

Trump, Inc.

The President and the Emoluments Clause

Thursday, March 7, 2019

Co-sponsored by

Georgia State Law School Student Chapters

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Federalist Society

Professor Clark Cunningham

Professor Neil Kinkopf

This presentation can be downloaded at:

www.clarkcunningham.org/TrumpInc.html

TED W. LIEU
33RD DISTRICT, CALIFORNIA

COMMITTEE ON THE
JUDICIARY

COMMITTEE ON
FOREIGN AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515-0533

February 11, 2019

403 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3976

5055 WILSHIRE BOULEVARD, SUITE 310
LOS ANGELES, CA 90036
(310) 652-3095

1600 ROSECRANS AVENUE, 4TH FLOOR
MANHATTAN BEACH, CA 90266
(310) 321-7664

His Excellency Salem Abdullah Al-Jaber Al-Sabah
Embassy of the State of Kuwait
2940 Tilden Street NW
Washington, DC 20008

Dear Ambassador Al-Sabah,

Thank you for your invitation to the reception for the 58th Anniversary of the Independence of the State of Kuwait on February 26, 2019. I always appreciate the opportunity to engage with the Embassy on areas of mutual interest between our nations, from human rights and security to trade and investment, and I look forward to continuing our productive partnership.

Regrettably, the Embassy's event will be held at the Trump International Hotel, which is owned by the President of the United States. I must therefore decline your invitation, as the Emoluments Clause of the U.S. Constitution (Article I, Section 9, Paragraph 8) stipulates that no federal officeholders shall receive gifts or payments from foreign states or rulers without the consent of the Congress.

Please be aware that the continued ownership of the Trump International Hotel in Washington, D.C. raises serious ethical and legal questions for the U.S. Government and an event hosted by a foreign government could amount to a violation of the U.S. Constitution.

Sincerely,



Ted W. Lieu
Member of Congress

1771: Bribery of King disclosed after a century

1670: Secret Treaty of Dover

“The King of England will make a public profession of the Catholic faith and will receive the sum of two million of crowns from the Most Christian King [Louis XIV] in the course of the next six months.”

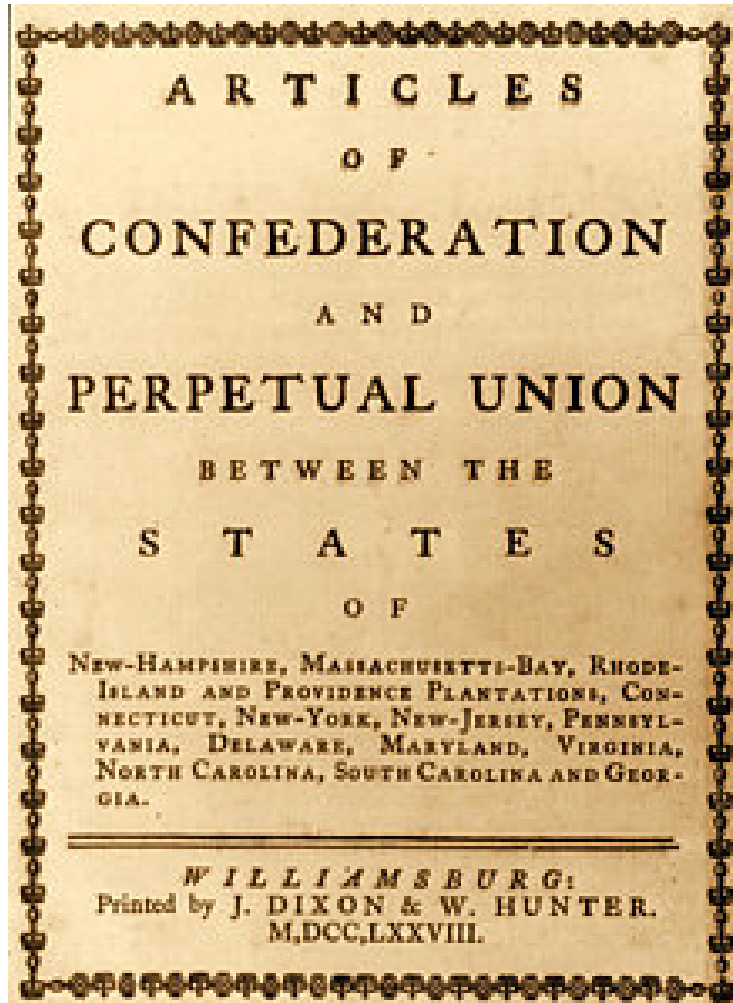
Charles II, King of England



Louis XIV, King of France



Articles of Confederation (1781)



“nor shall any person holding any office of profit or trust under the united states, or any of them, accept any present, emolument, office or title of any kind whatever from any king, prince or foreign state”

Constitutional Convention

August 23, 1787

Charles Pinckney
Delegate from South Carolina



Moved to add to Article I:

“no Person holding any Office of Profit or Trust under them [the United States], 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.”

Virginia Ratifying Convention

June 15, 1788

Governor Edmund Randolph



Explains the Foreign Emolument Clause

- “[It] restrains any person in office from accepting of any present or emolument, title or office, from any foreign prince or state.
- This restriction is provided to prevent corruption.
- [This] provision [is] against the danger ... of the President receiving emoluments from foreign powers.
- If discovered, he may be impeached.
- I consider, therefore, that he is restrained from receiving any present or emolument whatever. It is impossible to guard better against corruption.”

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5 STAR DC HOTELS

WASHINGTON D.C. *DISTINGUISHED FIVE- STAR HOTEL*

Approved by Congress in 1880 and completed in 1899, the iconic building, affectionately known as the Old Post Office was dreamt up with the intention of announcing Washington, D.C. as a world-class capital. With a storied history that has included a front seat to D.C's most famous marches, parades, and inaugurations and the spot where Flag Day was first inceptioned, Trump International Hotel Washington, D.C. is an experience not to be missed. Meticulously redeveloped to retain the incredible historic character while elevating the design to bring a new level of luxury to Pennsylvania Avenue, exceeding expectations at every turn.

Trump International Hotel Washington, D.C., includes 263 of the largest and most luxurious **guest rooms and suites** in Washington, D.C., with soaring 16-foot ceilings, jaw-dropping views of the Nation's capital, carefully restored original woodwork, and dazzling crystal chandeliers. Encompassing 38,000 sq. ft. of **meeting and event space**, including the exquisite 13,200 sq. ft. column-free Presidential Ballroom, the largest luxury ballroom among hotels in Washington, D.C., we provide the perfect backdrop for any occasion. Our Lincoln Library and Franklin Study both provide elegant event settings while paying homage to America's rich and vibrant history.

The Grand Lobby, a soaring nine-story atrium that functions as the hotel's main hub, houses 1,000 panes of glass forming the atrium roof that illuminates the interior courtyard setting with sunlight. It is home to the city's first **BLT Prime** restaurant with celebrated chef David Burke, **Benjamin Bar & Lounge** which also features Benjamin Pastry in the morning. As the centerpiece, Robert Irwin's "48 Shadow Planes," a series of fabric panels that hang from the ceiling, was initially installed in 1983 and commissioned by the U.S. Government as a part of the "Art & Architecture" program to showcase the vibrancy of American visual arts.

Additional features include a 10,000 sq. ft. **The Spa by Ivanka Trump**, a curated walkway museum and Clock Tower observation deck with panoramic views of the capital city.

1899: Old Post Office built

2013: 60 year lease to Trump Organization

10/26/16: Reopened as Trump International Hotel





How the Trump hotel changed Washington's culture of influence

Washington Post Aug 7, 2017



- Veterans groups were brought in to lobby Congress against a law allowing victims of 911 to sue Saudi Arabia
- \$270,000 in hotel charges
 - \$190,000 for rooms
 - \$78,000 for catering
 - \$1,600 for parking
- The bill was paid by the Kingdom of Saudi Arabia

At President Trump's hotel in New York, revenue went up this spring — thanks to a visit from big-spending Saudis
Washington Post Aug 3, 2018



- The general manager of the Trump International Hotel in Manhattan had a rare bit of good news
- After two years of decline, revenue from room rentals went up 13 percent in the first three months of 2018
- One major factor: “a last-minute visit to New York by the Crown Prince of Saudi Arabia,” wrote general manager Prince A. Sanders in a May 15 letter
- A five-day stay in March was enough to boost the hotel's revenue for the entire quarter
- Neither the Trump Organization nor the Saudi Embassy answered questions about whether the Saudi government paid

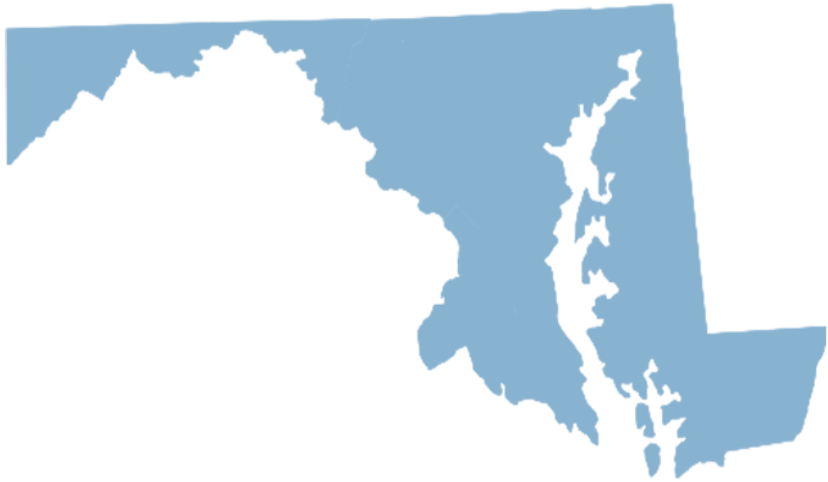
Citizens for Responsibility & Ethics in Washington (CREW) v. Trump Filed Jan. 23, 2017

CREW Board Chair: Norman Eisen

WH Ethics Counsel, President Obama



District of Columbia, State of Maryland v. Trump Filed June 12, 2017



Senator Richard Blumenthal et al v. Trump

Filed June 14, 2017

30 members of Senate

171 members of House of Representatives



Blumenthal v Trump (D.DC)

Case 1:17-cv-01154 Document 1 Filed 06/14/17 Page 1 of 54

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Senator RICHARD BLUMENTHAL)	
706 Hart Senate Office Building)	
Washington, D.C. 20510,)	
)	
Representative JOHN CONYERS, JR.)	
2426 Rayburn House Office Building)	Civil Action No.
Washington, D.C. 20515,)	
)	
Senator RICHARD J. DURBIN)	
711 Hart Senate Office Building)	
Washington, D.C. 20510,)	
)	
Senator PATTY MURRAY)	
154 Russell Senate Office Building)	
Washington, D.C. 20510,)	
)	
Senator ELIZABETH WARREN)	
317 Hart Senate Office Building)	
Washington, D.C. 20510,)	
)	
Senator AMY KLOBUCHAR)	
302 Hart Senate Office Building)	
Washington, D.C. 20510,)	
)	
Senator BERNARD SANDERS)	
332 Dirksen Senate Office Building)	
Washington, D.C. 20510,)	
)	
Senator PATRICK LEAHY)	
437 Russell Senate Office Building)	
Washington, D.C. 20510,)	
)	



President's Motion to Dismiss - Standing

- CREW v Trump
 - Dec 21, 2017: GRANTED – Case dismissed S.D.N.Y
 - Oct 29, 2018: Argued in 2nd Circuit
 - So far, no decision
- Blumenthal v Trump
 - Sep 28, 2018: DENIED -- D.D.C.
 - Not yet ripe for appeal
- DC & Maryland v Trump
 - March 28, 2018: DENIED as to Trump property in D.C. – D.Md.
 - Stay on appeal granted
 - March 19, 2019: oral argument 4th Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator RICHARD BLUMENTHAL,
Representative JOHN CONYERS, JR., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States,

Defendant.

Civil Action No. 17-cv-1154 (EGS)

INTEREST OF *AMICI CURIAE*

Amici curiae—Rebecca L. Brown, Harold H. Bruff, Neil Kinkopf, Christopher H. Schroeder, Peter M. Shane, Kevin M. Stack, and Peter L. Strauss (“Separation of Powers Scholars”)—are distinguished professors of constitutional and administrative law who are experts in separation of powers issues.¹ They have a strong interest in ensuring that the Court’s decision in this case upholds the separation of powers principles and the checks and balances found in the Constitution. They thus file this *amicus* brief to urge the Court to find this case justiciable.²

**BRIEF OF SEPARATION OF POWERS SCHOLARS AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS**

President's Motion to Dismiss – “Emolument”

- CREW v Trump
 - SDNY only decided standing issue
 - If 2nd Circuit reverses on standing, to be decided by SDNY
- Blumenthal v Trump
 - D.D.C so far has only decided standing issue
 - Has not scheduled oral argument on emolument issue
- DC & Maryland v Trump
 - July 25, 2018: DENIED Revenue from Trump Hotel within meaning of “emolument”
 - Stay on appeal granted
 - March 19, 2019: oral argument 4th Circuit

Article I, Section 9

- ... no Person holding any Office of Profit or Trust ... 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

President's position

- when the Constitution was ratified “emolument” had two distinct meanings:
- a “narrow” sense limited to “profit arising from an office or employ”
- a “broad” sense meaning “benefit, advantage or profit”
- emolument in the Constitution only referred to the narrow meaning

Brief can be downloaded at:
www.clarkcunningham.org/ScientificMethods.html

In The
United States Court of Appeals
For The Fourth Circuit

**In Re: DONALD J. TRUMP, President of the
United States of America, in his official capacity and
in his individual capacity,**

Petitioner.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
AT GREENBELT**

**BRIEF OF *AMICI CURIAE*
PROFESSOR CLARK D. CUNNINGHAM AND
PROFESSOR JESSE EGBERT
ON BEHALF OF NEITHER PARTY**

Corpus of Founding Era American English (COFEA)

95,133 texts

138,892,619 words

Search Now

The Corpus of Founding Era American English covers the time period starting with the reign of King George III, and ending with the death of George Washington (1760-1799). COFEA contains documents from ordinary people of the day, the Founders, and legal sources, including letters, diaries, newspapers, non-fiction books, fiction, sermons, speeches, debates, legal cases, and other legal materials. Three sources have provided the majority of texts, the National Archive Founders Online; William S. Hein & Co., HeinOnline; Text Creation Partnership (TCP) Evans Bibliography (University of Michigan).

Search results

- 69 uses of *emolument* in coordinated noun phrases in which the term appeared at the end of a list, preceded by “other”
- Approximately one out of every 40 cases of *emolument* occurs in this structure
- On average, nouns in *COFEA* appear in this structure in only one out of 1250 cases

Nouns preceding *other emolument(s)* in coordinated noun phrases will be types of *emolument* but will not exhaust meaning of *emolument*

Cats, dogs, and other animals
*Cats, birds, and other dogs

Examples

- having Receiv'd a wound ... which has renderd him incapable of doing duty with his Regiment ever since— and being much Embarrass'd by not having receiv'd any pay, Cloathing or other Emoluments granted to the Officers of your State, Since July 1779 (Leonard Cooper to Virginia Delegates 1781)

Examples

- the memorial of William Finnie ... praying that the donation of lands and other emoluments appertaining to the rank of a Colonel in the line of the late continental army may be extended to him (Continental Congress 1785)
- Rivers and lakes are useful for navigation or for fishing, or for other emoluments arising from their possession (Summary of the Law of Nations 1795)

Nouns preceding *other emolument(s)* in coordinated NPs

Bounties	Lands	Privileges
Clothing	Liberty	Rank
Command	Offices	Rations
Commissions	Pay	Subsistence
Commutation	Gratuity	Sum
Contracts	Pensions	Tithes
Fees	Perquisites	Toll
Forage	Places	

Scientific Methods for Analyzing Original Meaning: Corpus Linguistics and the Emoluments Clauses

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[On-line appendix](#)

The research described in this paper was submitted to the U.S. Court of Appeals for the 4th Circuit on January 29, 2019, as a friend of the court (amicus) brief in support of neither party, in the case of In Re Trump, Case No. 18-2486 [appeal from District of Columbia v Trump, 315 F.Supp.3d 875 (D.Md. 2018)]. The case is scheduled for oral argument on March 19, 2019. [Download amicus brief as pdf.](#)

clarkcunningham.org/JP/Emolument/ScientificMethodsTOC.html
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Example 2: Appendix to the History of Congress, 8 Annals of Cong. 1569-1570 (1798-1799)
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Example 4: Form of Commission to Deputy Attorney Generals (1779) 3 THE PAPERS OF THOMAS JEFFERSON 21 (Julian P. Boyd ed. 1951), available at https://founders.archives.gov/documents/Jefferson/01-03-02-0025
Example 5: Reply to Vindex Patriae on American Representation in Parliament , THE GAZETTEER (Jan 29, 1776), 13 THE PAPERS OF BENJAMIN FRANKLIN 63-66 (Leonard W. Labaree ed. 1969), available at https://founders.archives.gov/documents/Franklin/01-13-02-0022
Example 6: To George Washington from William Mumford , 9 May 1789, May 9th, 1789, 2 THE PAPERS OF GEORGE WASHINGTON 240-242 (Dorothy Twohig ed. 1987), available at https://founders.archives.gov/documents/Washington/05-02-02-0179
Example 7: 20 JOURNALS OF THE CONTINENTAL CONGRESS 766 (1781)
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Example 9: 15 JOURNALS OF THE CONTINENTAL CONGRESS 1307 (1779)
Example 10: Leonard Cooper to Virginia Delegates , 22 June 1781, 3 THE PAPERS OF JAMES MADISON 166-167 (William T. Hutchinson & William M. E. Rachal eds. 1963), available at https://founders.archives.gov/documents/Madison/01-03-02-0085
Example 11: To Thomas Jefferson from George Mason , 6 March 1791, 5 THE PAPERS OF THOMAS JEFFERSON 78-80 (Julian P. Boyd ed. 1951), available at https://founders.archives.gov/documents/Jefferson/01-05-02-0102

A big Trump case hinges on the definition of ‘emoluments.’ A new study has bad news for him.

Washington Post

<https://www.washingtonpost.com/politics/2019/01/29/big-trump-case-hinges-definition-emoluments-new-study-has-bad-news-him/>

D.C. and Maryland are suing President Trump for violating a little-known constitutional provision called "the emoluments clause."



By [Aaron Blake](#)

January 29 at 2:58 PM

President Trump is dealing with special counsel Robert S. Mueller III's investigation, a new Democratic House majority and a series of controversies. Lurking behind it all is a slow-moving legal case trying to establish whether Trump is violating the Constitution by accepting foreign money at his hotel.

A new study suggests he might be.

Seminar on Judicial Power Spring 2019

www.clarkcunningham.org/JP/index.htm

- Article 3: case or controversy – Heather Kuhn
- 4th Amendment “papers and effects” – Michael Duffey
- 5th Amendment commas v semicolons – Enid Kim
- 7th Amendment: “right of trial by jury shall be preserved” Haden Mars
- 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” – Abby Stout
- Pre-apply for Fall 2019: www.surveymonkey.com/r/JP19F

This presentation available at:

www.clarkcunningham.org/TrumpInc.html

See also:

Scientific Methods for Analyzing Original Meaning: Corpus Linguistics and the Emoluments Clauses

Available at:

www.clarkcunningham.org/ScientificMethods.html

Nonpartisan Originalism, available at

www.clarkcunningham.org/NonpartisanOriginalism.html