

Foreign Emoluments 101

“[N]o Person holding any Office of Profit or Trust under [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.”
Foreign Emoluments Clause, U.S. Const. art. I, § 9, cl. 8.

What are “emoluments”?

When the Constitution was written, the word “emolument” had a broad meaning and was defined in dictionaries of the time as “profit,” “advantage,” “benefit,” and “comfort.” The Founding Fathers used the term when referring to benefits of all kinds, including the benefits gained from ordinary business transactions.

The Foreign Emoluments Clause is one of the Constitution’s most important anti-corruption provisions. This language prohibits any federal officeholder – including the President – from accepting any benefits or advantages from foreign states without the consent of Congress. These benefits also include any compensation for services rendered in a private capacity, such as when a foreign government throws a party at a hotel owned by a federal official.

Because President Trump has refused to come to Congress, as the Constitution requires, and disclose the benefits he wishes to accept from foreign governments, we cannot know the full range of his potential constitutional violations. But thanks to the work of the independent press, we do know that President Trump has received the following foreign emoluments during his presidency, among others:

- Payments from foreign governments housing their officials in rooms or hosting events at Trump’s Washington, D.C. hotel;
- Entities owned by foreign states paying rent at Trump Tower in New York City; and
- The Chinese government granting forty trademarks to Trump and his businesses.

Why does it matter if the President accepts foreign emoluments?

The Framers of the Constitution recognized the extreme danger posed by corruption, and they were specifically worried about the threat of interference in government from outside their own borders. The Framers feared that if our President or other federal officeholders could receive payments from the leaders of other countries, the well-being of the American people might take a backseat to those foreign interests.

The Foreign Emoluments Clause was included in the Constitution to protect against foreign corruption and influence. But President Trump’s continued and unknown business interests make it impossible to know if he is making policy decisions concerning trade, military efforts, or diplomatic overtures based on his personal interests or the best interests of the American people. This is exactly what our Founders tried to prevent.

What is the constitutional duty of the President concerning foreign emoluments?

The plain text of the Constitution requires the President to first seek and obtain the consent of the Congress before accepting any foreign emoluments. Previous presidents have complied with this constitutional duty by seeking Congress' consent to accept foreign emoluments or simply choosing not to receive them.

For example, when Colombia's president Simón Bolívar presented President Andrew Jackson with a commemorative gold medal, Congress directed that the medal be "deposited in the Department of State." President John F. Kennedy was offered honorary Irish citizenship, but after consulting with the Office of Legal Counsel – which advised that acceptance would implicate the Foreign Emoluments Clause – President Kennedy declined to accept the honor.

Congress has not always withheld its consent to a president's acceptance of a foreign emolument. For example, President Benjamin Harrison had "certain medals presented to him by the Governments of Brazil and Spain during the term of his service as President of the United States," which Congress authorized him to personally accept.

While there are many more examples of presidents, and other government officials, throughout history who have complied with their constitutional duty, President Trump has not.

What is the constitutional duty of Congress concerning foreign emoluments given to the President?

The Constitution authorizes Congress to either give or withhold its consent to the President's acceptance of foreign emoluments.

By entrusting Members of Congress with this responsibility, the Founders ensured that no federal officeholder would decide for themselves whether particular emoluments were likely to compromise their independence or integrity. They also ensured that any receipt of foreign emoluments would be transparent and subject to public scrutiny, further minimizing the dangers of corruption and influence that such transfers of wealth or benefit might pose.

If President Trump believes his acceptance of foreign emoluments raises no conflicts of interest, he can simply follow in the footsteps of his predecessors and present them to Congress for approval. Trump's failure to comply with the Constitution not only demonstrates an utter disregard for the rule of law, it also raises a serious question: *what is he trying to hide?*