



Sleep well, President Trump — There are no emoluments under the bed

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June 16, 2017

Twice this week, DMV-area officials accused the president of violating the Emoluments Clause, which bars public officials from accepting gifts from foreign governments.

On Monday, the attorneys general of the District of Columbia and Maryland alleged that President Trump’s continuing business profits, some of which are coming from foreign governments, constitute such violations. On Wednesday, nearly 200 democratic senators and representatives sued over similar accusations.

The Constitution states that “no Person holding any Office...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.”

These are difficult and complex issues, but the question of whether the president’s ongoing business activities constitute an “emolument” under the original meaning of that term is more straightforward. The short answer: Whatever Trump’s profits are, they are almost assuredly not violations of the Emoluments Clause.

The argument of the attorneys general adopts a broad definition of “emolument” that can encompass almost any payment. Allegedly, emoluments include “hotel accommodations, restaurant purchases, the use of venues for events and purchases of other services and goods by foreign governments” and even “payments from foreign-government-owned broadcasters” for rebroadcasts and foreign versions of *The Apprentice*.

A careful reading of the original public meaning of the clause, however, shows that such a broad reading was never contemplated or endorsed. If it were, then many presidents and officers would have been in constant violation.

George Washington’s Mount Vernon was a working plantation during his presidency, so did international tobacco sales to foreign governments or officials violate the Emoluments Clause? More recently, President Obama received royalty income from his books during his presidency.

If the British government had decided to purchase a copy of *The Audacity of Hope* for every member of Parliament, would that have violated the Emoluments Clause?

Other evidence from the founding era points to a limited interpretation of “emolument.” In 1810, an amendment to the Constitution was proposed that would have applied emolument restrictions to private citizens. That amendment was nearly ratified (it failed by two states), and it would have stripped citizenship from any person who, without the consent of Congress, accepted a “present, pension, office or emolument of any kind whatever” from a foreign government. It would be decidedly odd if this near-amendment to the Constitution was understood to strip the citizenship from a Philadelphia tobacconist who sold a pipe to a French ambassador, or a New York businessman who made interest on foreign bonds.

And finally, the broad interpretation offered by the lawsuit violates a basic canon of legal interpretation — the rule against surplusage, or the rule against interpreting a clause in a way that would render some words irrelevant. If the meaning of “emolument” is as broad as the suit argues, then the word “present” in the clause — “accept of any present, Emolument, Office, or Title” — adds nothing, because surely the broad interpretation covers “presents” too.

Unless we believe that the Framers intended to prohibit any presidential secondary source of income that could, even incidentally, do business with a foreign government or official, then clearly “emolument” is a term of art that covers specific types of payments and gifts.

Thankfully, we have more evidence to deduce what an “emolument” might be, and that evidence strongly points to payments that are related to the office itself, particularly in compensation for services rendered. Thus the Supreme Court said in 1850 that an emolument included “every species of compensation or pecuniary profit *derived from a discharge of the duties of the office.*”

Or in 1912: “[E]moluments are but expressions of value *used to give complete recompense to a deserving officer.*”

And in 1920: “[A] sum collected by a clerk for a service *not pertaining to his office . . . was not a fee or emolument.*”

Therefore, run-of-the-mill transactions between foreign governments and officials and Trump’s businesses do not qualify as emoluments. If ambassadors and other foreign officials frequent Trump’s golf courses, hotels or other businesses, and they pay the same fair-market price that anyone would pay, then it is likely not a payment to Trump that is related to the “discharge of the duties of his office.”

Granted, many of those officials are subjectively hoping to curry favor with the president — just like a foreign official may have purchased and read Obama’s book for the same reasons — but subjective intentions don’t make a normal business transaction into an emolument.

Not all sources of corruption need to be “emoluments.” It would be worrying if Trump gives special solicitude to officials who stay in Trump hotels — even if they pay the prevailing market price — but that would be more like the Clinton-era Lincoln bedroom scandal than an emolument.

While Trump's presidency has set Washington spinning and blown new life into dusty provisions of the Constitution, his lawyers should rest easy — there aren't any emoluments hiding under the bed.

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