

The Hon. Susan Brooks, Chairman
The Hon. Ted Deutch, Ranking Member
U.S. House of Representatives
Committee on Ethics
1015 Longworth House Office Bldg.
Washington, D.C. 20515

February 9, 2017

RE: Non-Disclosure Agreements of Congressional Members and Staff

Dear Chairman Brooks and Ranking Member Deutch:

Published reports have stated that congressional staff on the House Judiciary Committee provided their expertise and guidance to the Trump Transition Team in helping draft the President's executive order curbing immigration from seven Muslim-majority nations.

The executive order also suspended all refugee admissions for 120 days, and barred all Syrian refugees indefinitely. While it may be appropriate for congressional staff to provide some assistance on the Presidential transition with the prior approval of the Member of Congress or Committee that employs them, and they have done so in varying capacities for past transitions of new Administrations as well, we are alarmed to discover that the staff assisting the Trump Transition Team were required to sign a non-disclosure agreement regarding their work.

The non-disclosure agreement, which as far as we know is a practice unique to the Trump Transition Team, appears to prevent congressional staff from disclosing anything regarding their participation in the Presidential transition not only to the public, but to Members of Congress as well – including, apparently, the Members for whom they work. Seemingly, Members of Congress, party leadership and even the Chairman of the House Judiciary Committee were not informed even after the fact about the work done by committee staff for the Trump Transition Team. This places everyone in an awkward situation, creating the possibility that the interests of the staff and the Members or Committees they serve may diverge and raising concerns about separation of powers.

When President Trump issued his immigration executive order, the congressional staff non-disclosure agreements left everyone confused about whether the Administration even consulted Congress about the issue. After the executive order was issued, an aide to the House Judiciary Committee publicly declared the Chairman Bob Goodlatte (R-Va.) was not “consulted by the administration on the executive order.”¹

It is not clear whether the staffers were counseling the transition team as part of their congressional duties, as volunteers during non-work hours, or as formal detailees. In any case, the secrecy agreements resulted in congressional leaders caught entirely by surprise as to the executive order and erroneously claiming publicly that Congress was not consulted. Congressional leaders spent the weekend scrambling to figure out what was going on, who was involved, and why they were so ill-informed.

¹ Rachel Blade, Jake Sherman and Josh Dawsey, “Hill staffers secretly worked on Trump’s immigration order,” *Politico* (Jan. 30, 2017).

Guidance issued by the House Committee on Ethics lays out three alternative procedures in which Members and staff of Congress may assist the transition of the new Administration.² However, this guidance fails to address the issue of non-disclosure agreements as part of that assistance.

We urge the Committee on Ethics to revise this guidance to make clear that congressional staffers are prohibited from signing non-disclosure agreements that prevent them from communicating with Members of Congress regarding any work they do for presidential transitions or for other entities or individuals in the future. We additionally urge the Committee to clarify that staffers' primary responsibility is to their employing Member and committee, and that their work on the transition is for the benefit of Congress rather than the new Administration.

The non-disclosure agreements of the Trump Transition Team should never have been extended to congressional staff to keep Members of Congress in the dark.

Sincerely,

Citizens for Responsibility and Ethics in Washington (CREW)
Common Cause
Democracy 21
Norman L. Eisen
Issue One
OpenTheGovernment.org
Norman J. Ornstein
Public Citizen
Sunlight Foundation
James A. Thurber
Transparency International -- USA
U.S. PIRG

² House Committee on Ethics, "Guidance on House staff assisting the Presidential transition," *Memorandum* (Dec. 5, 2016).