

A big Trump case hinges on the definition of ‘emoluments.’ A new study has bad news for him.

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D.C. and Maryland are suing President Trump for violating a little-known constitutional provision called "the emoluments clause."



By [Aaron Blake](#)

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President Trump is dealing with special counsel Robert S. Mueller III’s investigation, a new Democratic House majority and a series of controversies. Lurking behind it all is a slow-moving legal case trying to establish whether Trump is violating the Constitution by accepting foreign money at his hotel.

A new study suggests he might be.

The study concerns the so-called [“emoluments clause” case](#), which was brought by the attorneys general in Maryland and the District of Columbia. The case seeks to show Trump is violating the portion of the Constitution barring a public official from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” The case has [progressed further than some experts predicted](#), with a U.S. district judge last year allowing it to proceed and [launching the discovery process](#), in which Trump’s business dealings can be revealed.

Perhaps the biggest, unresolved question hanging over the whole thing is this: What exactly is an “emolument?”

For Trump to have violated the Constitution, it requires his businesses' acceptance of foreign money to be understood as “emoluments.” That is not a word that is widely in use today.

Trump’s legal team has pointed to some 18th century dictionaries to argue for a narrow definition of an emolument as a profit specifically "arising from an office or employ" — i.e. something leveraged by a position of power. The payments to Trump by foreign entities staying at his hotel do not qualify, his attorneys argue, because they are separate from his work as

president. The attorneys general argued for a broader definition that includes any benefit, advantage or profit, regardless of official actions.

The U.S. district judge sided with the attorneys general after a [Georgetown University law professor studied many more dictionaries](#) written at the time and found they favored the broader definition.

That decision is under appeal, but now a new study submitted as an amicus brief in the case bolsters it, using a much-broader survey of how the word was used in the late-1700s than even the dictionary study.

[Read: [Maryland v. Trump amicus brief](#)]

The study from Clark D. Cunningham at Georgia State University and Jesse Egbert of Northern Arizona University uses a scientific method called “corpus linguistics” that combines traditional linguistics with large sets of data, in the form of contemporary written texts.

Studying 138 million words written between 1760 and 1799, the researchers found 2,500 uses of “emolument” or “emoluments.” From there, they found:

1. The word was usually modified either before or after its usage — much more than an average noun — suggesting it had a broad meaning that required such specification and clarifying.
2. Many of the uses concerned personal or private transactions not involving a public official.
3. The word was often modified using the adjective “official,” which would be redundant if that were understood as part of its definition.
4. It often appeared (35 percent of the time) with other nouns as part of a “coordinated noun phrase,” and in many cases involving public officials it was used *alongside* the word “profit.” This suggests it could be something *besides* a profit.

Perhaps most importantly, the study found these coordinated noun phrases often used the word “other” before emoluments. (In fact, the phrase “other emoluments” accounted for one out of every 30 uses of emolument, which is far more common than for other nouns.) This suggests many of the words that would proceed “other emoluments” were understood themselves to be forms of emoluments. This would include words like “bounties,” “fees,” “contracts,” “lands,” “pay,” “clothing,” “privileges” and “places.”

Taken together, this research suggests many things constitute an emolument and that Trump’s continued acceptance of basically anything from foreign states could be interpreted as accepting emoluments.

The benefit of this kind of study, the authors contend, is dictionaries are not reliable sources of common usage. “There is no scientific basis for using a handful of definitions written by individual, idiosyncratic dictionary authors and evaluating sixteen sentences, as the District

Court did, in order to prove common usage by the population of late 18th century America,” Cunningham and Egbert write.

Lawrence Solan of the Brooklyn Law School, who has studied both the law and linguistics and has reviewed the new study, said it should strengthen the case for a broader definition of emolument.

“I think the arguments that they make are very strong,” Solan said. “They show that, time and time again when they use the word emolument, they give a list of things that can be emoluments, and then say ‘and other emoluments.’”

Corpus linguistics has been around as a field of study since the 1960s, but it has become increasingly popular among so-called constitutional “originalists” — those who believe we should decide cases based upon the original meaning. Utah Supreme Court Justice Thomas R. Lee, the brother of Sen. Mike Lee (R-Utah), has been a main proponent of its use in judicial opinions, and it has been used in Supreme Court cases [in 2011 by Chief Justice John G. Roberts Jr.](#) and [last year by Justice Clarence Thomas](#). The Michigan Supreme Court issued an opinion in 2016 [in which every justice cited corpus linguistics](#).

[\[The path forward for law and corpus linguistics\]](#)

That does not mean this brief will prove compelling to the U.S. Court of Appeals for the Fourth Circuit. But if the case is allowed to proceed and this becomes a bigger problem for Trump — even if that just means the veil is lifted off his businesses for a while — studies like this could play a significant role.