

Congressional Democrats seek ruling against Trump to enforce emoluments clause

The valet entrance to the Trump International Hotel in Washington. (Linda Davidson/The Washington Post)

By [Jonathan O'Connell](#)

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Attorneys representing 200 Democratic lawmakers urged a federal judge on Thursday to allow their lawsuit against President Trump to proceed, arguing it is Congress's job to ensure the president is not improperly receiving payments from foreign governments through his company.

If U.S. District Judge Emmet G. Sullivan agrees, it would be the second legal challenge to advance centering on whether Trump is violating one of the Constitution's emolument clauses, which bar federal officials from accepting certain gifts known as emoluments. The clause at issue in this case covers payments from foreign governments, which it says cannot be accepted "without the consent of Congress."

Some of Trump's properties benefit from investments or business from foreign governments, particularly his D.C. hotel, which has hosted leaders from Kuwait, Malaysia and other countries. Trump's attorneys have argued that the payments he receives through the hotel and other businesses are not emoluments.

The lawsuits also create the potential for protracted legal battles that could force Trump to reveal private business information and his tax returns.

In the case heard Thursday, the lawmakers are asking the court to force Trump to stop accepting payments they consider improper or seek Congress's consent before doing so.

"We know the tip of the iceberg of what the president has done to accept foreign payments, benefits and gifts," said Sen. Richard Blumenthal (D-Conn.), a lead plaintiff along with Rep. Jerrold Nadler (D-N.Y.). "We can't vote on what we don't know and he has the burden to come to us."

If Trump does not request permission to accept such payments, "there is simply nothing the Congress can do to stop the president's actions," said Brianne J. Gorod, chief counsel at the Constitutional Accountability Center, a nonprofit law firm representing the lawmakers.

Justice Department attorneys, who are representing Trump, have asked the court to dismiss the case. They say Congress could pass a bill whenever it wanted that would ban Trump from accepting such compensation and even override a presidential veto if needed.

Brett A. Shumate, a Justice Department attorney, said members of Congress had additional ways of pressuring the president to change his behavior, such as holding hearings or withholding funding.

"This is a political dispute," Shumate said.

Gorod contended that the president requires "affirmative consent" — meaning a vote of approval — to accept the payments. Otherwise, she said, the president is illegally preventing members of

Congress from doing their job enforcing the constitutional clause. Requiring Congress to pass a law to enforce the provision, she said, would be redundant.

“It would essentially write the foreign emoluments clause out of existence,” she said.

Sullivan did not indicate when he will make a ruling on whether he will dismiss the case or allow it to continue, but he gave both sides reason for optimism.

During arguments, Sullivan told Justice Department attorneys he found their contention that the members of Congress do not have standing to bring the suit “troubling.” He said if individual members of Congress do not have standing to bring such a suit, it was not clear who did.

But he also pressed the plaintiffs on whether the courts needed to get involved, suggesting that if Democrats controlled Congress they would have more power politically and legislatively over the matter.

“It may take some time, but they could get the relief they wanted,” he said.

The members of Congress filed suit against the president a year ago, citing Trump’s decision to retain a financial interest in his company.

Although he resigned from his management position in the company when he entered the White House, he still benefits financially from his businesses, which include residential, office, hotel and golf properties in the United States, Europe and South America.

No Republicans have joined the effort.

The emoluments clause has never been the subject of a major court case and never been taken up by the Supreme Court, leaving great uncertainty about what it means — and to whom, exactly, it applies — in the 21st century.

At the end of last year the Trump Organization donated \$151,470 to the U.S. treasury, an amount that the company said represented profits from some business with foreign governments.

It was the third emoluments case filed against the president, with plaintiffs in each case raising different arguments about why they should have legal standing to bring a suit against the president.

In another, the attorneys general of Maryland and the District successfully argued in March that they have the right to press a case against Trump for profiting from his Washington Trump International Hotel, which does business with foreign embassies. That case is slated to resume next week.

A third case, brought by the advocacy group Citizens for Responsibility and Ethics in Washington, was dismissed for lack of standing but is under appeal.



Jonathan O'Connell covers economic development with a focus on commercial real estate and the Trump Organization. He has written extensively about Donald Trump's business, including how his D.C. hotel has affected Washington and what Trump hotels will mean to the Mississippi Delta. He joined The Washington Post in 2010.

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