Emoluments Case

Members of Congress Emoluments Case
Key Excerpts from 2019 District Court Opinion
On Stating a Claim and Defining Emoluments

Prepared by Elise Bean
Levin Center at Wayne Law

On April 30, 2019, D.C. District Judge Sullivan issued an opinion which defined the term "emolument," held that Members of Congress had stated a claim, and denied the President's motion to dismiss the case. *Blumenthal v. Trump*, 373 F. Supp. 3d 191 (D.D.C. 2019). Here are key excerpts from his 48-page opinion, each excerpt of which consists of a direct quotation taken from the text of his opinion, with no changes in punctuation but with footnotes omitted.

Narrow definition of emolument rejected
The President's definition [of emolument], however, disregards the ordinary meaning of the term as set forth in the vast majority of Founding-era dictionaries; is inconsistent with the text, structure, historical interpretation, adoption, and purpose of the Clause; and is contrary to Executive Branch practice over the course of many years.

Members of Congress have stated a claim
[T]he Court finds that: (1) plaintiffs have stated a claim against the President for allegedly violating the Foreign Emoluments Clause; (2) plaintiffs have a cause of action to seek injunctive relief against the President; and (3) the injunctive relief sought is constitutional.

Analysis of definition
The Court is persuaded that the weight of the evidence in "founding-era dictionaries and other contemporaneous sources" supports the broad meaning of the term advocated by plaintiffs and supported by the Legal Historians.

The fact that there is evidence from founding-era sources that both the broad definition advocated by plaintiffs, as well as a narrower definition associating "Emolument" with employment, existed at the ratification of the Constitution, however, suggests some

ambiguity in the term. Accordingly, the Court considers the surrounding text, structure, adoption, historical interpretation, and purpose of the Clause, as well as Executive Branch practice to determine the meaning of "Emolument."

The Court is persuaded that the text and structure of the Clause, together with the other uses of the term in the Constitution, support plaintiffs' definition of "Emolument" rather than that of the President.

In view of the overwhelming evidence pointing to over two hundred years of understanding the scope of the Clause to be broad to achieve its purpose of guarding against even the possibility of "corruption and foreign influence," 3 Records of the Federal Convention of 1787, at 327 (Max Farrand ed., 1966), the Court is persuaded that adopting plaintiffs' broad definition of "Emolument" ensures that the Clause fulfills this purpose.

OLC opinions considered
Given that there is only one other judicial opinion interpreting the Clause, the Court looks to OLC and Comptroller General opinions as sources of authority for how "Emolument" is defined and how the Clause is interpreted and applied. *Canning*, 573 U.S. at 525 (noting that "the longstanding 'practice of the government' can inform our determination of 'what the law is'" and that "this Court has treated practice as an important interpretive factor even when the nature or longevity of that practice is subject to dispute, and even when that practice began after the founding era") (citations omitted). OLC opinions have consistently cited the broad purpose of the Clause and broad understanding of "Emolument" advocated by plaintiffs to guard against even the potential for improper foreign government influence.

Court's definition
"Emolument" is broadly defined as any profit, gain, or advantage.

Statement of Claim
Plaintiffs have alleged that the President has accepted a variety of Emoluments from foreign governments—intellectual property rights, payments for hotel rooms and events, payments derived from real estate holdings, licensing fees for "The Apprentice," and regulatory benefits—without seeking and obtaining the consent of Congress. Am. Compl., ECF No. 14, ¶¶ 44-67. Accepting the allegations in the Amended Complaint as true, which the Court must at this juncture, plaintiffs' allegations state a plausible claim for relief, and survive the President's motion to dismiss.

Equitable discretion to enjoin unconstitutional actions
The Court is persuaded that this is a proper case in which to exercise its equitable discretion to enjoin allegedly unconstitutional action by the President.

Here, accepting the allegations in the Amended Complaint as true, which the Court must at this juncture, the President is accepting prohibited foreign emoluments without seeking congressional consent, thereby defeating the purpose of the Clause to guard

against even the possibility of "corruption and foreign influence." 3 Records of the Federal Convention of 1787, at 327 (Max Farrand ed., 1966). Exercising the Court's equitable discretion here is therefore "not in derogation of the separation of powers, but to maintain their proper balance." *Nixon*, 457 U.S. at 754.

Taking care laws are faithfully executed

[A]djudicating this case ensures that the President fulfills his duty to "take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3, and consistent with his oath of office to "preserve, protect and defend the Constitution of the United States," U.S. Const. art. II, § 1, cl. 8.

No discretion over whether to comply with emoluments clause

"The language of the Emoluments Clause is both sweeping and unqualified." 17 Op. O.L.C. at 121. The acceptance of an Emolument barred by the Clause is prohibited unless Congress chooses to permit an exception. *Id.* Given the "sweeping and unqualified" Constitutional mandate, the President has "no discretion . . . no authority to determine whether to perform the duty" to not accept any Emolument until Congress gives its consent. *Swan*, 100 F.3d at 977. Accordingly, seeking congressional consent prior to accepting prohibited foreign emoluments is a ministerial duty. *Id*. The President's argument regarding the "judgment" and "planning" needed to ensure compliance with the Clause is beside the point. It may take judgment and planning to comply with the Clause, but he has no discretion as to whether or not to comply with it in the first instance. *See id*.

Whether compliance imposes significant burden is wrong inquiry

The President complains about the "significant burdens" an injunction requiring him to comply with the Clause would impose. Reply, ECF No. 28 at 32. However, as discussed supra Section IV.D.1, the correct inquiry is not whether injunctive relief requiring the President to comply with the Constitution would burden him, but rather whether allowing this case to go forward would interfere with his ability to ensure that the laws be faithfully executed. See *Clinton*, 520 U.S. at 718 (Breyer, J., concurring in the judgment). Accordingly, the injunctive relief sought in this case is constitutional.