



Emoluments Case

Members of Congress Emoluments Case Key Excerpts from 2018 District Court Opinion On Standing

Prepared by Elise Bean
Levin Center at Wayne Law

On Sept. 28, 2018, D.C. District Judge Sullivan held that the 200 Members of Congress who filed the emoluments lawsuit had standing to bring the case. *Blumenthal v. Trump*, 335 F. Supp. 3d 45 (D.D.C. 2018). Here are key excerpts from his 52-page opinion, each excerpt of which consists of a direct quotation taken from the text of his opinion, with no changes in punctuation but with footnotes omitted.

Emoluments Clause

[T]he President may not accept any emolument until Congress votes to give its consent.

The Clause was intended by the Framers to guard against “corruption and foreign influence.”

Historically, Presidents have complied with the Clause by either seeking and obtaining congressional consent prior to accepting foreign presents or emoluments, or by requesting an opinion from the Executive or Legislative Branch’s advisory office as to whether the Clause applies.

Modern Presidents, except for President Trump, have sought advice from the Department of Justice Office of Legal Counsel (“OLC”) prior to accepting potentially covered emoluments.

Since the Clause prohibits the President from accepting a prohibited foreign emolument unless Congress votes to consent, the Constitution gives each individual Member of Congress a right to vote before the President accepts. Under the Constitution, Congress expresses its consent through the combined votes of its individual members.

Finding on Standing

[T]he President’s arguments rely on a repeated misstatement of the injury alleged and on proffers of plainly inadequate legislative remedies. The Court is persuaded that plaintiffs have sustained their burden to show that they have standing to bring their claims: (1) they have adequately alleged a judicially cognizable injury that is fairly traceable to the President and can be redressed by a favorable judicial decision; and (2) although plaintiffs’ claims raise separation-of-powers concerns, plaintiffs have no adequate legislative remedy and this dispute is capable of resolution through the judicial process.

Guidance from other cases on standing

Raines teaches that when a suit is brought by an individual Member of Congress, the member can allege either a personal injury or an institutional injury. If the injury is personal, standing is present when the injury arises out of something to which the member is personally entitled, such as the salary associated with his or her seat. As to an institutional injury, the Court has recognized standing when a legislator’s vote has been completely nullified.

Raines also teaches that it is not necessary for an institutional claim to be brought by or on behalf of the institution. ... Finally, by not overruling *Coleman*, the *Raines* Court suggests that vote nullification is an institutional injury that is personal, although not in the sense that the injury in *Powell* was personal, to the legislators entitled to cast the vote that has been nullified.

D.C. Circuit precedent teaches that individual Members of Congress do not have standing to sue the Executive Branch when their institutional injury is such that they can obtain their remedy in Congress.

Actions by President

[T]he President is accepting prohibited foreign emoluments without asking and without receiving a favorable reply from Congress.

Nullification of Votes

[T]he President has neither sought plaintiffs’ consent prior to accepting prohibited foreign emoluments, nor provided any information to Congress about them, thereby preventing plaintiffs from “exercis[ing] their constitutional prerogative to authorize or reject the specific emoluments he is accepting.” *Id.* ¶ 41. Plaintiffs adequately allege that the President has completely nullified their votes in the past because he has accepted prohibited foreign emoluments as though Congress had provided its consent. And he will completely nullify their votes in the future for the same reason, as plaintiffs allege that he intends to continue this practice.

No legislative remedy

[I]n asking this Court to accept the proposition that legislation on the emoluments issue would be an adequate remedy, the President asks this Court to ignore this constitutional Clause. The Court may not do so.

The Clause is unambiguous: acceptance is prohibited without “Consent.” U.S. Const. art. I, § 9, cl. 8. The Clause therefore places the burden on the President to convince a majority of Members of Congress to consent. The legislation suggested by the President flips this burden, placing the burden on Members of Congress to convince a majority of their colleagues to enact the suggested legislation. This is not what the Clause requires.

Second, the President does not explain why such legislation, assuming he signed it, would prevent him from accepting prohibited foreign emoluments. His failure to explain is especially problematic given that the Constitution itself has not prevented him from allegedly accepting them.

Third, the President does not explain how the proposed legislation would be adequate in view of the allegation that the President has not provided any information to Congress about the prohibited foreign emoluments he has received, and that he does not intend to change this practice. Am. Compl., ECF No. 14 ¶¶ 40, 41. Legislating after Congress happens to learn about his acceptance of a prohibited foreign emolument through news reports is clearly an inadequate remedy.

Fourth, legislation disagreeing with the President’s acceptance of prohibited foreign emoluments does not provide a remedy for him already having allegedly accepted them without seeking and obtaining consent. Finally, legislation would neither prevent the President from accepting future prohibited foreign emoluments, nor force him to return those he has already accepted.

Enforcing the Clause

[I]f these plaintiffs do not have standing to bring their claims to address their alleged injury, it is unlikely that another plaintiff would, rendering the Clause unenforceable against the President except via impeachment. As explained, ... impeachment is an inadequate remedy within the meaning of *Raines*.

Standing to sue

[T]he Court finds that plaintiffs have standing to sue the President for allegedly violating the Foreign Emoluments Clause.