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“Believe Me,” We Do Not Have a Foreign Emoluments Clause Violation

SCOTTY NICOLE TEAL

INTRODUCTION

An increasingly globalized world has brought a stronger need to protect the U.S. government from foreign corruption.¹ With the 2016 election of President Donald Trump, this need has only expanded.² Having elected a billionaire, reality star, real estate mogul, and international business owner³ as the leader of a world super power, the U.S. government can be vulnerable to negative foreign influence. The Framers of the Constitution sought to protect the government from this type of problem by adding the Foreign Emoluments Clause (Emoluments Clause) to the Constitution in 1787.⁴

President Trump was sued in New York District Court for allegedly violating the Foreign Emoluments Clause.⁵ In its brief, the Citizens for Responsibility and Ethics in Washington (CREW)⁶ alleged that the

1. See Peter Berkowitz, *The Constitution and Globalization*, HOOVER INST. (Aug. 1, 2012), <https://www.hoover.org/research/constitution-and-globalization>.

2. *Id.*

3. The President operates his business in at least 20 foreign countries. See Marilyn Geewax & Maria Hollenhorst, *Trump's Businesses and Potential Conflicts: Sorting It Out*, NPR (Dec. 5, 2016, 7:00 AM), <https://www.npr.org/2016/12/05/503611249/trumps-businesses-and-potential-conflicts-sorting-it-out>.

4. See NAT'L AERONAUTICS AND SPACE ADMIN., APPLICABILITY OF EMOLUMENTS CLAUSE TO EMPLOYMENT OF GOVERNMENT EMPLOYEES BY FOREIGN PUBLIC UNIVERSITIES 13, 15 (1994), <https://www.justice.gov/file/20391/download>.

5. See U.S. CONST. art. I, § 9, cl. 8.

6. This article only seeks to address one of the four currently pending suits against President Trump. The focus of this article will be on the case *Citizens for Responsibility and Ethics in Washington, et al., v. Donald Trump*, 276 F. Supp. 3d 174 (S.D.N.Y.) because this case most directly reflects the Foreign Emoluments Clause issue and definition. The other three cases are *District of Columbia v. Donald J. Trump*, 291 F. Supp. 3d 725 (focusing on President Trump's hesitation to remove himself from his business leads him to accepting unconstitutional emoluments for foreign officials); *Blumenthal v. Trump*, No. 17-1154, 2018 U.S. Dist. LEXIS 167411 (D.D.C. Sept. 28, 2018) (a suit by almost 200 Democrats claiming that President Trump did not seek Congressional Consent when accepting these emoluments or what to do with them

president's international businesses and real estate holdings positioned him to receive money from foreign governments.⁷ These business interests, or *entanglements*, could "sway"⁸ or create an opportunity for negative foreign influence in violation of the Emoluments Clause.⁹ CREW states that these "entanglements between American officials and foreign powers could pose a creeping, insidious threat to the Republic."¹⁰ CREW argued that President Trump violated the Emoluments Clause because the clause "cover[s] anything of value, monetary or nonmonetary."¹¹

In defense of the president, the Department of Justice (DOJ) contended that the president had not received illegal emoluments because an Emoluments Clause violation occurs only when the president receives compensation or gifts from a foreign country *because* of his official duty as president.¹²

Neither of these emoluments definitions gets at the core of an Emoluments Clause violation. The Emoluments Clause, intended to prevent negative foreign influence in a globalizing world, acts as a built-in protection. It was created by the Framers to avoid the negative impact that foreign wealth could have on the U.S. government. This article argues that while foreign corruption in the form of payments to the president might be exactly what the Framers originally intended to avoid, President Trump is not violating the Emoluments Clause; President Trump's interests both domestically and globally that increase his wealth are not a violation of the clause. This article argues that because the world has become more globalized, any Emoluments Clause violation should occur only if there is a real possibility that the president will actually be influenced and engage in political action based on the potential for financial windfall. Thus, would a reasonable president in this situation actually be influenced to act in favor of foreign powers?

Part II of this article explains the CREW case and the competing definitions of emoluments. Part III addresses the functionalist and

afterward); and *K&D LLC t/a Cork v. Trump Old Post Office LLC*, No. 1:17-cv-00731 (President Trump's new hotel has an "unfair advantage").

7. See Second Amended Complaint at 12, *Citizens for Responsibility & Ethics v. Trump*, 276 F. Supp. 3d 174 (S.D.N.Y. 2017) (No. 1:17-cv-00458-RA) [hereinafter *CREW Complaint*].

8. *Id.* at 2.

9. See *id.*

10. *Id.*

11. *Id.* at 12.

12. See Department of Justice Reply Brief at 27, *Citizens for Responsibility & Ethics v. Trump*, 276 F. Supp. 3d 174 (S.D.N.Y. 2017) (No. 1:17-cv-00458-RA) [herein after *DOJ Brief*].

formalist approaches to constitutional interpretation and ultimately advocates for a functional approach to the Foreign Emoluments Clause.¹³ Part IV examines the clause's text and emoluments' meaning in a global world. Part V explores the Foreign Emoluments Clause's original intent. Part VI discusses the Supreme Court's interpretation of the clause. Part VII discusses past practices regarding the executive branch's interpretation. Finally, Part VIII discusses the clause's future implications and possible remedies.

CITIZENS FOR RESPONSIBILITY AND ETHICS, ET AL. V. TRUMP

The U.S. people elected Donald J. Trump as president in 2016.¹⁴ Immediately, articles surfaced about possible Emoluments Clause violations.¹⁵ This culminated in a suit by CREW that alleged President Trump's personal ownership of the Trump Organization, including its interests in the United States and in twenty foreign countries, is a violation of that clause because ownership involves President Trump receiving money from foreign governments.¹⁶ In its complaint, CREW explained that President Trump "personally benefits from business dealings, and Defendant is and will be enriched by any business in which they engage with foreign governments and officials."¹⁷ First, because President Trump owns a massive business empire comprising of hotels, buildings, restaurants, and other real estate, he has daily opportunities to do business with foreign officials.¹⁸ Although the president has placed this organization in a trust, he still has universal access to its distributions.¹⁹ The president still receives frequent updates about his organization and its progress,²⁰ and thus CREW argues that the trust is not enough to save him from an Emoluments Clause violation.²¹ Second, Chinese officials granted President Trump

13. This article does not seek to analyze the Presidential Emoluments Clause, though it does include a brief description, this is not the article's focus.

14. See Matt Flegenheimer & Michael Barbaro, *Donald Trump Is Elected President in Stunning Repudiation of the Establishment*, N.Y. TIMES (Nov. 9, 2016), <https://www.nytimes.com/2016/11/09/us/politics/hillary-clinton-donald-trump-president.html>.

15. See Andy Kroll & Russ Choma, *Here Are the 4 Lawsuits That Could Force Trump to Release His Taxes*, MOTHER JONES (Jul. 6, 2017, 6:00AM), <http://www.motherjones.com/politics/2017/07/here-are-the-4-lawsuits-that-could-force-trump-to-release-his-taxes/>.

16. See *CREW Complaint*, *supra* note 7, at 14.

17. *Id.* at 15.

18. See *id.*; see also *The Companies Donald Trump Owns*, INVESTOPEDIA (Oct. 3, 2018, 3:30 P.M.), <https://www.investopedia.com/updates/donald-trump-companies/>.

19. See *CREW Complaint*, *supra* note 7, at 15.

20. See *id.* at 16.

21. See *id.*

the ability to register the trademark "Trump" for building construction services, which he had been trying to get for over ten years.²² CREW explains that "China only gave the trademark protection to Defendant after he had been elected President, questioned the One China policy, was sworn in, and re-affirmed the One China policy."²³ CREW emphasized that this receipt was a direct violation, as the president received a benefit from a foreign country.

In its brief, CREW defined the word emoluments in the constitutional context to "cover anything of value, monetary or nonmonetary" of "any kind whatever."²⁴ CREW heavily emphasized the phrase "any kind whatever" in its definition²⁵ and found a violation whenever anything is given to the president. This is an extremely broad interpretation of the clause and of the word emolument. It would prohibit the president from receiving anything from a foreign country without express Congressional approval. CREW then utilized this definition to explain that the foreign influences to which President Trump could succumb stem from:

(a) leases held by foreign-government owned entities in New York's Trump Tower; (b) room reservations, restaurant purchases, the use of facilities, and the purchase of other services and goods by foreign governments and diplomats, state governments, and federal agencies, at Defendant's Washington, D.C. hotel and restaurant; (c) hotel stays, property leases, restaurant purchases, and other business transactions tied to foreign governments, state governments, and federal agencies at other domestic and international establishments owned, operated, or licensed by Defendant; (d) property interests or other business dealings tied to foreign governments in numerous other countries; (e) payments from foreign-government-owned broadcasters related to rebroadcasts and foreign versions of the television program "The Apprentice" and its spinoffs; and (f) continuation of the General Services Administration lease for Defendant's Washington, D.C. hotel despite Defendant's breach, and potential provision of federal tax credits in connection with the

22. *Id.* at 26.

23. *Id.* at 27.

24. *Id.* at 12.

25. *Id.*

same property.²⁶

CREW's possible areas for foreign influence focus on the expansive, globalized organization that the president has created and the use of this organization as an avenue to commit a violation. CREW argued that because the president retains ownership of his business, he will always be entangled with foreign governments receiving money from them.²⁷ For example, if foreign government members wished to stay at the president's hotel in Washington, D.C., CREW would consider this a violation because the president would be receiving money from a foreign government. Further, CREW relied on the phrase "any kind whatever" from the clause to argue that these types of business transactions are emoluments.²⁸ Although CREW raised valid concerns, it is unlikely that any benefits will influence his politics or presidential agenda.

In its brief, the DOJ responded by adding an element to the emolument definition: the thing of value must be given to the president *because* of his official presidential duties.²⁹ The DOJ expanded the definition by explaining that "the Emoluments Clauses apply only to the receipt of compensation for personal services and to the receipt of honors and gifts based on official position. They do not prohibit any company in which the President has any financial interest from doing business with any foreign, federal, or state instrumentality."³⁰ Thus, the DOJ's main focus was that President Trump would have to receive this compensation because he is the president,³¹ which requires "some tie between the profit or payment in question and the President's office or employment."³² Further, the DOJ sought to limit the emoluments definition and not have it cover any benefit of "any kind whatever" because this would cover items that are clearly not emoluments, such as treasury bonds from a foreign country.³³ As the DOJ argued, it is unlikely that Trump has received these benefits because of his

26. *Id.* at 3-4.

27. *See id.* at 7, 15.

28. *See* Brief for Scholar Seth Barrett Tillman as Amicus Curiae in Support of the Defendant at 8, *Citizens for Responsibility & Ethics v. Trump*, 276 F. Supp. 3d 174 (S.D.N.Y. 2017) (No. 1:17-cv-00458-RA) [hereinafter *Tillman Brief*]; *see also The Companies Donald Trump Owns*, INVESTOPEDIA (Oct. 3, 2018, 3:30 PM), <https://www.investopedia.com/updates/donald-trump-companies/>.

29. *See DOJ Brief*, *supra* note 12, at 27.

30. *Id.*

31. *See id.*

32. Marty Lederman, *How the DOJ Brief in CREW v. Trump Reveals that Donald Trump is Violating the Foreign Emoluments Clause*, TAKE CARE BLOG (Jun. 12, 2017), <https://takecareblog.com/blog/how-the-doj-brief-in-crew-v-trump-reveals-that-donald-trump-is-violating-the-foreign-emoluments-clause>.

33. *Id.*

presidential duties.

However accurate both definitions are, neither adopts a living constitutional analysis that is important for today's globalized era and this presidency. First, CREW failed to consider that a violation can only occur if the thing of value is given to the president because of his official duties. CREW considered anything given to the president an Emoluments Clause violation and made no distinction between that given to him as president or a private citizen. This distinction is important because presidents often have businesses, other income, or retirement accounts they have secured as a private citizen. The clause should not be expanded to sweep in different forms of income arising from private action; the clause should only concern emoluments given to the president because of his official duties. Second, CREW seemed to suggest that anything given, at all, qualifies as an emolument.³⁴ CREW's definition is too expansive for a world in which foreign business transactions take place daily. Business transactions are not emoluments unless they are directly related to the president's official duties.³⁵

This article agrees with the DOJ's definition of emoluments³⁶ but carries it one step further to find a violation of the clause only if a reasonable president is likely to act to benefit a foreign government when given a thing of value because of his official position.. The DOJ emphasizes that the president must receive these emoluments because of his official duties for there to be a violation³⁷ but fails to emphasize that these benefits must persuade the president into action.

Therefore, emoluments should only include payment or nonmonetary benefits that the president receives because of his official duties, and an Emoluments Clause violation should only occur when receiving that emolument would influence a reasonable president to act. Emoluments cannot be given to the president because of some service he offered the foreign government. Foreign governments using Trump Hotels or Trump Organization holdings should not count as an Emoluments Clause violation.

The flaw in this definition, as with any reasonableness standard, is the struggle to determine what is likely to make the president act. This standard, however, is important for a globalized world in which

34. See *CREW Complaint*, *supra* note 7, at 14.

35. See *The Companies Donald Trump Owns*, INVESTOPEDIA (Oct. 3, 2018, 3:30 PM), <https://www.investopedia.com/updates/donald-trump-companies/>; see generally Tillman Brief, *supra* note 28.

36. This article agrees with the definition of emoluments the DOJ articulated in its brief. This article does not necessarily agree with the entirety of or analysis of the DOJ brief. In fact, the President could be violating the Emoluments Clause even under the DOJ definition. See Lederman, *supra* note 32.

37. See *DOJ Brief*, *supra* note 12, at 11.

politicians have increasing numbers of investments and relationships with foreign countries. The Emoluments Clause can adapt to these changing needs. An example of such a reasonableness standard violation would be if the president were preparing to build personal real estate in a foreign country but could only get the permission to do so in exchange for opting out of some international treaty involving carbon emissions between the two nations. This example demonstrates the concerning type of Emoluments Clause violation. Given that the president is a real estate mogul and is probably trying to advance his interest, he is likely to act in this situation.³⁸

A FUNCTIONALIST APPROACH—THE LIVING CONSTITUTION

Two schools of thought common to constitutional interpretation of separation of powers issues are helpful to this clause violation analysis: functionalism and formalism. These interpretations often reach different results.³⁹ A functionalist approach “promises adaptability and evolution” to interpreting the Constitution’s text,⁴⁰ whereas a formalist approach “promises stability and continuity of analysis over time.”⁴¹ Formalism largely relies on original intent, text, structure, and authoritative interpretations of the Constitution.⁴² Because of its rigid scope and hesitancy to adapt to new and changing societal events,⁴³ formalism should not be adopted for the Emoluments Clause analysis. This article adopts a functionalist-reasoning approach to interpret the clause that sees the principles in the Constitution as capable of adapting to current events. One situation that the Framers could never have imagined is the election of a billionaire businessman with a global empire. As one source explains, “[t]here’s never been a businessman-turned-president quite like Mr. Trump.”⁴⁴

The Constitution is an adaptive document that should be read flexibly to meet current domestic and global events.⁴⁵ This means that

38. This definition does not include emoluments such as personal checks that would qualify as bribes covered by U.S. CONST. art. II, § 4.

39. See William N. Eskridge, Jr., *Relationships Between Formalism and Functionalism in Separation of Powers Cases*, 22 HARV. J.L. & PUB. POL’Y 21, 21-23 (1998) (explaining functionalism and formalism approaches to constitutional interpretation).

40. *Id.* at 21.

41. *Id.*

42. See *id.*

43. See *id.* at 21-22.

44. *Trump Sued Over Foreign Payments by Attorneys General*, BBC NEWS (Jun. 12, 2017), <http://www.bbc.com/news/world-us-canada-40250700>.

45. See David A. Strauss, *The Living Constitution*, U. CHI. L. SCH., <https://www.law.uchicago.edu/news/living-constitution>.

the Constitution, when viewed under the functionalist lens, is a “living constitution” that allows for adaptive interpretations to meet new situations that the framers could never have conceived.⁴⁶ Specifically, “[a] living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended by the ‘cumbersome amendment process.’”⁴⁷ This is important because it allows society to evolve without having to amend the Constitution frequently to meet new circumstances.

Today, business operations are becoming more advanced and globalized.⁴⁸ It is necessary to interpret the Constitution to account for these changes but maintain its original intent. Without a Constitution that allows for societal growth, the United States would be stuck in the past and hindered by an outdated framework.⁴⁹ This does not mean that the Constitution can be easily manipulated to adopt and conform to any idea.⁵⁰ It means that, over time, constitutional interpretations under common law can change to meet a society’s needs.⁵¹ A court accomplishes this by first looking at the Constitution and then spending a large part of its analysis looking at precedent.⁵² These precedents change as a court forms new interpretations as a result of new circumstances.⁵³ The Emoluments Clause should not be exempt from an interpretation that reflects the current environment.

UNDERSTANDING EMOLUMENTS

With this *living constitution*⁵⁴ theory in mind, a deeper look at the Emoluments Clause’s text and meaning will be useful in explaining why a violation necessarily involves presidential action. Understanding what constitutes a violation of the Emoluments Clause requires a clear definition of what constitutes an emolument. Many scholars have attempted this feat of constitutional interpretation, answered this question at length, and cited court decisions, past analytical definitions, and original intent. The clause states:

No Title of Nobility shall be granted by the United

46. See Eskridge, *supra* note 39, at 21-23.

47. *Id.*

48. See *id.*

49. See *id.*

50. See *id.*

51. See *id.*

52. See *id.*

53. See *id.*

54. See generally *id.* (discussing the theory of a living constitution).

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.⁵⁵

The Emoluments Clause appears straightforward; however, one word draws confusion—emolument. Emolument is a strange word that is not often heard. Because this clause lists “present, Emolument, Office, or Title” as separate elements that an officer⁵⁶ can receive, the *differences* between these prohibited elements must be analyzed and recognized to show that they are not redundant.⁵⁷ Weight must also be given to the *similarities* of these words since they are presented in a list together.⁵⁸

There is one word of relative importance incorporated into this clause: foreign. So, any emolument received from a foreign government (not from an individual state, as indicated in the Presidential Emoluments Clause) for official service is at issue here.

The word *present* is considered first. Its dictionary meaning at the time the Constitution was written meant “a gift,” which was explained to be something “bestowed on another without price or exchange; the act of giving.”⁵⁹ This is the modern understanding of *present*. Because *present* is listed distinctly from emolument in the clause, *emolument* cannot simply mean something that has been given to the president with no expectation of return.⁶⁰

Next is the vaguest part of this clause: *emolument*.⁶¹ It must mean something different from present, office, or title, because it is listed separately.⁶² Consistent with the DOJ’s meaning of the word, an emolument is something of value, such as payment or a trademark

55. U.S. CONST. art. I, § 9, cl. 8.

56. For the purposes of this article, the president is an officer under the United States. See DAVID ROBERTSON, DEBATES AND OTHER PROCEEDINGS OF THE CONVENTION OF VIRGINIA 345 (Richmond, Enquirer-Press 2d ed. 1805); see generally Lederman, *supra* note 32 (providing a brief overview of the mechanics of the Emoluments Clause).

57. See *Beecham v. United States*, 511 U.S. 368, 371 (1994).

58. See *United States v. Stevens*, 559 U.S. 460, 474 (2010) (explaining that words can be derived of their meaning by examining the words in a list that surround it).

59. JAMES BARCLAY, A COMPLETE AND UNIVERSAL ENGLISH DICTIONARY ON A NEW PLAN 548 (n.p. 1774).

60. See *DOJ Brief*, *supra* note 12, at 12.

61. This article is less concerned with the precise definition of what constitutes an emolument. It is focused on deciding when a violation of the Foreign Emoluments Clause has occurred.

62. See *United States v. Stevens*, 559 U.S. at 474.

given to the president because of his official duties.⁶³ CREW argued that an emolument is anything at all of value, of “any kind whatever.”⁶⁴ Many scholars have attempted to determine what constitutes an emolument,⁶⁵ but this article agrees with the DOJ definition.⁶⁶ Consistent with the Framers’ original intent and past interpretations of the phrase, a benefit-office-duty nexus must be involved.⁶⁷ This article takes the DOJ definition one step further and finds a violation only if a reasonable president is likely to act to benefit a foreign government when given a thing of value because of his official position.⁶⁸

Next, the words *office* or *title* prevent any U.S. officer from accepting these positions from a foreign country.⁶⁹ These were included because granting these titles to U.S. officials could corrupt the person into making decisions that are contrary to the United States’ well-being.⁷⁰ An office or title are positions that have been offered to an officer of the United States from another country. For example, in *Marshal of Florida*, the Marshal of Florida (an officer of the state) was offered the position to be an “Agent of France.”⁷¹ This was held to violate the Emoluments Clause because it was an impermissible bestowment of a title without Congressional consent.⁷² A second example of foreign governments bestowing these titles on U.S. officers is from the World War II era, when Congress passed an act explicitly allowing an officer to receive a title from a foreign government, given these officers’

63. See *DOJ Brief*, *supra* note 12, at 11.

64. See *CREW Complaint*, *supra* note 7, at 12.

65. See Normal L. Eisen, Richard Painter & Laurence H. Tribe, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, BROOKINGS 10-11 (Dec. 16, 2016), https://www.brookings.edu/wp-content/uploads/2016/12/gs_121616_emoluments-clause1.pdf (defining an emolument to be any benefit of any kind).

66. Private business transactions do not count. See Amandeep S. Grewal, *The Foreign Emoluments Clause and the Chief Executive*, 101, 106 MINN. L. REV., (forthcoming 2018), <http://ssrn.com/abstract=2902391> (“Under that definition, [of an emolument being essentially any payment or benefit] a U.S. Officer would violate the Constitution if a foreign country granted her a building permit to modify her vacation residence there or a temporary permit to operate a motor vehicle. However, under an office-related definition, U.S. Officers can obtain a foreign government’s permission to acquire these things without worrying about impeachment.”); but see Eisen, et al. *supra* note 65 (“the Clause unquestionably reaches any situation in which a federal officeholder receives money, items of value, or services from a foreign state”).

67. See *DOJ Brief*, *supra* note 12, at 14.

68. For more on this, see Part II.

69. U.S. CONST. art. I, § 9, cl. 8.

70. JONATHAN ELLIOT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 465–66 (Philadelphia, J.B. Lippincott Co. 2d ed. 1891) (explaining the text of the clause was to prevent corruption).

71. See *Marshal of Florida*, 6 Op. Att’y Gen. 409, 410 (1854), 1854 WL 2054.

72. See *id.*

exemplary military service during the war.⁷³ These officers had “exceptionally meritorious conduct in the performance of outstanding services” and deserved to be rewarded by the U.S. allies after the war.⁷⁴ There was no constitutional problem for the officers to accept the title because Congress had given express approval for acceptance.⁷⁵

Further, the inclusion of the words “of any kind whatever” illustrates that the Framers were eager to keep *all* corruption by way of foreign involvement away from the U.S. government.⁷⁶ This should not, however, be interpreted so broadly as to include anything conceivable.⁷⁷ This phrase refers directly back to the list, to any or all kinds of “present, Emolument, Office, or Title.”⁷⁸ Thus, the phrase seeks to include any and all of those four specific items listed; it is not a catch-all for anything else received from a foreign government.⁷⁹ The word “any” does not expand the meaning of emolument to include anything imaginable but limits the emoluments an officer can receive.⁸⁰

When considering “without the Consent of the Congress,” this plain language indicates that an official can ask Congress to grant consent to receive a type of emolument. This could incorporate transparency and constitutional abeyance⁸¹ and is one way to help ensure that the officer will not receive these emoluments in secret or for a nefarious reason.⁸² This happened with the World War II era acceptance of titles from foreign governments for military service mentioned above. The Framers thought this was an appropriate check on the president and other officers.⁸³

73. Given their exceptional military service, Congress allowed “that any such officer or enlisted man is hereby authorized to accept and wear any decoration, order, medal, or emblem heretofore bestowed upon such person by the government of a cobelligerent nation or of an American republic.” With Congressional approval, there was no Emoluments Clause issue. See Pub. L. No. 507-508, 56 Stat. 662, 662-663 (1942), <http://www.legisworks.org/congress/77/publaw-671.pdf>.

74. *Id.*

75. *See id.*

76. Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV., 341, 362 (2009).

77. *See United States v. Palmer*, 16 U.S. 610, 631 (1818) (“[G]eneral words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them”).

78. U.S. CONST. art. I, § 9, cl. 8.

79. *See DOJ Brief*, *supra* note 12, at 27.

80. *Id.* at 15.

81. *See* Brief of Senator Richard Blumenthal & Representative John Conyers, Jr., as Amici Curiae in Support of Plaintiffs at 2, *Citizens for Responsibility & Ethics v. Trump*, No. 1:17-cv-00458-RA (S.D.N.Y. Aug. 11, 2017).

82. *See id.* (explaining that consent “reduces the threat that receiving them will compromise an official’s loyalty or judgment”).

83. *See id.*

Finally, the Constitution's *Presidential* Emoluments Clause will prove helpful on the separation of powers issue.⁸⁴ Although this clause is different from the Foreign Emoluments Clause, the word emolument should be interpreted the same way.⁸⁵ Both the CREW and the DOJ mention the Presidential Emoluments Clause in their briefs to help with understanding what a violation is.⁸⁶ The language states:

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.⁸⁷

Thus, this clause "bars the President from receiving benefits other than his compensation from the federal, state, or local governments."⁸⁸ It is almost the same as the Foreign Emoluments Clause but with the focus being on any emolument received by the president from a state. An analysis of past issues concerning the Presidential Emoluments Clause will be helpful when considering a possible Foreign Emoluments Clause violation because the same emoluments definition is employed in both clauses.

ORIGINAL INTENT AND PURPOSE

In addition to the text itself, the original intent of the Framers is enlightened when considering whether there has been an Emoluments Clause violation. The original intent shows that an action must occur to show a violation. In this case, the original intent is clear.⁸⁹ The original meaning of the Foreign Emoluments Clause was to protect the U.S.

84. There are other allegations that President Trump is violating the Presidential Emoluments Clause. This article's sole focus, however, is on any possible *Foreign* Emoluments Clause violation.

85. The focus of this article is the Foreign Emoluments Clause.

86. Compare *CREW Complaint*, *supra* note 7, at 8 (claiming that the Presidents violation of the Emolument Clause will injure the plaintiff without relief), with *DOJ Brief*, *supra* note 12, at 19 (arguing that the plaintiffs interpretation of the Emolument Clause is overbroad).

87. U.S. CONST. art. II, § 1, cl. 7.

88. Constitutional Accountability Center, *The Domestic Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, <https://www.theusconstitution.org/think-tank/issue-brief/domestic-emoluments-clause>.

89. See Amandeep S. Grewal, *The Foreign Emoluments Clause and the Chief Executive*, 102 MINN. L. REV. 639, 644 (2017).

government from being corrupted by foreign governments by way of emoluments.⁹⁰ These emoluments, the Framers feared, could influence U.S. government officials into serving foreign interests over that of United States' citizens.⁹¹ The clause's conception was brought about when Benjamin Franklin, the ambassador to France, received a small box from the king of France as a gift.⁹² Thus, these gifts became forbidden by the Constitution unless specifically approved by Congress out of fear that U.S. government corruption would result.⁹³ After this event, "the delegates were deeply concerned that foreign interests would try to use their wealth to tempt public servants and sway the foreign policy decisions of the new government."⁹⁴ Thus, the Foreign Emoluments Clause was created to curb this influence.

The Framers wanted to protect U.S. citizens from government corruption brought on by foreign governments negatively influencing American politics.⁹⁵ A clear explanation of the clause's purpose comes from Federalist No. 73, which explains that the Emoluments Clause was supposed to allow the president to retain independence to do as he pleases without outside corruption that would:

[W]eaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act.⁹⁶

In their article, Professors Eisen, Painter, and Tribe further explain that not only were the Framers concerned with flat-out bribery⁹⁷ but also saw other ways in which politicians could be persuaded. "[T]he

90. See Teachout, *supra* note 76, at 345; see also Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize, 33 Op. O.L.C. 1, 4 (2009) (explaining that the President "hold[s] an[] Office of Profit or Trust" (quoting U.S. Const. art. I, § 9, cl. 8) and thus, is within the Foreign Emoluments Clause).

91. See Grewal, *supra* note 89, at 645.

92. See President Reagan's Ability to Receive Ret. Benefits from the State of Cal., 5 Op. O.L.C. 187, 188 (1981).

93. See Grewal, *supra* note 89.

94. Teachout, *supra* note 76, at 361.

95. See *id.*

96. THE FEDERALIST NO. 73 (Alexander Hamilton).

97. See U.S. CONST. art. II, § 4 ("The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors").

Framers recognized the subtle, varied, and even unthinking ways in which a federal officeholder's judgment could be clouded by private concerns and improper dependencies."⁹⁸ They did not want outside governments to persuade the American government; they feared that US government officials would not be loyal to their citizenry. Based on the simple receipt of a box, probably unlikely to cause the ambassador of France to corrupt his ways, it is clear the Foreign Emoluments Clause was meant to prevent any and all corruption by foreign governments. This original purpose continues to serve important needs and interests in today's world.

The Framers probably never could have imagined that the business world could become so globalized and that important interactions with foreign countries would occur daily. It is also implausible that they thought the president could be conducting business on such a global scale. Thus, while remaining true to the Framers' intent, it is a fair interpretation of the Emoluments Clause to conclude that whatever foreign emoluments a president may receive must induce him into taking action. Because it is so clear that the Framers wanted to prevent the president from being persuaded by this influence, the likelihood of that persuasion should be a requirement to find a violation. The Framers did not consider emoluments to be profits from private business transactions.⁹⁹ There is no mention of these types of transactions surrounding the Emoluments Clause discussions.¹⁰⁰ With the recent globalized influence that almost every president will face, the Emoluments Clause acts as a protection when the president is unable to avoid influence and uphold his duty to protect American citizens.

SUPREME COURT INTERPRETATION

The idea that emoluments are received because of an official duty is essential to this analysis. This is consistent with the Supreme Court's interpretation of the word emolument as something given to an officer for his duty.¹⁰¹ In an early, often-cited case, *Hoyt v. United States*, a tax collector was owed money and "all fees and emoluments whatever."¹⁰² The Supreme Court defined an emolument as "compensation or pecuniary profit derived from a discharge of the duties of the office."¹⁰³

98. Eisen et al., *supra* note 65, at 6.

99. See DOJ Brief, *supra* note 12.

100. See *id.*

101. See Grewal, *supra* note 89, at 647.

102. See Teachout, *supra* note 76, at 360.

103. *Hoyt v. United States*, 51 U.S. (10 How.) 109, 135 (1850).

This included fees, commissions, and a share of the fines.¹⁰⁴ Both the legislative and the executive branches have followed this definition since.¹⁰⁵ As helpful as this definition may be, however, this case was about statutory interpretation and has no specific constitutional implications for the word emolument. The Court in *Hoyt*, however, focused on an office-related definition. Thus, CREW may be dismayed by the fact that almost two hundred years ago, the Court found that emoluments must be related to official duties. CREW did not mention the case in its brief.¹⁰⁶ The DOJ embraced this definition and essentially based its argument on this benefit-office-duty nexus.¹⁰⁷

Two additional cases, while not mentioned in either brief, are helpful for the further interpretation of this issue. *Mullett's Adm'x v. United States*, decided by the Court in 1893 and citing *Hoyt* in its decision, explains that any "extras" received by a public service officer for performance of such duties were forbidden unless specifically approved by Congress.¹⁰⁸ This suggests that any financial gain by a state employee in his official capacity that is not his salary or any emolument officially given to him for his official duties is prohibited unless previously approved by Congress. In this case, the supervisor of the Architect of the Treasury was trying to claim compensation above his statutorily defined salary.¹⁰⁹ The Court denied relief.¹¹⁰ Further, in *McLean v. United States*, the Court found that the word emoluments included back pay for servants and forage for horses.¹¹¹ In this case, an army officer's widow was granted relief for her husband's payments that he was never given from the time between his army resignation and his death.¹¹² These emoluments were to be paid in addition to his salary, which expanded the definition from *Hoyt* to include more than compensation.¹¹³ In this case, the Court yet again drew a nexus between the emoluments and the office and held that emoluments are for

104. See Grewal, *supra* note 89, at 648 n.35.

105. See *id.* at 643.

106. See generally CREW Brief, *supra* note 7.

107. See DOJ Brief, *supra* note 12, at 27-28.

108. *Mulletts v. United States*, 150 U.S. 566, 570 (1893); see also *United States v. King*, 147 U.S. 676, 679 (1893) ("[N]o officer in any branch of the public service, or any other person whose salary, pay or emoluments is or are fixed by law or regulations, shall receive any additional pay, extra allowance or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatsoever, unless the same shall be authorized by law. . . ." (quoting Act of Aug. 23, 1842, ch. 183, 5 Stat. § 2)).

109. See *Mulletts*, 150 U.S. at 569.

110. *Id.* at 572.

111. See *McClean v. United States*, 226 U.S. 374, 377-78 (1912).

112. *Id.* at 377.

113. See *id.* at 382.

“recompense to a deserving officer.”¹¹⁴

EXECUTIVE INTERPRETATION

How former U.S. presidents have handled emolument issues can also shed light on the current situation.¹¹⁵ The practices that these presidents established can give meaning to the word emolument and can provide examples of times when no violation of the clause was found.

Former President George Washington

One example is from former President George Washington, whose presidency has offered guidance to many former presidents.¹¹⁶ Like President Trump, he was also active in the real estate world while serving as president.¹¹⁷ In one instance, he purchased a large amount of land from the government.¹¹⁸ If the word emolument covers anything of value,¹¹⁹ then the land he received would have put him in violation of the Presidential Emoluments Clause for doing business with the government while president.¹²⁰ Further, while president, he sent a letter to an officer in the United Kingdom asking the officer if he would be willing to help him rent real estate to secure his retirement.¹²¹ The president would have been openly, willingly, and negligently violating the Constitution if emolument covered anything of value because he was receiving rental income from a foreign government.¹²² Because he sold and bought real estate with foreign clients, he would have also been in violation of the Foreign Emoluments Clause.¹²³ In fact, he regularly received updates on how his business was doing while president.¹²⁴

114. *Id.* at 385.

115. See *McCulloch v. Maryland*, 17 U.S. 316, 401 (1819) (explaining that, in constitutional interpretation, courts can rely on past accepted practices).

116. See Eugene Kontorovich, *George Washington was the First President to Stay in the Real Estate Business*, WASH. POST (Apr. 14, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/04/14/george-washington-was-the-first-president-to-stay-in-the-real-estate-business/?utm_term=.ed7772b16db3.

117. See *id.*

118. See Seth Barrett Tillman, *Business Transactions and President Trump's "Emoluments" Problem*, 40 HARV. J.L. & PUB. POL'Y 759, 761 (2017).

119. See *CREW Complaint*, *supra* note 7, at 3.

120. See Tillman, *supra* note 118, at 761.

121. See Kontorovich, *supra* note 116 (Washington and this UK officer also exchanges similar letters before Washington was president).

122. See Tillman, *supra* note 118, at 763.

123. See Kontorovich, *supra* note 116.

124. See *id.*

Under CREW's emoluments definition, these actions taken by Washington would clearly be a violation of the Emoluments Clause. The DOJ, on the other hand, may not think so. Because the DOJ interprets emoluments to mean compensation or gifts based off an official position as president, the DOJ would require that Washington had received these emoluments for some reason related to his official conduct. Looking back, this is extremely hard to prove, and it was likely that Washington did not receive benefits because of his official capacity. It was probably because he was a prominent businessman.¹²⁵ It would be hard to imagine that one of the Constitution's Framers would so readily violate the clause. This suggests that he believed his actions were not a violation, and it further provides the need for a benefit-office-duty nexus.¹²⁶

Further, "[f]ounding-era presidents openly received diplomatic gifts from foreign governments."¹²⁷ If CREW's definition were to be used, then this would be an open, constitutional violation. One scholar argues that Washington's conduct was never questioned nor thought to violate the Emoluments Clause.¹²⁸ While not law, these past actions are helpful in guiding future presidential actions.¹²⁹

Former President Ronald Reagan

A different example is from former President Ronald Reagan. In his case, the Presidential Emoluments Clause was at issue.¹³⁰ While this is a different clause, it is relevant in that it sheds light on emoluments generally. Former President Reagan was the governor of California before he became president of the United States.¹³¹ As such, he was entitled to receive retirement funds from California for his service.¹³² The issue was whether receiving this money would be a Presidential Emoluments Clause violation.¹³³ This is because he would be receiving "extra" money from California while simultaneously serving as the U.S.

125. *See id.*

126. *See Tillman, supra* note 28, at 2.

127. *Id.*

128. *See Tillman, supra* note 118, at 764.

129. *See Kontorovich, supra* note 116.

130. *See* U.S. Const., art. II., § 1, cl. 7 ("The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them").

131. *See President Reagan's Ability to Receive Retirement Benefits from the State of California, supra* note 92, at 187.

132. *See id.*

133. *See id.*

president. Under this clause, the president is forbidden to receive any type of emolument.

In this case, his pension collection of \$22,197¹³⁴ per year from the state was not found to violate the Presidential Emoluments Clause. In a 1983 hearing discussing this issue, Senator George J. Mitchell concluded that “the term emolument in article II, section 1, clause 6 does not extend to payments for services rendered prior to the occupancy of, and having no connection with the presidency.”¹³⁵ The Senate determined that because the president earned this pension before he was president, the money he received was not connected with his services as president,¹³⁶ citing Federalist No. 73 (A. Hamilton) for its conclusion.¹³⁷ The Senate explained that the clause’s original purpose was to allow the president freedom to act without fear of being negatively influenced by rewards or salary reductions.¹³⁸

The Office of Legal Counsel stated that “the term emolument has a strong connotation of, if it is not indeed limited to, payments *which have a potential of influencing or corrupting the integrity of the recipient.*”¹³⁹ This directly supports the idea that the benefit must be likely to make the president act or must have the potential to do so. President Reagan’s receipt of California pension was highly unlikely to cause a reasonable president to act in a way that would favor California over the rest of the states. Thus, this presented no Emoluments Clause problem.

MODERN GLOBAL IMPLICATIONS AND REMEDIES

Given that an emoluments violation should only occur when receiving an emolument would influence a reasonable president to take action, President Trump is not standing in violation of the Foreign Emoluments Clause. A functional interpretation of the clause requires it to be viewed under today’s changing circumstances. Today, this includes a billionaire real estate mogul serving as president.

While it is hard to know if the president is a reasonable person or if he would indeed be brought to action by foreign emoluments, it is highly

134. See U.S. GOV’T ACCOUNTABILITY OFFICE, B-207467 L/M, THE PRESIDENT’S ACCEPTANCE OF A RETIREMENT ALLOWANCE (2008), <http://www.gao.gov/products/423723#mt=e-report>.

135. *Id.*

136. *See id.*

137. *See id.*

138. *See id.*

139. *President Reagan’s Ability to Receive Retirement Benefits from the State of California*, *supra* note 92, at 188 (emphasis added).

unlikely that President Trump will be influenced by the revenue he receives as a private citizen from foreign countries.¹⁴⁰ For example, consider again CREW's explanation that "China only gave the trademark protection to Defendant after he had been elected President, questioned the One China policy, was sworn in, and re-affirmed the One China policy."¹⁴¹ This indicates that the trademark was granted only because the president decided to reaffirm the One China policy.¹⁴² But, the president did not actually do anything based upon this foreign trademark grant. He did not act in a way that could be shown to favor China over the United States.

An important consideration when analyzing if President Trump is likely to be influenced into action by global forces is that he is already extremely rich.¹⁴³ For his entire adult life, he has had a lot of money and has received a large amount of it from foreign sources.¹⁴⁴ Foreign guests have stayed at the Trump Organization's hotels for many years.¹⁴⁵ If foreign officials threatened to stop spending money at the Trump Organization's real estate venues, it seems unreasonable that President Trump would offer his presidential services to keep their business. He probably would not even notice the missing revenue and is likely more preoccupied with his presidential duties. Further, the president specifically campaigned on the idea that because he has money, he could not be bought by interest groups or other outside influences.¹⁴⁶ He claimed that his competition would be beholden to those interest groups

140. See Joy Blenman, *The Companies Donald Trump Owns*, INVESTOPEDIA (Apr. 12, 2017), <https://www.investopedia.com/updates/donald-trump-companies/>; see generally DOJ Brief, *supra* note 12 (arguing that the Emoluments Clause must not be read broadly to protect against undue influence).

141. *CREW Complaint*, *supra* note 7, at 27. (providing an in-depth description of the President's holdings and lengthily explains possible foreign emoluments he receives).

142. See *id.*

143. See Grewal, *supra* note 89, at 102.

144. *Id.*; see also Johnathon H. Adler, *Is the Emoluments Clause a Problem for Hillary Clinton?*, WASH. POST (Sept. 23, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/23/is-the-emoluments-clause-a-problem-for-hillary-clinton/?utm_term=.e27e9d95ba5a (noting that Hillary Clinton had the possibility to run into the same Emoluments Problems with her acceptance of foreign gifts through the Clinton Foundation as Secretary of State and as possibly the next president, signifying an even stronger argument for the functionalist approach that the Emoluments Clause violation should be found in today's modern world (given that both candidates for the 2016 election did in fact receive emoluments from foreign countries) only if these emoluments are likely to produce action from the recipient).

145. See Grewal, *supra* note 89, at 102.

146. See Daniel Strauss, *Donald Trump's New Pitch: I'm So Rich I Can't Be Bought*, POLITICO (Jul. 28, 2015 6:08AM), <https://www.politico.com/story/2015/07/donald-trumps-so-rich-i-cant-be-bought-120743>.

and donors who gave them money.¹⁴⁷ He explained how his competition may be swayed to build in foreign countries:

So their lobbyists, their special interests and their donors will start calling President Bush, President Clinton, President Walker. Pretty much whoever is president other than me. Other than me. And they'll say: You have to do it. They gave you a million dollars to your campaign, [to build a] two-and-a-half-billion-dollar plant in Mexico.¹⁴⁸

If the president is given foreign emoluments but does not act because of it then the negative foreign influence that the Framers intended to avert with the Emoluments Clause has effectively been deterred. In other words, the president does not need this money from foreign officials and is unlikely to be brought to action by hotel or other revenues they generate. Receiving these emoluments does not mean he will be influenced to act.¹⁴⁹

Second, President Trump has offered to relinquish “leadership and management” of the Trump Organization to his children.¹⁵⁰ CREW argued that because the president is not giving up *ownership* of the Trump Organization, he will still be in violation of the clause.¹⁵¹ President Trump has the option of divesting his business into a blind trust, as he has mentioned; however, this may be unfair to the president. With the business’s expansive and global impact, he would have to sell off nearly everything owned by the organization, give up everything he has worked for his entire life, and accept a personal loss because he is the president.¹⁵² But, under this article’s definition, this would only occur if a reasonable president would likely be influenced by

147. *See id.*

148. *Id.*

149. The burden of proof is also very difficult here. It is very hard to tell if a foreign official would stay in the President’s hotel because of the fact he is President, thus meeting the benefit-office nexus required by the definition. *But see* K&D LLC t/a Cork v. Trump Old Post Office LLC and Donald J. Trump, No. 1:17-cv-00731 (alleging President Trump’s new hotel has an “unfair advantage” because foreign businessmen have chosen to stay there over other hotels).

150. *See CREW Complaint*, *supra* note 7, at 15 (quoting *Donald Trump’s News Conference: Full Transcript and Video*, N.Y. TIMES (Jan. 11, 2017), <http://nyti.ms/2jG86w8>).

151. *See id.*

152. *See* David B. Rivkin Jr. & Lee A. Casey, *It’s Unrealistic and Unfair to Make Trump Use a Blind Trust*, WASH. POST (Nov. 22, 2016), https://www.washingtonpost.com/opinions/its-unrealistic-and-unfair-to-make-trump-use-a-blind-trust/2016/11/22/a71aa1d4-b0c0-11e6-8616-52b15787add0_story.html.

such acts. Much like the updates President Washington received,¹⁵³ President Trump receives updates about his businesses even though “[he] pledged to extricate himself from his day-to-day business operations. His son Eric acknowledged he still gives his father regular financial updates.”¹⁵⁴

Relatedly, another option is for President Trump to relinquish all of his assets. This seems to be a severe option that would essentially say that any person who wants to run for president must surrender all their business endeavors involving foreign countries. This reading of the Foreign Emoluments Clause goes way beyond the Framers’ intent. Is this saying that a person must give up everything they have to serve their country on the chance that they might be influenced by foreign governments?¹⁵⁵ Surely, the Constitution cannot be read so expansively. President Trump has taken steps to distance himself from the direct oversight of his businesses. “Since taking office in January, Mr. Trump has turned day-to-day control of his real estate empire and other assets over to a trust managed by his adult sons.”¹⁵⁶

Further, President Trump has suggested that he will be donating all of the proceeds from his hotel.¹⁵⁷ While not a remedy per the Constitution, it could lessen the likelihood of the president being influenced by foreign emoluments. It helps the president’s case if he is unwilling to personally accept the foreign money. Even after the president has given up all of the profits from foreign officials using his real estate, however, President Trump can then ask for Congressional permission to allow him to receive profits from his company.¹⁵⁸ This would ensure complicity with the Constitution while allowing the president to maintain his organization in the United States and abroad.¹⁵⁹

In the United States, anyone can aspire to be president, run for president, or serve as president.¹⁶⁰ Children are taught this proposition

153. See Kontorovich, *supra* note 116.

154. See BBC, *supra* note 44.

155. See Rivkin Jr. & Casey, *supra* note 152.

156. See BBC, *supra* note 44.

157. See Darren Samuelson, *Trump Organization: First Treasury Donation on Hotel Stays to Come in 2018*, POLITICO (Mar. 17, 2017), <https://www.politico.com/story/2017/03/trump-hotels-first-treasury-donation-2018-236202>.

158. See Kroll & Choma, *supra* note 15.

159. See *id.*

160. See Tom Toles, *Trump Proved that Anyone in American Can Grow Up to Be President Without Even Growing Up*, WASH. POST (June 6, 2017), https://www.washingtonpost.com/news/opinions/wp/2017/06/06/trump-proved-that-anyone-in-american-can-grow-up-to-be-president-without-even-growing-up/?utm_term=.90802aef9c1c; Can Anyone Be President of the United States?, WONDEROPOLIS, <https://wonderopolis.org>

early in school. In modern society, this means that a war hero, a constitutional scholar, a secretary, or a reality star billionaire with a global empire can all run for president. If the United States were to shut off this opportunity to the presidency, it would cease to be the democracy the Framers intended when they placed only three limitations on the presidency.¹⁶¹ Should the word emolument be given an expansive meaning to essentially block anyone who owns a business, domestic or international, at which foreign governments or officers spend money, it would impose an additional limitation on the presidency that the Framers did not suggest. Such an expansive reading of the Emoluments Clause as implicated in the CREW definition, would force successful businessmen such as President Trump out of the presidential running. This would have drastic implications for future presidents,¹⁶² basically limiting the presidency by degree of success.¹⁶³ Only if a candidate is willing to give up their life work can they be president. It would be devastating if instead of telling children that anyone can be president, a caveat was added stating "so long as they are not the owner of a billion-dollar global empire." Would one choose to be the former or the latter?

This notion that anyone can become president should be something that Americans strive to protect. With the election of Donald J. Trump, the American people proved that anyone could become president, and the people willingly and knowingly chose someone with such expansive domestic and foreign business organizations.¹⁶⁴ As business empires grow and expand on a daily basis and the world becomes more globalized, constitutional interpretation can adapt to reflect these current changes.

CONCLUSION

Thus, emoluments should only include payment or nonmonetary benefits that the president receives because of his official duties acting as president, and a violation should only occur when receipt of that emolument would influence a reasonable president to take political action. This is a valid interpretation of what constitutes an Emoluments Clause violation, having considered a functionalist approach to

/wonder/can-anyone-be-president-of-the-united-states (explaining that anyone can run for President so long as they have fulfilled the three constitutional requirements).

161. See U.S. CONST. art. II, § 1, cl. 5.

162. See Rivkin Jr. and Casey, *supra* note 152.

163. This article assumes that having a billion dollar global empire makes one successful.

164. See Blenman, *supra* note 140.

analyzing this separation of powers issue, past precedents, Supreme Court interpretations, and original intent. President Trump may be receiving emoluments from foreign nations, but in today's world, these emoluments must produce action on his part before a violation of the Constitution can occur.