

# United States Senate

WASHINGTON, DC 20510

November 6, 2017

The Honorable William Emanuel  
Member  
National Labor Relations Board  
1015 Half Street S.E.  
Washington, D.C. 20570-0001

Dear Member Emanuel:

We write today to clarify your ethics obligations as a newly confirmed member of the National Labor Relations Board (NLRB). As you know, this position carries enormous importance for workers and the strength of the American economy. Millions of working Americans, whether or not they belong to unions, are now looking to you and your fellow board members to aggressively protect their right to join together to seek higher pay, better working conditions, and a brighter future for themselves and their families.

One element of serving as an NLRB member in a manner that is faithful to the law and to the American public is ensuring that you are not faced with any conflicts of interest, such as conflicts with any parties that come before the Board with whom you previously had a relationship. We are concerned about your long history of representing employers wishing to make it harder for workers to bargain collectively. Your record presents a number of conflicts, particularly with regard to the many clients of your former law firm, Littler Mendelson.

The ethics pledge that you signed pursuant to Executive Order 13770 prohibits you from participating in “any particular matter involving specific parties that is directly and substantially related to [your] former employer or former clients, including regulations and contracts.”<sup>1</sup> That Order specifies that “former clients” include anyone for whom you served as an attorney or consultant “within the 2 years prior to the date” of your appointment.<sup>2</sup> “Directly and substantially related to [your] former employer” is defined as “matters in which the appointee’s former employer or a former client is a party or represents a party.” Thus, in order to adhere to these commitments, you will need to recuse from any matter in which your former employer, Littler Mendelson, is representing a party. In addition, under federal regulations, you are required to “endeavor to avoid any actions creating that appearance that [you] are violating the law...” or

---

<sup>1</sup> Exec. Order No. 13770, 3 C.F.R. 9333 (2017). Online at: [https://www.oge.gov/web/oge/nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/\\$FILE/Exec%20Order%2013770.pdf](https://www.oge.gov/web/oge/nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf).

<sup>2</sup> *Id.*

failing to “act impartially and not give preferential treatment to any private organization or individual.”<sup>3</sup> Your involvement in any form in a case involving a client of your former law firm would clearly create, at minimum, the appearance of the kind of conflict of interest that this regulation prohibits.

During your July 13, 2017 confirmation hearing, you said that if you were confirmed, you would be “an excellent board member and an honest Board member and an objective one,” and said: “[A]s I understand the recusal rule, I have to recuse myself from all cases involving my law firm.”<sup>4</sup> But in questions for the record following your confirmation hearing asking you to specify which parties that might come before the board may require your recusal, you simply said, “I have provided the financial information required by law. Please see my 278 filing.”

The financial information you’ve provided, however, does not give a full picture of your potential conflicts. Section 4 of the Office of Government Ethics Form 278e, or “Public Financial Disclosure Report,” that you submitted during your confirmation process lists 49 companies as “Filer’s Sources of Compensation Exceeding \$5,000 in a Year,” including major employers like JPMorgan Chase Bank, Nissan North America, PPG Industries, Securitas Security Services USA, Rite Aid Corporation, and Uber Technologies.<sup>5</sup> Staff have identified dozens of pending cases before the NLRB that each involve one of these 49 companies, listed in the attachment to this letter, and more will presumably arise during your tenure on the Board that will require your recusal. But when it comes to determining which parties would require your recusal based on ethics regulations and the commitments you have made to the Senate, this list is incomplete, because it only includes sources of more than \$5,000 in compensation for “personal services” for the current and the past two calendar years.<sup>6</sup> For the purposes of fully understanding your recusal obligations, it is missing clients from which you did not receive compensation, clients that compensated you with less than \$5,000, and, most notably, clients of your law firm, Littler Mendelson, for which you did not provide personal services.

In order for the public to evaluate your ability to impartially apply the law, you will need to publicly disclose all potential conflicts created by your former clients and those of your firm. To help us understand the full extent of the conflicts of interest your record poses and the cases you will need to recuse yourself from, we respectfully request that you answer the following requests by November 24, 2017.

1. Please list all “former clients” including anyone for whom you served as an attorney or consultant “within the 2 years prior to the date” of your appointment to the NLRB pursuant to Executive Order 13770.

---

<sup>3</sup> Basic obligation of public service. 5 CFR 2635.101. Online at: <https://www.gpo.gov/fdsys/pkg/CFR-2005-title5-vol3/pdf/CFR-2005-title5-vol3-sec2635-101.pdf>.

<sup>4</sup> “Senator Warren Questions NLRB Nominee William Emanuel” [video]. Senator Elizabeth Warren. *Youtube* (July 17, 2017). Online at: <https://www.youtube.com/watch?v=1fxYRkrJX6Q>.




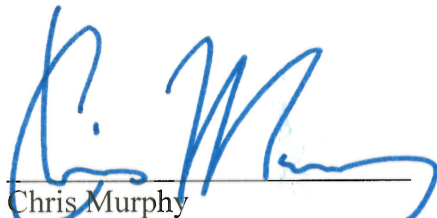

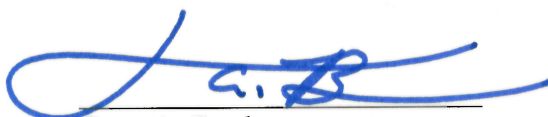
<sup>5</sup> Emanuel, W. J. “Public Financial Disclosure Report (OGE Form 278e).” *U.S. Office of Government Ethics* (May 2, 2017).

<sup>6</sup> “Your Sources of Compensation Exceeding \$5,000 in a Year (Nominee and New Entrant Reports Only).” Public Financial Disclosure Guide. *U.S. Office of Government Ethics* (accessed Nov. 3, 2017). Online at: [https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20\\$5,000%20in%20a%20Year%20\(Nominee%20and%20New%20Entrant%20Reports%20Only\)?opendocument](https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20$5,000%20in%20a%20Year%20(Nominee%20and%20New%20Entrant%20Reports%20Only)?opendocument).

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board is or was also a party.
3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.
4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

Thank you for your attention to this matter. We hope the answers to these questions will be a first step toward ensuring the public that you will be faithful to the law.

Sincerely,


  
Elizabeth Warren  
United States Senator  
Patty Murray  
United States Senator  
Sherrod Brown  
United States Senator  
Al Franken  
United States Senator  
Chris Murphy  
United States Senator  
Richard Blumenthal  
United States Senator  
Cory A. Booker  
United States Senator  
Kirsten Gillibrand  
United States Senator



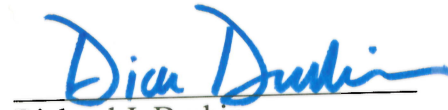
Bernard Sanders  
United States Senator



Sheldon Whitehouse  
United States Senator



Mazie K. Hirono  
United States Senator



Richard J. Durbin  
United States Senator

**Attachment:** Open NLRB Cases in Which a Party is “Source of Compensation Exceeding \$5,000 in a Year,” According to Member Emanuel’s *Public Financial Disclosure Report* (OGE Form 278e)<sup>1</sup>

Former Client	Case Number
CBRE, Inc.	01-RC-205981
	21-CA-182368
EMCOR Group, Inc.	20-CA-206203
	20-RC-205892
Enterprise Products Company	16-CA-206932
FedEx Freight, Inc.	32-CA-166913
	32-CA-176171
	32-CA-196037
	32-CA-166909
	32-CA-164946
	32-CA-164936
Genesis Healthcare	06-CB-208790
	04-CA-198944
Handy Technologies, Inc.	01-CA-158125
	01-CA-158144
Mastec, Inc.	16-CA-086102
	12-CA-153478
	31-CA-205653
	01-CA-161183
	12-CA-154795
	01-CA-168468
	15-CA-204600
	12-CA-024979
	12-CA-062983
Nissan North America, Inc.	10-CA-198732
	15-CA-150431
	15-CA-171184
	15-CA-175295
	15-CA-194155
	15-CA-145043
	15-CA-197194
	15-CA-203808
	15-CA-203802
	15-CA-203818
	15-CA-195326
	15-CA-203813
	15-CA-190791
	15-CA-203796

<sup>1</sup> Emanuel, W. J. “Public Financial Disclosure Report (OGE Form 278e).” *U.S. Office of Government Ethics* (May 2, 2017).

	15-CA-201390
	15-CA-203806
Rite Aid	31-RD-001591
	07-CA-206549
	31-CA-203737
	31-CA-207383
	31-CA-205905
	31-CA-200038
	31-CA-200040
	31-CA-205485
	31-CA-206226
	31-CA-200912
	31-CA-205908
	31-CB-207931
	31-CA-187065
	02-CA-160384
	02-CA-189661
	02-CA-182713
Rural/Metro Corporation	19-RC-189869
	28-CA-165387
	12-CA-189787
	28-CA-164048
	32-CA-204800
	28-CA-208936
	28-CA-206365
	28-CA-200674
Safeway	19-CA-189221
	27-RC-206225
	05-CA-209090
	27-CA-207934
	32-CA-204008
	20-CB-206871
	27-CA-203383
	05-CB-206962
	19-CA-182503
	20-CB-203758
	32-CA-206839
	19-CB-009660
	19-CB-192630
	32-CA-207667
	19-CA-208745
	19-CB-178098
	19-CB-168283
	32-CB-207460
	05-CB-207752

	20-CB-201594
Securitas Security Services	16-CA-176006
	16-CA-183494
	31-CA-088082
	31-CA-072180
	31-CA-088081
	31-CA-072179
	19-AC-206531
	19-CA-191814
Serta Simmons Bedding	10-CA-202722
	27-CA-202059
Uber Technologies, Inc.	20-CA-160717
	20-CA-181146
	13-CA-174693
	29-CA-177483
	22-CA-178936
	19-CA-199000
	12-CA-173125
	20-CA-160720
	14-CA-158833
	13-CA-163062
	12-CA-181961
	19-CA-205263