

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

CITIZENS FOR RESPONSIBILITY  
AND ETHICS IN WASHINGTON,  
RESTAURANT OPPORTUNITIES  
CENTERS (ROC) UNITED, INC.,  
JILL PHANEUF, and ERIC GOODE,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official  
capacity as President of the United  
States of America,

*Defendant.*

No. 1:17-cv-00458-GBD

**MOTION FOR LEAVE TO FILE  
BRIEF OF FORMER GOVERNMENT ETHICS OFFICERS  
AS AMICI CURIAE SUPPORTING PLAINTIFFS**

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Amici are a group of ten former government ethics officers, who have served in various executive agencies under administrations of both major parties.<sup>1</sup> They hereby move, through counsel, for leave to file the accompanying brief (attached as Exhibit A) in support of the plaintiffs' opposition to the defendant's motion to dismiss the Second Amended Complaint. Plaintiffs consented to the filing of this brief. Defendant took no position.

Because there is essentially no judicial precedent on point, the parties have attempted to interpret the Emoluments Clauses by resort to first principles. Thus, they have covered the waterfront, discussing the text and history of the clauses in considerable depth, and included some discussion of the government's existing guidance. This brief leaves the textual and historical discussion to the side, focusing instead on the modern meaning of the Emoluments Clauses and the interpretive methodology employed by the Office of Legal Counsel (OLC) and the Comptroller General—two government offices with extensive experience interpreting the clauses. Thus, the brief provides a more detailed analysis of the way the Emoluments Clauses work in practice today—with a particular focus on the precise question before the Court, *i.e.*, whether and when a public official's interest in a business can give rise to an Emoluments Clause violation. Amici leverage their substantial

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<sup>1</sup> A full list of the amici is appended to this Motion.

experience as government ethics officers to address the practical implications of a ruling in either side's favor, and to compare the parties' legal positions with the approach that government agencies have been taking for decades. Amici also argue in favor of a rule and a result in this case that is consistent with OLC's and the Comptroller General's settled approach, as such a rule would preserve continuity and predictability in the application of constitutional norms.

A motion for leave to file an amicus brief can be granted in the Court's discretion, and should be granted if the brief will aid the Court in its resolution of the issues. This brief is useful because it expands the discussion of an important line of authorities. Moreover, nobody else in this case has the same level of experience applying ethical rules in the executive branch. Amici therefore respectfully request that leave to file this brief be granted. Amici do not request leave to participate in oral argument.

Respectfully submitted,

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## APPENDIX

Don Fox – Former Office of Government Ethics (OGE) General Counsel and Acting Director (career; also served at the Department of Defense in career legal capacity)

Marilyn Glynn – former OGE Acting Director and General Counsel (career)

Karen Kucik – Former ethics official for DOJ, Department of Commerce, and Department of Health & Human Services (career)

Lawrence D. Reynolds – Former Assistant General Counsel for the Department of Housing and Urban Development with responsibility for ethics (career; also served at the Department of Labor in career ethics capacity)

Amy Comstock Rick – Former Director of the Office of Government Ethics; former Associate Counsel to President Clinton for ethics (originally career ethics official at Department of Education)

Trip Rothschild – Former Associate General Counsel at the Nuclear Regulatory Commission.

Richard M. Thomas – Former Associate General Counsel, Office of Government Ethics; Former Ethics Counsel, Department of Health and Human Services

Kathleen Whalen – Former Associate Counsel to President Clinton for ethics (originally career ethics official at the Department of Commerce)

Harvey Wilcox – Former Navy Deputy General Counsel (career) and Designated Agency Ethics Official

Leslie Wilcox – Former Associate General Counsel for OGE (career), and principal author of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635).