



## Democrats' 'emoluments' lawsuits against Trump are a monumental distraction

Ilya Shapiro

June 14, 2017

Multiple organizations, businesses, taxpayers, and now the District of Columbia and state of Maryland have sued President Trump for violating the Constitution's Emoluments Clause by not sufficiently separating himself from business holdings that benefit financially from foreign patronage. These lawsuits are a waste of time and resources, having been orchestrated by certain elites who can't reconcile themselves to the election results and are doing their best to #resist Donald Trump to the point of denying the legitimacy of his presidency. To put a finer legal point on it, the charge that President Trump's hotels, because they benefit from foreign business, constitute a kind of corruption that the Framers explicitly sought to prevent is, to be blunt, frivolous.

Article I, Section 9, of the Constitution provides that "no Person holding any Office of Profit or Trust under [the United States] shall, without the Consent of Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." This Emoluments Clause was passed unanimously by the Constitutional Convention, based on the young nation's own recent diplomatic history – namely, gifts given by foreign kings to Ambassador Benjamin Franklin and other diplomats, which they promptly reported to Congress. Under President Bill Clinton, the Justice Department's Office of Legal Counsel explained that "those who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty ... That judgment might be biased, and that loyalty divided, if they received financial benefits from a foreign government."

In other words, the Emoluments Clause is a stopgap against the risk that foreign powers will try to curry favor by bribing U.S. officials with gifts and other baubles. (Maybe even titles of nobility, which are prohibited for all Americans by another constitutional provision.) To be sure, a politically motivated decision by a foreign government to give preferential permitting or land acquisition terms to a Trump construction project could be a favor worth millions of dollars.

But is booking suites at a Trump hotel or holding a conference at another Trump facility really a bribe? So long as payments are made at market rates – not "here's 100 million dollars for a room with a view" – I don't see how they could. Whatever the Emoluments Clause protects against, arms-length business transactions ain't it.

Indeed, to hold to the contrary would be to disqualify businessmen with a diversified portfolio from the White House. That can't be the case; George Washington himself was a wealthy landholder who engaged in business with foreign nationals. There's even an academic debate about whether the clause applies to the president in the first place, as distinct from those ambassadors and other officials.

In short, while scholars can disagree on legal and policy grounds about many of the Trump administration's doings – from the travel ban, to renegotiating trade treaties, to various deregulatory initiatives – no serious person should spend time on this emoluments nonsense. They're a distraction from the important issues our divided nation faces and the debates over how to solve them.

For an elaboration of my thinking on this matter, see [Kyle Sammin's excellent analysis](#), which I'll "incorporate here by reference," as the lawyers say.

*Ilya Shapiro (@ishapiro) is a contributor to the Washington Examiner's Beltway Confidential blog. He is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review. This piece was originally posted at [the Cato Insitute](#).*