

WASHINGTON **Examiner**

Some experts believe Trump can be impeached for conduct performed before becoming president

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December 06, 2018

Michael Cohen's recent plea deal with special counsel Robert Mueller revealing more about President Trump's involvement in a possible real estate project in Moscow has sparked whispers of impeachment from Trump's critics once again, and some legal experts say a president can be ousted, at least under certain circumstances, for conduct performed before taking the oath of office.

“My view, which represents the decisive majority opinion, is that President Trump can be impeached for conduct before he took office if there is an exceptionally close connection between that conduct and his acquisition of the office,” Joshua Matz, an author of *To End a Presidency: The Power of Impeachment*, told the *Washington Examiner*.

Generally, he continued, “presidents cannot be impeached for conduct before they take office unless that conduct related to the corrupt acquisition of the office.” But other experts say the exception is even broader.

Federal prosecutors revealed last week that Cohen had cut a deal with Mueller's team, and appearing in federal court, Trump's longtime lawyer pleaded guilty to lying to Congress about plans for a Trump-branded tower in Moscow.

Cohen initially told congressional investigators consideration of the Moscow project ended in January 2016. But according to court records, discussions about the potential deal continued as late as June 2016, after Trump clinched the Republican presidential nomination.

Documents also revealed Cohen discussed with Trump during the campaign a trip to Russia and spoke to a top member of the Trump campaign about potential travel.

Cohen's revelations about the discussions over a Trump-branded tower in Moscow stand in contrast to the president's statements denying business ties to Moscow. In January 2017, Trump told reporters he had “no dealings with Russia.”

In addressing whether a president can be impeached for conduct prior to assuming office, legal experts point to the 2010 impeachment of former U.S. District Judge G. Thomas Porteous. Porteous was convicted of four articles of impeachment, which included conduct while he was a state-court judge.

Rep. Adam Schiff, D-Calif., the top Democrat on the House Intelligence Committee, cited Porteous' case when discussing whether sitting officials can be ousted for offenses committed before acquiring higher office.

"We now by constitutional terms — in a country that rarely has impeachment trials — have a precedent that you can be impeached and removed from office both for prior crimes and for lying under oath," Schiff said during an event in October.

Gene Healy, a vice president at the Cato Institute who focuses on executive power and the role of the presidency, said Porteous' case provides a model for answering the question of impeachment for pre-presidential misconduct.

"When you understand that the impeachment process fundamentally goes to fitness for office, you can't draw a bright line that says anything that happened before this certain date when the president assumed office, you get a clean slate and the clock starts after an election or confirmation," Healy told the *Washington Examiner*. "That's not the way it's supposed to work."

Because impeachment deals with whether one is fit for office, "it stands to reason that conduct that occurred before somebody assumes their post, when it's exposed, is relevant to that kind of inquiry," he added.

"We need to go one level below or unpack by one level what it means to have a business deal with a foreign power," Jeffrey Engel, co-author of the book *Impeachment: An American History*, told the *Washington Examiner*. "Obviously that means that the foreign power has some financial interest or financial sway and you could be influenced by money. And we certainly know the president is influenced by money."

"Secondly, it also gives them classic opportunities to blackmail the president because Trump said numerous times on the campaign trail, 'I have no foreign dealings with Russia,'" he continued. "If that's not true, then the Russians at any time could choose to disclose that information and provide proof."

Healy and other legal experts also point to the Constitutional Convention in 1787, when George Mason argued a president who has obtained the office through corrupt means should not be allowed to escape punishment.

The circumstances of Porteous' impeachment reflected the concerns the founders had regarding obtaining an office through fraudulent means, as one of the articles of impeachment said he lied to the Senate and FBI to obtain his seat on the federal bench, according to a September report from Healy.

Michael Gerhardt, a professor at the University of North Carolina School of Law, said that in following Porteous' case, a president can be removed for actions before assuming office if that conduct "were similar to a kind of fraud or if it could be viewed as defrauding the American people to secure the office."

“It wouldn’t just be the misconduct, but the fact that the people weren’t given the chance to take that into consideration when voting on the president,” he told the *Washington Examiner*.

“What the Founders really cared about was trust and integrity,” Engel said.

But despite the criticism over the president’s pursuit of a real estate project in Moscow, Matz said that conduct is not sufficient to support articles of impeachment, and neither is lying about his business dealings there.

Further investigation from the special counsel’s office and Congress is needed, he said.

"There are credible allegations of serious wrongdoing and abusive power that merit further investigation, but at this point, a sufficient factual record does not yet exist to justify the filing of articles of impeachment against the president," Matz said.

Last week, the president dismissed the allegations from Cohen, claiming his former lawyer was lying to secure a lesser sentence and arguing that running for president didn’t preclude him from pursuing business deals.

The new Democratic House chairs are likely to face pressure from their base to move toward efforts to remove the president from office. Still, House Democratic leaders claim they have left pursuing impeachment of Trump off their to-do list for the next Congress, when they take control of the lower chamber.