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**Civics 101**

**Episode 23: - THE EMOLUMENTS CLAUSE**

**Virginia Prescott:** [00:00:00] I'm Virginia Prescott and this is Civics 101, a podcast refresher course on some basics you may have forgotten from your U.S. history and government classes. One of our listeners got in touch with us through Hearken and asked for an explanation of the constitutional ethics clause and the penalties for violating it.

[00:00:35] Well it turns out there is no specific ethics clause in the constitution but there is the Emoluments Clause, which you've probably been hearing quite a bit about lately especially as it relates to the president's global business empire and brand and world leaders and operatives staying at Trump Hotels.

[00:00:52] Brianne Gorod is chief counsel of the Constitutional Accountability Center that's in Washington D.C. and she's joining us to help us answer some of those questions. Brianne, welcome.

**Brianne Gorod:** [00:01:02] Thanks for having me.

**Virginia Prescott:** [00:01:03] So what is emoluments, first off. I've been wondering.

**Brianne Gorod:** [00:01:06] Sure. So you know emoluments is not a term that's used everyday these days but was used by the framers and it had a pretty broad meaning. It referred to compensation, to gifts, to other forms of profits or gains. They wanted to pretty broadly prescribe the president and other office holders from taking benefits that might lead them to put their own personal interests above that of the nation.

**Virginia Prescott:** [00:01:27] Now there are two pieces of the puzzle here. The foreign Emoluments Clause and the domestic clause. Can you walk us through that distinction?

**Brianne Gorod:** [00:01:35] The foreign Emoluments Clause prohibits any person holding what's called an office of profit or trust from accepting without the consent of the Congress any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state. So basically if you're the president of the United States or the holder of another office you can't be accepting gifts or presents or other financial benefits from foreign states.

[00:02:01] The Domestic Emoluments Clause applies specifically to the president and it provides that he shall at stated times receive for his services a compensation. So he should receive a salary but he should not receive within that period any other emoluments from the United States or any of them. So basically the president can receive his salary but he should receive any other benefit from either the federal government or state governments to the localities. The idea of both of these clauses was the president should be putting his focus on the national interest and not on his personal financial interest.

[00:02:35] They didn't want there to be concerns about corruption or individual states, foreign governments trying to curry favor with the president. And so that's why they put this broad prescription in the Constitution.

**Virginia Prescott:** [00:02:47] Well trade and business were markedly different when the constitution was drawn up, and now questions have arisen about the president's global business.

[00:02:56] But hotel rooms and rounds of golf aren't what you'd think of when you hear foreign gifts. So what do you think the framers would say about these transactions, these gifts today?

**Brianne Gorod:** [00:03:08] Well you know what we know about the framers is that they were deeply concerned about corruption. This was a term that came up over and over and over again as they debated the Constitution. They put a number of provisions in the Constitution to guard against corruption. And so what they would not have wanted was the possibility that foreign governments would be trying to curry favor with the president and they might not have been able to imagine a president with a vast business empire like Donald Trump's or with business with hotels around the globe. But the kind of benefits that the president may be receiving from foreign governments and states clearly fall within the broad prescription that they put into the Constitution.

**Virginia Prescott:** [00:03:44] Has any past president had to deal with these kinds of conflicts of interest?

**Brianne Gorod:** [00:03:48] We know what makes Donald Trump unique is not so much his vast business holding but his unwillingness to take the steps that past presidents have taken in order to ensure that he wasn't in violation of the Emoluments Clause. Past presidents have been willing to divest, to put their assets in a blind trust.

[00:04:05] That's what President Trump was encouraged to do even before he took office by bipartisan ethics experts and the Office of Government Ethics. We honestly don't know the full extent of the problem because there's been a lack of transparency about the extent of his business holdings but it's quite clear from what we do know is that he's in violation of these clauses.

**Virginia Prescott:** [00:04:25] Does the Emoluments Clause apply or not apply to those traditional givings of gifts or exchange of gifts between heads of state like at a state dinner or something like that.

**Brianne Gorod:** [00:04:34] So you know the foreign emoluments clause provides that Congress can consent to gifts and Congress has historically permitted you know small gifts to be accepted. That's very different than what we're talking about here where the president has vast business empire. And may be receiving significant financial benefits from states in a way that raises the very corruption concerns that the framers were concerned about.

**Virginia Prescott:** [00:04:59] Team of lawyers for the Citizens for Responsibility and Ethics in Washington or CREW have brought a lawsuit against the president for a violation of the Emoluments Clause. Now has this ever been argued before?

**Brianne Gorod:** [00:05:13] Well there really isn't a court precedent for precisely the reason that past presidents have taken the steps they needed to ensure that they weren't in violation of the clause. But I think you know given that President Trump has chosen not to divest I think we're going to see a lot of litigation. The CREW suit is a very important first case but I think it's the first case not the last.

**Virginia Prescott:** [00:05:34] And do you know what the nature of their suit is exactly, the case that made it to court?

**Brianne Gorod:** [00:05:40] Sure. So you know CREW is arguing that the president is violating the Foreign Emoluments Clause. If you look at their complaint they list a number of different examples of financial benefits that the president is likely receiving from foreign governments and states in violation of the clause. And they explained that they should be able to go into court to challenge him for this violation because it's injuring them. You know they are a watchdog organization that monitors ethics and government and they're having to divert resources and time to this issue that they could be spending on other issues that the president had either divested or in the case of the foreign Emoluments Clause you know sought consent from Congress and received it.

**Virginia Prescott:** [00:06:19] What if this lawsuit goes forward. What will happen to the president?

**Brianne Gorod:** [00:06:24] So you know as this lawsuit goes forward and other lawsuits go forward there can be different types of relief sought. You know one type of relief is what's called injunctive relief. Basically asking a court to make the president divest his assets so that he's no longer in violation of the cause. One could imagine hotel competitors for example filing suit because they're injured by the fact that foreign governments are staying at Trump Hotels in order to try to curry favor and so they might seek a different type of damages they might seek monetary damages to make up for the money that they've been losing by virtue of the president's Emoluments Clause violations.

**Virginia Prescott:** [00:06:59] If Donald Trump did divest as you've suggested he's obligated to do, still his immediate family is in charge of the business. So what real difference does that make. He would presumably take back the reins after his presidency right. Is that OK?

**Brianne Gorod:** [00:07:15] Well I think there are ethics experts who would say that's not OK and that he needs to take steps to ensure that he can't just reap the benefits of the presidency four or eight years from now, but needs to totally separate himself and his family from the Trump Organization. But we haven't even had an opportunity to really fully debate that question because Trump's not willing to go anywhere near that. You know at this point he has said he has turned management over to his children but won't even sell his own stake in the company. So you know if you were willing to do that then I think there'd be a lot of discussion about what exact steps he needs to take to ensure that he's not in violation of the clauses.

**Virginia Prescott:** [00:07:51] So there is a lawsuit. There are ethics experts, bipartisan ethics experts as you mentioned. But can he be compelled by any congressional body or other ethical body?

**Brianne Gorod:** [00:08:02] Well I mean certainly Congress can impeach. That is a power that they have. I think if the president violates the Constitution, that would constitute grounds for impeachment. So that is certainly a step that Congress could take. One could also imagine a court saying the president is in violation of the Constitution, we're going to enjoin him from continuing to receive these benefits. I think we're going to see a lot of action certainly and public conversation but also in the courts going forward it will be really interesting to see what the courts do.

**Virginia Prescott:** [00:08:31] What do you think is the most important thing that citizens should know about the Emoluments Clause?

**Brianne Gorod:** [00:08:38] I don't think anyone should think about this as a technicality. You know the Emoluments Clauses -- again there are two, there's both the foreign and the domestic clause -- reflect the framers our founding fathers' very very deep concern about corruption. You know it's true that emoluments was not a household word before a couple of months ago but that's because you know past presidents have gone to real lengths to make sure that they didn't run afoul of these clauses.

[00:09:04] But that doesn't mean that the clauses aren't important. You know they again reflect a deep deep concern that our framers had about corruption and one that is still very important today. You know we want the American people to have confidence that when the president is acting he's acting in their interest and not in his own personal financial interest.

[00:09:21] Brianne Gorod chief counsel of the Constitutional Accountability Center Brianne thank you so much for speaking with us.

[00:09:28] Thanks again for having me.