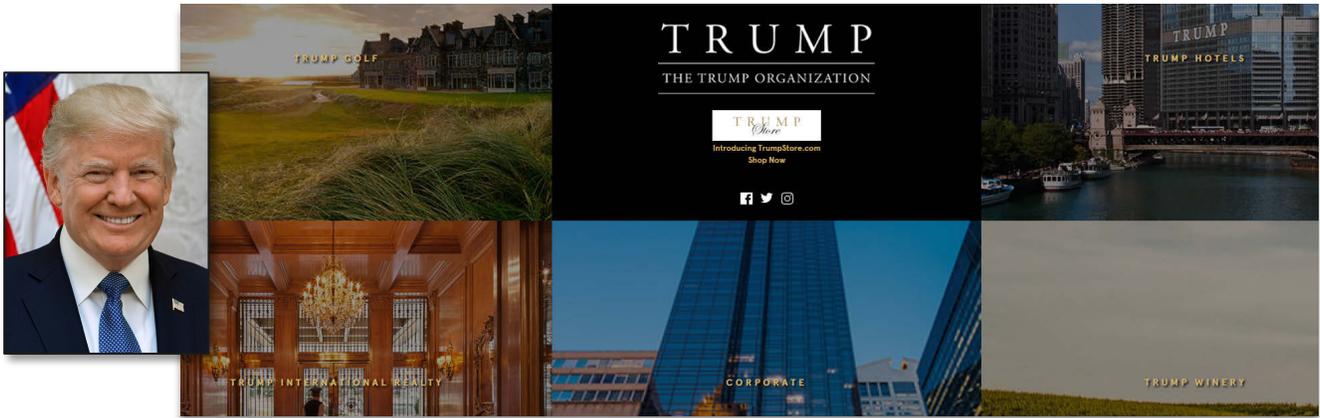


The Emoluments Clause and the President

Prior to his election in November 2016, President Donald Trump had an extensive private business empire. He was a well-known real estate developer. He became most famous as a celebrity host and executive producer of a reality T.V. show called *The Apprentice*. Since his election, some have raised concerns that President Trump is profiting off his presidency.



The emoluments clause is a provision in the U.S. Constitution. An *emolument* is a profit or advantage an official gains from his or her office. The framers of the Constitution feared that ambassadors in the early republic might be corrupted by gifts from foreign countries. The framers wanted public servants to be free from outside influence.

The emoluments clause in Article 1, Section 9, states, “No person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.” This means that U.S. government officials cannot accept gifts or money from foreign officials or foreign countries. Congress, however, may vote to allow emoluments.

Upon taking office, President Trump kept ownership of his businesses. But he turned over control of those businesses to his sons and an executive at his private company, the Trump Organization. President Trump pledged not to enter into new foreign transactions while president. He also pledged to have heightened review of domestic transactions.

No sitting president has ever been sued under the emoluments clause before. The challenges to President Trump are new issues for the courts.

Why Has the President Been Sued?

Three groups sued President Trump over the emoluments clause in federal court. Political and legal analysts are uncertain what the outcomes of these cases will be.

Citizens for Responsibility and Ethics in Washington (CREW) filed the first suit on January 23, 2017, the day after the president’s inauguration. CREW is a private nonprofit advocacy organization. CREW argues that President Trump receives emoluments whenever he receives rents from foreign governments at Trump-owned buildings and hotels, such as the Trump International Hotel in Washington, D.C. Plaintiffs from the hotel and restaurant industries joined CREW’s lawsuit against President Trump.

The attorneys general of Washington, D.C., and Maryland — both Democrats — also filed suit. They allege that President Trump has committed “unprecedented constitutional violations” by continuing to own his business empire. They argue that citizens of Maryland and Washington, D.C., and elsewhere have a right to “honest government,” and they seek to have the president release his tax returns so they can assess his private dealings with foreign governments.

The third group to sue the president was a group of about 200 Democratic Party members of Congress. Similar to CREW, they allege that the president is receiving emoluments from foreign governments. They further allege that they have not been allowed to fulfill their duty to review the emoluments under Article I, Section 9, of the Constitution.

Why President Trump May Be Violating the Emoluments Clause

The plaintiffs in the lawsuits argue that an emolument means “anything of value,” and President Trump is receiving a value. Examples of “values” are foreign government leases in Trump Tower, foreign officials staying or holding events at his hotels, and when foreign government broadcasters pay for rights for *Apprentice* re-runs.

The plaintiffs claim all of the above activities violate the emoluments clause. The plaintiffs cite examples of foreign diplomats deliberately patronizing the Trump hotel and restaurant in Washington, D.C., to gain President Trump’s favor. For example, one diplomat from an Asian country said, “Why 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’?”

They also claim President Trump has taken no precautions against violating another clause in the Constitution. The presidential compensation clause in Article 2, Section 1, is often known as the “domestic emoluments clause.” It states that the president, while in office, cannot receive any compensation from any state or from the United States other than the president’s standard salary. Plaintiffs argue that President Ronald Reagan asked for a formal opinion from the Office of Legal Counsel before accepting pension payments from the State of California. (Reagan had been governor of California from 1967 to 1975.)

The plaintiffs say President Trump’s plan of putting his sons in charge of the Trump Organization is also inadequate. President Jimmy Carter, for example, placed his family’s peanut farm and warehouse into an independent trust after he won the presidential election of 1976. Therefore, no one in the Carter family could be affected by profits or losses of the businesses while Jimmy Carter was president.

Why President Trump May Not Be Violating the Emoluments Clause

Since the lawsuits were filed against Donald Trump as president and not as a private citizen, the Department of Justice (DOJ) is defending him. The DOJ argues that President Trump is not violating the emoluments clause. The DOJ interprets the clause to mean, “profit arising from an office or employ.” This means receiving monetary compensation as a result of being in office.

According to the DOJ, the emoluments clause does not apply to private business transactions. This means that the president has to act in his official capacity to violate the emoluments clause. For example, if the president accepts a bribe in exchange for an official act, then that would violate the emoluments clause.

The DOJ also cites examples of previous presidents who had private business interests while in office. George Washington was one of the nation’s largest landowners while president and even owned a flour mill. His nephew ran his businesses during his presidency. Thomas Jefferson himself owned a farm and

Glossary of Legal Terms

emolument - Profit, salary, or fees from office or employment; compensation for services.

independent trust - A legal relationship in which one party (person or group) assumes financial control of another party’s assets. The party in charge of the assets has legal responsibilities to manage the assets wisely and profitably (i.e., it is trusted to do so).

lawsuit - A proceeding by one party (person or group) against another party in a court of law.

Office of Legal Counsel - This office within the Department of Justice provides legal advice to the president and executive branch agencies.

plaintiff - A party (person or group) who sues another party in a court of law.

standing - One party’s right to make a claim against another party in a lawsuit. Generally, the one party must show that the other party caused an actual injury.

nail factory, and he exported tobacco to Great Britain during his presidency. The DOJ argues that no one at the time “raised concerns about whether foreign governments or government-owned corporations” were “customers” of these businesses of the early presidents.

The DOJ also argues that President Trump is not violating the domestic emoluments clause. That clause was explained by Alexander Hamilton in the *Federalist Papers* in 1788. Hamilton wrote that the clause was meant to ensure that the president could not be persuaded by monetary payments to “renounce or desert” the independence of his office. In other words, it has nothing to do with private business transactions. It has only to do with the president receiving payments for doing something *as president*. It was later determined, for example, that President Reagan could, after all, receive his California pension payments because they had nothing to do with his being president.

What About Standing?

The DOJ argues that CREW does not have standing to sue the president. This generally means CREW is not a party that is experiencing any harm from the president’s activities. For this reason, some analysts believe that the lawsuits by the attorneys general and the members of Congress are more likely to go all the way to the Supreme Court.

CREW argues that the new plaintiffs from the hotel and restaurant industry will solve the issue of standing. One new plaintiff is hotel owner Eric Goode who claims President Trump’s status as both president and hotel owner will unfairly hurt Goode’s business. The DOJ has responded that Goode’s injuries are too speculative, or unknowable, and so standing is still an issue.

Writing & Discussion

1. Read the emoluments clause from Article I, Section 9, again. Does it seem fair to you? Why or why not?
2. Whose description of emoluments do you think is more accurate: the DOJ’s or the plaintiffs’? Why?
3. A president’s alleged violation of the emoluments clause has never come before the Supreme Court. Which of the three cases do you think has the strongest claims? Which has the weakest? If all three came before the Supreme Court, what should the court decide in each case? Use evidence from the article to help explain your answer.
4. What possible consequences could come from Congress approving the president’s alleged emoluments? Do you think a good solution to the controversy is just for Congress to approve them? Why or why not?

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Photos: Wikimedia Commons

Conducting a Civil Conversation in the Classroom

OVERVIEW

Our pluralistic democracy is based on a set of common principles such as justice, equality, liberty. These general principles are often interpreted quite differently in specific situation by individuals. Controversial legal and policy issues, as they are discussed in the public arena, often lead to polarization, not understanding. This civil conversation activity offers an alternative. In this structured discussion method, under the guidance of a facilitator, participants are encouraged to engage intellectually with challenging materials, gain insight about their own point of view and strive for a shared understanding of issues.

OBJECTIVES

By participating in civil conversation, students:

1. Gain a deeper understanding of a controversial issue.
2. Use close reading skills to analyze a text.
3. Present text-based claims.
4. Develop speaking, listening, and analytical skills.
5. Identify common ground among differing views.

DISCUSSION FORMAT

Time: Conversations for classroom purposes should have a time limit, generally ranging from 15 to 45 minutes and an additional five minutes to reflect on the effectiveness of the conversations. The reflection time is an opportunity to ask any students who have not spoken to comment on the things they have heard. Ask them who said something that gave them a new insight that they agreed or disagreed with. Consider the length/difficult of the text(s) students will use and how experienced in student-directed discussion your students are in determining the time.

Small Groups: This discussion strategy is designed to ensure the participation of every student. Groups of 3-4 students are ideal. If you are scaffolding text for various reading levels, group students who will use the same text.

3. Assessment: Each student should fill in his/her own Civil Conversation Guide. Look for:
 - Step 2 - A B: Basic understanding of text.
 - Step 2 - C D: Text-based arguments.
 - Step 2 - E: Appropriate and compelling questions about the text.
 - Step 3 - A: Level of participation (should be “about the same as others”).
 - Step 3 - B: Answer is appropriately related to topic/issue presented in text.
 - Step 3 - C D: Specificity/text-based.

In addition, you may want to collect the article/text students used to assess the annotations they made in terms of connections to prior knowledge/experience, questions they had while reading, and comments they made.

PREPARATION

- Civil Conversation Guide – one per student.
- Article/Text – one per student.

PROCEDURE

A. Introduction.

Briefly overview the purpose and rationale of the Civil Conversation activity. Use the Overview above to help you.

B. Civil Conversation Guide.

Distribute a copy of the Civil Conversation Guide to each student. The Civil Conversation can be used with a news article or other readings you select. It works best for readings that present two or more perspectives on a subject. Each student should fill in his/her own guide.

C. Conducting the Activity.

Divide the class into groups of 3-4 students. You may want to have each group select a leader who will get the discussion started, ensure the group stays on-task, and finishes on time.

Determine how much time the groups have to complete the discussion. (Depending in the length of the reading and how experienced your students are in student-directed discussion.)

Review the rules of a Civil Conversation and direct the groups to follow the instructions on the Guide to get started.

Let groups know you will be circulating to listen in on their conversations and that each person in a group is expected to participate. The goal is for everyone to contribute equally to the conversation.

If necessary, remind groups of the time and urge them to move to the next steps.

D. Closure

After the groups have completed their discussions, debrief the activity by having the class reflect on the effectiveness of the conversation:

- What did you learn from the Civil Conversation?
- What common ground did you find with other members of the group?
- Conclude the debriefing by asking all participants to suggest ways in which the conversation could be improved. If appropriate, have students add the suggestions to their list of conversation rules.

CIVIL CONVERSATION GUIDE

Name: _____ Class: _____

Title of Reading: _____

Step 1: Read.

A. Read through the entire selection without stopping to think about any particular section. Pay attention to your first impression as to what the reading is about.

B. Re-read the selection and annotate (“talk to”) the text:

- Underline the main/most important points. You can comment on these points in the margins.
- Circle words or phrases that are unknown or confusing to you.
- Write down any questions you have in the margin labeling them with a “?”.
- Draw an ➡ in the margin next to text that connects to something else you know outside the text. Note what the connection is, such as a news item or personal experience.

Step 2: Think about the reading to prepare for the discussion.

A. This reading is about...	B. The MAIN POINTS are:
C. In the reading, I agree with:	D. In the reading, I disagree with:
E. What are two questions about this reading that you think could be discussed? (The best questions for discussion are ones that have no simple answer and that can use the text as evidence.) 1. 2.	

Step 3: Discuss and listen.

RULES FOR CIVIL CONVERSATION

1. Everyone in your group should participate in the conversation.
2. Listen carefully to what others are saying.
3. Ask clarifying questions if you do not understand a point raised.
4. Be respectful of what others are saying.
5. Refer to the text to support your ideas.

You will have _____ minutes to discuss. Your goal is to engage with each other and the text to gain insight about your own point of view while finding a shared understanding of issues.

At the end of the reading, you will likely find at least one discussion question. Use that question to get your discussion started. If time permits, you can also discuss questions you came up with in Step 2.

If the reading does not provide discussion questions, choose questions to discuss from Section E in Step 2 above.

Step 4: After your conversation...

A. Compared to others in my group, I spoke: ___ less than, ___ about the same as, ___ more than others

B. Some of the ways I added to the discussion:

C. What evidence did you use from the text to add to the discussion? Why was this evidence helpful?

D. What did you learn about the topic from the civil conversation? (Be sure to reference the text!)