

EXPLAINER

The Emoluments Clauses, Explained

The framers wanted to insulate the president and federal officials from corrupting influences, but a new law is needed to ensure effective enforcement.



Eric Petry



Daniel I. Weiner

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Government Power

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A number of President Trump's recent actions, including cryptocurrency transactions, real estate deals, and interactions with foreign officials, have raised legal questions related to the Constitution's Foreign and Domestic Emoluments Clauses. Congress can protect the public from these abuses by

passing [new legislation](#) [\[link-1\]](#) that fully implements the clauses' prohibitions.

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What are the Emoluments Clauses?

The Constitution's Emoluments Clauses are among the oldest federal anticorruption safeguards. Both clauses apply to the president, who is exempt from many other government ethics rules.

The [Foreign Emoluments Clause](#) [\[link-7\]](#)

bars the president and other federal officials from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or

foreign State” without the consent of Congress. It reflects the framers’ desire to prevent federal officials from succumbing to foreign influence.

The [Domestic Emoluments Clause](#) [\[link-8\]](#)

provides for the president to receive a fixed salary and bars him from receiving “any other Emolument from the United States, or any of them.” It was designed to insulate the president against undue [pressure](#) [\[link-9\]](#) from Congress or any individual state.

How have the Emoluments Clauses been interpreted?

Until recently, there were very few judicial decisions interpreting either clause. In providing guidance to successive presidents, however, the Department of Justice generally has taken the position that the clauses broadly prohibit receipt of any tangible [profit, advantage, or benefit](#) [\[link-10\]](#) from a foreign government (absent congressional consent) or a U.S. state.

When Trump first took office in 2017, he departed from the practice of other recent presidents who voluntarily divested from any assets that could pose a potential conflict of interest. He maintained control of his extensive business holdings, including hotels and other properties that regularly transacted with foreign governments and officials and with state governments.

Concerns about these business dealings led to lawsuits filed by members of Congress, the state of Maryland and the District of Columbia, and a group of private plaintiffs. In the litigation that followed, federal trial court judges in [Maryland](#) [\[link-11\]](#) and the [District of Columbia](#) [\[link-12\]](#) issued opinions confirming a broad reading of both clauses to include not only honors and gifts but also proceeds from commercial transactions. But these lawsuits were later [dismissed](#) [\[link-13\]](#) on [procedural grounds](#) [\[link-14\]](#), meaning

that there has been no recent, definitive judicial interpretation of either clause.

Have the Emoluments Clauses been an issue before?

The Constitution doesn't say how to enforce the Emoluments Clauses, but robust enforcement wasn't needed in the past because presidents and other high-level officials voluntarily complied. When in doubt, previous presidents [sought official legal guidance](#) [\[link-15\]](#) — for example, when President Barack Obama asked whether he could accept the cash award accompanying his Nobel Peace Prize, and when President Ronald Reagan asked whether he could continue to receive the state pension he earned from his time as governor of California.

Congress has also played a [watchdog role](#) [\[link-16\]](#). Particularly in the 18th and 19th centuries, it regularly exercised its power to consent to the receipt of specific gifts under the Foreign Emoluments Clause. Later, in 1966, it established a statutory

system for handling such gifts — the Foreign Gifts and Decorations Act — which permits officials to accept gifts of minimal value and symbolic honors but generally requires other gifts to be treated as the property of the U.S. government, not the accepting official.

There were no significant lawsuits over the Emoluments Clauses until Trump's first term in office. And because those cases were dismissed on procedural grounds without resolving the underlying emoluments issue, it remains unclear who, if anyone, has the right to sue to enforce either clause.

Why do the Emoluments Clauses matter today?

The Emoluments Clauses exist to prevent U.S. officials from selling influence or favors, but the norm of strict voluntary compliance with both the letter and spirit of these and other safeguards has been eroding for years. Under the Obama administration, for instance, Secretary of

State Hillary Clinton maintained her ties to the [Clinton Foundation](#) [\[link-17\]](#), which accepted donations from foreign governments. And while the Emoluments Clauses don't apply to relatives of government officials, then-Vice President Joe Biden's son Hunter has been accused of trading off his father's position in a variety of [foreign business dealings](#) [\[link-18\]](#), which strained the longstanding practice of administration members distancing themselves from transactions involving friends and family to avoid even the appearance of impropriety.

But the norm shattered completely when Trump came into office. During his first term, Trump kept control of hotels and other properties that did extensive business with foreign officials and governments, as well as state governments.

Now back in office, Trump's business entanglements have expanded even further. In addition to hotels and other properties, the Trump family also launched new cryptocurrency ventures

like the [\\$TRUMP meme coin](#) [link-19] and [World Liberty Financial](#) [link-20] trading platform, which have funneled hundreds of millions of dollars to the Trumps, including from buyers connected to foreign governments like the [United Arab Emirates](#) [link-21] and [China](#) [link-22].

The president has also signaled an unprecedented willingness to accept gifts from foreign governments, such as a new [luxury airplane](#) [link-23] from Qatar. Ownership of the plane will reportedly be [transferred](#) [link-24] from the U.S. government to the president's library foundation before he leaves office, potentially clearing the way for him to continue using it as a private citizen, although Trump denies that he will do so.

How can the Emoluments Clauses be enforced?

Courts will likely be asked to step in again to adjudicate whether the Emoluments Clauses apply to these new situations,

but any new lawsuit could run into the same procedural hurdles as those filed under the first Trump administration. Likewise, several members of Congress have [introduced](#) [link-25] [resolutions](#) [link-26] [disapproving](#) [link-27] of Trump's actions, but they are unlikely to pass without bipartisan support.

As detailed in [this Brennan Center report](#) [link-28], a more durable solution would be for Congress to pass legislation addressing situations that are not covered by the Foreign Gifts and Decorations Act. The law should make clear, for example, that it applies to a covered official's receipt of commercial proceeds or indirect receipt of gifts or other benefits via a foundation or other entity over which the official has substantial influence or control.

The Constitution's Emoluments Clauses are a key safeguard against corruption, among the few provisions that apply to the president himself. Now more than ever, it is critical that Congress take action to give them real effect.

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link-28: this Brennan Center report <https://www.brennancenter.org/our-work/policy-solutions/codifying-constitutions-emoluments-clauses>