August 21, 2018

The Honorable Lamar Alexander  
Chairman  
Committee on Health, Education, Labor, and  
Pensions  
U.S. Senate  
428 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and  
Pensions  
U.S. Senate  
428 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

As you probably know, McDonald’s USA, LLC, et al. is a matter currently pending before the National Labor Relations Board (NLRB) on McDonald’s request for special permission to appeal the administrative law judge’s decision to reject a settlement reached by and between McDonald’s and its franchisees and the Board’s General Counsel. You are probably also aware that the Charging Parties in this proceeding have filed a motion in which they contend that Member Emanuel and I are obligated to recuse ourselves from participating in the disposition of McDonald’s request for special permission to appeal.

I understand that the minority staff of the Senate Committee on Health, Education, Labor, and Pensions (HELP) has contacted the NLRB’s Inspector General (IG) regarding the pending recusal motion, even though there is no active IG investigation or audit involving the matter. For whatever reason, the IG then discussed the call with the NLRB’s Designated Agency Ethics Officer (DAEO), who has the responsibility to provide the Board’s members independent and objective advice regarding recusal matters.

Unquestionably, the HELP Committee has important oversight functions over the NLRB, and we pledge full compliance with those responsibilities. It is distressing, however, that the Committee’s minority staff would reach out to the IG to discuss a pending recusal motion where there is currently no IG involvement. As the Committee staff knows, the NLRB has a Congressional Affairs Office, which typically handles inquiries from Congress. And the Committee staff certainly knows that the NLRB (like every other federal agency) has a Designated Agency Ethics Official (DAEO) whose duties include advising the Board on recusal matters. Given the public statements made by the Democratic members of the HELP Committee prejudging the recusal motion, the minority staff’s contact with the IG, who then discussed the outreach with the DAEO, has the unfortunate appearance of an attempt to improperly influence the outcome of the pending recusal motion.

Regardless of the reason for the contact, it is imperative that the pending recusal motion in the McDonald’s proceeding—just like every other recusal matter—be handled under the prescribed government ethics rules and procedures first. Those procedures include a process for individual Board members to secure an opinion from the Board’s DAEO reflecting her independent, objective review of particular recusal issues in light of the applicable legal standards. There can be no doubt about the DAEO’s impartiality, and there should be no
doubt about the fairness of the Board’s recusal procedures. There is no room for politicization of this process.

As I have repeatedly told the Committee, I take my ethical obligations very seriously. And, as Chairman, one of my primary responsibilities is to ensure that everyone at the Agency upholds the highest ethical standards. Under my leadership, the Board has initiated an internal review of its recusal standards and procedures in order to ensure rigorous compliance with all ethical obligations and recusal requirements. In connection with the McDonald’s case, upholding these high standards demands strict adherence to the applicable recusal standards and to the process for individual Board members to ascertain their duty in light of those standards. In this regard, promptly after the Charging Parties filed their motion—and before the Committee contacted the IG—both Member Emanuel and I requested the Agency’s DAEO to review the Charging Parties’ motion, evaluate our recusal obligations in the McDonald’s matter, and provide an opinion. We will be guided by that opinion, not by political considerations.

If you have any other questions or concerns, please do not hesitate to contact me directly or the Agency’s Congressional Affairs Office.

Sincerely,

John F. Ring
Chairman