No. 19-___

IN THE

Supreme Court of the United States

SENATORS RICHARD BLUMENTHAL, RICHARD J. DURBIN, PATTY MURRAY, ELIZABETH WARREN, AMY KLOBUCHAR, BERNARD SANDERS, PATRICK LEAHY, SHELDON WHITEHOUSE, CHRISTOPHER A. COONS, MAZIE K. HIRONO, CORY A. BOOKER, KAMALA D. HARRIS, MICHAEL F. BENNET, MARIA CANTWELL, BENJAMIN L. CARDIN, TOM CARPER, CATHERINE CORTEZ MASTO, TAMMY DUCKWORTH, KIRSTEN E. GILLIBRAND, MARTIN HEINRICH, TIM KAINE, EDWARD J. MARKEY, JEFF MERKLEY, CHRIS MURPHY, JACK REED, BRIAN SCHATZ, TOM UDALL, CHRIS VAN HOLLEN, AND RON WYDEN, *Petitioners*,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *Respondent.*

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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July 6, 2020

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QUESTION PRESENTED

Do legislators have standing to seek judicial relief when their votes have been "completely nullified," *Raines v. Byrd*, 521 U.S. 811, 823 (1997)?

PARTIES TO THE PROCEEDINGS

Plaintiffs-appellees in the court of appeals were Senators Richard Blumenthal, Richard J. Durbin, Patty Murray, Elizabeth Warren, Amy Klobuchar, Bernard Sanders, Patrick Leahy, Sheldon Whitehouse, Christopher A. Coons, Mazie K. Hirono, Cory A. Booker, Kamala D. Harris, Michael F. Bennet, Maria Cantwell, Benjamin L. Cardin, Tom Carper, Catherine Cortez Masto, Tammy Duckworth, Kirsten E. Gillibrand, Martin Heinrich, Tim Kaine, Edward J. Markey, Jeff Merkley, Chris Murphy, Jack Reed, Brian Schatz, Tom Udall, Chris Van Hollen, and Ron Wyden; and Representatives Jerrold Nadler, Alma Adams, Pete Aguilar, Nanette Diaz Barragán, Karen Bass, Joyce Beatty, Ami Bera, Donald S. Beyer, Jr., Sanford D. Bishop, Jr., Earl Blumenauer, Lisa Blunt Rochester, Suzanne Bonamici, Brendan F. Boyle, Anthony Brown, Julia Brownley, Cheri Bustos, G.K. Butterfield, Salud O. Carbajal, Tony Cárdenas, André Carson, Sean Casten, Kathy Castor, Joaquin Castro, Judy Chu, David N. Cicilline, Gilbert R. Cisneros, Jr., Katherine Clark, Yvette D. Clarke, William Lacy Clay, Emanuel Cleaver II, James E. Clyburn, Steve Cohen, Gerald E. Connolly, Jim Cooper, J. Luis Correa, Jim Costa, Joe Courtney, Charlie Crist, Danny K. Davis, Susan A. Davis, Madeline Dean, Peter DeFazio, Diana DeGette, Rosa L. DeLauro, Suzan K. DelBene, Val Butler Demings, Mark DeSaulnier, Ted Deutch, Debbie Dingell, Lloyd Doggett, Michael F. Doyle, Eliot L. Engel, Veronica Escobar, Anna G. Eshoo, Adriano Espaillat, Dwight Evans, Bill Foster, Lois Frankel, Marcia L. Fudge, Tulsi Gabbard, Ruben Gallego, John Garamendi, Jesús G. "Chuy" Garcia, Sylvia Garcia, Jimmy Gomez, Al Green, Raul M. Grijalva, Deb Haaland, Josh Harder, Alcee L. Hastings, Jahana Hayes, Denny Heck, Brian Higgins, James A. Himes, Steny H.

Hoyer, Jared Huffman, Sheila Jackson Lee, Pramila Jayapal, Hakeem Jeffries, Eddie Bernice Johnson, Henry C. "Hank" Johnson, Jr., Marcy Kaptur, William R. Keating, Robin L. Kelly, Joseph P. Kennedy III, Ro Khanna, Daniel T. Kildee, Derek Kilmer, Ann Kirkpatrick, Raja Krishnamoorthi, James R. Langevin, Rick Larsen, John B. Larson, Brenda L. Lawrence, Al Lawson, Barbara Lee, Andy Levin, Mike Levin, John Lewis, Ted W. Lieu, Dave Loebsack, Zoe Lofgren, Alan Lowenthal, Nita M. Lowey, Ben Ray Luján, Stephen F. Lynch, Carolyn B. Maloney, Sean Patrick Maloney, Doris Matsui, Betty McCollum, A. Donald McEachin, James P. McGovern, Ann McLane Kuster, Jerry McNerney, Gregory W. Meeks, Grace Meng, Gwen S. Moore, Joseph D. Morelle, Seth Moulton, Debbie Mucarsel-Powell, Grace F. Napolitano, Richard E. Neal, Joe Neguse, Donald Norcross, Alexandria Ocascio-Cortez, Ilhan Omar, Frank Pallone, Jr., Jimmy Panetta, Bill Pascrell, Jr., Donald M. Payne, Jr., Nancy Pelosi, Ed Perlmutter, Scott H. Peters, Dean Phillips, Chellie Pingree, Mark Pocan, Ayanna Pressley, David E. Price, Mike Quigley, Jamie Raskin, Kathleen M. Rice, Cedric L. Richmond, Harley E. Rouda, Lucille Roybal-Allard, C.A. Dutch Ruppersberger, Bobby L. Rush, Tim Ryan, Linda T. Sánchez, John P. Sarbanes, Mary Gay Scanlon, Jan Schakowsky, Adam B. Schiff, Bradley S. Schneider, Robert C. "Bobby" Scott, José E. Serrano, Terri Sewell, Donna Shalala, Brad Sherman, Albio Sires, Adam Smith, Darren Soto, Jackie Speier, Greg Stanton, Eric Swalwell, Mark Takano, Bennie G. Thompson, Mike Thompson, Dina Titus, Rashida Tlaib, Paul D. Tonko, Norma J. Torres, Lori Trahan, Juan Vargas, Marc Veasey, Filemon Vela, Nydia M. Velázquez, Debbie Wasserman Schultz, Maxine Waters, Bonnie Watson Coleman, Peter Welch, Jennifer Wexton, Susan Wild, Frederica S. Wilson, and John Yarmuth.

Defendant-appellant in the court of appeals was Donald J. Trump, in his official capacity as President of the United States.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Blumenthal, et al. v. Trump, No. 19-5237, U.S. Court of Appeals for the District of Columbia Circuit (opinion, order, and judgment entered February 7, 2020).

In re Trump, No. 19-8005, U.S. Court of Appeals for the District of Columbia Circuit (order entered September 4, 2019).

In re Trump, No. 19-5196, U.S. Court of Appeals for the District of Columbia Circuit (order entered July 19, 2019).

Blumenthal, et al. v. Trump, No. 1:17-cv-1154, U.S. District Court for the District of Columbia (opinions and orders entered September 28, 2018; April 30, 2019; June 25, 2019; and August 21, 2019).

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INTRODUCTION

The Foreign Emoluments Clause of the Constitution requires federal officials to obtain congressional consent before accepting rewards from foreign states, U.S. Const. art. I, § 9, cl. 8, a requirement the Framers imposed because they recognized "the necessity" of ensuring that officials remain "independent of external influence," 2 *The Records of the Federal Convention of 1787*, at 389 (Max Farrand ed., 1911) (hereinafter "*Records*"). Since the eighteenth century, U.S. presidents and other federal officials have obeyed the Clause's mandate by declining to accept rewards from foreign states without prior consent.

President Trump, however, has been violating this critical constitutional prohibition for his entire term in office. By maintaining ownership of his companies while they conduct business with foreign governments—without seeking or obtaining congressional consent for these transactions—the President is accepting unauthorized financial benefits from foreign states. His defense is that the Clause prohibits him only from accepting fees for services that he personally provides with his own labor, and that it imposes no limit on the vast sums of money foreign governments are paying him through his businesses for the services of his employees. *See* Pet. App. 70-71.

Because President Trump is denying members of Congress an institutional prerogative to which the Constitution entitles them—the right to cast effective votes on whether he may accept specific foreign emoluments before he accepts them—Petitioners filed suit, seeking declaratory and injunctive relief preventing the President from accepting foreign emoluments without first obtaining congressional consent. In a thorough opinion, the district court held that Petitioners have Article III standing, explaining that "the

President's complete nullification of plaintiffs' votes is entirely different from the 'abstract dilution of legislative power' alleged in *Raines* [*v. Byrd*, 521 U.S. 811 (1997)]." Pet. App. 46 (quoting *Raines*, 521 U.S. at 826).

The court of appeals reversed but did not engage with the district court's analysis. Instead, in a cursory opinion, the court of appeals held that under *Raines* "only an institution can assert an institutional injury," and that Petitioners lack standing because they "do not constitute a majority" of the House or Senate. *Id.* at 10-11. This new rule misunderstands the concept of "institutional injury" articulated in *Raines*. And based on that misunderstanding, it categorically prevents individual members of Congress from enforcing *any* of their institutional prerogatives in court.

But since this Court first recognized institutional injuries as cognizable in *Coleman v. Miller*, 307 U.S. 433 (1939), it has been careful not to foreclose all standing for individual members of Congress. Instead, even as it has clarified that individual members enjoy standing to sue only in narrow circumstances, it has preserved their ability to seek judicial relief in at least one situation: when their votes have been "completely nullified." *Raines*, 521 U.S. at 823. That is the case here. By refusing to seek congressional consent before accepting payments and other benefits from foreign governments, President Trump is denying Petitioners their right to cast specific votes on whether he may accept those benefits and to have their votes given effect.

The court of appeals, however, short-circuited this analysis with its categorical new rule. Because its shallow treatment of legislative standing departs from this Court's precedent, and because its decision undermines key safeguards of our constitutional structure, review by this Court is imperative.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals, Pet. App. 3, is reported at 949 F.3d 14. The opinions of the district court denying the motion to dismiss, Pet. App. 14 and 64, are reported at 335 F. Supp. 3d 45 and 373 F. Supp. 3d 191. The opinions of the district court addressing interlocutory appeal, Pet. App. 105 and 118, are available at 382 F. Supp. 3d 77 and 2019 WL 3948478. The orders of the court of appeals addressing interlocutory appeal, Pet. App. 115 and 125, are available at 781 Fed. App'x 1 and 2019 WL 4200443.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Foreign Emoluments Clause provides:

> No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

U.S. Const. art. I, § 9, cl. 8.

STATEMENT OF THE CASE

A. The Foreign Emoluments Clause

Recognizing that foreign states would "intermeddle in our affairs, and spare no expence to influence them," 2 *Records* at 268, the Framers fortified our national charter with safeguards against "foreign influence and corruption," 1 *id.* at 289. Chief among them is the Foreign Emoluments Clause. Reflecting "the

necessity" of ensuring that federal officials remain "independent of external influence," 2 *id.* at 389, the Clause requires "the Consent of the Congress" before an official accepts "any present, Emolument, Office, or Title, of any kind whatever," from any foreign state. U.S. Const. art. I, § 9, cl. 8. In short, perceiving that foreign rewards "opened an avenue to foreign influence," 8 Annals of Cong. 1587 (1798) (Joseph Gales ed., 1834), the Framers demanded that "every present . . . be laid before Congress," *id.* at 1585, and they vested members of Congress with "the exclusive authority to permit the acceptance of presents from foreign Governments," Letter from James Madison to David Humphreys (Jan. 5, 1803).

The Foreign Emoluments Clause's "sweeping and unqualified" language, 18 Op. O.L.C. 13, 17 (1994), has long been understood to require consent for even "trifling presents," 8 Annals of Cong. 1587, encompassing rewards as diverse as jewelry, household luxuries, ornamental novelties, medals, tokens of thankfulness, symbolic military decorations, and compensation for services provided. *See, e.g.*, H.R. Rep. No. 21-170 (1830); 4 Stat. 792 (Feb. 13, 1835); 5 Stat. 730 (Mar. 1, 1845); 10 Stat. 830 (June 29, 1854); 11 Stat. 152 (Aug. 30, 1856); 20 Stat. 587 (Dec. 15, 1877); 21 Stat. 603, 604 (Jan. 31, 1881); 29 Stat. 759 (Apr. 2, 1896); S. Rep. No. 61-373, at 2-20 (1910); 40 Stat. 845, 872 (July 9, 1918); 48 Stat. 1267 (June 27, 1934); 56 Stat. 662 (July 20, 1942); 65 Stat. A148 (Oct. 30, 1951); 72 Stat. A159 (Aug. 27, 1958); 80 Stat. 1634 (July 4, 1966).

While the Clause is severe, its language is clear. And under that language, "[t]he decision whether to permit exceptions that qualify the Clause's absolute prohibition or that temper any harshness it may cause is textually committed to *Congress*." 17 Op. O.L.C. 114, 121 (1993). Thus, in contrast with other

constitutional prohibitions that give members of Congress no special role to play, *e.g.*, U.S. Const. art. II, § 1, cl. 7 (Domestic Emoluments Clause), the Framers deliberately gave members of Congress an ongoing procedural role in vetting foreign emoluments.

Equally deliberate was the Framers' decision to require a prior act of affirmative congressional consent before foreign emoluments may be accepted. The Framers knew how to assign legal effect to an *absence* of legislative action. *See id.* art. I, § 7, cl. 2 (bills presented to the President become law if not returned within ten days); 2 *Records* at 80, 83 (declining to adopt proposal that would allow appointments to take effect unless the Senate voted to *reject* the nominee). Eschewing that model, the Framers placed a formidable burden on any official wishing to accept a foreign reward: convince majorities in both Houses of Congress to give their affirmative consent. *See* 4 John Bassett Moore, *A Digest of International Law* 582 (1906) (quoting 1834 message from the Secretary of State reminding diplomats not to accept foreign presents "unless the consent of Congress shall have been previously obtained").

The mechanism for complying with the Clause, however, is straightforward: an official who wishes to accept a foreign emolument simply writes to Congress describing that benefit and seeking Congress's direction. This procedure is long settled by historical practice. *See, e.g.*, H. Journal, 5th Cong., 2d Sess. 275 (1798) (letter from ambassador requesting decision on "whether he shall accept or decline the customary presents given, by [foreign] Courts, . . . which he has declined receiving, without first having obtained the consent of the Government of the United States"); S. Journal, 26th Cong., 1st Sess. 385 (1840) (letter from President Van Buren describing gifts offered to him and

"deem[ing] it my duty to lay the proposition before Congress"); H. Journal, 34th Cong., 1st Sess. 686-87 (1856) (letter from President Pierce requesting consent for naval officers to accept gifts); S. Journal, 37th Cong., 2d Sess. 243 (1862) (letter from President Lincoln reporting gifts offered to him and "submit[ting] for . . . consideration the question as to the[ir] proper place of deposit"); *President Benjamin Harrison* (Oct. 14, 2012), https://www.benjaminharrison.org/ (letter from President Harrison requesting consent to accept two medals, "[i]f it is appropriate that I should have them"); H.R. Rep. No. 65-695, at 1 (1918) (letter from President Wilson requesting consent for embassy officials to accept gifts); 105 Cong. Rec. 6879-80 (daily ed. Apr. 28, 1959) (letter from Defense Secretary requesting consent for military officers to accept foreign decorations).

When Congress wishes to approve an official's request to accept a foreign emolument, or to give direction on that request, it passes a resolution or private bill.[1] And if Congress wishes to decline a request, it can simply do nothing. Because acceptance requires affirmative consent, inaction by either House functions as a denial of that consent. *See, e.g.*, 8 Annals of Cong. 1593 (1798) (failure of resolution in House after Senate passage); H.R. Rep. No. 65-695, at 5 (1918) (noting that despite State Department recommendations to consent to gifts, "[i]t has not been the pleasure of Congress to act favorably upon these recommendations").

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[1] In addition, legislation can provide blanket consent for particular classes of benefits, *e.g.*, 5 U.S.C. § 7342 (gifts of minimal value and decorations); 37 U.S.C. § 908 (civil employment by foreign governments). Where blanket consent has not been given, however, "any other emolument stands forbidden." 6 Op. O.L.C. 156, 158 (1982).

In sum, the procedure required by the Foreign Emoluments Clause is textually clear and historically settled. *Before* an official accepts an emolument from a foreign state, he or she must obtain the affirmative consent of Congress.

Congress "consist[s] of a Senate and House of Representatives," U.S. Const. art. I, § 1, and each member of Congress has a right to vote on every matter that comes before those bodies, *see id.* art. I, § 3, cl. 1 ("each Senator shall have one Vote"); *id.* art. I, § 5, cl. 3 (requiring the House and Senate to record "the Yeas and Nays of the Members" upon request). The Constitution, therefore, entitles individual members of Congress to vote on whether to consent to an official's acceptance of a foreign emolument before he or she accepts it.

B. President Trump's Violations

Since the eighteenth century, U.S. presidents and other federal officials have obeyed the Foreign Emoluments Clause's clear mandate, either by seeking Congress's consent before accepting rewards from foreign states or by declining to accept such rewards. *See* Pet. App. 22-24.

Not President Trump. By maintaining ownership of his companies while allowing them to conduct business with foreign governments, the President is accepting payments and other financial benefits from foreign states. Yet President Trump has not sought, much less obtained, congressional consent for any of these transactions. Instead, he has disregarded the Constitution's structural safeguard "against every kind of influence by foreign governments upon officers of the United States." 10 Op. O.L.C. 96, 98 (1986) (quoting 24 Op. Att'y Gen. 116, 117 (1902)).

The results are predictable. Foreign officials flock

to the President's hotels and resorts, reportedly paying up to hundreds of thousands of dollars for celebrations and blocks of rooms. Foreign ambassadors explain that hosting events at Trump properties is "a statement that we have a good relationship with this president."[2] Prime ministers travel in motorcades from the President's Washington, D.C., hotel straight to the White House to meet with him.[3]

And that is just the start. Foreign governments are reportedly paying President Trump untold amounts for rent and fees at his commercial and residential towers,[4] many having signed leases soon after he took office.[5] Abroad, foreign states have granted the President lucrative intellectual property rights, Pet. App. 67, 121, and have "donated public land, approved permits and eased environmental regulations for Trump-branded developments."[6] Rather than comply with the Foreign Emoluments Clause before accepting these benefits, President Trump has disparaged "you people with this phony Emoluments

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[2] David A. Fahrenthold & Jonathan O'Connell, *At President Trump's Hotel in New York, Revenue Went up This Spring—Thanks to a Visit from Big-Spending Saudis*, Wash. Post (Aug. 3, 2018).

[3] Jonathan O'Connell, *From Trump Hotel Lobby to White House, Malaysian Prime Minister Gets VIP Treatment*, Wash. Post (Sept. 12, 2017).

[4] Dan Alexander & Matt Drange, *Trump's Biggest Potential Conflict of Interest Is Hiding in Plain Sight*, Forbes (Feb. 13, 2018).

[5] Julia Harte, *Foreign Government Leases at Trump World Tower Stir More Emoluments Concerns*, Reuters (May 2, 2019).

[6] Anita Kumar, *Foreign Governments Are Finding Ways To Do Favors for Trump's Business*, McClatchy (Jan. 2, 2018).

Clause."[7]

Worst of all, because the President is not seeking congressional consent before accepting benefits from foreign governments, the full range of those benefits—and their sources—remain unknown.

Under the Constitution, each of these transactions requires the prior consent of Congress. By engaging in these transactions without seeking and obtaining the prior approval of majorities in both Houses of Congress, President Trump is denying Petitioners specific votes to which they are constitutionally entitled. And because Congress cannot adequately remedy this violation of Petitioners' voting rights without the aid of the courts, Petitioners filed suit in June 2017, seeking a declaratory judgment that the President is violating the Clause and an injunction ordering him to stop accepting foreign emoluments unless he first obtains congressional consent. Pet. App. 6.

The President moved to dismiss Petitioners' suit, arguing among other things that Petitioners lack standing. *Id.*

C. The District Court's Decisions

In September 2018, the district court denied the President's motion in part, holding that Petitioners have standing to maintain this action. Pet. App. 14.

The district court began by describing the dichotomy this Court recognized in *Raines v. Byrd* between two categories of harms to individual legislators: "[A]n individual Member of Congress . . . can allege either a personal injury or an institutional injury." *Id.* at 32; *accord Cummings v. Murphy*, 321 F. Supp. 3d 92, 107

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[7] Kyle Griffin (@kylegriffin1), Twitter (Oct. 21, 2019, 1:55 PM), https://twitter.com/kylegriffin1/status/1186340167193366529.

(D.D.C. 2018) ("[W]here suit is brought by individual Members of Congress, *Raines* establishes a binary rubric of potential injuries," under which "the alleged injury . . . is either personal or institutional."); *see* Pet. App. 27-30 (discussing *Raines*'s differentiation of *Powell v. McCormack*, 395 U.S. 486 (1969) (involving "personal injury"), from *Coleman v. Miller*, 307 U.S. 433 (1939) (involving "institutional injury")). "If the injury is personal, standing is present when the injury arises out of something to which the member is personally entitled, such as the salary associated with his or her seat." Pet. App. 32.

"As to an institutional injury," the district court continued, this Court "has recognized standing when a legislator's vote has been completely nullified." *Id.* (citing *Raines*, 521 U.S. at 823). That was the case in *Coleman v. Miller*, where the plaintiffs were Kansas state legislators whose votes on a measure had been "overridden and virtually held for naught." 307 U.S. at 438.

While *Coleman* did not "implicate[] federal separation-of-powers concerns," the district court explained, "the *Raines* Court specifically declined to hold that *Coleman* would be inapplicable 'to a similar suit brought by federal legislators.'" Pet. App. 33 (quoting *Raines*, 521 U.S. at 824 n.8). Moreover, *Coleman* was a case brought by individual legislators who did not sue on behalf of their legislative body, but rather challenged the nullification of their own individual votes. And this Court "reaffirmed *Coleman* in both *Raines* and *Arizona State Legislature* [*v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652 (2015)], necessarily holding that the institutional injury alleged—vote nullification—was sufficiently personal to each of the individual plaintiffs to satisfy the standing requirement under Article III." *Id.* at 40 (citing

Raines, 521 U.S. at 821; *Ariz. State Legislature*, 135 S. Ct. at 2665).

In sum, as the district court explained, this Court "has recognized at least one type of institutional injury for which legislators may have standing to sue: complete vote nullification." *Id.* at 40.

The district court also recognized that *Raines*, which denied standing to several members of Congress who sought to challenge the constitutionality of a federal law, did not discard vote nullification as a cognizable injury. "In *Raines*, plaintiffs sued after being on the losing side of the vote that enacted the Line Item Veto Act, alleging that their injury was the diminution of legislative power caused by the Act." *Id.* at 49 (citing *Raines*, 521 U.S. at 814). Upholding standing there, the district court explained, "would have required a drastic extension of *Coleman* because the nature of the vote nullification in *Coleman* was different from the 'abstract dilution of legislative power' alleged in *Raines*." *Id.* at 46 (quoting *Raines*, 521 U.S. at 826); *accord Comm. on Oversight & Gov't Reform v. Holder*, 979 F. Supp. 2d 1, 13 (D.D.C. 2013) (noting that the *Raines* plaintiffs "were simply complaining that the Act would result in some abstract dilution of the power of Congress as a whole" (quotation marks omitted)).

"Here, by contrast," the district court explained, "the President's complete nullification of plaintiffs' votes is entirely different from the 'abstract dilution of legislative power' alleged in *Raines*." Pet. App. 46. Unlike Petitioners, "the *Raines* plaintiffs could not allege that their votes had been nullified in the past; rather, they had simply lost the vote on the Act. And the *Raines* plaintiffs could not allege that their votes would be nullified in the future because they had a variety of legislative remedies at their disposal." *Id.* at 30 (citing *Raines*, 521 U.S. at 824).

Significantly, as the district court emphasized, *Raines* "did not hold that it would be necessary for an institutional claim to be brought by or on behalf of the institution." *Id.* at 42. "Rather, the fact that the case had not been authorized by the institution was a relevant consideration, but not dispositive, in determining that the *Raines* plaintiffs lacked standing." *Id.*; *accord Raines*, 521 U.S. at 829 ("We attach *some importance* to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action, and indeed both Houses actively oppose their suit." (emphasis added)); *id.* at 829-30 ("Whether the case would be different if . . . th[is] circumstance[] were different we need not now decide."). Indeed, as the district court also observed, "the claim in *Coleman* was not brought on behalf of the state senate as an institutional plaintiff, but rather by a bloc of individual members who had voted not to ratify the constitutional amendment." Pet. App. 42 (citing *Coleman*, 307 U.S. at 438); *accord Raines*, 521 U.S. at 821 (describing *Coleman* as a case "in which we have upheld standing for legislators (albeit *state* legislators) claiming an institutional injury"). And while this Court subsequently "distinguished *Raines* from *Arizona State Legislature* because the latter *was* brought by the legislature as an institution," *Arizona* likewise "did not hold that an institutional claim may be brought *only* by the institution." Pet. App. 42 (citing *Ariz. State Legislature*, 135 S. Ct. at 2664).

The district court therefore recognized that when legislators' votes are allegedly nullified *Raines* permits those individual legislators to sue to protect their own individual votes. *Accord Cummings*, 321 F. Supp. 3d at 105 ("Complete vote nullification is clearly a type of an institutional injury . . . . that grants *individual legislators* standing to seek redress consistent with

Raines." (citations omitted)).

The district court went on to discuss post-*Raines* precedent from the D.C. Circuit. In *Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir. 2000), the district court explained, the D.C. Circuit "understood vote nullification 'to mean treating a vote that did not pass as if it had, or vice versa.'" Pet. App. 38 (quoting *Campbell*, 203 F.3d at 22). And in *Chenoweth v. Clinton*, 181 F.3d 112 (D.C. Cir. 1999), the Circuit "suggested that notwithstanding *Raines*, a single Member of Congress could have standing to sue based on a vote nullification claim when it was the President's action, rather than 'a lack of legislative support,' that nullified the Member's vote." *Id.* at 38 (quoting *Chenoweth*, 181 F.3d at 117). But under both decisions, the district court emphasized, "individual Members of Congress do not have standing to sue the Executive Branch when their institutional injury is such that they can obtain their remedy in Congress." *Id.* at 38.

Applying this precedent, the district court held that Petitioners have standing to allege that President Trump has completely nullified their votes under the Foreign Emoluments Clause: "Accepting the allegations in the Complaint as true, . . . the President is accepting prohibited foreign emoluments without asking and without receiving a favorable reply from Congress," thereby "depriving plaintiffs of the opportunity to give or withhold their consent" through their votes. *Id.* at 40-41. As the district court explained, "[p]laintiffs adequately allege that the President has completely nullified their votes in the past because he has accepted prohibited foreign emoluments as though Congress had provided its consent." *Id.* at 41. And the President "will completely nullify their votes in the future for the same reason, as plaintiffs allege that he intends to continue this practice." *Id.* at 41-42.

Moreover, the district court noted that "although the injury is an institutional one, the injury is personal to legislators entitled to cast the vote that was nullified." *Id.* at 47.

Notably, the district court "agree[d] with the President that, 'when legislators possess political tools with which to remedy their purported injury, they may not seek the aid of the Judiciary.'" *Id.* at 50 (quoting motion to dismiss). But the district court discussed at length why, unlike the plaintiffs in *Raines*, Petitioners "have no adequate legislative remedies." *Id.* at 46; *see id.* at 50-54. "Accordingly, although this case implicates separation-of-powers concerns, finding standing here 'keep[s] the Judiciary's power within its proper constitutional sphere.'" *Id.* at 59 (quoting *Raines*, 521 U.S. at 820).

In April 2019, the district court denied the President's motion to dismiss in full after addressing the remainder of his arguments for dismissal. *Id.* at 63. The district court held that Petitioners have stated a plausible claim against President Trump for violating the Foreign Emoluments Clause. Rejecting the President's defense that the Clause does not cover payments from business transactions, the district court concluded that "the weight of the evidence in founding-era dictionaries and other contemporaneous sources" supports Petitioners' contrary interpretation, a result confirmed by the "surrounding text, structure, adoption, historical interpretation, and purpose of the Clause, as well as Executive Branch practice." *Id.* at 76 (quotation marks omitted); *accord District of Columbia v. Trump*, 315 F. Supp. 3d 875 (D. Md. 2018). The district court also held that Petitioners have an equitable cause of action to seek prospective relief from President Trump's violations, and that while "[judicial] restraint is appropriate," such relief is

constitutionally permissible to enforce the ministerial duty of "seeking congressional consent prior to accepting prohibited foreign emoluments." Pet. App. 102-03 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992), and *Swan v. Clinton*, 100 F.3d 973, 977 (D.C. Cir. 1996)).

D. The Court of Appeals' Decisions

In June 2019, the district court denied the President's motion to certify its orders for immediate interlocutory appeal, finding that an immediate appeal would not likely "materially advance the ultimate termination of the litigation," 28 U.S.C. § 1292(b), because the parties had proposed filing cross motions for summary judgment within six months. Pet. App. 110. President Trump then sought a writ of mandamus from the court of appeals directing the district court to dismiss Petitioners' complaint or, in the alternative, to certify the district court's orders for interlocutory appeal. *Id.* at 115.

A motions panel of the court of appeals denied the President's mandamus petition without prejudice in July 2019. *See id.* at 115-16. Recognizing that "the standing question arises at the intersection of precedent," *id.* at 116 (citing *Coleman* and *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019)), the court of appeals concluded that the President failed to demonstrate his right to dismissal of Petitioners' complaint. However, the court of appeals also concluded that the district court's orders met the criteria for certification under 28 U.S.C. § 1292(b). *Id.* at 115. It therefore remanded the case for reconsideration of the President's motion to certify those orders. *Id.* at 117. On remand, the district court certified its orders for interlocutory appeal and stayed its proceedings. *Id.* at 118. The court of appeals then granted the interlocutory appeal. *Id.* at 125.

In February 2020, the court of appeals reversed the district court and remanded with instructions to dismiss the complaint. *Id.* at 13. "This case is really no different from *Raines*," the court wrote, because Petitioners' claim "is based entirely on the loss of political power." *Id.* at 9. The court of appeals did not explain why depriving Petitioners of the opportunity to vote on specific transactions with foreign governments is equivalent to an "abstract dilution" of congressional power. *Raines*, 521 U.S. at 826.

Instead, the court of appeals stated that Petitioners lack standing because they do "not constitute a majority of either body," Pet. App. 11; *id.* ("the Members' inability to act determinatively is important"), and that "only an institution can assert an institutional injury provided the injury is not 'wholly abstract and widely dispersed.'" *Id.* at 10-11 (quoting *Raines*, 521 U.S. at 829). The court of appeals did not explain how a claim brought by an institution could be "widely dispersed," a description that makes sense only when applied, as it was in *Raines*, to claims brought by the individual members of an institution. The incongruity of the court of appeals' statement reveals its basic misunderstanding of *Raines*, which denied standing to individual members of Congress because the specific claims they brought were both "wholly abstract and widely dispersed," *Raines*, 521 U.S. at 829, not because "only an institution can assert an institutional injury," Pet. App. 10. The court of appeals discussed *Coleman* in a two-sentence footnote. *Id.* at 11 n.3.

According to the court of appeals, its holding rested largely on this Court's "recent summary reading of *Raines*" in *Bethune-Hill*. *Id.* at 10. Because Petitioners are claiming an "institutional" injury rather than a personal or private injury, the court wrote, they "concededly seek to do precisely what *Bethune-Hill*

forbids"—that is, "'assert interests belonging to the legislature as a whole.'" *Id.* (quoting *Bethune-Hill*, 39 S. Ct. at 1953-54). Apparently, the court of appeals understood the term "institutional injury" as meaning injury to the legislature as a whole. *But see Raines*, 521 U.S. at 820-21 & n.4 (explaining that for individual legislators like those in *Coleman*, an "institutional injury" means an "injury to their institutional power as legislators").

The court of appeals also stated in a footnote, without elaboration, that "[o]ur own precedent confirms that the Members lack standing." Pet. App. 12 n.5 (citing *Chenoweth v. Clinton*, 181 F.3d 112, and *Campbell v. Clinton*, 203 F.3d 19).

REASONS FOR GRANTING THE PETITION

I. The Decision Below Departs from This Court's Precedent by Eliminating Standing for Individual Legislators When Their Votes Are Completely Nullified.

This Court's decisions on legislative standing have established three propositions. First, individual legislators have standing when their votes are completely nullified. *Coleman*, 307 U.S. at 438. Second, a legislative body has standing when it is deprived of one of its powers. *Ariz. State Legislature*, 135 S. Ct. at 2665. Third, notwithstanding those first two propositions, individual legislators and the subcomponents of a legislature lack standing to assert interests that are possessed only by the legislature as a whole. *Raines*, 521 U.S. at 829-30; *Bethune-Hill*, 139 S. Ct. at 1950.

Under these principles, Petitioners have standing to sue. The decision below held to the contrary only by departing from these principles and eliminating complete vote nullification as a basis for standing. Reasoning that "only an institution can assert an

institutional injury," Pet. App. 10, the decision below essentially imposed a categorical bar on individual legislators seeking judicial relief from "injury to their institutional power as legislators." *Raines*, 521 U.S. at 820 n.4. This Court has never taken that step. To the contrary, it carefully preserved that avenue for lawmakers in *Raines*. And *Bethune-Hill*—which did not even involve alleged vote nullification or individual legislators—did not foreclose it either. The court of appeals erred in concluding otherwise. By foreclosing standing for individual legislators, the decision below eliminates an important structural safety valve that this Court has been careful to preserve.

A. Every time President Trump accepts a foreign emolument without Congress's prior consent, he is denying Petitioners their right to cast an effective vote on whether he may accept that emolument. Although this Court has narrowed the circumstances in which individual legislators may sue over harms to their official powers, there is one type of "institutional injury" that individual legislators can vindicate in court: complete vote nullification. *Raines*, 521 U.S. at 823 (quoting *Coleman*, 307 U.S. at 438).

This Court first recognized vote nullification as a cognizable injury in *Coleman v. Miller*, 307 U.S. 433. In *Coleman*, Kansas officials treated a federal constitutional amendment as having been ratified by the state senate even though, according to the plaintiffs, the senate had not approved the amendment. This Court concluded that those actions inflicted an "institutional injury" on the plaintiffs—legislators who had voted against the amendment—because their votes were "deprived of all validity," and that the legislators therefore had standing to sue. *See Raines*, 521 U.S. at 821-22. This Court has repeatedly reaffirmed *Coleman*. *See, e.g.*, *Ariz. State Legislature*, 135 S. Ct. at

2665 & n.13 (confirming "the precedential weight of *Coleman*" and relying on its vote-nullification rationale); *Raines*, 521 U.S. at 826 (reaffirming *Coleman*); *cf. Bethune-Hill*, 139 S. Ct. at 1954 (distinguishing *Coleman*).

As this Court has made clear, vote nullification occurs both when a past vote is unlawfully disregarded and when the right to cast an effective vote is unlawfully denied. In *Raines*, for example, in holding that the plaintiffs had not experienced vote nullification and therefore lacked standing, this Court emphasized not only that the plaintiffs' past votes were "given full effect" during the passage of the Line Item Veto Act, but also that the Act would not "nullify their votes in the future." *Raines*, 521 U.S. at 824. In *Arizona State Legislature*, this Court confirmed what *Raines* suggested: unlawful vote denial is a form of vote nullification. *Arizona* held that a legislature could challenge a ballot measure that took away its redistricting power because the measure "would 'completely nullif[y]' any vote by the Legislature, now or 'in the future,' purporting to adopt a redistricting plan." 135 S. Ct. at 2665 (quoting *Raines*, 521 U.S. at 823-24). Finally, in *Bethune-Hill*, as in *Raines*, this Court denied standing in part because the purported injury did not deprive the plaintiff of any future voting power. *Bethune-Hill*, 139 S. Ct. at 1954.

While suits by federal legislators like Petitioners raise "separation-of-powers concerns," *Raines*, 521 U.S. at 824 n.8; *accord Ariz. State Legislature*, 135 S. Ct. at 2665 n.12, this Court has never held that those concerns foreclose members of Congress from seeking judicial relief. Indeed, this Court expressly declined to dismiss the plaintiffs' claims in *Raines* on that basis. *See* 521 U.S. at 824 n.8. The D.C. Circuit has long addressed these separation-of-powers concerns by

mandating dismissal of any suit brought by members of Congress when Congress as a whole has the power to remedy the members' grievance. *See Chenoweth*, 181 F.3d at 116. This Court endorsed that principle in *Raines*. *See Campbell*, 203 F.3d at 24 ("*Raines*[] focus[ed] on the political self-help available to congressmen. . . . [T]he Court denied [the plaintiffs] standing as congressmen because they possessed political tools with which to remedy their purported injury.").

President Trump's denial of Petitioners' right to vote under the Foreign Emoluments Clause constitutes complete vote nullification that Petitioners have standing to challenge. As the district court recognized, each time the President accepts financial rewards from foreign states "as though Congress has provided its consent," he is "'treating a vote that did not pass as if it had.'" Pet. App. 41-42 (quoting *Campbell*, 203 F.3d at 22). And because President Trump is violating the Clause through his private businesses, rather than through government agencies over which Congress could exert control, Petitioners "have no adequate legislative remedies." *Id.*

B. In reversing the district court's decision, the court of appeals misapplied *Raines* and overlooked the careful limits of its holding.

In *Raines*, this Court reversed a lower court's ruling that members of Congress could challenge the Line Item Veto Act because it allegedly "dilute[d]" their power and "affect[ed]" their duties by changing "the dynamic of lawmaking." *Byrd v. Raines*, 956 F. Supp. 25, 30-31 (D.D.C. 1997); *see Raines*, 521 U.S. at 825 (quoting plaintiffs' argument that "the 'meaning' and 'integrity' of their vote ha[d] changed"). This Court rejected the "drastic extension of *Coleman*" that would be necessary to recognize standing based on that claim. *Raines*, 521 U.S. at 826. When the Act was

passed, the Court explained, the plaintiffs' votes "were given full effect. They simply lost that vote." *Id.* at 824. Nor would the Act "nullify their votes in the future." *Id.* Because no past votes were disregarded and no future votes denied, *Coleman* provided "little meaningful precedent" for the plaintiffs' argument: "There is a vast difference between the level of vote nullification at issue in *Coleman* and the abstract dilution of institutional legislative power that is alleged here." *Id.* at 824, 826. While Congress may have lost clout, no rights of individual lawmakers were impaired. "None of the plaintiffs, therefore, could tenably claim a 'personal stake' in the suit." *Ariz. State Legislature*, 135 S. Ct. at 2664 (quoting *Raines*, 521 U.S. at 830).

Here, by contrast, Petitioners are being deprived of specific votes to which the Constitution entitles them. As in *Coleman*, they seek to maintain the effectiveness of their own individual votes—not to challenge an "abstract dilution" of Congress's power, as in *Raines*, 521 U.S. at 826. Congress cannot give the "Consent" that the Foreign Emoluments Clause requires, U.S. Const. art. I, § 9, cl. 8, without first having the opportunity to vote on the matter in both of its chambers. And the Constitution guarantees each Senator and Representative the right to vote on every matter that comes before those bodies. *See id.* art. I, § 3, cl. 1; *id.* art. I, § 5, cl. 3. Thus, under the Constitution, Petitioners are entitled to vote on whether to consent to the President's acceptance of specific foreign emoluments before he accepts them. Petitioners, therefore, are not attempting to vindicate the interests of Congress any more than the *Coleman* plaintiffs sought to vindicate those of the Kansas legislature. Rather than trying to redress an injury to the body in which they serve, Petitioners are trying to redress an injury to their own individual voting rights.

The decision below did not explain why *Raines* "plainly applies here" despite these differences. Pet. App. 10. Its only attempt at doing so was to observe that Petitioners are not being "singled out." *Id.* at 9. But that is no reason for rejecting a claim of institutional injury under *Raines*. In the passage of *Raines* to which the court of appeals referred, this Court was explaining why the plaintiffs' alleged injury did not fit the mold of *Powell v. McCormack*, where a Congressman was "singled out for specially unfavorable treatment as opposed to other Members" concerning a "private right." *Raines*, 521 U.S. at 821 (citing *Powell*, 395 U.S. at 496, 512-14). When this Court later addressed "institutional injury," it distinguished the plaintiffs' claims from the claims in *Coleman* on the entirely different grounds described above, without suggesting that vote nullification requires a legislator to be singled out. *See id.* at 821-26.

At bottom, the court below simply misunderstood the distinction *Raines* drew between "institutional injury," on the one hand, and "personal injury," on the other. Under *Raines*, "personal injuries" are based on the deprivation of legislators' "private rights," as in *Powell* (involving a Congressman's salary), while "institutional" injuries are based on harm to their "institutional power as legislators." *Raines*, 521 U.S. at 820-21 & n.4. Contrary to *Raines*, the court below assumed that vindicating an "institutional injury" necessarily means asserting the rights of a legislative body. Pet. App. 10 (stating that Plaintiffs "concededly" seek to "assert interests belonging to the legislature as a whole" simply because they acknowledge they are not vindicating a "private right" (quotation marks omitted)). But that is wrong: "The one case in which [this Court] ha[s] upheld standing for legislators . . . claiming an institutional injury is *Coleman*," *Raines*, 521

U.S. at 821, and the *Coleman* plaintiffs were not asserting the rights of their legislature. Instead, as individual members who had voted against a legislative measure, they sought to "maintain[] the effectiveness of their votes." *Coleman*, 307 U.S. at 438.

Claims of institutional injury, therefore, can be brought to assert the rights of legislative bodies *or* of individual legislators. When brought by individuals, some injuries are cognizable (as in *Coleman*) while others are not (as in *Raines*), just as when claims are brought by legislative bodies, some injuries are cognizable (as in *Arizona State Legislature*), while others are not (as in *Bethune-Hill*).

Remarkably, the entire discussion of *Coleman* in the decision below is a short footnote, which merely asserts that *Coleman* is "inapposite" because it "'stands (at most) for the proposition that legislators *whose votes would have been sufficient* to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.'" Pet. App. 11 n.3 (quoting *Raines*, 521 U.S. at 823 (emphasis added and citation omitted by the court of appeals)).

As Petitioners explained below, however, that statement addresses scenarios like in *Coleman*, where legislators claim that votes they have already cast were unlawfully disregarded. After all, when legislators assert that the result of a prior vote was overridden, the only basis for claiming nullification is that the majority's will was thwarted, and so a showing of majority support is essential. But when legislators are denied their right to vote entirely, the denial itself deprives their votes "of all validity," *Raines*, 521 U.S. at 822, regardless of what the result might have been. For instance, if the defendants in *Coleman* had simply

deemed the constitutional amendment ratified without submitting it for a vote, that would have injured the plaintiffs no less than allowing them to go through the motions of voting but then ignoring the outcome. In both situations, the harm is the same: legislators are denied the right to cast a vote that is given legal effect.[8]

Indeed, this Court in *Raines* expressly contemplated that, in a proper case, vote deprivation affecting less than a majority of members can be a cognizable injury. *See id.* at 824 n.7 (declining to address scenarios "in which first-term Members were not allowed to vote on appropriations bills, or in which *every* Member was disqualified . . . from voting on major federal projects in his or her own district" (quotation marks omitted)). If *Raines* had confined institutional injuries to legislative bodies, or to members who make up a majority of their legislative body, it would not have needed to defer questions about these hypotheticals in which smaller numbers of legislators are deprived of their votes. This Court's decision not to resolve such questions is incompatible with the holding below—that *Raines* forecloses standing for anything less than a majority of members. *Raines* rejected "a *drastic* extension of *Coleman*," *id.* at 826 (emphasis added), not *any* extension of its rationale.

The decision below addressed none of this. Instead, it cast doubt on whether *Coleman* "survives"

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[8] Importantly, this Court's use of the caveat "at most" in describing what *Coleman* stands for, *Raines*, 521 U.S. at 823, was not meant to suggest that vote nullification is limited to *Coleman*'s precise situation. Rather, as explained in the accompanying footnote, this caveat simply recognizes the possibility that *Coleman* might not apply to federal legislators. *See Raines*, 521 U.S. at 824 n.8.

Raines, Pet. App. 11 n.3, even though this Court expressly reaffirmed "the precedential weight of *Coleman*" five years ago, *Ariz. State Legislature*, 135 S. Ct. at 2665 n.13, and took pains to distinguish *Coleman* just last year, *see Bethune-Hill*, 139 S. Ct. at 1954. *See also Ariz. State Legislature*, 135 S. Ct. at 2665 n.13 (chiding the dissent's effort "to wish away *Coleman*").

C. In support of its overbroad reading of *Raines*, the court below relied almost entirely on one sentence in *Bethune-Hill*, a case that did not involve individual legislators or alleged vote nullification: "Just as individual members lack standing to assert the institutional interests of a legislature, . . . a single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole." *Bethune-Hill*, 139 S. Ct. at 1953-54; *see* Pet. App. 10 (quoting this sentence). According to the court below, this "summary reading of *Raines*" confirms that individual legislators cannot sue over the complete nullification of their votes. *Id.*

As this Court's decisions make clear, however, legislators challenging vote nullification are not asserting interests belonging to the legislature as a whole, but rather are seeking to maintain the effectiveness of their own individual votes. Here, Petitioners allege that President Trump has completely nullified their individual votes—not that he has inflicted a cognizable injury on the House, the Senate, or Congress as a whole. *See supra.*

Critically, too, this Court emphasized in *Bethune-Hill* that vote nullification was not at issue. The Virginia House of Delegates had been permitted to play its full role in the passage of the legislation in question. "Unlike *Coleman*," therefore, the Court reasoned that "this case does not concern the results of a legislative chamber's poll or the validity of any counted or

uncounted vote. At issue here, instead, is the constitutionality of a concededly enacted redistricting plan." *Id.* at 1954. And just as no vote was disregarded in the past, none would be impaired in the future, because "the challenged order does not alter the General Assembly's dominant initiating and ongoing role in redistricting." *Id.*

Instead, the House of Delegates sought to vindicate an institutional interest never before recognized: a legislative chamber's ongoing interest in the legal status of a measure it helped pass. But this Court has "never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage." *Bethune-Hill*, 139 S. Ct. at 1953. There was simply "no support for the notion that one House of a bicameral legislature, resting solely on its role in the legislative process, may appeal on its own behalf a judgment invalidating a state enactment." *Id.* By contrast, this Court has held that legislators are injured by the complete nullification of their votes (*Coleman*), and that nullification can include the unlawful denial of an effective future vote (*Arizona State Legislature*).[9]

The House of Delegates, in short, sought to assert an interest belonging to the larger body of which it was a part, without showing any harm to its own individual

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[9] Consistent with *Bethune-Hill*, Petitioners have acknowledged that once members of Congress fulfill their role in enacting legislation, they have no special interest in its ongoing enforcement. *See Hollingsworth v. Perry*, 570 U.S. 693, 706-07 (2013) (distinguishing the "'unique,' 'special,' and 'distinct' role" that a legislative participant enjoys during "the process of enacting the law" from the lack of any special role after the law is "duly enacted" (quotation marks omitted)); *Bowsher v. Synar*, 478 U.S. 714, 733 (1986) (same).

prerogatives. This was the same type of "mismatch" that existed in *Raines*, where members of Congress alleged that the Line Item Veto Act "alter[ed] the constitutional balance of powers between the Legislative and Executive Branches," 521 U.S. at 816, without showing any harm to their own individual prerogatives. *See supra*. The similarity of this "mismatch" prompted the Court to liken the two cases: "Just as individual members lack standing to assert the institutional interests of a legislature, a single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole." *Id.* at 1953-54 (citing *Raines*, 521 U.S. at 829).

The decision below ignored the context of this sentence, quoting it in isolation for the proposition that legislators who make up less than a majority of their body may not sue over the complete nullification of their votes. Pet. App. 10-11. Yet the decision below offered no justification, and cited no precedent, for the premise that forms the crux of its conclusion: that challenging the nullification of a lawmaker's vote means "assert[ing] the institutional interests of a legislature." *Id.* at 10. Based on that unsupported assumption, which is nowhere to be found in this Court's decisions, the court below ordered the dismissal of Petitioners' claims.

II. The Issues at Stake Are Exceptionally Important.

The significant ramifications of the decision below make this Court's review imperative. By essentially imposing a categorical bar on individual members of Congress seeking judicial relief for complete vote nullification by the executive, even when Congress as a whole is powerless to remedy the injury through legislative action, the decision below eliminates an important safety valve for maintaining our constitutional

structure—one that this Court has carefully preserved in its prior decisions. As a result of the decision below, the Foreign Emoluments Clause—a critical safeguard against foreign corruption of America's leaders—no longer functions as the Framers prescribed.[10]

A. Even as this Court narrowed the availability of standing for individual members of Congress in *Raines*, it preserved the possibility that members could seek judicial relief if their own votes were completely nullified. *See Chenoweth*, 181 F.3d at 117 (explaining that under *Raines*, members of Congress could have standing where they can "plausibly describe the President's action as a complete nullification of their votes"); *Campbell*, 203 F.3d at 22 (noting that in *Raines*, this Court "emphasized that the congressmen were not asserting that their votes had been 'completely nullified'" (quoting *Raines*, 521 U.S. at 824)).

The decision below, however, prevents individual members of Congress from enforcing *any* of their institutional prerogatives in court, even when the executive branch has completely nullified their votes and Congress as a whole can provide no adequate remedy. The decision thus closes the door on any suits by

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[10] Although two other pending suits involve the President's unlawful acceptance of emoluments, those suits relate exclusively to his D.C. and New York hotels and restaurants. They cannot lead to judicial orders covering the President's other hotels and resorts, payments to his skyscrapers (the source of "[t]he real money in the Trump empire," Alexander & Drange, *supra*), his acceptance of foreign trademarks, or the regulatory favors conferred on his business ventures abroad. In other words, with respect to the vast majority of President Trump's alleged foreign emoluments, the decision below "forecloses the[m] . . . from constitutional challenge." *Raines*, 521 U.S. at 829. *But see id.* at 829-30 (declining to decide whether *Raines*'s holding "would be different" if no one else could challenge the Line Item Veto Act).

individual legislators seeking to uphold the Constitution's procedural requirements. "If [this] Court had meant to do away with legislative standing" in *Raines*, however, "it would have said so and it would have given reasons for taking that step." *Campbell*, 203 F.3d at 32 (Randolph, J., concurring in the judgment). Instead, this Court meticulously avoided taking that step.

So did the D.C. Circuit—until the decision below. After *Raines*, the Circuit twice addressed suits by individual members of Congress alleging institutional injuries, and in neither case did the Circuit adopt the categorical bar on standing adopted by the decision below. Construing *Raines* and *Coleman*, the Circuit interpreted vote "nullification" to mean "treating a vote that did not pass as if it had, or vice versa," in the "unusual situation" where there is no "legislative remedy." *Campbell*, 203 F.3d at 22-23. Under that restrictive standard, members of Congress can have standing only where Congress as a whole cannot redress the interference with their votes. *See id.* at 23 (dismissing suit for failure to make that showing); *Chenoweth*, 181 F.3d at 116 (similar).

Before the decision below, therefore, standing for individual members was already sharply circumscribed: even if members could show that their votes were unlawfully denied or disregarded, they also had to show that Congress could not adequately solve the problem itself. *See, e.g.*, *Campbell*, 203 F.3d at 23 (rejecting suit over military strikes because "Congress has a broad range of legislative authority it can use to stop a President's war making"); *Kucinich v. Bush*, 236 F. Supp. 2d 1, 10 (D.D.C. 2002) (rejecting suit because Congress could address the alleged problem using its appropriations power); *Kucinich v. Obama*, 821 F. Supp. 2d 110, 119 (D.D.C. 2011) (same).

As narrow as that standard was, it preserved a critical caveat: in an extreme case—where unlawful executive action completely negates the votes of members of Congress, and where no political remedy is adequate—legislators could turn to the courts to vindicate their institutional prerogatives and maintain the procedural requirements on which our constitutional structure rests. The decision below eliminated that possibility.

B. The circumstances of this case illustrate the harms of eliminating that safety valve. The Foreign Emoluments Clause is one of the few constitutional provisions that impose a specific procedural requirement (obtain "the Consent of the Congress") before federal officials may take a specific action (accept "any" emolument from "any . . . foreign State"). U.S. Const. art. I, § 9, cl. 8; *see* Pet. App. 41 n.8 (identifying the Article II requirement of Senate consent for appointments and treaties as "[t]he only similar provision"). Among these provisions, only the Foreign Emoluments Clause employs a congressional "consent" requirement to regulate officials' private behavior. Because President Trump is violating the Clause through his private businesses, Congress cannot block his actions through its appropriations power—normally the "ultimate weapon of enforcement available to the Congress." *United States v. Richardson*, 418 U.S. 166, 178 n.11 (1974). Without that tool or any other effective means of forcing President Trump to conform his conduct to the Clause's requirements, Petitioners have no adequate legislative remedy for the President's denial of their voting rights. *See* Pet. App. 50-54.

As a result, for more than three years, the nation's highest officeholder has been making critical foreign policy decisions under a cloud of potentially divided loyalty caused by his enrichment from foreign states—

the scope of which remains unknown. *See supra* at 8-9. That is precisely what the Constitution's Framers tried to prevent. The Framers empowered presidents to make "the most sensitive and far-reaching decisions entrusted to any official under our constitutional system," *Nixon v. Fitzgerald*, 457 U.S. 731, 752 (1982), but recognizing the existential threat of foreign corruption, they adopted the Foreign Emoluments Clause to shield presidents and other federal officials from the possibility of undue foreign-government influence.

By accepting financial rewards from foreign states in secret, President Trump is defying the Framers' design and depriving the American people of assurance that their highest elected official is pursuing their interests with undivided loyalty. Neither the President nor the Justice Department has explained why the Foreign Emoluments Clause would prevent a federal employee from accepting $150 to review a Ph.D. thesis, *see* 18 Op. O.L.C. at 17 (citing Memorandum for H. Gerald Staub, Office of Chief Counsel, NASA, from Samuel A. Alito, Jr., Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Emoluments Clause Questions Raised by NASA Scientist's Proposed Consulting Arrangement with the University of New South Wales* (May 23, 1986)), but would allow the President to accept millions of dollars through his business empire, in secret, from an unknown range of foreign states.

The Framers designed the Clause as a default prohibition under which Congress's *failure* to act functions as a denial of consent to accept foreign emoluments. The decision below, however, requires the House or Senate, acting as a legislative body, to join any legal challenge to a president's alleged acceptance of foreign emoluments—without knowing what those emoluments are or which foreign states may have

provided them. The result, in effect, is to rewrite the Foreign Emoluments Clause, inverting its structure and converting legislative roadblocks into an ally of foreign corruption instead of an enemy.

For the Foreign Emoluments Clause to retain its value as a prophylactic safeguard against even the possibility of foreign corruption—and to ensure that when our leaders are making sensitive foreign policy decisions, they are considering only what they believe to be the nation's best interest—members of Congress must be able to vindicate their right to vote on whether to approve specific emoluments before the President accepts them, as the Constitution requires. Preserving that structure is *more* critical to the nation's welfare, not less, during times when fewer than a majority of Congress's members are willing to challenge the President's actions in court. As illustrated by President Trump's increasingly defiant disregard of the Clause, the decision below is a recipe for impunity and for foreign interference with our democratic system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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