



## Professor: 37 Historic Dictionaries Disagree With Trump's Definition of 'Emolument'

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It's been a summer of booming business at President Trump's Washington, D.C., hotel: a sweet season enhanced by the spending of foreign diplomats and lobbyists. But now a watchdog group and the Justice Department are preparing their first courtroom arguments for a lawsuit alleging the hotel was a hotbed of continuing violations by the president of the Constitution's Foreign Emoluments Clause.

In the roughest shorthand, the Constitution's Foreign Emoluments Clause says federal officials can't take goodies from the governments of other countries.

Citizens For Responsibility and Ethics in Washington, or CREW, sued President Trump three days after he took office, saying he is "submerged in conflicts of interest" because of foreign governments' spending at the D.C. hotel.

The Constitution doesn't ban foreign emoluments outright. It empowers Congress to approve them or not, and lawmakers have passed judgment on foreign gifts to lesser officials for more than 200 years.

Trump could agree that the hotel spending amounts to emoluments, and ask for congressional consent. But last January his lawyer, Sherri Dillon, said he doesn't have to.

"No one would have thought, when the Constitution was written, that paying your hotel bill was an emolument," she said at a press conference. "Instead, it would have been thought of as a value-for-value exchange. Not a gift. Not a title. And not an emolument."

The Justice Department agrees, arguing in the CREW case that the hotel transactions are business transactions, unrelated to the president's office, and thus not emoluments.

But the meaning of *emolument* has evolved since the Constitution was written in 1787. Most dictionaries from the colonial and federalist eras are more sympathetic to CREW.

John Mikhail, a professor at Georgetown Law School, set out last winter to research that evolution. "Prior to maybe December of 2016, I had not given much thought to the word," he said.

Mikhail told NPR he and his researchers looked at all the known dictionaries between 1604 and 1806 that define *emolument* — 40 books in all. He said only three gave definitions in ways favorable to Trump, "kind of a narrow, even technical meaning, tied to the salary or official

duties of an office," while the other 37 used "a broader meaning that would encompass sort of the profits of ordinary market transactions."

Almost all of the dictionaries used the word *profit* in their definitions. The two other go-to words were *advantage* and *gain*.

In the CREW case, the Justice Department cites two dictionaries that also used the words *office* and *employ*. "They had selected, maybe cherry-picked even, a couple of dictionary definitions," Mikhail said.

An online search of Founding Fathers' papers at the Library of Congress failed to produce any indication the Constitution's Framers had consulted either of those dictionaries, he added.

CREW filed the suit in the federal district court for the Southern District of New York, in Manhattan. The suit seeks a definitive version of what *emolument* means, along with an injunction to stop the president from violating that definition. Two other emoluments suits are also pending in the federal courts but have not advanced to the point of the Manhattan case.

A Justice Department spokeswoman declined to comment on the pending lawsuit.

But going back to the word in question: "It's clear in the 1780s this was a very broad term, understood by most people," Peter Sokolowski, a lexicographer at the dictionary publisher Merriam Webster, told NPR. "As often happens, the definition that is the broader one, which happens to be the one that was in most common use in the 18th century, is the one that has sort of fallen away."

CATO Institute senior fellow Walter Olson said in an interview that Congress may have the final say on the definition. "At that point, the mood that Congress has, whether it is mad at the president or indulgent toward him, is going to make a lot of difference."

That point could come if more members of Congress move toward impeachment.