

DAILY KOS

Trump's Golden Parachute from the Emoluments Clause?

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Constitutional experts continue to quote the Emoluments Clause, at least those who claim Donald Trump will be in violation of it on the first day of his presidency. This clause is said to be the primary means to impeach Trump after he takes office due to favors and gifts from foreign governments, and his refusal to divest himself from his businesses that are a convenient way to curry favor.

A single expert, Seth Barrett Tillman, claims the Emoluments Clause doesn't apply to the President, but that opinion is almost universally dismissed.

From an article by Dick Tofel of Pro Publica:

Concerning Seth Tillman,

“First, he notes that George Washington accepted two gifts from French officials while president without seeking congressional consent. Second, Tillman says that a list of office holders prepared by Secretary of the Treasury Alexander Hamilton for the Senate during the 2nd Congress, and which excluded elected officials such as the president, vice president and members of Congress, establishes that such officials were not intended to come within the Emoluments Clause’s scope.

But Tillman’s case appears considerably weaker than he believes, and practice over the last 185 years is surely to the contrary.”

Mr Tofel also confirms that Congress “Could consent by joint resolution” to approve a gift on an individual basis.

The text of the Emoluments Clause:

*“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.”*

Article I, Section 9, Clause 8 — Constitution of the United States

This is a concern (**in bold**) that shouldn't be ignored. The republican dominated Congress could give their consent for Trump to engage in profiteering during his term in office, but

according to a constitutional law expert I contacted, it would be unlikely that they would be able to give blanket approval to Trump. If they tried to it would have chilling effects on their reelection bids at the very least.

The founding fathers could never conceive of a President who would so blatantly flaunt even the appearance of conflict of interest or influence peddling, or a Congress dominated by a single party that had a vested interest in allowing such self-serving behavior in their President.

From an article written by Walter Olson of Philly.com:

“The wording of the clause itself points one way to resolution: Congress can give consent, as it did in the early years of the Republic to presents received by Ben Franklin and John Jay. It can decide what it is willing to live with in the way of Trump conflicts, and then enact those into a resolution approving the resulting set of presents and emoluments. If it misjudges public opinion, it will pay a political price at the next election.”

The Emoluments clause has gone largely untested by the Supreme Court with a few notable exceptions, including the most obvious by Franklin and Jay. The difference in the cited cases is that they were individual incidents, not the tidal wave of possible influence peddling that could result from Trump’s foreign entanglements. Special permission was given by Congress for these single events, which were disclosed properly and approved individually.

From an article in the LA Times by David Savage:

“When Benjamin Franklin, the first U.S. ambassador to France, decided to return home in 1784, King Louis XVI gave the beloved American a gold case with a portrait of the French monarch, encircled by 408 diamonds. When John Jay was sent to Spain for negotiations, the king presented him with a horse. The new Constitution let ambassadors keep such “presents,” but only if they were disclosed and Congress gave its consent.”

If Donald Trump refuses to fully divest himself from his businesses, even if he simply transfers the operation of those businesses to his children, the resulting investigations will rightly mire his presidency. A special commission would need to be appointed, whose sole duty would be to track all possible violations and report back to Congress with their conclusions. This would almost certainly end in impeachment.

Trump may think he has a golden parachute in the Emoluments Clause, but if he jumps and pulls that cord he may have a harder landing than he expects.