



## **DC attorney general challenging Trump on Emoluments Clause: It's a 'chaotic, unconstitutional, and unlawful' situation**

Jack O'Brien

July 19, 2017

The attorney general for the District of Columbia believes President Trump is creating a "chaotic, unconstitutional and unlawful" situation in the White House by not following the Constitution, but there's a quick and easy fix.

Karl Racine, the attorney general for D.C., said Wednesday at a panel held by the American Constitution Society Trump isn't following the Emoluments Clause of the Constitution, which states "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."

"We are here today because the normal checks and balances are not working," Racine said. "This is a chaotic, unconstitutional, unlawful situation created by the president of the United States."

But, Racine added, Trump could fix those transparency issues within "a number of days" by setting up a true blind trust. Right now, Trump has set up his two oldest sons, Donald Trump Jr. and Eric Trump, in charge of his businesses and has not set up a true blind trust.

In January, Racine and Maryland Attorney General Brian Frosh filed a lawsuit against Trump for refusing to divest his business dealings and comply with the Emoluments Clause.

The American Constitution Society (ACS) hosted a five-member panel on Wednesday to discuss three lawsuits against President Trump for violating the Emoluments Clause.

The panel consisted of Brianne Gorod, chief counsel at the Constitutional Accountability Center; Gautham Rao, professor of history at American University; Stephanie Litos, senior counsel to the Attorney General of the District of Columbia; Trevor Burrus, a research fellow at the Cato Institute's Center for Constitutional Studies and Deepak Gupta, a founding principal of a boutique firm in D.C. specializing in Supreme Court litigation.

Gorod, Litos and Gupta are currently involved in three separate lawsuits challenging Trump's separation of his personal business affairs from the presidency. The discussion was moderated by Joan Biskupic, editor of legal affairs for Reuters.

Litos reminded the audience Maryland had an emoluments clause before they were admitted into the United States, pointing to a long-held belief in the state. She said D.C. helped file the suit to address the government's capacity to protect citizens.

Gorod's case represents the largest congressional lawsuit in history, comprising 196 members with more expected to be added in the coming weeks.

She said the size of the suit shows that members of Congress intend to hold the president accountable. She emphasized the line from the clause "without the Consent of the Congress," arguing that it is not a prohibition but rather a safeguard for discussion of potential emoluments.

"Congress can't consent to what it doesn't know," Gorod said. "We need to know the president is acting in the national interests, not his personal interests."

Gupta's lawsuit was filed with Citizens for Responsibility and Ethics in Washington (CREW) and now includes a hotel owner in New York City as well as a hotel event booker in D.C. Rao said he plans on filing an amicus brief on CREW's behalf.

Gupta said CREW's legal challenge rested on Trump's ability to create an advantage for his businesses through his presidency. Gupta said foreign nationals have made it clear they prefer to stay at the Trump International Hotel Washington, D.C. in order to curry favor with the administration.

He said previous presidents have divested before assuming the office, adding "even Jimmy Carter had to sell his peanut farm."

Burrus, who stated he is not a Trump supporter, argued the legal standing of the three cases was as much a challenge as their substantive aspects.

Burrus challenged that the focus of the emoluments argument was not a "wise or proper" interpretation of the Constitution. By broadening the definition of "emoluments" to apply to benefits of the office, Burrus countered that George Washington, Thomas Jefferson, James Madison, and James Monroe could have violated the clause.

"The foreign emoluments clause does not apply to the president," Burrus said. "It applies to the 'office under the government,' which using the 'under the crown' argument that the Framers followed, would apply to employees of the government, not elected officials."