

Constitution Corner – Has Trump Violated the Constitution?

Is Donald Trump receiving an “emolument” by allowing his hotels and other properties to rent rooms or office space to foreign governments, or their employees? Is he “increasing his compensation” through his organization receiving tax breaks from the State of New York? Some on the Left think the answer to both questions is “Yes,” and that such actions are a violation of the Constitution. Some even [call for impeachment](#).¹ Are they right?

[Citizens for Responsibility and Ethics in Washington](#),² or CREW has brought suit against the President. Their suit, which does not seek any monetary damages, asks a federal court in New York to order the President to stop taking payments at his properties from foreign governments. This includes payments at Trump hotels and golf courses; loans for his office buildings from certain banks controlled by foreign governments; and leases with tenants like the Abu Dhabi tourism office, a government enterprise.

They claim doing so violates the “Emoluments Clause” of the Constitution, sometimes also referred to as the “Titles of Nobility Clause,” for reasons which are obvious upon reading Article I, Section 9:

“No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.”

What constitutes a “present, emolument, office, or title” and why is the receipt of such things from “any king, prince, or foreign state” such a problem?

As Alexander Hamilton explained in *Federalist No. 22*: “One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption.” Foreign influence was an area of great concern to the Framers of the Constitution and continued to be so in the eyes of the nation at large for many, many years.

We think the nation is divided today; in the first 20 years after the Constitution was ratified the nation was equally divided between Anglophiles and Francophiles. Anglophiles, naturally, retained affection for the “mother country,” while Francophiles retained gratification for France’s timely aid in the American Revolution. Neither side totally trusted the other, both charging that “foreign influence” was behind their words and actions.

¹ <http://www.acslaw.org/acsblog/%E2%80%9Cif-discovered-he-may-be-impeached%E2%80%9D-president-trump-and-the-foreign-emoluments-clause>

² <http://www.citizensforethics.org/>

You might wish that Mr. Trump's opponents operated from the highest motives and were truly worried that such hotel rents might influence American foreign or even domestic policy. You are free to wish that; this is a free country, what remains of it; but you are naïve to think so. There is no doubt that such suits will be an everyday occurrence over the next 4-8 years; expect them. The Left intends to confront this President *at every turn*.

If you consult the standard expositives on the Constitution you find almost nothing written about the Emoluments Clause. The Annotated Constitution, which includes all pertinent court cases affecting the interpretation of each clause of the Constitution, mentions absolutely nothing concerning the emoluments portion of the clause, only the Titles of Nobility portion.

Warning: you will find constitutional scholars coming down on both sides of this question. The leftist [Brooking Institute](https://www.brookings.edu/),³ concluded that the situation is indeed a violation, and every progressive website jumped on the bandwagon. Then there's a paper published in the [University of Iowa College of Law Review](https://www.illawarra.edu.au/~lawreview/)⁴ which argues that those bringing the suit have interpreted the clause too broadly, relying on a secondary dictionary definition.

Webster's 1828 Dictionary says this:

EMOL'UMENT, *noun* [Latin emolumentum, from emolo, molo, to grind. Originally, a toll taken for grinding.]

And then it provides both a primary and a secondary meaning:

1. The profit arising from office or employment; that which is received as a compensation for services, or which is annexed to the possession of office, as salary, fees and perquisites.
2. Profit; advantage; gains in general.

Which definition should be used? The narrower one (1) or the broader one (2)?

When determining the meaning of a Constitutional word it is usually safe to look for other uses of that word in the document. We find "emolument" used two other times. First, in Article 1 Section 6:

"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall

³ https://www.brookings.edu/wp-content/uploads/2016/12/gs_121616_emoluments-clause1.pdf

⁴ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2902391

be a Member of either House during his Continuance in Office.” (emphasis added)

Clearly the meaning of the word in this clause comes from the primary definition, the “salary, fees and perquisites” of a particular office.

During Hillary Clinton’s time as a Senator, the pay of the Secretary of State was increased. She was thus ineligible to take the appointment. In order for her to be confirmed and take that office after appointment by President Obama, she had to accept the original pay level of Secretary of State that was in effect when she became a Senator. This was, I expect, gladly agreed to, given the alternative.

This “out” is known in Congress as the “Saxbe Fix,” after Senator William Saxbe who was confirmed as Attorney General in 1973 after Congress reduced the position’s salary to the level it had been before Saxbe’s term as Senator began.

So the question becomes: does the actions by the Trump Corporation somehow affect the pay of the President (Trump has declined his \$400,000 salary and has instead accepted a \$.01/year salary), or the perquisites or other benefits of the office. Clearly no.

What about gifts as emoluments?

Congress, by statute, allows government employees to accept gifts from foreign governments worth less than \$390 received as a souvenir or mark of courtesy. Congress also allows more valuable gifts to be accepted, such as scholarships, medical treatment, food, lodging, travel arrangements when it appears that to refuse the gift would likely cause offense or embarrassment. This is all spelled out in the Foreign Gifts and Decorations Act, [Title 5 U.S.C. §7342](#).⁵

There is also a Congressional Research Service Report on this subject, [Report R43660](#),⁶ entitled: “The Receipt of Gifts by Federal Employees in the Executive Branch.” You’re probably seeing a trend here: the focus is on gifts. But, like everything, “gifts” must be defined. “Gift” expressly includes, says the report, “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, of other item having monetary value.” Is renting a hotel room at fair-market value a “gift?” Clearly no.

⁵ <https://www.gpo.gov/fdsys/granule/USCODE-2011-title5/USCODE-2011-title5-partIII-subpartF-chap73-subchapIV-sec7342/content-detail.html>

⁶ <https://fas.org/sgp/crs/misc/R43660.pdf>

[The late Saudi King Abdullah](#)⁷ gave President Obama and his family gifts valued at more than \$1.3 million. They included an \$18,000 watch for the president and a "diamond and emerald jewelry set including earrings, necklace, ring, brooch, and wristwatch" for Obama's daughters, Sasha and Malia, estimated to cost \$80,000.

Various Chinese officials have also been generous: President Xi Jinping gave Obama two computer tablets during a time his government is believed to have been carrying out large-scale hacking of American computer systems, including the database of federal employees.

Other government officials get gifts too. Gifts given to CIA Director John O. Brennan had the donors' names removed because they might "affect United States intelligence sources or methods." Brennan appears to have kept many of the gifts, including a "small decorative sword," "for official use."

Republican Senators Lindsey Graham and John McCain both received 4' x 6' rugs worth \$4,000 from the attorney general of Qatar, and promptly deposited them with the secretary of the Senate.

Some nameless soul in the government has the interesting job of registering all these gifts; the justification noted for each of them: "non-acceptance would cause embarrassment to the donor and the U.S. Government."

The CRS Report states: "Because of the considerations relating to the conduct of their offices, including those of protocol or etiquette, the President and the Vice President may accept any gift on his own behalf or on behalf of a family member, provided that such acceptance does not violate §2635.202(c)(a) or (2), 18 USC §201(b) or 201(c)(3), or the Constitution of the United States."

Supporters of the President point out that Mr. Trump is not renting these rooms, his corporation is.

Eric Trump, an Executive vice president of the Trump Organization, said Trump Enterprises has already taken more steps than required by law to avoid legal entanglements. They have set up procedures to donate any profits collected at Trump-owned hotels that come from foreign government or guests, to the United States Treasury. Is there even a "profit" from a single hotel room if the hotel, as a whole, lost money that night, if the corporation itself is losing money?

⁷ <http://www.usnews.com/news/blogs/data-mine/2015/12/02/the-king-of-saudi-arabia-gave-over-13m-in-gifts-to-the-obamas-last-year>

The president's legal team argued that the Emoluments Clause does not apply to fair-market payments, such as a standard hotel room bill. Echoing what I just concluded, they say the clause is only intended to prevent federal officials from accepting a special consideration or gift from a foreign power.

Of course Congress could defuse this issue immediately by passing a non-binding "Sense of the Congress" resolution stating that it views renting of hotel rooms or office space to foreign governments or entities to be in compliance with the Emoluments Clause. But I doubt this Congress will do that. There seem to be as many Republicans in Congress willing to "slow-roll" this President as support him.

There is another occurrence of "Emolument" in the Constitution. It is found in Article 2, Section 1, Clause 7, and reads:

"The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them."

Notice the term: "United States" is used to mean both the national government as well as the States.

Critics of Trump point out that his corporation has in the past received close to \$1 billion in tax breaks from New York State alone. These critics argue that if New York continues to offer such breaks, they will qualify as emoluments. If other states follow suit with their own tax benefits for Trump Enterprise projects, those will also be a problem.

One problem with all these suits against the President is standing, the plaintiffs have to demonstrate that they have been harmed by Trump's action. Have they?

The Citizens for Responsibility and Ethics in Washington argues that the President's action has forced them to, quote: "divert essential and limited sources" from its regular government watchdog role and that they "will essentially be forced into the role of litigating and educating the public regarding (Trump's) Foreign Emoluments Clause violations," or so goes the complaint.

There is an expression in the Air Force pilot world that goes by the euphemism, YGBSM, which I will not explain here, but which expresses exactly how I view the group's charge that they have been "forced" to bring this suit. A watchdog group being forced to act as a watchdog? Pllleeeasssee!

Comedian Flip Wilson's favorite excuse of long, long ago comes to mind: "The devil made me do it." Which translates in this case to: "We hate Donald Trump so thoroughly and completely that we intend to find any excuse whatsoever to obstruct his agenda and tie him up in court."

I predict that if CREW or another group is somehow granted standing, and it is doubtful they will be, they will lose their case simply because of the steps the Trump organization has taken to isolate the President himself from any financial gain. But what do I know? Federal judges can be found to do anyone's bidding these days.

But we should also note that Mark Cuban is being touted as a possible opponent for Trump in 2020. Businessman versus businessman, mano a mano. Yet, no one on the Left seems concerned about Cuban's extensive business holdings, and I suspect that if he does emerge as the leading Democrat contender, some convenient excuse will be offered for why the Emoluments Clause is suddenly no longer a problem.

If there is a silver lining here it is that the American people are getting a good dose of Constitutional education, and it is likely to continue through the next four years. Keep your seat belts fastened.

To hear the views of my other commentators on "We the People – the Constitution Matters" as we discussed this issue on 17 February 2017, download or listen to the [podcast](#)⁸ of the show.

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⁸ <http://www.1180wfyl.com/we-the-people-2017.html>