

ATTACHMENTS 1-4

300 New Jersey Avenue, N.W., Suite 900
Washington, D.C. 20001
Phone: 202-465-8728

June 6, 2020

William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear General Barr,

On April 20, 2020, the undersigned sent you a letter (attached) describing criminal violations of the Hatch Act by President Donald Trump regarding his use of federal property and federal employees to have his name on treasury checks going out to millions of Americans in this election year. (See attached Washington Post column).

We requested that you appoint a special counsel to investigate this matter.

There has been neither a substantive response nor acknowledgement of receipt of our letter sent by postal mail. We assume that you recognize President Trump is not your client, but that the United States Constitution is. When the two conflict, the former is subservient to the latter.

The United States Court of Appeals for the District of Columbia Circuit elaborated in *In re Bruce Lindsey*, 158 F. 3d 1263, 1273 (D.C. Cir. 1998):

When an executive branch attorney is called before a federal grand jury to give evidence about alleged crimes within the executive branch, reason and experience, duty, and tradition dictate that the attorney shall provide that evidence. With respect to investigations of federal criminal offenses, and especially offenses committed by those in government, government attorneys stand in a far different position from members of the private bar. Their duty is not to defend clients against criminal charges and it is not to protect wrongdoers from public exposure. The constitutional responsibility of the President, and all members of the Executive Branch, is to “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, § 3. Investigation and prosecution of federal crimes is one of the most important and essential functions within that constitutional responsibility. Each of our Presidents has, in the words of the Constitution, sworn that he “will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” *Id.* art. II, § 1, cl. 8. And for more than two hundred years each officer of the Executive Branch has been bound by oath or affirmation to do the same. *See id.* art. VI, cl. 3; *see also* 28

U.S.C. § 544 (1994). This is a solemn undertaking, a binding of the person to the cause of constitutional government, an expression of the individual's allegiance to the principles embodied in that document. Unlike a private practitioner, the loyalties of a government lawyer therefore cannot and must not lie solely with his or her client agency. (footnote omitted).

The Professional Ethics Committee of the Federal Bar Association has described the public trust of the federally employed lawyer as follows:

[T]he government, over-all and in each of its parts, is responsible to the people in our democracy with its representative form of government. Each part of the government has the obligation of carrying out, in the public interest, its assigned responsibility in a manner consistent with the Constitution, and the applicable laws and regulations. In contrast, the private practitioner represents the client's personal or private interest.... [W]e do not suggest, however, that the public is the client as the client concept is usually understood. It is to say that the lawyer's employment requires him to observe in the performance of his professional responsibility the public interest sought to be served by the governmental organization of which he is a part. *Federal Bar Association Ethics Committee, The Government Client and Confidentiality: Opinion 73-1*, 32 FED. B.J. 71, 72 (1973).

We look forward to a response to our letter. That has been the practice of previous Attorney Generals over the past five decades, including your service from 1991-1993. Please be advised that we have requested an opinion on our allegation from the Office of Government Ethics (see attached).

Sincerely,

Ralph Nader

Lou Fisher

Bruce Fein

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May 6, 2020

Emory A. Rounds, III
Director
Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005

RE: Presidential Violation of Section 2635.702, Subpart G-Misuse of Position-e-CFR Title 5, Chapter XVI-Subchapter B-Part 2635

Dear Director Rounds:

Enclosed is a letter to Attorney General William Barr addressing President Donald Trump's hijacking of U.S. Treasury payments under the Coronavirus, Aid, Relief, and Economic Security Act (CARES) to promote his 2020 re-election campaign in violation of the Hatch Act, 18 U.S.C. 610. We believe the evidence adduced also demonstrates a violation of the ethical prohibition enshrined in Section 2635.702, Subpart G-Misuse of Position-e-CFR Title 5, Chapter XVI-Subchapter B-Part 2635. It prohibits use of public office for private gain. Mr. Trump used his Office of President of the United States to arrange to have his name on U.S. Treasury CARES Act checks to ingratiate himself with voters for his 2020 re-election campaign.

Since the letter was sent to the Attorney General, additional evidence of the President's violation of Section 2635.702 has surfaced. Every direct deposit recipient of a CARES payment received a letter on White House letterhead signed by President Trump in a Treasury Department envelope. The Trump signed letter effusively praises President Trump and his administration for quick action (contrary to facts) to mitigate the economic hardships occasioned by the COVID-19 epidemic. It concludes with a signature Trump campaign allusion to Making America Great Again: "Just as we have before, America will triumph yet again—and rise to new heights of greatness." A copy of the letter is also enclosed.

We strongly urge you to commence an investigation and make findings relevant to President Trump's seeming violation of Section 2635.702 pursuant to Section 402 (b) (9) and (f) (2) (B) (1) of the Ethics in Government Act of 1978; and, investigate whether any White House or Treasury Department officials were partners in the violation. OGE has previously concluded that the President is subject to the prohibition.

Sincerely,


Bruce Fein Esq.


Ralph Nader Esq.


Louis Fisher


Richard Painter Esq.

The Washington Post

Democracy Dies in Darkness

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These lawyers say Trump's name on stimulus checks might be a crime

By **Joe Davidson**

April 30, 2020 at 8:12 a.m. EDT

Is President Trump guilty of a crime because he has his name on the coronavirus relief checks?

While some might excuse that as an example of Trump's narcissism, a letter from three prominent lawyers, who represent disparate points on the political spectrum, says it is more serious than that.

The administration's action, they argue, warrants the appointment of a special prosecutor to investigate the improper use of government employees and property to promote the president's reelection campaign. That would be a criminal violation of the Hatch Act.

Checks to individuals and organizations from the \$2 trillion relief effort are meant to combat the calamitous economic impact of the novel coronavirus pandemic. It is the first time a president's name has been on an IRS disbursement check, my colleague Lisa Rein reported.

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“President Trump is actively seeking re-election. The signature of President Trump on United States Treasury checks is superfluous to their value, legality, or authenticity. The signature serves no official government purpose,” reads the letter to Attorney General William P. Barr. “It does serve Mr. Trump’s 2020 re-election campaign by making it appear that he is responsible for a monetary windfall to tens of millions of voters.”

The letter was signed by Ralph Nader, a progressive icon; Louis Fisher, a constitutional scholar who served both parties for four decades with the Library of Congress and who now is with the College of William & Mary; and Bruce Fein, an attorney who worked in Ronald Reagan’s Justice Department and for congressional Republicans. The Justice Department and the White House did not respond to requests for comment.

After Treasury Secretary Steven Mnuchin told CNN it was his idea to put Trump’s name on the checks, Sen. Ron Wyden (Ore.), the top Democrat on the Senate Finance Committee, asked in a letter to Mnuchin whether “the decision to gratuitously affix the president’s name . . . provides any benefit to Americans struggling to pay rent or buy food.”

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Politico reported that Senate Minority Leader Charles E. Schumer (N.Y.), plans to introduce the No PR Act, short for No Politics in Pandemic Recovery Act, to prohibit using tax money for any publicity or promotional activity that includes the names or pictures of the president or vice president.

“President Trump unfortunately appears to see the pandemic as just another opportunity to promote his own political interests,” Schumer said in a statement. “The No PR Act puts an end to the president’s exploitation of taxpayer money for promotional material that only benefits his re-election campaign.”

Nader, Fisher and Fein requested a special counsel to investigate Trump’s name on the checks because it would be a conflict for Barr’s staff to investigate his boss.

AD

Trump should be investigated, their letter said, “for allegedly commanding a federal

employee to engage in political activity, the unprecedented, gratuitous placement of Mr. Trump's signature on the memo line of tens of millions of United States Treasury checks disbursed to eligible citizens under the Coronavirus Aid, Relief, and Economic Security Act (CARES)."

Trump's name, not his signature, is printed on the lower left side of the checks. Be it his printed name or his distinctive scrawl is of no matter, the three said in separate interviews. The impact is the same.

Directing a "Treasury employee to place [Trump's name] on Cares checks for the purpose of affecting the 2020 presidential election," Fein said, is a violation of federal law that prohibits the "use of official authority or influence for the purpose . . . of affecting the result of an election."

AD

Rein reported that "Trump had privately suggested to Treasury Secretary Steven Mnuchin, who oversees the IRS, that he allow the president to formally sign the checks. . . . But the president is not an authorized signer for legal disbursements by the U.S. Treasury." Furthermore, to ensure against partisan use of government funds, it is standard practice for civil servants to sign Treasury checks.

Trump's printed name or his signature "on the CARES checks in the middle of his 2020 presidential campaign," the lawyers wrote, "is a prominent symbol that benefits his re-election by making it appear that he has alleviated the financial plight of tens of millions of voters."

There have been no prosecutions, however, under "this section of this little-known part of the criminal code," said Nick Schwellenbach, an Obama administration staffer with the Office of Special Counsel, which investigates civil Hatch Act violations.

AD

"But just because it hasn't been previously enforced doesn't mean it should not be when the facts warrant it," added Schwellenbach, now a senior investigator with the nonpartisan Project on Government Oversight. "There's enough smoke to warrant an investigation, such as the reportedly unprecedented nature of having a president's signature on Treasury checks. And it is an election year."

Read more:

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April 20, 2020

Honorable William Barr
Attorney General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

RE: Evidence of President Donald Trump's violation of the Hatch Act, 18 U.S.C. 610

Dear General Barr:

We write to request the appointment of a special counsel pursuant to 28 C.F.R. 6001(a) to investigate President Donald Trump for allegedly commanding a federal employee to engage in political activity, i.e., the unprecedented, gratuitous placement of Mr. Trump's signature on the memo line of tens of millions of United States Treasury checks disbursed to eligible citizens under the Coronavirus Aid, Relief, and Economic Security Act (CARES) in violation of 18 U.S.C. 610. You are undoubtedly aware that section 610 carries no exceptions for the President or Vice President, unlike other Hatch Act provisions.

President Trump is actively seeking re-election. The signature of President Trump on United States Treasury checks is superfluous to their value, legality, or authenticity. The signature serves no official government purpose. It does serve Mr. Trump's 2020 re-election campaign by making it appear that he is responsible for a monetary windfall to tens of millions of voters.

Mr. Trump was the first official in the Executive Branch to publicly float the idea of his signature appearing on CARES checks. The Washington Post reported on April 15, 2020 that Mr. Trump's signature would appear, and that Mr. Trump had asked Secretary of Treasury Steve Mnuchin to make it happen.

On April 19, 2020, Secretary Mnuchin on CNN belatedly claimed he raised the idea with the President. The Secretary's explanation, however, is revealing: "He is the President, and I think a terrific symbol to the American people." Everyone knows Mr. Trump is President. And his signature on the CARES checks in the middle of his 2020 presidential campaign is a prominent symbol that benefits his re-election by making it appear that he has alleviated the financial plight of tens of millions of voters. Neither Mr. Mnuchin nor Mr. Trump has proffered an alternative symbolic effect of Mr. Trump's signature.

In any event, the foregoing evidence justifies a special counsel investigation as to whether President Trump has violated 18 U.S.C. 610 by commanding a federal employee to enable his piggybacking on CARES checks to further his re-election campaign.

If you do not find justification for a special counsel, we would request a legal opinion explaining your decision.

Sincerely,

Ralph Nader

Louis Fisher

Bruce Fein