

No. 18-2488

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

DISTRICT OF COLUMBIA; STATE OF MARYLAND,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the United States of America,
in his official capacity and his individual capacity,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Maryland
Case No. 8:17-cv-01596
Judge Peter J. Messitte

APPELLANT'S SUPPLEMENTAL BRIEF

Patrick Strawbridge
CONSOVOY MCCARTHY PARK PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com

William S. Consovoy
Thomas R. McCarthy
Bryan K. Weir
Cameron T. Norris
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
(703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
bryan@consovoymccarthy.com
cam@consovoymccarthy.com

Counsel for Defendant-Appellant in his individual capacity

Appellant President Donald J. Trump, in his individual capacity, files this supplemental brief in response to the Court's order to "address[] developments in these cases not covered in the original briefs." CA4 Doc. 69. The President is aware of three such developments—two legal and one factual. None provides a basis to depart from the panel's well-reasoned opinion.

First, after the parties' submitted their original briefs but before the panel issued its opinion, a district court disagreed with the President's interpretation of the Foreign Emoluments Clause. *See Blumenthal v. Trump*, 373 F. Supp. 3d 191 (D.D.C. 2019). That decision followed the district court's decision here and is unpersuasive for the same reasons.

Second, after the panel issued its decision, a divided panel of the Second Circuit held that a group of individuals and businesses had standing to sue the President (in his official capacity) for alleged violations of the Emoluments Clauses. *See CREW v. Trump*, 939 F.3d 131 (2d Cir. 2019). The Second Circuit's decision is unpersuasive for the reasons given in the dissent, the district court's opinion, and the Justice Department's pending petition for rehearing en banc.

But even assuming the Second Circuit were correct, Plaintiffs here have a weaker case for standing. As the district court found, the President explained in his original briefs, and Plaintiffs never disputed, Plaintiffs' theory of "competitor standing" is incredibly limited: they allege that two specific properties (the Washington Convention Center and the Bethesda Marriott Conference Center, not the MGM Casino) compete

with one specific hotel in D.C. (the Trump International Hotel, not any other Trump properties) for one specific type of service (event space, not hotel or restaurant services). *See* JA141-46 & n.13; Appellant’s Reply Br. 13-15; Appellant’s Br. 15-17. This hyper-specificity makes it even harder to prove standing here than in *CREW*, where the plaintiffs were more than 200 establishments that allegedly competed with Trump properties in both New York and D.C. for event space, hotel space, and restaurant services. *See* 939 F.3d at 138.

Third, as recently reported in the media, The Trump Organization is in discussions to sell its rights to the Trump International Hotel in D.C.—the property at issue in this litigation. The President will keep this Court apprised of any significant developments on that front.

* * *

For these reasons and the reasons given in the President’s opening briefs, this Court should reverse the district court and remand with instructions to dismiss the claims against President Trump in his individual capacity.

Patrick Strawbridge
CONSOVOY MCCARTHY PARK PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com

November 14, 2019

Respectfully submitted,

/s/ William S. Consovoy
William S. Consovoy
Thomas R. McCarthy
Bryan K. Weir
Cameron T. Norris
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
(703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
bryan@consovoymccarthy.com
cam@consovoymccarthy.com

*Counsel for Defendant-Appellant in his
individual capacity*

CERTIFICATE OF COMPLIANCE

This brief complies with the Court's order because it is less than 15 pages. This brief also complies with any applicable typeface and typestyle requirements because it was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond.

/s/ William S. Consovoy

CERTIFICATE OF SERVICE

I certify that on November 14, 2019, this document was served on all parties or their counsel of record through the CM/ECF system.

/s/ William S. Consoy