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Between "The Rock" and a Hard Case: Application of the Emoluments Clauses for a New Political Era

Douglas R. Hume, J.D.*

Abstract

The election of Donald Trump in 2016 rewrote some of the traditional rules for electing presidents in the United States. Does his election portend a new breed of presidential candidate, arising from the business and celebrity arena rather than traditional government service? If so, the potential for candidates with more diverse and global business interests (and the conflicts of interest that come along with them) becomes more likely. This Essay discusses the historical intent of the Emoluments Clauses and the issue of potential presidential conflicts of interest. This Essay also examines the litigation efforts filed against President Trump to force him to divest his business interests or transfer them to a blind trust, and the search for a plaintiff with standing to bring a valid claim. Lastly, this Essay discusses potential solutions if a plaintiff with standing cannot be found, or if the courts leave the problem to be solved within the political realm.

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I. INTRODUCTION

November 5, 2024. Tension is high as the country and the world anxiously await the results of the presidential election in the United States. The campaign season leading up to the election produced sights and sounds unlike anything the country had ever seen or heard. For the first time, the general election contained three candidates with no prior political experience; instead, the candidates relied on business experience, celebrity, and name recognition for their popularity. Headed into election night, it is a virtual three-way tie between the candidates. Oprah Winfrey heads the Democratic ticket. Mark Cuban, attempting to pull off a miracle of Trumpian proportions, runs as a Republican. Filling out the field is Dwayne "The Rock" Johnson running as an independent, who—with raised eyebrow and flexed muscle—refers to himself as "The People's Candidate."

Hard to imagine? Perhaps prior to 2016, but each of these individuals—in addition to other celebrities and business people—have mentioned the possibility of running for president.[1] If the election of Donald Trump has taught us anything, it is that we should no longer be surprised at who runs for, or is ultimately elected president.[2] Does the recent election of Donald Trump mean that we could be seeing a new type of politician running for president, coming out of the business and celebrity arenas instead of government service?[3] Will this new breed of "politician" carry with them varying business interests and potential conflicts of interest unlike any we have seen in the past?[4] Is the election of Donald Trump a one-off event, or are we entering a period where traditional politicians will be shunned in favor of public figures with more

1. *See* Saba Hamedy, *Dwayne 'The Rock' Johnson Still Interested in Running for President -- Just Maybe Not in 2020*, CNN (Apr. 4, 2018, 3:45 PM), https://www.cnn.com/2018/04/04/politics/dwayne-johnson-the-rock-political-aspirations/index.html; Betsy Klein, *Oprah for President?*, CNN (Mar. 2, 2017, 9:34 AM), https://www.cnn.com/2017/03/01/politics/oprah-presidential-run/index.html; Lisa Marie Segarra, *Mark Cuban Says He's Weighing a Presidential Bid*, FORTUNE (June 5, 2018), http://fortune.com/2018/06/05/mark-cuban-weighs-presidential-bid.

2. 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.

3. *See* Lee Drutman, *How to Deal with the Age of Celebrity Candidates*, VOX (Jan. 11, 2018, 1:50 PM), https://www.vox.com/polyarchy/2018/1/11/16878546/celebrity-political-candidates ("In an era of nonstop politics-as-entertainment media, there's something appealing about a celebrity candidate known for being an inspirational problem solver on television, who makes us feel like great things are possible.").

4. *See generally* David A. Fahrenthold & Jonathan O'Connell, *Nine Questions about President Trump's Businesses and Possible Conflicts of Interest*, WASH. POST (MAR. 28, 2018), https://www.washingtonpost.com/politics/nine-questions-about-president-trumps-businesses-and-possible-conflicts-of-interest/2018/01/29/f8b2a3a8-014f-11e8-9d31-d72cf78dbeee_story.html (describing some of President Trump's business interests and how those interests have been impacted by being elected).

diverse holdings, relationships, and economic interests?[5] Will this exacerbate issues related to potential presidential conflicts of interest?[6]

In response to President Trump's varied business interests, multiple news sources have discussed President Trump's potential conflicts of interest arising under the Emoluments Clauses.[7] The purpose of the Clauses is to avoid foreign (and domestic) interference in our government by regulating the potential conflicts of interest and corruption that could subsequently arise from emoluments.[8] Since Inauguration Day, multiple lawsuits have been filed against the President under the Emoluments Clauses in an effort to force him to divest his business interests, or transfer them into a blind trust.[9] This Essay addresses the Emoluments Clauses and the lawsuits filed against President Trump.

The Essay is divided into three parts. Part II provides a brief history of the Emoluments Clauses, along with examples of the Clauses being implicated by past presidents.[10] Part III examines the lawsuits filed against President Trump, highlighting the lawsuit filed by Citizens for Responsibility and Ethics in Washington (CREW) (the most mature of the lawsuits filed against the President) and the plaintiffs' problem with standing.[11] Part IV looks at

5. *See* Judy Kurtz, *Alec Baldwin: I Want to See 'a Healthy Republican Party,'* THE HILL (June 11, 2018, 12:21 PM), http://thehill.com/blogs/in-the-know/391648-alec-baldwin-i-want-to-see-a-healthy-republican-party ("I'd like to think that this thing with Trump is a one-off.").

6. *See* Jim Zarroli, *Donald Trump's Businesses Pose New Conflict of Interest Questions*, NPR (Nov. 10, 2016, 5:08 AM), https://www.npr.org/2016/11/10/501537263/donald-trumps-businesses-pose-new-conflict-of-interest-questions (noting that it is difficult to assess conflicts of interest arising between Trump's companies and his administration because Trump's businesses are privately held and are not required to "release much information to the public about their operations").

7. *Id.* The word "emolument" is commonly defined as "the returns arising from office or employment usually in the form of compensation or perquisites." *Emolument,* MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/emolument (last visited Oct. 11, 2018). The word comes from *emolumentum*, which is Latin for "profit" or "gain." *Id.* The Emoluments Clauses are found in Article I, Section Nine, Clause Eight and Article II, Section One, Clause Seven of the Constitution. U.S. CONST. art I, § 9, cl. 8; *id.* art. II, § 1, cl.7.

8. NORMAL EISEN ET AL., THE EMOLUMENTS CLAUSE: ITS TEXT, MEANING, AND APPLICATION TO DONALD J. TRUMP 2 (2016), https://www.brookings.edu/wp-content/uploads/2016/12/gs_121616_emoluments -clause1.pdf ("Foreign interference in the American political system was among the gravest dangers feared by the Founders of our nation and the framers of our Constitution. . . . In response . . . the Framers included in the Constitution the Emoluments Clause of Article I, Section 9.").

9. These cases are discussed in Part III and include: (1) *Citizens for Responsibility and Ethics in Washington v. Trump*, 276 F. Supp. 3d 174 (S.D.N.Y. 2017) [hereinafter CREW v. Trump], *appeal docketed*, No. 18-474 (2d Cir. Feb. 16, 2018); (2) *Weinstein v. Trump*, No. 17 Civ. 1018 (GBD), 2017 WL 6544635 (S.D.N.Y. Dec. 21, 2017); (3) *District of Columbia v. Trump*, 291 F. Supp. 3d 725 (D. Md. 2018); and, (4) *Blumenthal v. Trump*, No. 1:17-cv-01154 (EGS), 2018 WL 4681001, (D.D.C. Sept. 28, 2018).

10. *See infra* Part II.

11. *See infra* Part III.

potential solutions to the standing problem and seeks to answer what can be done if a plaintiff with proper standing cannot be found, or if the courts leave the problem to be solved within the political realm.[12]

II. HISTORY OF THE EMOLUMENTS CLAUSES

Most of the debates surrounding the Emoluments Clause as it relates to President Trump refer to what is known as the Foreign Emoluments Clause found in Article I, Section Nine, Clause Eight of the Constitution.[13] The Clause states: "No Title of Nobility shall be granted by the United States: And no person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign state."[14] This Clause applies to presents and emoluments from foreign governments and their instrumentalities.[15]

Many scholars have written extensively on the history and purpose of the Emoluments Clauses.[16] A full recitation thereof is not the goal of this Essay. However, a brief discussion of the Clauses' background will prove helpful in understanding the arguments made by the parties engaged in the Emolument Clause litigations discussed in Part III.[17]

The Foreign Emoluments Clause has its origin not in the Constitution, but in the Articles of Confederation of 1781.[18] The prohibition against federal officers accepting presents or emoluments from foreign governments was

12. *See infra* Part IV.

13. U.S. CONST. art I, § 9, cl. 8.

14. *Id.*

15. *Id.* The Constitution also contains what is known as the Domestic Emoluments Clause (sometimes referred to as the Presidential Emoluments Clause) found in Article II, Section One, Clause Seven. *Id.* art II, § 1, cl. 7. It 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." *Id.* This Clause applies to any emoluments from the federal government or from any of the individual states above and beyond the President's fixed salary. *Id.*

16. *See generally* ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN'S SNUFF BOX TO CITIZENS UNITED (2014); EISEN ET AL., *supra* note 8; John F. O'Connor, *The Emoluments Clause: An Anti-Federalist Intruder in a Federalist Constitution,* 24 HOFSTRA L. REV. 89 (1995); Don Mayer & Adam Sulkowski, Emoluments and Implications From Conflict of Interest Laws and Private Sector Fiduciary Duty (May 20, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3003141.

17. *See infra* notes 18–43 and accompanying text, and Part III.

18. *See* Robert J. Delahunty, *What Is the Emoluments Clause?*, THE HERITAGE FOUNDATION (May 16, 2017), https://www.heritage.org/the-constitution/commentary/what-the-emoluments-clause; *see also* Memorandum in Support of Defendant's Motion to Dismiss at 38, District of Columbia v. Trump, 291 F. Supp. 3d 725 (D. Md. 2018) (No. 8:17-cv-01596-PJM) [hereinafter Memorandum in Support].

adopted in response to "[a] custom [then] prevail[ing] among European sovereigns, upon the conclusion of treaties, of bestowing presents of jewelry or other articles of pecuniary value upon the minister of the power with which they were negotiated," and with the same practice being repeated at the termination of the minister's mission.[19] The earliest example generally cited as a remedial response to this custom was a rule adopted by the Dutch in 1651, which prohibited their foreign ministers from accepting "any presents, directly or indirectly, in any manner or way whatever."[20]

King Louis XVI, in particular, "had the custom of presenting expensive gifts to departing ministers who had signed treaties with France, including American diplomats."[21] The prohibition against gifts in the Articles of Confederation (and later the Constitution) was prompted by one of the more notorious historical gifts to a United States ambassador, and the concern that as a result of such a gift, officers of the United States could be subject to foreign influence.[22]

The gift—gold snuff boxes set with diamonds bestowed on American diplomats Arthur Lee, Silas Deane, and Benjamin Franklin by King Louis XVI—was given for successfully negotiating the Franco-American alliance treaty of 1778.[23] When Lee returned to the United States from France, he asked the Continental Congress for permission to keep the gift and was allowed to do so.[24] Thomas Jefferson later noted that this event "formed the . . . rule" prohibiting acceptance of gifts without congressional approval.[25] Later, King Louis gifted "Benjamin Franklin a snuff box bearing a royal portrait surrounded by 408 diamonds 'of a beautiful water'—inciting American anxiety

19. Letter from John Q. Adams, Sec'y of State, U.S., to Richard Rush, Minister to Great Britain, U.S. (Nov. 6, 1817), *in* 1 A DIGEST OF THE INTERNATIONAL LAW OF THE UNITED STATES 757 (Francis Wharton ed., 2d ed. 1886); *see* Robert Ralph Davis, Jr., *Diplomatic Gifts and Emoluments: The Early National Experience*, 32 The Historian 376, 376–78 (1970) ("One of the clearest manifestations of the attempt to divorce American diplomatic etiquette and protocol from the traditional and time-honored practices associated with European court usage involved the giving and receiving of diplomatic gifts and emoluments. Although there existed many occasions upon which the governments of Europe gave presents to foreign ministers stationed at their respective courts, the two most common instances were upon the conclusion of treaties and international agreements and at the completion of the foreign minister's official tour of duty.").

20. EISEN ET AL, *supra* note 8, at 4 (quoting ZEPHYR, *supra* note 16, at 20).

21. Mayer & Sulkowski, *supra* note 16 (manuscript at 2).

22. EISEN ET AL, *supra* note 8, at 4–5 ("Thus, while the immediate basis for the Emoluments Clause was a rejection of European gift-giving habits pertaining to diplomacy, the Clause also demarcated and enforced a sweeping American rejection of European corruption and foreign influence.").

23. *See* Davis, *supra* note 19, at 379–80; Mayer & Sulkowski, *supra* note 16 (manuscript at 2).

24. Thomas Jefferson, Notes of Presents Given to American Diplomats by Foreign Governments (c. 1791), *in* 16 THE PAPERS OF THOMAS JEFFERSON 366, 366–67 (Julian P. Boyd ed., 1953).

25. *Id.*

that Franklin, a notorious Francophile, might be corrupted, and therefore prompting Franklin to ask Congress for approval to keep the box (which was granted)."[26]

The founders were aware of the potential corrupting influence of foreign governments on the new republic, the susceptibility of human nature, and the need for a constitutional restraint to protect against temptations of foreign influence.[27] In The Federalist, Number 22, Alexander Hamilton wrote that, "One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption."[28] He continued:

> In republics, persons elevated from the mass of the community . . . to stations of great preeminence and power, may find compensations for betraying their trust, which to any but minds actuated by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is, that history furnishes us with so many mortifying examples of the prevalence of foreign corruption in republican governments.[29]

Thus, the Emoluments Clause was created to protect the new republic from corrupting foreign influence.[30]

As one might imagine, the opposing parties in the four respective lawsuits filed against President Trump take differing positions on how the Emoluments Clauses should be interpreted.[31] The plaintiffs in each case (who contend that President Trump's various business interests constitute violations of the Clauses) argue for a broad definition of emolument including income from private business pursuits, such as hotels, restaurants, and golf courses.[32]

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26. EISEN ET AL, *supra* note 8, at 4 (quoting TEACHOUT, *supra* note 16, at 1).

27. *See generally id.* at 5 (highlighting purpose of Emoluments Clause to limit corrupting foreign influence).

28. THE FEDERALIST No. 22 (Alexander Hamilton).

29. *Id.* Hamilton further noted (referring to the Domestic Emoluments Clause, but with equal applicability to the Foreign Emoluments Clause) that the purpose of the restraint was to ensure that the President can have "no pecuniary inducement to renounce or desert the independence intended for him by the Constitution." THE FEDERALIST No. 73 (Alexander Hamilton).

30. *See supra* notes 13–29 and accompanying text.

31. *See* CREW v. Trump, 276 F. Supp. 3d 174, 182–83 (S.D.N.Y. 2017), *appeal docketed*, No. 18-474 (2d Cir. Feb. 16, 2018); Weinstein v. Trump, No. 17 Civ. 1018 (GBD), 2017 WL 6544635, at *2 (S.D.N.Y. Dec. 21, 2017); District of Columbia v. Trump, 291 F. Supp. 3d 725, 733–76 (D. Md. 2018); Complaint at 35–37, Blumenthal v. Trump, No. 1-17-cv-01154 (EGS) (D.D.C. June 14, 2017).

32. *See* cases cited *supra* note 31. The plaintiffs in *Blumenthal* cite an eighteenth-century dictionary definition of *emolument* "to mean 'profit,' 'advantage,' 'benefit,' and 'comfort.'" Complaint, *supra* note 31, at 26. The plaintiffs then conclude *emolument* to mean "anything of value and any benefits, monetary or nonmonetary" which they believe would include any benefit derived from any business dealings with a foreign instrumentality by an entity in which the President has a financial

Defendant President Trump argues in each case that an emolument has a much more narrow definition, only including specific compensation for personal services provided in an official capacity.[33] Trump argues that money exchanged for goods and services should not be considered an emolument and that the intent of the Clauses was to allow federal officials to "continue to have income from private pursuits" while in office.[34]

Under President Trump's interpretation, emoluments would only include gifts and presents received while an individual is acting as the president and tendered without any consideration.[35] Examples from the founding era suggest that this interpretation has some merit.[36] George Washington exported flour and cornmeal to England, Portugal, and the island of Jamaica from his gristmill at Mount Vernon.[37] Thomas Jefferson maintained his farm and nail factory at Monticello and exported his tobacco crop to Great Britain.[38] Other presidents, including James Madison and James Monroe, also owned plantations from which tobacco, timber, and grain products were likely to have been exported to foreign countries.[39] There is also evidence that George Washington received gifts from the French without asking for or receiving congressional consent; for example, the key to the Bastille from General Lafayette and a picture frame and full-length portrait of King Louis XVI from the French ambassador.[40]

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interest—including payments for goods, food, hotel stays, licensing agreements, real estate leases, and condominium common charges, and the grant of trademarks, permits, tax credits, and other regulatory benefits. *See id.* at 26, 35–46, 53.

33. *See* Memorandum in Support, *supra* note 18, at 36 ("[T]he term 'Emolument,' when read harmoniously with the rest of the Clause, has the natural meaning of the narrower definition of profit arising from an official's services rendered pursuant to an office or employ.").

34. *Id.* at 41.

35. *See id.* at 38 ("The adoption and historical interpretation of the Emoluments Clauses are consistent with the office- and employment-specific construction of the term 'Emolument' and with the term 'present' being construed to mean gifts tendered without any consideration.").

36. *See infra* notes 37–40 and accompanying text.

37. *Ten Facts about the Gristmill*, GEORGE WASHINGTON'S MOUNT VERNON, http://www.mountvernon.org/the-estate-gardens/gristmill/ten-facts-about-the-gristmill (last visited Oct. 8, 2018) ("9. Washington's Gristmill was a highly profitable enterprise.").

38. Letter from Thomas Jefferson to William A. Burwell (Nov. 22, 1808), *in* 11 THE WORKS OF THOMAS JEFFERSON 75, 75–76 (Paul Leicester Ford ed., Fed. ed. 1905), http://lf-oll.s3.amazonaws.com/titles/807/0054-11_Bk.pdf (discussing the sale of Jefferson's tobacco); *see also* ALF J. MAPP, JR., THOMAS JEFFERSON: PASSIONATE PILGRIM 19, 57 (1991) (discussing profits from Jefferson's tobacco crops and nail factory and income while President).

39. *See The Life of James Madison*, JAMES MADISON'S MONTPELIER, https://www.montpelier.org/learn/the-life-of-james-madison (last visited Oct. 8, 2018) (discussing James Madison's plantations where tobacco and wheat were cultivated); *Highland*, NAT'L PARK SERV., https://www.nps.gov/nr/travel/journey/hig.htm (last visited Sep. 16, 2018) (listing James Monroe's "principal crops of timber, tobacco, and grain").

40. Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A*

In 1881, Congress enacted the first law related to the Foreign Emoluments Clause, requiring that any presents, gifts, and decorations conferred by any foreign government on United States officials be tendered through the Department of State.[41] A more recent situation arising under the Domestic Emoluments Clause occurred in the early 1980s when President Ronald Reagan sought to receive retirement benefits from the State of California (where he had served as Governor) while he was serving as President of the United States.[42]

At that time, as well as today, the two governmental units charged with interpreting the application of the Emoluments Clauses were the Comptroller General of the United States and the Office of Legal Counsel of the Department of Justice.[43] Both governmental units determined that President Reagan could receive the retirement benefits without violating the Domestic Emoluments Clause's prohibition against the receipt of emoluments from a state.[44] The Comptroller General concluded, "The pension payments President Reagan receives from the State of California cannot be construed as being in any manner received in consequence of his possession of the presidency."[45]

As shown above, historical interpretations of the Emoluments Clauses are varied, and do not directly address the unique situation presented by President Trump's worldwide business interests.[46] I now turn from these historical interpretations to the lawsuits filed against President Trump.

III. LAWSUITS FILED AGAINST PRESIDENT TRUMP

The election of Donald Trump resulted in an immediate barrage of litigation aimed at challenging President Trump's refusal to completely divest himself of his business interests or seek congressional approval to continue owning and operating his various businesses under the Trump Organization.[47] The plaintiffs in each case alleged violations of both the Foreign and Domestic

Reply to Professor Zephyr Teachout, 107 NW. U. L. REV. COLLOQUY 180, 188 (2012–2013).

41. Act of Jan. 31, 1881, ch. 32 § 3, 21 Stat. 603 (1881) (authorizing the persons to accept certain decorations and presents from foreign governments).

42. *See* District of Columbia v. Trump, 315 F. Supp. 3d 875, 901 (D. Md. 2018) (first citing President Reagan's Ability to Receive Retirement Benefits from the State of California, 5 Op. O.L.C. 187, 187 (1981); and then citing The Honorable George J. Mitchell U.S. Senate, B-207467, 1983 WL 27823 (Comp. Gen. Jan. 18, 1983) [hereinafter Mitchell]).

43. *See id.* at 884 n.16, 900 n.37 (describing the roles of the Office of Legal Counsel and Office of the Comptroller General).

44. *Id.* at 901.

45. Mitchell, *supra* note 42, at *3.

46. *Compare* Part II *with* Part III.

47. *See infra* Sections III.A–D.

Emoluments Clauses.[48] The four cases, *Citizens for Responsibility and Ethics in Washington v. Trump* (filed January 23, 2017 in the Southern District of New York), *Weinstein v. Trump* (filed February 10, 2017 in the Southern District of New York), *District of Columbia v. Trump* (filed June 12, 2017 in the District of Maryland), and *Blumenthal v. Trump* (filed June 14, 2017 in the District of Columbia Circuit) are discussed in turn below.[49]

A. CREW v. Trump

Three days after the inauguration of President Trump, the non-profit group Citizens for Responsibility and Ethics in Washington (CREW) filed a complaint against President Trump and was later joined by three other plaintiffs: Restaurant Opportunities Centers United, Inc. (ROC); Jill Phaneuf; and Eric Goode.[50] Anticipating potential issues with standing, the four plaintiffs represented a variety of business interests, but were united in their allegation that President Trump's "vast, complicated, and secret" business interests created conflicts of interest resulting in "unprecedented government influence" in violation of both the Domestic and Foreign Emoluments Clauses of the United States Constitution.[51]

The plaintiffs were comprised of a group of organizations and individuals that believed they had been personally injured by President Trump's activities, giving them standing to bring their claims.[52] Plaintiff CREW represented itself as a nonprofit, nonpartisan government ethics watchdog organized under the laws of the State of Delaware, with a mission of "protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of government officials, protecting the political system against corruption, and reducing the influence of money in politics."[53] Plaintiff ROC billed itself as a nonprofit, nonpartisan member-based group organized under the laws of New York.[54] ROC claimed its membership included nearly 25,000 restaurant employees, and over 3,000 restaurants and other dining

48. *See infra* Sections III.A–D.

49. *See* CREW v. Trump, 276 F. Supp. 3d 174 (S.D.N.Y. 2017), *appeal docketed*, No. 18-474 (2d Cir. Feb. 16, 2018); Weinstein v. Trump, No. 17 Civ. 1018 (GBD), 2017 WL 6544635 (S.D.N.Y. Dec. 21, 2017); District of Columbia v. Trump, 291 F. Supp. 3d 725 (D. Md. 2018); Blumenthal v. Trump, No. 17-1154 (EGS), 2018 WL 4681001 (D.D.C. Sept. 28, 2018).

50. Complaint at 1, *CREW*, 276 F. Supp. 3d 174 (No. 1:17-cv-00458); First Amended Complaint at 1, *CREW*, 276 F. Supp. 3d 174 (No. 1:17-cv-00458).

51. Second Amended Complaint at 1, *CREW*, 276 F. Supp. 3d 174 (No. 1:17-cv-00458).

52. *Id*. at 34–58 (alleging the injuries suffered by each plaintiff).

53. *Id*. at 4, 8–9.

54. *Id*. at 5.

establishments.[55] Individual plaintiff Jill Phaneuf worked with a hospitality company to book embassy functions and other events tied to foreign governments in Washington D.C., while individual plaintiff Eric Goode was a New York resident and the owner of several hotels, restaurants, bars, and event spaces in New York City.[56] Each individual plaintiff claimed that their income depended upon their ability to book events and provide hospitality services in their respective cities.[57] Plaintiffs ROC, Phaneuf, and Goode asserted in the complaint that President Trump's alleged violations of the Emoluments Clauses injured them through loss of business and revenue, while Plaintiff CREW claimed it suffered harm when it diverted and expended resources to counteract the alleged violations, thus impairing its ability to accomplish its mission.[58]

On January 11, 2017, in his first formal press conference following his election victory, President-elect Trump announced that he would turn over the "leadership and management" of the Trump Organization to his sons, Donald Trump, Jr. and Eric Trump.[59] He further announced that he would donate all profits from foreign governments' patronage of his businesses to the U.S. Treasury, and would create a trust to hold his business assets.[60] Notwithstanding the above, the plaintiffs in *CREW* alleged that because President Trump would continue to own and take distributions from the trust at any time, he was in violation of the Emoluments Clauses.[61] Specific allegations of Emoluments Clauses violations included:

(1) that the Embassy of Kuwait in Washington D.C. moved its National Day celebration from the Four Seasons Hotel to the Trump International Hotel, spending $40,000 to $60,000 for the event;[62]
(2) that other foreign diplomats have expressed a desire to patronize the Trump International Hotel and other Trump properties to "curry

55. *See id*.
56. *Id.* at 6–8.
57. *See id.*
58. *See id.* at 6, 34–35, 54, 56.
59. *Donald Trump's News Conference: Full Transcript and Video*, N.Y. TIMES (Jan. 11, 2017), https://www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html. Trump created a trust agreement through which he "relinquished leadership and management of the Trump Organization to his sons Don and Eric and a longtime Trump executive, Allen Weisselberg. Together, Don, Eric and Allen will have authority to manage the Trump Organization and will make decisions for the duration of the presidency without any involvement whatsoever by President-elect Trump." *Id.*
60. *Id.* (stating that President-elect Trump will "voluntarily donate all profits from foreign government payments made to his hotel to the United States Treasury").
61. *See* Second Amended Complaint, *supra* note 51, at 15–16.
62. *Id.* at 20–21.

favor" with the President;[63]

(3) that President Trump continues to benefit from multiple countries purchasing space at the Trump World Tower in New York City over the past two decades (including Saudi Arabia, India, Afghanistan, and Qatar) through common charges for building amenities;[64]
(4) that President Trump secured trademark rights in China for the Trump name in connection with building construction services because the Industrial and Commercial Bank of China (a Chinese majority-state-owned entity) is one of the Trump Tower's largest tenants, and;[65]
(5) and that Trump International Hotel's new 60-year lease with the General Services Administration (GSA) violates the Domestic Emoluments Clause.[66]

The plaintiffs sought declaratory relief from the court stating that President Trump had violated and would continue to violate the Emoluments Clauses, and an injunction enjoining President Trump from further violations and requiring him to release financial records to confirm his compliance with the court's order.[67] In response, President Trump filed a motion to dismiss the complaint on the primary ground that the plaintiffs lacked standing to bring their claim.[68]

1. Issue of Standing

The question of whether a plaintiff has standing to bring a claim in any

63. *Id.* at 60–62 (quoting foreign diplomats as saying "[b]elieve me, all the delegations will go [to the Trump International Hotel]," and "[w]hy wouldn't I stay at his hotel blocks from the White House, so I can tell the new president, 'I love your new hotel!' Isn't it rude to come to his city and say, 'I am staying at your competitor?'").

64. *See id.* at 23–25 (noting that, at the Trump World Tower, Qatar spends approximately $67,920 annually, India spends approximately $43,670 annually, Afghanistan spends $25,085 annually, and Saudi Arabia spends $88,781 annually).

65. *See id.* at 16, 26–27.

66. *See id.* at 30–32 (stating that when Trump became President and still retained benefits of this lease, he was in plain violation of the lease, but that the GSA overlooked the violation in exchange for Trump's proposed budget containing an increase for the GSA's funding). The GSA is an independent government agency established in 1949 to help manage and support the basic functioning of federal agencies through constructing, managing, and preserving government buildings and acquiring private sector services and equipment for government organizations. *See Background and History*, GSA, https://www.gsa.gov/about-us/background-and-history (last visited Oct. 11, 2018).

67. *See* Second Amended Complaint, *supra* note 51, at 64–65.

68. CREW v. Trump, 276 F.Supp.3d 174, 179 (S.D.N.Y. 2017), *appeal docketed*, No. 18-474 (2d Cir. Feb. 16, 2018) (stating that Trump moved to dismiss the lawsuit on lack of plaintiff's standing and "lack of subject matter jurisdiction").

case is essential to whether the court may adjudicate a plaintiff's claims.[69] Standing consists of three elements:

> First, the plaintiff must have suffered an "an injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, . . . a causal connection between the injury and the conduct complained of . . . . Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."[70]

Adding to the plaintiffs' burden in *CREW* is the fact that the standing inquiry is "especially rigorous" where reaching the merits of the dispute would force the court to decide whether an action taken by the President or Congress was unconstitutional.[71]

In *CREW*, the individual plaintiffs and ROC (the hospitality plaintiffs) argued that they met the requirements for standing based upon their status as competitors of President Trump for government business in the Washington D.C. and New York City restaurant and hotel markets.[72] Their standing argument was further based on the allegation that they had been and would be harmed "due to foreign states, the United States, and state and local governments patronizing establishments with financial connections" to President Trump rather than those owned by the plaintiffs.[73] The hospitality plaintiffs argued that Trump "adopted 'policies and practices that powerfully *incentivize[d]* government officials to patronize his properties in hopes of winning his affection.'"[74]

President Trump's motion to dismiss the complaint argued that the plaintiffs lacked standing to bring their claim because their allegations were far too speculative to show the necessary nexus between their alleged injuries and any conduct by President Trump, and because the plaintiffs failed to sufficiently allege that they personally compete with Trump's hotels and

69. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (stating that "standing is an essential and unchanging part of the case-or-controversy requirement of" the courts).

70. *Id.* at 560–61 (citations omitted). Plaintiffs bear the burden of establishing standing. *Id.* at 561.

71. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013) (stating the standing requirement is "especially rigorous when reaching the merits of the dispute would force [the judiciary] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional").

72. *CREW*, 276 F. Supp. 3d at 185.

73. *Id.* (quoting Second Amended Complaint, *supra* note 51, at 47).

74. *Id.* at 186.

restaurants.[75]

The court agreed with President Trump's arguments, finding that the hospitality plaintiffs failed to meet the second and third elements of the standing requirement.[76] The court found that the hospitality plaintiffs failed to properly allege that Trump's actions caused the plaintiffs' injuries and failed to show that such injuries would be redressed by a favorable decision of the court.[77] Specifically, as to the causation prong, the court found that it was entirely speculative whether any loss of business by the hospitality plaintiffs was due to "incentives" or instead, resulted from an independent desire of government officials to patronize Trump's businesses.[78] The court summarized its holding and explained that:

> Even before Defendant [Trump] took office, he had amassed wealth and fame and was competing against the Hospitality Plaintiffs in the restaurant and hotel business. It is only natural that interest in his properties has generally increased since he became President. As such, despite any alleged violation on Defendant's part, the Hospitality Plaintiffs may face a tougher competitive market overall. Aside from Defendant's public profile, there are a number of reasons why patrons may choose to visit Defendant's hotels and restaurants including service, quality, location, price, and other factors related to individual preference.[79]

In addition to failing to show causation, the court found that the hospitality plaintiffs were unable to meet the third prong of the standing requirement—"that it is likely, as opposed to merely speculative," that a plaintiff's injury "could be redressed by a favorable decision" of the court.[80] The hospitality plaintiffs argued that the injunction they sought (preventing Trump from violating the Emoluments Clauses) would end "the source of intensified competition [and] provide redress."[81] However, the court was unconvinced, finding that "[e]ven if it were determined that [President Trump] personally

75. *Id.* at 185. The remaining plaintiff, CREW, argued that it suffered injury by having to utilize resources on the case that would have otherwise allowed CREW to focus on other aspects of its corporate mission. *Id.* at 183. President Trump's motion to dismiss CREW's claims focused on the first element required to establish standing—that of actual injury—arguing that CREW had not suffered any injury in fact. *Id.* at 188–89.

76. *Id.* at 185.

77. *Id.* at 185–86.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

accepting any income from the Trump Organization's business with foreign and domestic governments was a violation of the Emoluments Clauses, it is entirely 'speculative' what effect, if any, an injunction would have on the competition Plaintiffs claim they face."[82]

The court concluded its disposal of the hospitality plaintiffs' case by stating that the injuries the hospitality plaintiffs claimed (increased competition and loss of income) were not within the "zone of interests" that the Emoluments Clauses were meant to protect.[83] The court held that "[n]othing in the text or history of the Emoluments Clauses suggests that the Framers intended these provisions to protect anyone from competition. The prohibitions contained in these Clauses arose from the Framers' concern with protecting the new government from corruption and undue influence."[84]

As for the plaintiff CREW, the court held that it failed the first prong of the standing analysis—to allege an actual injury in fact.[85] CREW claimed that it suffered injury in the form of having to divert some of its resources to this case, resulting in an impairment of its normal functions.[86] This argument did not persuade the court, which held that an organization's interest in a problem and consequent diversion of resources to investigate and challenge the problem does not in itself confer standing on that organization.[87] The court stated that every organization with finite resources needs to make choices about how to allocate those resources, and "[i]f CREW could satisfy the standing requirement on this basis alone, it is difficult to see how any organization that claims it has directed resources to one project rather than another would not automatically have standing to sue."[88]

The plaintiffs' failure to establish standing ultimately resulted in the

82. *Id.* (citation omitted).

83. *Id.* at 187 ("[T]he plaintiff must establish that the injury he complains of . . . falls within the zone of interests sought to be protected by the statut[e] . . . whose violation forms the legal basis for his complaint." (quoting Wyoming v. Oklahoma, 502 U.S. 437, 468–69 (1992))).

84. *Id.* at 187.

85. *Id.* at 193 ("Since Plaintiff CREW has failed to adequately plead a cognizable injury in fact, it lacks standing to sue under Article III.").

86. *Id.* at 189. CREW asserted that it

> had to devote significant resources to identify and counteract [Trump's] alleged violations of the Emoluments Clauses, including through the use of "every member of CREW's research team on a near-daily basis" and "the hiring of additional senior attorneys" [to work the case], as well as its efforts to explain the alleged violations to stakeholders, including the press, and assist and counsel others in counteracting [Trump's] alleged violations.

Id.

87. *Id.* at 191 ("CREW alleges that the time, money, and attention it has diverted to this litigation from other projects have placed a significant drain on its limited resources. But such an allegation, by itself, is insufficient to establish an injury in fact.").

88. *Id.*

dismissal of their case.[89] However, in addition to his primary argument based upon lack of standing, President Trump also raised arguments for dismissal of the complaint based upon the political question doctrine and the issue of ripeness.[90]

2. The Political Question Doctrine

President Trump also argued in his motion to dismiss that the plaintiffs' claims would be "better left resolved through the 'political process' rather than the courts, because Congress is 'far better equipped' to address whether . . . [his] activities violate the Foreign Emoluments Clause."[91] As originally stated in the landmark Supreme Court case *Baker v. Carr*, a case may be dismissed based on the political question doctrine if certain factors exist, including: "a textually demonstrable constitutional commitment of the issue [at hand] to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it."[92] Applying the factors, the court dismissed CREW's case and found that the first *Baker* factor controlled, stating that "[a]s the explicit language of the Foreign Emoluments Clause makes clear, this is an issue committed exclusively to Congress."[93] In other words, because the Constitution expressly delegates consent on Foreign Emoluments Clause issues to Congress, the court determined it would restrain itself from deciding on the case.[94]

3. The Ripeness Doctrine

Ripeness is a justiciability doctrine designed to prevent courts from prematurely deciding cases.[95] The Supreme Court held in *Goldwater v. Carter* that,

89. *Id.*

90. *See infra* Sections II.A.2–3.

91. *CREW*, 276 F. Supp. 3d at 193.

92. Baker v. Carr, 369 U.S. 186, 217 (1962). The *Baker* court noted additional factors, including:

> the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. The *Baker* factors are generally viewed as being listed in descending order of importance. Vieth v. Jubelirer, 541 U.S. 267, 278 (2004).

93. *CREW*, 276 F. Supp. 3d at 193.

94. *Id.* at 193–94 (holding that because Congress is the only branch that may consent to Foreign Emoluments Clause violations "this case presents a non-justiciable political question").

95. Abbot Labs. v. Gardner, 387 U.S. 136, 148–49 (1976) (stating that the ripeness doctrine's "basic rationale is to prevent courts, through avoidance of premature adjudication, from entangling

"a dispute between Congress and the President is not ready for judicial review unless and until each branch has taken action asserting its constitutional authority."[96] Finding that Congress, and Congress alone, has the authority to consent to violations of the Emoluments Clauses, the court held that "this case involves a conflict between Congress and the President in which this Court should not interfere unless and until Congress has asserted its authority and taken some sort of action with respect to Defendant's alleged constitutional violations of its consent power."[97] In short, the court found that the plaintiffs' claims were not yet "ripe" for review by the judicial branch.[98]

Consequently, on December 21, 2017, the court granted President Trump's motion to dismiss CREW's complaint, primarily because the plaintiffs lacked standing to bring the case.[99] Nevertheless, CREW and the hospitality plaintiffs have appealed the decision to the Second Circuit.[100]

B. Weinstein v. Trump

On the same date the court dismissed the CREW litigation, it also dismissed a putative class action filed by William R. Weinstein (a New York attorney) on behalf of himself and the "People of the United States of America" against President Trump, his sons Donald J. Trump, Jr. and Eric Trump, and Allen Weisselberg, the Chief Financial Officer of the Trump Organization.[101]

The focus of the Weinstein complaint was to enforce promises made by then-President-elect Trump on January 11, 2017 at a press conference prior to

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themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties").

96. Goldwater v. Carter 444 U.S. 996, 996 (1979).

97. *Id.* at 194–195. The Court further stated in an interesting footnote that "Congress is not a potted plant. It is a co-equal branch of the federal government with the power to act as a body in response to Defendant's alleged Foreign Emoluments Clause violations, if it chooses to do so." *Id.* at 195 n.8.

98. *Id.* at 194–95 ("[U]nless and until Congress speaks on this issue, Plaintiffs' Foreign Emoluments Clause claims are not ripe for adjudication.").

99. *Id.* at 179.

100. Plaintiffs' Notice of Appeal at 1, *CREW* 276 F. Supp. 3d 174 (No. 1:17-cv-00458-GBD) (filing Notice of Appeal on February 16, 2018). The case was fully briefed as of June 27, 2018 and oral argument is scheduled for October 30, 2018. Reply Brief of Plaintiffs-Appellants, Citizens for Responsibility & Ethics in Washington v. Trump, No. 18-474 (2d. Cir. June 27, 2018) (showing the last brief by the parties); Notice of Hearing Date, *Citizens for Responsibility & Ethics in Washington*, No. 18-474.

101. Weinstein v. Trump, No. 17 Civ. 1018 (GBD), 2017 WL 6544635, at *1 (S.D.N.Y. Dec. 21, 2017) (dismissing the case based on lack of subject matter jurisdiction and failure to state a claim).

his inauguration.[102] Those promises were also detailed in a White Paper issued by his attorneys in conjunction with the press conference.[103] The promises included: (1) that President Trump would convey all his investments and business assets into a trust for the duration of his presidency, which his sons and Mr. Weisselberg would manage; (2) that a separate "Ethics Advisor" would need to approve all actions, deals, or transactions that could potentially implicate ethics or conflict of interest concerns; and (3) that President Trump would donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the United States Treasury.[104] Weinstein alleged that President Trump had not complied with all the policies outlined in the White Paper, and sought to hold him to his word by seeking an order imposing an equitable constructive trust, directing an accounting of profits, and directing payment of promised monies to the United States Treasury.[105]

President Trump filed a motion to dismiss Weinstein's complaint based on two alternative arguments: (1) Weinstein lacked standing to bring the claim; and, (2) Weinstein failed to state a claim entitling him to relief.[106]

Trump's first argument focused on the initial factor of the standing analysis[107]—that the plaintiff must show that "he has suffered an actual or imminent injury in fact, which is concrete and particularized."[108] An injury is not particularized unless it "affect[s] the plaintiff in a personal and individual way."[109] Standing is thus rejected where the plaintiff "suffers in some indefinite way in common with people generally."[110] The court found that Weinstein's claimed injury was insufficient to convey standing because he alleged nothing more than a general grievance that he shared with the public, a point that Weinstein conceded throughout his complaint.[111]

President Trump's second argument was that Weinstein failed to state a proper claim for relief.[112] The court agreed with this argument and

102. *Id.* at *1–2.

103. *Id.*

104. *See* SHERI DILLON ET AL., MORGAN, LEWIS & BROCKIUS LLP, WHITE PAPER: CONFLICTS OF INTEREST AND THE PRESIDENT 1–6 (2017), http://www.presidency.ucsb.edu/papers_pdf/121427.pdf (last visited Oct. 12, 2018).

105. *Weinstein*, 2017 WL 6544635, at *2.

106. *Id.*

107. *Id.*

108. *Id.* at *3; *see* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (defining an "injury in fact" as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent'") (citations omitted).

109. *Weinstein*, 2017 WL 6544635, at *3 (quoting *Lujan*, 504 U.S. at 560 n.1).

110. *Id.* (quoting DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 344 (2006)).

111. *Id.* at *3–4.

112. *Id.* at *1.

summarized its ruling as follows:

> Yet, the greatest obstacle to Plaintiff's claim is his failure to identify what law, if any, Defendants have violated because Defendant Trump failed to honor his promise. Our judicial system does not recognize or provide redress for just any grievance. Rather, a plaintiff must identify the specific legal basis pursuant to which he is entitled to a remedy.[113]

The court went on to state that even if Weinstein "had alleged a legal basis upon which relief could be granted, [he] still would not be entitled to the relief he [sought]" (a constructive trust) because he did not allege or meet any of the factors necessary for imposition of a constructive trust.[114] The court confirmed that Weinstein's claims were not premised on any alleged constitutional or statutory violations, and Weinstein conceded in his complaint that he was not asserting any specific claims under the Foreign Emoluments Clause.[115] For these reasons, the court granted President Trump's motion and dismissed Weinstein's complaint on December 21, 2017.[116] Weinstein did not appeal the decision.

C. District of Columbia v. Trump

On June 12, 2017, the District of Columbia and State of Maryland filed suit against President Trump seeking relief for alleged violations of the Emoluments Clauses.[117] In that case, the plaintiffs asserted that the Emoluments Clauses disqualified Trump from serving as President while maintaining ownership of his commercial businesses.[118] The plaintiffs sought both a declaratory judgment that President Trump had violated and would continue to violate the Foreign and Domestic Emoluments Clauses, and an injunction prohibiting the President from further violations.[119]

As in *CREW* and *Weinstein*, President Trump filed a motion to dismiss the complaint,[120] this time based on three arguments: (1) "that plaintiffs . . .

113. *Id.* at *4.
114. *Id.* at *5.
115. *Id.*
116. *Id.* at *6.
117. Complaint at 1, District of Columbia v. Trump, 291 F. Supp. 3d 725 (D. Md. 2018) (No. 8:17-cv-01596-PJM).
118. *Id.* at 11–12, 41–42 ("[Trump] did not . . . relinquish[] *ownership* of his businesses or establish[] a blind trust.").
119. *See* Amended Complaint at 45–46, *District of Columbia*, 291 F. Supp. 3d 725 (No. 8:17-cv-01596-PJM).
120. Motion to Dismiss on Behalf of Defendant in His Individual Capacity at 1, *District of*

suffered no injury outside of the District of Columbia and therefore ha[d] no standing to bring their claim in the District of Maryland";[121] (2) plaintiffs failed to state a claim upon which relief could be granted;[122] and (3) the relief sought was unconstitutional because it attempted to impose a condition on the President's ability to serve as President and carry out his duties.[123]

In the complaint, the plaintiffs listed items that they believed Trump had received and would continue to receive as President in violation of the Emoluments Clauses including:

> (a) leases of Trump properties held by foreign-government-owned entities; (b) purchase and ownership of condominiums in Trump properties by foreign governments or foreign-government-controlled entities; (c) other property interests or business dealings tied to foreign governments; (d) hotel accommodations, restaurant purchases, the use of venues for events, and purchases of other services and goods by foreign governments and diplomats at hotels, restaurants, and other domestic and international properties owned, operated, or licensed by President Trump; (e) continuation of the General Services Administration lease for President Trump's Washington, D.C. hotel despite his breach of the lease's terms, and potential provision of federal tax credits in connection with the same property; and (f) payments from foreign-government-owned broadcasters related to rebroadcasts and foreign versions of the television program "The Apprentice" and its spinoffs.[124]

As for other damages, Maryland alleged injury in the form of reduced tax revenues, "competitive harm," and "economic loss" on the theory that competition from the Trump International Hotel located in Washington, D.C. diverted business away from other Maryland-based companies.[125]

Columbia, 291 F. Supp. 3d 725 (No. 8:17-cv-01596); *supra* notes 68, 106 and accompanying text.

121. Memorandum in Support of Motion to Dismiss on Behalf of Defendant in His Individual Capacity at 6–7, *District of Columbia*, 291 F. Supp. 3d 725 (No. 8:17-cv-01596).

122. *Id.* at 14. Trump argued that the plaintiffs did not have standing because

> [T]he President is not subject to suit under the Emoluments Clauses in his individual capacity. . . . Plaintiffs lack a cause of action that allows them to pursue declaratory and injunctive relief against the President in his individual capacity for violating the Constitution. . . . [E]ven assuming such a cause of action exists, it cannot be expanded to the Emoluments Clauses.

Id. at 3–4.

123. *Id.* at 24–27 ("Just as the President should not have to fear that individuals will hold him personally liable for what he ultimately decides to do as President, neither should he have to fear individual liability simply because he is President.").

124. *See* Amended Complaint, *supra* note 119, at 5.

125. *Id.* at 38–40, 42.

One argument made by the State of Maryland is especially interesting.[126] Maryland claimed that it would not have joined the Union if it had known that the Emoluments Clauses would be interpreted in such a way as to allow a President to maintain ownership in separate commercial businesses while serving as President.[127] Maryland claimed that the prohibitions in the Emoluments Clauses were "material inducements to [its] entering the union," and thus Maryland "retains its power to bring suit to enforce [the] prohibitions today."[128] In his motion to dismiss, President Trump countered this claim by stating that the complaint was factually deficient because "[t]he Complaint contains no plausible allegations that delegates to Maryland's ratifying convention in 1788 held the State's current view of the Emoluments Clauses, much less that such view was material to their decision to ratify the Constitution."[129]

President Trump made an additional argument that the District of Columbia and Maryland were not within the "zone of interests" that the Emoluments Clauses were meant to protect.[130] The zone of interests test "serve[s] to limit the role of the courts in resolving public disputes" by asking "whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief."[131] President Trump argued that the plaintiffs' alleged injuries, whether through loss of tax revenues, loss of profit, or loss of political power, were outside the zone of interests covered by the Emoluments Clauses, which was to protect "against the corruption of, and foreign influence on, federal officials and to ensure the independence of the President."[132]

With regard to standing, President Trump argued that Maryland's claim that it lost political power in joining the Union was "not judicially cognizable because Maryland may not ask the Court 'to adjudicate . . . abstract questions of political power, of sovereignty, [or] of government.'"[133] The motion to dismiss also cited multiple examples of the Supreme Court finding that "alleged abstract injuries to a State's sovereignty [are] not judicially

126. *See infra* notes 127–28 and accompanying text.

127. Amended Complaint, *supra* note 119, at 33–34.

128. *Id.* at 34.

129. *See* Memorandum in Support, *supra* note 18, at 11. The motion to dismiss went so far as to cite to the conduct of two residents of Maryland at the time of the Nation's founding, Daniel Carroll and Thomas Johnson, both of whom sold public land to President George Washington in his capacity as a private citizen, and neither raised any concerns that such transactions constituted prohibited emoluments. *Id.* at 12.

130. *Id.* at 28–29.

131. Warth v. Seldin, 422 U.S. 490, 500 (1975).

132. Memorandum in Support, *supra* note 18, at 28–29.

133. *Id.* at 10 (quoting Massachusetts v. Mellon, 262 U.S. 447, 484–85 (1923)).

cognizable,"[134] which is a requirement for the "injury in fact" prong of the standing analysis.[135]

The court heard oral argument on President Trump's motion to dismiss on January 25, 2018.[136] On March 28, 2018, the court decided, in part, on the motion to dismiss, finding that plaintiffs had met the requirements for standing (a finding specifically not made by the court given similar facts in *CREW*) and deferred ruling on the other arguments made in the motion to dismiss (including arguments related to whether or not the plaintiffs had stated sufficient claims under the Emoluments Clauses) pending further oral argument.[137] On the standing issue, the court found that plaintiffs had "plausibly alleged [that] they have been subjected to increased competition as a result of the President's purported violations,"[138] and concluded, based on purportedly "fairly straightforward economic logic, that the properties with which Plaintiffs do have a proprietary interest in are in fact disadvantaged" by the President's ownership interest in the Trump Hotel.[139]

Prior to the court making further rulings on the motion to dismiss, the plaintiffs filed a motion to amend the complaint to add claims against President Trump as an individual and not just in his capacity as President.[140] The motion to amend was granted and an amended complaint was filed.[141] President Trump filed another motion to dismiss, and oral argument was heard on June 11, 2018.[142]

On July 25, 2018, the court denied President Trump's motion to dismiss finding that the plaintiffs had stated sufficient claims that President Trump had violated both the Foreign and Domestic Emoluments Clauses.[143] This finding was based on the court's determination that the term emolument expansively covers any non-*de minimis* profit, gain, or advantage the President receives through the Trump Hotel because of the patronage of government customers.[144]

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134. *Id.*

135. *Id.* at 14.

136. Motion Hearing, District of Columbia v. Trump 291 F. Supp. 3d 725 (D. Md. 2018) (No. 8:17-cv-01596-PJM), ECF No. 86.

137. *See* District of Columbia v. Trump 291 F. Supp. 3d 725, 738–56 (D. Md. 2018).

138. *Id.* at 749.

139. *Id.* at 745.

140. *See* Plaintiffs' Motion for Leave to File an Amended Complaint and to Apply the Pending Motion to Dismiss to the Amended Complaint, *District of Columbia*, 291 F. Supp. 3d 725 (No. 8:17-cv-01596-PJM).

141. *See* Amended Complaint, supra note 119, at 1.

142. *See* Motion Hearing, District of Columbia v. Trump 291 F. Supp. 3d 725 (D. Md. 2018) (No. 8:17-cv-01596-PJM), ECF No. 120.

143. *District of Columbia*, 315 F. Supp. 3d at 907.

144. *See* Opinion at 21, 27 n.27, *District of Columbia*, 291 F. Supp. 3d 725 (No. 8:17-cv-01596-

As the suit will now proceed to discovery, the court asked the parties to submit a joint recommendation suggesting next steps for the case, including the necessity of further amendments to the complaint and a proposal for discovery.[145]

D. Blumenthal v. Trump *(200 Members of Congress Case)*

On August 15, 2017, 201 members of the United States Senate and United States House of Representatives (30 Senators and 171 Representatives) filed a first amended complaint against President Trump for alleged violations of the Foreign Emoluments Clause of the Constitution.[146] Many of the individual plaintiffs have sponsored bills either to declare that President Trump has potentially violated the Clause, or to withhold consent from approving the President's alleged violations of the Clause.[147] However, none of the bills have come to a vote, nor has the President done anything to prevent Congress from holding a vote.[148] In his motion to dismiss, President Trump argued that, "Plaintiffs could not convince their own colleagues in Congress to take the actions they desired, and now seek the aid of the Judiciary to circumvent the legislative process prescribed by the Constitution."[149]

The plaintiffs claimed that their injury comes from being denied "their constitutional prerogative [as Members of Congress] to authorize or reject the specific emoluments [the President] is accepting" because the President refused to first seek the consent of Congress.[150] In response, President Trump reiterated that the plaintiffs lacked standing, and cited to numerous cases from the Supreme Court and D.C. Circuit with holdings finding that a "'diminution of legislative power' that 'damages all Members of Congress and both Houses of Congress equally,' . . . is not 'a sufficiently concrete injury' to give Members of Congress a 'personal stake in [the] dispute' with the Executive Branch."[151] In short, President Trump stated that if Congress wishes to vote on whether to consent to his alleged violations of the Foreign Emoluments

PJM), ECF No. 123.

145. *District of Columbia*, 315 F. Supp. 3d at 907.

146. First Amended Complaint at 1–19, Blumenthal v. Trump, No. 17-1154 (EGS) (D.D.C. Sept. 28, 2018), 2018 WL 4681001.

147. *See, e.g.*, S. Con. Res. 8, 115th Cong. (2017) (introducing bill to clarify whether President-elect Trump violated the Emoluments Clause and calling on him to divest his interests in the Trump Organization); S. Con. Res. 4, 115th Cong. (2017) (same); H.R. Con. Res. 5, 115th Cong. (2017) (same).

148. *Id.*

149. Statement of Points and Authorities in Support of Defendant's Motion to Dismiss at 1, *Blumenthal*, No. 17-1154-EGS.

150. *Id* (quoting First Amended Complaint, *supra* note 146, at 37).

151. *Id.* at 1–2 (quoting Raines v. Byrd, 521 U.S. 811, 826 (1997)).

Clause, he has not deprived them of their ability to do so.[152] However, Congress must do so pursuant to the constitutional scheme.[153] He also argued that,

> [T]he Foreign Emoluments Clause was intended to guard generally against the corruption of and foreign influence on federal officials. It is not designed to protect any legislative prerogative that individual Members of Congress may have. The right of Congress to consent to receipt of emoluments inures only to Congress as a whole, not to its individual Members, and thus Plaintiffs would not be the proper plaintiffs to assert any injury to such a right.[154]

Other arguments made by Trump to dismiss this case are very similar to those made in *District of Columbia*.[155]

The court heard oral argument on President Trump's motion to dismiss the complaint on June 7, 2018, and issued an opinion on September 28, 2018, denying the motion in part and deferring ruling on the motion in part.[156] The court held that plaintiffs did have standing as Members of Congress because, in the court's view, the Foreign Emoluments Clause "gives each individual Member of Congress a right to vote before the President accepts" any foreign emoluments, and the President deprived them of that right by not seeking consent.[157] President Trump has filed a motion asking the court to allow him the right to file an interlocutory appeal on this point, challenging the court's ruling.[158]

IV. SOLUTIONS TO THE STANDING PROBLEM: WHAT CAN CONGRESS DO?

Identifying a plaintiff with proper standing to bring a claim appears to be a high hurdle for establishing an Emoluments Clause claim.[159] As discussed above, the court in *CREW* and *Weinstein* ruled that despite the diverse nature of the plaintiffs and their claims in those two cases, they could not establish

152. *See id.* at 2 ("Plaintiffs could vote on whether Plaintiffs' allegations constitute violations of the Foreign Emoluments Clause by the President and whether congress should provide its consent.").

153. *See* Marbury v. Madison, 5 U.S. 137, 138 (1803).

154. *See* Statement of Points and Authorities in Support of Defendant's Motion to Dismiss, *supra* note 149, at 16.

155. *See supra* Section III.C.

156. *See* Motion Hearing, *Blumenthal*, No. 17-1154-EGS, 2018 WL 4681001, ECF No. 53; Memorandum Opinion at 4, *Blumenthal*, No. 17-1154-EGS, 2018 WL 4681001, ECF No. 59.

157. Memorandum Opinion at 11, *Blumenthal*, No. 17-1154-EGS, 2018 WL 4681001, ECF No. 59.

158. Motion for Certification for Interlocutory Appeal of the Court's September 28, 2018 Order, *Blumenthal*, No. 17-1154-EGS, 2018 WL 4681001, ECF No. 60.

159. *See supra* notes 69–90, 107–11 and accompanying text.

proper standing.[160] While the court in *District of Columbia* and *Blumenthal* have preliminarily found that the plaintiffs have standing, President Trump continues to challenge this finding by seeking appeals through the interlocutory appeals process.[161] Furthermore, depending upon the ultimate result of these cases at the district court level, the issue of standing will certainly be a primary ground upon which President Trump would appeal. Since lower courts in multiple districts have come to different conclusions on standing, the issue will need to be determined by the Circuit Courts and perhaps ultimately the United States Supreme Court.

Given these differing rulings on the issue of standing, the most cynical observer might believe that standing is merely in the eye of the beholder and depends upon the ruling judge's political preference.[162] However, it bears noting that each of the Article III judges who have ruled on the issue of standing thus far (Judge George B. Daniels in *CREW* and *Weinstein*,[163] Judge Peter J. Messitte in *District of Columbia*, [164] and Judge Emmet G. Sullivan in *Blumenthal*[165]) were nominated by President Clinton.[166] Thus, at least on the issue of standing with respect to President Trump's alleged violations of the Emoluments Clauses, the ruling judge's political preference has not been informative or dispositive.

In looking at whether the court ruled correctly in these cases, perhaps the easiest plaintiff to dispose of for lack of standing is the plaintiff in *Weinstein* where the court correctly found that an individual plaintiff with a grievance shared with the general public cannot show the particularized injury needed to establish standing.[167] It is just as easy to dispose of the plaintiff CREW because an interest group or other political organization cannot show an injury

160. *See supra* notes 69–90, 107–11 and accompanying text.

161. *See supra* note 158 and accompanying text.

162. *See* Adam Liptak, *'Politicians in Robes'? Not Exactly, But . . .* , N.Y. TIMES (Nov. 26, 2012), https://www.nytimes.com/2012/11/27/us/judges-rulings-follow-partisan-lines.html ("[T]here is a lot of evidence that the party of the president who appointed a judge is a significant guide to how the judge will vote on politically charged issues like affirmative action.").

163. CREW v. Trump, 276 F. Supp. 3d 174, 179 (S.D.N.Y. 2017), *appeal docketed*, No. 18-474 (2d Cir. Feb. 16, 2018); Weinstein v. Trump, No. 17 Civ. 1018 (GBD), 2017 WL 6544635, at *1 (S.D.N.Y. Dec. 21, 2017).

164. District of Columbia v. Trump, 291 F. Supp. 3d 725, 731 (D. Md. 2018); Complaint at 35–37, Blumenthal v. Trump, No. 1-17-cv-01154 (EGS) (D.D.C. June 14, 2017).

165. *Blumenthal v. Trump*, No. 1:17-cv-01154 (EGS), 2018 WL 4681001, at *1 (D.D.C. Sept. 28, 2018).

166. *See Daniels, George B.*, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/history/judges /daniels-george-b (last visited Nov. 26, 2018); *Messitte, Peter Jo*, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/history/judges/messitte-peter-jo (last visited Nov. 26, 2018); *Sullivan, Emmett G.*, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/history /judges/sullivan-emmet-g (last visited Nov. 26, 2018).

167. *See* discussion *supra* Section III.B.

sufficient to establish standing simply by claiming it had to divert resources from one case to another.[168] While the hospitality plaintiffs in *CREW* have a more convincing argument, the Court appears to be on solid footing in finding that their alleged injuries were speculative and lacked the required nexus with President Trump's actions.[169] The plaintiffs in *District of Columbia* were able to convince the court that increased competition formed a sufficient injury to establish standing.[170] However, the court in *CREW* did not find standing for the hospitality plaintiffs based upon similar facts,[171] and the historical examples from the founding era cited by President Trump in the litigation show that it is possible for a president to receive compensation for goods and services without seeking congressional approval and without raising the specter of injury to potential competitors.[172] A competitor would certainly have standing if President Trump were to offer goods or services for free or at a discounted rate to foreign governments because then he would be "trading favors in exchange for a benefit."[173] However, there has been no evidence of this occurring. If goods and services are offered for sufficient and fair consideration in a competitive marketplace, it is difficult to see how a competitor could establish the requisite injury for standing.[174]

As for the 201 congressional plaintiffs in *Blumenthal*, it could easily be argued that their claims are more political than substantive, given that all plaintiffs are congressional Democrats.[175] Again, historical examples show that when exchanging goods and services for sufficient consideration, it is not necessary for the President to seek prior congressional approval, and such a financial exchange does not qualify as an emolument.[176] Accordingly, the claim that President Trump is somehow depriving Congress of its right to vote on the receipt of alleged emoluments, and that this deprivation constitutes

168. *See* discussion *supra* Section III.A.

169. *See* discussion *supra* Section III.A.

170. *See* discussion *supra* Section III.C.

171. *See supra* notes 72–84 and accompanying text.

172. *See* Memorandum in Support, *supra* note 18, at 41–50; *see also* notes 35–45 and accompanying text.

173. *See* Ann E. Marimow & Jonathan O'Connell, *Trump Can Profit From Foreign Government Business at Hotel if He Doesn't Do Favors in Return, Justice Dept. Argues*, WASH. POST (June 11, 2018), https://www.washingtonpost.com/local/public-safety/obscure-no-more-the-emoluments-clause-is-back-again-in-a-federal-court/2018/06/09/cf052832-6a72-11e8-9e38-24e693b38637_story.html.

174. *Id.*

175. Jonathan O'Connell, David A. Fahrenthold, & Carol D. Leonnig, *Congressional Democrats' Lawsuit Alleging Trump's Private Business is Violating the Constitution Can Proceed, Federal Judge Rules*, WASH. POST (Sept. 28, 2018), https://www.washingtonpost.com/politics/congressional-democrats-lawsuit-alleging-trumps-private-business-is-violating-the-constitution-can-proceed-federal-judge-rules/2018/09/28/0aa3c5dc-bc22-11e8-8792-78719177250f_story.html.

176. *See supra* notes 36–40 and accompanying text.

injury sufficient to establish standing appears to be tenuous.

Standing would be established for members of Congress if President Trump were to accept gifts without first seeking Congressional approval.[177] As for competitors, standing would be established if President Trump were to charge less than market rates or otherwise exchange goods or services without proper consideration.[178] Anything less than this falls short of establishing proper standing.

If a plaintiff with standing cannot be found, it is left to Congress to address whether the President violates the Emoluments Clauses.[179] Congress appears to have the authority to pass such legislation under the Necessary and Proper Clause.[180] In addition, the Constitution vests in Congress the power to waive violations of the Foreign Emoluments Clause,[181] and various Article I provisions grant power to Congress "relating to commerce, foreign affairs, and national security."[182] Moreover, Congress has previously exercised its power in deliberating whether to provide consent to the President in specific circumstances in the past.[183] Nevertheless, as it relates to President Trump's activities, so long as the Republican Party controls at least one house of Congress, any proposed legislation dealing with the Emoluments Clauses and President Trump will likely not see the light of day.[184]

While President Trump has relinquished management of his investment and business assets for the duration of his presidency by conveying them to a trust managed by his sons, Don and Eric, and a Trump Organization executive Allen Weisselberg,[185] this arrangement does not meet the definition of a true

177. *See* supra text accompanying notes 24–25.

178. Marimow & O'Connell, *supra* note 173.

179. *See, e.g.*, *CREW*, 276 F. Supp. 3d at 188, 193 ("As the only political branch with power to consent to violations of the Foreign Emoluments Clause, Congress is the appropriate body to determine whether, and to what extent, Defendant's conduct unlawfully infringes on that power.").

180. U.S. Const. art. I, § 8.

181. U.S. Const. art. I, § 9, cl. 8.

182. U.S. Const. art. I.; *see* EISEN ET AL., *supra* note 8, at 22.

183. *See* Zephyr Teachout, *Trump's Foreign Business Ties May Violate the Constitution*, N.Y. TIMES (Nov. 17, 2016, 5:06 PM), https://www.nytimes.com/roomfordebate/2016/11/17/would-trumps-foreign-business-ties-be-constitutional/trumps-foreign-business-ties-may-violate-the-constitution ("Congress has exercised this obligation in the past. In 1840, when President Martin Van Buren was offered horses, pearls, a Persian rug, shawls and a sword by Ahmet Ben Hamman, the Imam of Muscat, Van Buren got a joint resolution of Congress authorizing him to split the bounty between the Department of State and the Treasury.").

184. *See* Jonathan Martin & Alexander Burns, *Democrats Capture Control of House; G.O.P. Holds Senate*, N.Y. TIMES (Nov. 6, 2018), https://www.nytimes.com/2018/11/06/us/politics/midterm -elections-results.html ("Mr. Trump strengthened his party's hold on the Senate and extended Republican dominance of several swing states crucial to his re-election campaign.").

185. *Report: Trump Assets in Revocable, Not Blind, Trust*, VOA NEWS (Feb. 4, 2017 5:27 AM), https://www.voanews.com/a/report-trump-assets-in-revocable-trust/3706054.html.

"blind" trust.[186] Doing so might remove most of the concerns of those who believe that the Emoluments Clauses have been violated by President Trump.[187] Eisen, Painter, and Tribe argue that the only real solution is for President Trump and his children to go much further than they already have, and divest themselves of all ownership interests in the Trump business empire.[188]

> That divestment process must be run by an independent third party, who can then turn the resulting assets over to a true blind trust. Even if, as some experts believe, there is nothing that Mr. Trump could do to avoid the significant tax consequences of divesting, fidelity to the Constitution, and to American foreign policy and national security interests, manifestly overcomes all such loss to Mr. Trump or his immediate family (who will remain extremely wealthy, in all events). Ultimately, having run for President and prevailed in Electoral College votes, Mr. Trump must make sacrifices in exchange for the awesome powers and responsibilities he will now inherit. That is the design of the Constitution, to which Mr. Trump is always subject.[189]

Might a "true" blind trust be unfair to President Trump and others?[190] David B. Rivkin, Jr. and Lee A. Casey, who both served in the Justice Department under Presidents Reagan and George H.W. Bush, observe that Trump would not simply be liquidating a securities portfolio like his predecessors, but would be selling off "business holdings that he has built and managed most of his life, and with which he is personally identified in a way that few other business magnates are."[191] They further note that Trump's businesses provide employment for thousands of people, and that requiring Trump to liquidate his holdings would discourage other entrepreneurs from seeking the presidency.[192]

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186. Sheelah Kolhatkar, *Trump's Conflict-of-Interest Problem*, THE NEW YORKER (Nov. 14, 2016), https://www.newyorker.com/business/currency/trumps-conflict-of-interest-problem ("[A] trust is only considered "blind" if the trustees are individuals with no financial relationship with the company's owner.").

187. *See, e.g.*, *Report: Trump Assets in Revocable, Not Blind, Trust*, *supra* note 185.

188. *See infra* note 189 and accompanying text.

189. EISEN ET AL., *supra* note 8, at 21.

190. *See, e.g.*, David B. Rivkin Jr. and 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...a1d4-b0c0-11e6-8616-52b15787add0_story.html (arguing that such a requirement is unfair because the action is not required by law and it will not "eliminate the virtual certainty that actions Trump takes as president will affect his personal wealth, for good or ill").

191. *Id.*

192. *Id.*

Eisen, Painter, and Tribe argue that Congress could take action in several different ways to remedy the problem.[193] As noted above, Congress could "pass legislation imposing restrictions on continued presidential involvement in or ownership of businesses and assets that may receive foreign payments or emoluments."[194] Additionally, Congress could "create a private right of action explicitly allowing injured parties, including business competitors of Trump-associated entities, to file Emoluments Clause suits against the President . . . for declaratory and injunctive relief, [such as] disgorgement of the constitutionally problematic assets."[195]

Would Congress ever come together to address this issue through legislation on a non-partisan basis?[196] Given that one party will always have its president in office, this seems unlikely, unless enormous pressure was applied by the public on its representatives.[197] Moreover, any such legislation would need to overcome a presidential veto as well as an inevitable constitutional challenge in federal court by the Executive.[198] Therefore, it is unlikely that legislation expanding the reach of the Emoluments Clauses will be successful barring some public catalyst.[199]

V. CONCLUSION

Shortly before his inauguration, Donald Trump stated, "the law is totally on my side, meaning, the president can't have a conflict of interest. . . . I can be President of the United States and run my business 100 percent."[200]

193. EISEN ET AL., *supra* note 8, at 21–22.

194. *Id.* at 22.

195. *Id.*

196. *See, e.g.*, Jonathan O'Connell, *Congressional Democrats Seek Ruling Against Trump to Enforce Emoluments Clause*, WASH. POST (June 7, 2018), https://www.washingtonpost.com /politics/congressional-democrats-seek-ruling-against-trump-to-enforce-emoluments-clause/2018/06/07/2469538e-6a55-11e8-bea7-c8eb28bc52b1_story.html (noting that Democrats are trying to secure relief but "[n]o Republicans have joined the effort").

197. *See, e.g.*, Thomas Jimenez, *On Being in the Minority*, FOOTNOTES (May 2005), http://www.asanet.org/sites/default/files/savvy/footnotes/mayjun05/fn5.html ("[I]t is tough to accomplish much as a minority member in the House.").

198. *See, e.g.*, John Lauritsen, *Good Question: Why is it so Hard to Pass a Law?*, CBS MINNESOTA (June 23, 2016, 10:56 PM), https://minnesota.cbslocal.com/2016/06/23/good-question-passing-bills/ ("Even if Congress [passes a bill], it goes to the President—who may not like it—and he can veto it.").

199. James Cleith Phillips & Sara White, *The Meaning of the Three Emoluments Clauses in the U.S. Constitution: A Corpus Linguistic Analysis of American English from 1760–1799*, 59 S. TEX. L. REV. 181, 182 (2017) ("With . . . lawsuits filed against President Trump since his surprise election victory, one of these clauses, the Foreign Emoluments Clause, has gained particular attention from academics, the media, and the public.").

200. Liam Stack, et al., *Donald Trump's New York Times Interview: Full Transcript,* N.Y. TIMES (Nov. 23, 2016), https://www.nytimes.com/2016/11/23/us/politics/trump-new-york-times-interview-transcript.html.

Notwithstanding this claim, President Trump promised to take certain actions to minimize any conflicts of interest that might arise.[201] While he is undoubtedly incorrect that a President cannot have conflicts of interest,[202] courts are split on whether individuals and businesses lack standing to bring an Emoluments Clause claim against him.[203] This hurdle will have to be cleared before a court can even reach the substantive issue of whether or not President Trump's actions implicate the Emoluments Clauses.[204]

Because it is unlikely in the short term that this issue will be resolved judicially or legislatively, where are we—the citizens of the United States—to turn?[205] Without the assistance of the "auxiliary precaution" of the Emoluments Clauses, perhaps we are left to rely on our President and other elected officials to be like "angels" exercising self-governance in the face of potential conflicts of interest as Madison described in The Federalist Papers, number 51[206]:

> If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.
>
> A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.[207]

Has President Trump exercised sufficient self-governance over his

201. *See* Kolhatkar, *supra* 186 ("I would probably have my children run it with my executives, and I wouldn't ever be involved.").

202. *See generally* DILLON ET AL., *supra* 104 (discussing how conflict of interest laws applies to the President).

203. *See* CREW v. Trump, 276 F. Supp. 3d 174, 193 (S.D.N.Y. 2017), *appeal docketed*, Citizens for Responsibility and Ethics in Washington v. Trump, No. 18-474 (2d Cir. Feb. 16, 2018); Weinstein v. Trump, No. 17 Civ. 1018, 2017 WL 6544635, at *2 (S.D.N.Y. Dec. 21, 2017); District of Columbia v. Trump, 291 F. Supp. 3d 725, 733–76 (D. Md. 2018); Blumenthal v. Trump, No. 1:17-cv-01154 (EGS), 2018 WL 4681001, at *2 (D.D.C. Sept. 28, 2018).

204. *.CREW*, 276 F. Supp. 3d at 183–84 (discussing the standing requirement before reaching the merits of the dispute).

205. Jessica Levinson, *Why the Emoluments Clause Will Not End Trump's Presidency*, NBC NEWS (Jan. 7, 2018, 12:57 PM), https://www.nbcnews.com/think/opinion/why-emoluments-clause-will-not-end-trump-s-presidency-ncna835331 ("While many of us believed Trump is a walking emoluments clause violation, we may never gain clarity on this issue.").

206. THE FEDERALIST No. 51 (James Madison).

207. *Id.*

business interests during his presidency through the precautionary actions he has taken? Some believe yes,[208] while others argue no, and seek confirmation of their belief via the courts.[209] Only time will tell which group's view is correct.

208. *See* Scott Clement, *A Majority of Americans Feel Like Trump Has Done Enough on His Conflicts of Interest*, WASH. POST (Jan. 17, 2017), https://www.washingtonpost.com.

209. *See, e.g.*, Jennifer Rubin, *Why a Third Emoluments Lawsuit?*, WASH. POST (June 15, 2017), https://www.washingtonpost.com/blogs/right-turn/wp/2017/06/15/why-a-third-emoluments-lawsuit/ (discussing multiple lawsuits against President Trump, alleging Emolument Clause violations).