

Is the Emoluments Clause Dead?

By Richard P. Swanson and Ronald C. Minkoff

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Recent high-level meetings between Saudi Crown Prince Mohammed bin Salman and President Donald Trump have caused us to ask some basic questions about the Emoluments Clause, which prohibits the acceptance of any “present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State,” without the consent of Congress.

The president’s family businesses have many Saudi connections. While there are arguments that these are purely private investments on an arms-length basis, the mix of personal and governmental raises issues about whether any of them constitutes a “present” or an “emolument.” The Emoluments Clause has almost never been addressed in our country’s history, because there has never before been such a dramatic mixing of personal business and wealth with presidential office and foreign potentates. But there are obvious issues. Why hasn’t there been more public outcry?

That in turn leads to the question of how one would actually go about trying to enforce the Emoluments Clause. Has the Supreme Court conferred presidential immunity from it? Is there anyone in the world who would have standing to



Courtesy photos

Richard Swanson, left, and Ronald Minkoff, right.

sue under it? Is the only remedy for its violation impeachment, and if so, doesn’t our history show that is no remedy at all? How did the Framers originally intend that the clause be enforced? Is the Emoluments Clause, seemingly important on its face, simply a dead letter?

We should be glad that these issues have never before have to have been raised, and we are sorry for the need to have to raise them now.

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