WHO HAS STANDING TO SUED UNDER THE EMOLUMENTS CLAUSES?

Three pending lawsuits challenge President Trump’s practice of accepting payments and other benefits from foreign governments through his businesses as violative of the Foreign Emoluments Clause. They also allege that the President’s practice of accepting payments and benefits from state or federal governmental units violates the Domestic Emoluments Clause. These actions raise interesting questions about the meaning of two little-discussed provisions of the Constitution. But before reaching the merits the courts where these cases are pending will first have to grapple with issues of justiciability - in particular, with the question whether plaintiffs have “standing” to bring their claims in federal court. This article explains why, under the Supreme Court’s Article III standing case law, the plaintiffs in the three pending actions do have standing to sue, and to demand most, if not all, of the relief that they seek.

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