³ *See Id.*

⁴ Jordan Libowitz, *If Donald Trump isn't running the Trump Organization, who is?*, Citizens for Responsibility and Ethics in Washington (August 28, 2019), <https://www.citizensforethics.org/reports-investigations/crew-investigations/donald-trump-running-trump-organization/>.

⁵ *Supra*, note 1.

⁶ Trump Turnberry resort website, <https://www.trumphotels.com/turnberry>.

⁷ *See Id.*

⁸ *See Id.*

⁹ *See Id.*

¹⁰ *See Id.*

¹¹ *See* Letter sent to Secretary of Defense Mark Esper by the US Congressional Committee on Oversight and Reform (September 18, 2019),

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-09-18.EEC%20Raskin%20to%20DOD-Esper%20re%20Turnberry-Followup%20to%206-21%20Request.pdf>.

¹² See Natasha Bertrand and Bryan Bender, *Air Force crew made an odd stop on a routine trip: Trump's Scottish resort*, Politico (September 6, 2019), <https://www.politico.com/story/2019/09/06/air-force-trump-scottish-retreat-1484337>.

¹³ *Supra*, note 11.

¹⁴ *See Id.*

¹⁵ *See Id.*

¹⁶ *See Id.*

¹⁷ See Eric Lipton, *Trump Had Deal With Scotland Airport That Sent Flight Crews to His Resort*, The New York Times (September 9, 2019), <https://www.nytimes.com/2019/09/09/us/politics/trump-hotel-turnberry.html>.

¹⁸ *Supra*, note 11.

¹⁹ See Severin Carrell, *Scottish government criticised over US military use of airport*, The Guardian (February 7, 2018), <https://www.theguardian.com/politics/2018/feb/07/scottish-government-criticised-over-us-military-use-of-airport>.

²⁰ *See Id.*

²¹ *Supra*, note 11.

²² U.S. Const. art 2, §1, cl. 7.