

Nos. 19-715, 19-760

---

IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
DONALD J. TRUMP, ET AL.,  
*Petitioner,*

v.

MAZARS USA, LLP, ET AL.,  
*Respondents.*

\_\_\_\_\_  
DONALD J. TRUMP, ET AL.,  
*Petitioner,*

v.

DEUTSCHE BANK AG, ET AL.,  
*Respondents.*

\_\_\_\_\_  
**On Writs of Certiorari to the United  
States Courts of Appeals for the  
Second and District of Columbia Circuits**

\_\_\_\_\_  
**BRIEF OF AMICI CURIAE OF FORMER  
FEDERAL ETHICS OFFICIALS SUPPORTING  
RESPONDENTS**

PATRICIA E. ROBERTS  
WILLIAM & MARY LAW  
SCHOOL APPELLATE AND  
SUPREME COURT CLINIC  
P.O. Box 8795  
Williamsburg, VA 23187  
Telephone: 757-221-3821

DWAYNE D. SAM\*  
PIERCE BAINBRIDGE BECK  
PRICE & HECHT LLP  
601 Pennsylvania Ave., NW  
Suite 700S  
Washington, DC 20004  
Telephone: 202-843-8342  
dsam@piercebainbridge.com

\*Counsel of Record

*Counsel for Amici Curiae*

---

**TABLE OF CONTENTS**

BRIEF OF AMICI CURIAE.....1

INTEREST OF AMICI.....1

SUMMARY OF ARGUMENT.....2

ARGUMENT .....4

I. THE PRACTICE OF AVOIDING CONFLICTS OF INTERESTS BY IMPLEMENTING ECONOMIC RESTRAINTS ON A PRESIDENT’S PERSONAL FINANCES IS MORE THAN TWO HUNDRED YEAR OLD AND STILL PERSISTS IN THE MODERN ERA.....4

    A. Every branch of government acknowledges the need for economic restraints on a president’s personal finances to avoid conflicts of interest..... 4

    B. Throughout the Nation’s history, various presidents have placed restraints on their personal financial interests to avoid conflicts of interest..... 9

II. PRESIDENT TRUMP’S DISCLOSURE AND DIVESTMENT DECISIONS DEPART FROM MODERN PRACTICE, RENDERING CONGRESSIONAL ACTION ESSENTIAL...17

A.	President Trump’s failure to divest or create blind trusts departs from presidential norms imposed by ethics-related statutes.....	17
B.	President Trump’s failure to divest or disclose his financial interests creates the appearance of impropriety with respect to his foreign and domestic business relationships.....	21
C.	The House Committee on Financial Oversight and the Intelligence Committee appropriately subpoenaed President Trump’s financial records to investigate legislative reform.....	33
	CONCLUSION.....	40
	APPENDIX: THE AMICI AND THEIR QUALIFICATIONS .....	1a

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008).....	3
<i>Kilbourn v. Thompson</i> , 103 U.S. 168 (1881).....	22
<i>McGrain v. Daugherty</i> , 273 U.S. 135 (1927).....	19, 22
<i>Quinn v United States</i> , 349 U.S. 155 (1955).....	22
<i>Shelton v. United States</i> , 404 F.3d 1292 (D.C. Cir. 1968).....	19
<i>Sinclair v. United States</i> , 279 U.S. 263 (1929).....	22
<i>Trump v. Mazars USA, LLP</i> , 940 F.3d 710 (D.C. Cir. 2019).....	4, 10, 21, 22
<i>United States v. Miss. Valley Generating Co.</i> , 364 U.S. 520 (1961).....	3
<b>Federal Statutes</b>	
18 U.S.C. § 208.....	4, 20, 22
Pub. L. No. 101-194, 103 Stat. 1747-48 (1989).....	4

**TABLE OF AUTHORITIES—CONTINUED**

Pub. L. No. 101-194, 103 Stat. 1716, 1739-40  
(1989); CRS Legal Sidebar, Conflicts of  
Interest and the Presidency 1 (2016)..... 4

Pub. L. No. 95-521, 68 Stat. 730 (1978), as  
amended by the Ethics Reform Act of 1989, Pub.  
L. No. 101-194, 103 Stat. 1716 (1989)..... 4

**Regulations**

3 C.F.R. 306 (1964-1965) ..... 5

**Legislation Authorities**

*H.R. 1: Strengthening Ethics: Hearing Before the  
House Committee on Oversight and Reform*, 116th  
Cong. 125 (Feb. 6, 2019) (Statement of Walter M.  
Shaub, Jr.)..... 5

H.R. Rep. No. 93-1609, at 8, 10 (1974)..... 10

*Hearing with Michael Cohen, Former Attorney to  
President Donald Trump: Hearing Before the  
House Committee on Oversight and Reform*, 116th  
Cong. 13 (Feb. 27, 2019) ..... 22

Letter from David H. Martin, Dir., Office of Gov't  
Ethics, to Richard Hauser, Deputy Counsel to the  
President (Oct. 20, 1983) ..... 5

**TABLE OF AUTHORITIES—CONTINUED**

Letter from Elijah E. Cummings, Chairman, House Committee on Oversight and Reform, to Emory A. Rounds III, Director, Office of Government Ethics 7-8 (Jan. 22, 2019) .....	21
Memorandum from Laurence H. Silberman, Deputy Att’y Gen., to Richard T. Burress, Office of the President 7 (Aug. 28, 1974) .....	5, 7
Nomination of Nelson A. Rockefeller of New York to Be Vice President of the United States: Hearings Before the S. Comm. on Rules & Admin., 93d Cong. 20 (1974) (Statement of Nelson A. Rockefeller) .....	9
S. Exec. Rep. No. 93-34 (1974) .....	9, 10
STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A (Comm. Print 2019) 3, 7, 8, 9	
<b>Other Authorities</b>	
<i>A Family Trust for Businesses May Fall Short</i> , N.Y. TIMES (2017) .....	12
Alexandra Berzon, <i>Trump Hotel in Washington Saw Strong Profit in the First Four Months of 2017</i> , WALL ST. J. (Aug. 11, 2017) .....	13

**TABLE OF AUTHORITIES—CONTINUED**

Andrew Desiderio, <i>Trump Vetoes Resolution on Ending U.S. Role in Yemen Civil War</i> , POLITICO (Apr. 16, 2019, 8:16 PM).....	15
Andrew Glass, <i>Rockefeller Sworn in as Vice President, Dec. 19, 1974</i> , POLITICO (Dec. 19, 2017, 12:16 AM).....	9
Andy Sullivan, et. al., <i>Trump Says Won't Divest From His Business While President</i> , REUTERS (Jan. 11, 2017).....	11
Anita Kumar, <i>A Trump Hotel Mystery: Giant Reservations Followed by Empty Rooms</i> , POLITICO (Oct. 2, 2019, 5:00 AM .....	10
Anita Kumar, <i>Trump Resort Revenue has Gone Up After Presidential Visits</i> , POLITICO (June 6, 2019, 5:02 AM) .....	15
<i>Carter Drops Blind Trust Secrecy And Divulges Finances for 1978-79</i> , N.Y. TIMES (May 31, 1979)	7
Charlie Savage <i>Congress Can Seek Trump's Financial Records, Appeals Court Rules</i> , N.Y. TIMES (Oct. 12, 2019).....	22
Cristina Alesci, <i>Questions Remain Over Trump Organization's Donation of Foreign Profits</i> , CNN (Feb. 27, 2018).....	14, 17

**TABLE OF AUTHORITIES—CONTINUED**

CRS Legal Sidebar, <i>Conflicts of Interest and the Presidency</i> (2016) .....	4
Dan Alexander, <i>After Promising Not to Talk Business with Father, Eric Trump Says He’ll Give Him Financial Reports</i> , FORBES (Mar. 24, 2017, 9:00 AM) .....	12
Daniel Weiner, <i>Strengthening Presidential Ethics Law</i> , BRENNAN CTR. FOR JUSTICE (Dec. 13, 2017). 6	
Daphna Renan, <i>Presidential Norms and Article II</i> , 131 HARV. L. REV. 2187, 2219 (2018) .....	7
David Kirkpatrick & Eric Lipton, <i>Behind Trump’s Dealings with Turkey</i> , N.Y. TIMES (Nov. 12, 2019) .....	16
David Welna, <i>Trump Sweet, Congress Sour on Turkey</i> , NPR (Nov. 13, 2019, 4:45 PM) .....	16
Dean Obeidallah, <i>Trump Still Doesn’t Get Why He Should Avoid Conflicts of Interest</i> , CNN (Oct. 21, 2019, 5:59 AM) .....	14, 18
Drew Harwell & Anu Narayanswamy, <i>A Scramble to Assess the Dangers of President-elect Donald Trump’s Global Business Empire</i> , WASH. POST (Nov. 20, 2016) .....	13



**TABLE OF AUTHORITIES—CONTINUED**

Edward T. Pound, <i>Reagan’s Worth Put at \$4 Million</i> , N.Y. TIMES, § A, at 1 (Feb. 23, 1981).....	8
Gretchen Frazee, <i>Trump Criticizes the Bidens, but His Own Family’s Business Raises Questions</i> , PBS NEWS HOUR (Oct. 17, 2019) .....	17
Isaac Arnsdorf, <i>Trump: “The President Can’t Have a Conflict of Interest,”</i> POLITICO (Nov. 22, 2016, 2:26 PM) .....	20
Jack Maskell, CONG. RESEARCH SERV., RS21656, THE USE OF BLIND TRUSTS BY FEDERAL OFFICIALS 4-5 (2005).....	4
Jeff Gerth, <i>Bush’s Blind Trust: Guarding Against Conflicts of Interest</i> , N.Y. TIMES (Sept. 28, 1984) .	8
Jeff Nesbit, <i>A Handy List of Donald Trump’s Biggest Conflicts of Interest</i> , TIME MAGAZINE (Nov. 21, 2016).....	13
Jennifer Wang, <i>Why Trump Won’t Use A Blind Trust And What His Predecessors Did With Their Assets</i> , FORBES (Nov. 15, 2016, 9:00 AM) .....	8
Jeremy Venook, <i>Trump’s Interests vs. America’s, Dubai Edition</i> , THE ATLANTIC (Aug. 9, 2017) ....	11, 14, 15

**TABLE OF AUTHORITIES—CONTINUED**

Jonathan O’Connell, et. al., <i>T-Mobile Executives Seeking Merger Approval Booked More than 52 Nights at Trump’s D.C. hotel – More than Previously Known</i> , WASH. POST (Feb. 6, 2019, 9:15 PM) .....	17
Jonathan O’Connell, et al., <i>Trump’s Company Sells California Mansion to Firm Linked to Indonesian Billionaire, a Business Partner</i> , WASH. POST (June 13, 2019, 4:37 PM) .....	17
Julie Hirschfeld Davis & Mark Landler, <i>Trump Praises Erdogan as Ally in Terrorism Fight, Brushing Aside Tensions</i> , N.Y. TIMES (May 16, 2017) .....	16
Karen Yourish & Larry Buchanan, <i>Trump Still Makes Money From his Properties. Is This Constitutional?</i> , N.Y. TIMES (Dec. 19, 2018) .....	12
Karl A. Racine & Elizabeth Wilkins, <i>Enforcing the Anti-Corruption Provisions of the Constitution</i> , 13 HARV. L. & POL’Y REV. 449, 453-54 (2019).....	7
Kevin Sullivan, <i>For a President Trump, Global Real Estate Deals Present Unprecedented Gray Areas</i> , WASH. POST. (May 30, 2016).....	13
Linda Charlton, <i>Rockefeller Says His Assets Are Valued at \$62-Million</i> , N.Y. TIMES, at 81 (Sept. 20, 1974).....	9

**TABLE OF AUTHORITIES—CONTINUED**

Lindsey Bever, <i>'I, Donald John Trump . . .': The 38 Most Momentous Words President Trump Said at His Inauguration</i> , WASH. POST (Jan. 20, 2017, 12:16 PM) .....	6
Marcy Gordon, <i>Blind Trusts Can be Big Money-Makers for Presidents</i> , THE ASSOCIATED PRESS (May 20, 1993) .....	4
Marissa L. Kibler, Note, <i>The Foreign Emoluments Clause: Tracing the Framers' Fears About Foreign Influence Over the President</i> , 74 N.Y.U. ANN. SURV. AM. L. 449, 492 (2019) .....	11
Mark Hensch, <i>Trump: 'I would want to protect Saudi Arabia,'</i> The Hill (Jan. 5, 2016, 7:41 AM)15	
Matt O'Brien, <i>Donald Trump Won't Do What Ronald Reagan, George H.W. Bush, Bill Clinton and George W. Bush Did</i> , WASH. POST (Nov. 15, 2016).....	11
Michael Crowley & Carlotta Gall, <i>In Trump, Turkey's Erdogan Keeps Finding a Sympathetic Ear</i> , N.Y. TIMES (Oct. 8, 2019).....	16
Michelle Cottle, <i>Merry Griftmas, Mr. Trump!</i> , N.Y. TIMES (Dec. 6, 2019) .....	17, 18
Nicolas Rapp, <i>Who Needs a Blind Trust?</i> , FORTUNE (Oct. 22, 2012, 4:55 PM) .....	7

**TABLE OF AUTHORITIES—CONTINUED**

Peter Overby, <i>4 Questions About Donald Trump’s Potential Conflicts of Interest If He’s Elected</i> , NPR (June 9, 2016).....	9
Press Release, U.S. Senate Committee on Homeland Security & Governmental Affairs, Peters Leads Colleagues in Introducing Bill to Stop Use of Taxpayer Dollars at Trump Properties (Sept. 16, 2019) .....	21
Richard Gonzales, <i>FCC Clears T-Mobile / Sprint Merger Deal</i> , NPR (Nov. 5, 2019) .....	18
Roswell B. Perkins, <i>The New Federal Conflict-of-Interest Law</i> , 76 HARV. L. REV. 1113, 1134 (1963) .....	4, 7
Samantha Block, <i>It is All About the Money: Presidential Conflicts of Interest</i> , 57 HARV. L.J. NO.1 (2018).....	3, 6, 20
Scott Simon, Transcript, <i>‘This is Crossing the Line’: Saudis Co-Opted Veterans’ Voices to Lobby Congress</i> , NPR (Dec. 15, 2018, 8:00 AM) .....	15
Shelby Hanssen & Kevin Dilanian, <i>Reps of 22 Foreign Governments Have Spent Money at Trump Properties</i> , NBC NEWS (June 12, 2019, 4:30 AM).....	13

**TABLE OF AUTHORITIES—CONTINUED**

Stephen Labaton, <i>Most of Clintons' Wealth Held by Mrs. Clinton, Disclosure Form Shows</i> , N.Y. TIMES (May 18, 1994) .....	8
Terry Gross, Transcript, <i>From Mar-A-Lago to Trump Hotels, Reporter Says Trump Profits as President</i> , NPR (Sept. 5, 2019, 1:27 PM) .....	14, 18
Tim Lau & Rudy Mehrbani, <i>The Debate Over Trump's Tax Returns</i> , BRENNAN CTR. FOR JUSTICE (Apr. 10, 2019).....	6
<i>Trump Adds to His Endless Parade of Corruption and Conflicts of Interest</i> , WASH. POST (June 23, 2019, 7:42 PM) .....	14
<i>Trump's 2,000 Conflicts of Interest (And Counting)</i> , Citizens for Responsibility and Ethics in Washington.....	19, 20
<i>Vetoed by President Donald J. Trump</i> , U.S. SENATE (last visited Feb. 25, 2020) .....	15
<i>Warren Leads 30 Colleagues in Reintroducing Bill to Require the President and Vice President to Fully Divest Their Financial Conflicts of Interests</i> , SENATE.GOV (Mar. 27, 2019) .....	20

## BRIEF OF AMICI CURIAE

*Amicus curiae* respectfully submits this brief in support of the Respondents, the Committees of the U.S. House of Representatives, urging that the Court affirm the United States Courts of Appeals for the Second and District of Columbia Circuits.<sup>1</sup>

### INTEREST OF AMICI

Amici are former government ethics officials with decades of experience applying ethical rules in the real world, under administrations of both major political parties. Throughout their service, in addition to advising their agencies about ethical considerations generally, they have also given advice about potential conflicts of interest between the private financial interests of government officials and the interests of the general public. They submit this brief to explain how prior presidents have addressed potential conflicts of interests, and to highlight the radical departure President Trump has undertaken.

Although the principal subject matter on appeal concerns whether, pursuant to the Constitution and House Rules, congressional committees may issue subpoenas to third parties related to the President's

---

<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief. All parties have provided blanket consent for the filing of *amicus curiae* briefs or filed letters of nonparticipation in this litigation.

financial records, this brief may be helpful to the Court for two reasons. First, the practice of minimizing any conflicts of interest that may interfere with a president's official duties in the White House is more than two-hundred years old. And presidents in the modern era have adhered to this principle with near uniformity. Second, this brief demonstrates that President Trump's failure to remove any conflicts of interest not only contravenes modern practice, but also places the interests of the People at a substantial risk of being undermined by his financial interests.

### **SUMMARY OF ARGUMENT**

This Court has stressed the importance of a conflict-free government. Every branch of government has further acknowledged that economic restraints on a president's personal finances can minimize potential conflicts that may arise between private financial concerns and official decisions within the White House. For decades, presidents from various economic backgrounds have recognized the wisdom of these economic restraints, treating them as a mandatory obligation upon election. As such, presidents have displayed a uniform practice of divesting themselves of their personal finances and producing prior tax returns in an effort to minimize conflicts of interest and effectively serve the American People.

Here, President Trump has refused divestiture or even full disclosure of his financial interests, a grave departure from modern presidential practices. President Trump instead retains ownership of his

global business empire and his political, diplomatic, and economic decisions are clouded by the appearance of impropriety. The President's business relationships with Saudi Arabia, Turkey, and other countries further raise the specter of indiscretion and double dealing, which serve only to undermine the President's legitimacy. For these reasons, it is entirely natural that the Oversight Committee is now reviewing legislation on these subjects.

These concerns are not merely academic. By challenging whether congressional committees have the authority to subpoena his financial records, President Trump effectively asks this Court to eviscerate a vital check on the executive branch—a check needed to winnow out instances of abuse of power and corruption. This Court should affirm the rulings below and decline the invitation to significantly limit Congress' oversight power. To do otherwise would be at odds with the Constitution's fundamental mandate of separation of powers.



**ARGUMENT****I. THE PRACTICE OF AVOIDING CONFLICTS OF INTERESTS BY IMPLEMENTING ECONOMIC RESTRAINTS ON A PRESIDENT'S PERSONAL FINANCES IS MORE THAN TWO HUNDRED YEAR OLD AND STILL PERSISTS IN THE MODERN ERA.****A. Every branch of government acknowledges the need for economic restraints on a president's personal finances to avoid conflicts of interest.**

Each branch of government has recognized that economic restraints on a president's personal finances help minimize potential conflicts of interest. The importance of a conflict-free government is not a new; over two hundred years ago, Thomas Jefferson made strategic economic decisions to avoid any appearance of impropriety. *See* WILLARD S. RANDALL, THOMAS JEFFERSON: A LIFE (1993). And in the modern era, presidents have adhered to economic restraints by either divesting or disclosing their individual financial interests and releasing previous tax return statements. *See* STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A at 1-4 (Comm. Print 2019) (documenting tax return statements provided by previous presidents). As this Court has explained, "no man may serve two masters, . . . a maxim which is especially pertinent if one of the masters happens to

be economic self-interest.” *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 549 (1961). By divesting potentially conflicting financial interests and releasing their tax returns, presidents reassure the People that only one interest is served: the general public’s.

This Court has acknowledged that the government can only be successful if it has the faith of those governed, which “is bound to be shattered when high officials . . . engage in activities which arouse suspicions of malfeasance and corruption.” *Id.* at 562; *see generally Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (Stevens. J., plurality opinion) (addressing the importance of public confidence in distinct government processes). When presidents refuse to divest or place meaningful restraints on their personal financial interests, they run a high risk of losing the faith of the People, because the People have no way of knowing whether their president is taking actions or establishing policies that further the president’s financial interests. *See* Samantha Block, *It is All About the Money: Presidential Conflicts of Interest*, 57 HARV. J. LEGIS. ONLINE NO.1 (2018). Alternatively, when presidents willingly divest or disclose their finances and turn over their tax returns, the faith of those governed is secured by reassurance that the president is acting in the interest of the general public or that the president’s potential financial benefits can be discerned.

In 1978, Congress attempted to minimize conflicts

among the Executive Branch and enacted economic restraints via the Ethics in Government Act of 1978 (“the Act”). See Pub. L. No. 95-521, 68 Stat. 730 (1978), as amended by the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716 (1989); see also CRS Legal Sidebar, Conflicts of Interest and the Presidency 1 (2016).<sup>2</sup> The Act required Executive Branch officials to disclose their financial holdings and, if necessary, divest themselves from any financial interests that might undermine their ability to carry out their official duties. See Pub. L. No. 101-194, 103 Stat. 1716, 1739-40 (1989); CRS Legal Sidebar, *supra*, at 1. One method of divestiture authorized under the Act that has been used by some presidents is through establishment of a qualified blind trust. CRS Legal Sidebar, *supra*, at 1-2; see also Jack Maskell, CONG. RESEARCH SERV., THE USE OF BLIND TRUSTS BY FEDERAL OFFICIALS 4-5 (2005).<sup>3</sup> Essentially, a trust is established for the term of the government official’s service. Roswell B. Perkins, *The New Federal Conflict-of-Interest Law*, 76 HARV. L. REV. 1113, 1134 (1963). The official is shielded from knowing the specific securities within that trust and, most importantly, lacks any “power of control or distribution or disposition over the properties for the duration of the trust.” *Id.* This form of divestiture ensures the official’s personal finances lack any

---

<sup>2</sup> Available at <https://fas.org/sgp/crs/misc/conflicts.pdf>.

<sup>3</sup> Available at <http://congressionalresearch.com/RS21656/document.php>.

“influences on his or her official decisions.” See Maskell, *supra*, at 5.

Congress did not make presidents subject to the Act’s divestiture requirements, but it did not need to as presidents voluntarily abided by it. See *Trump v. Mazars USA, LLP*, 940 F.3d 710, 735 (D.C. Cir. 2019); see also Pub. L. No. 101-194, 103 Stat. 1747-48 (excluding the President, among other officials, from section 208 the Act). For decades, presidents established blind trusts to avoid the appearance of impropriety and potential conflicts of interest. Marcy Gordon, *Blind Trusts Can Be Big Money-Makers for Presidents*, THE AP (May 21, 1993).<sup>4</sup> In fact, the Department of Justice has emphasized the need for presidents to follow conflict of interest laws—regardless of whether they are statutorily required to. See Letter from David H. Martin, Dir., Office of Gov’t Ethics, to Richard Hauser, Deputy Counsel to the President (Oct. 20, 1983) (“[T]he Department of Justice’s views, with which we agree, are that . . . as a matter of policy, the President and Vice President should conduct themselves as if they were so bound [by conflict of interest laws].”).<sup>5</sup> Former presidents’ use of a qualified blind trust is further recognized and accepted by Congress. See, e.g., *H.R. 1: Strengthening Ethics: Hearing Before the H. Committee on Oversight and Reform*, 116th Cong. 125, at 1 (Feb. 6, 2019)

---

<sup>4</sup> Available at <https://apnews.com/e832c01614b3411d49af5929c62ad906>.

<sup>5</sup> Available at <https://bit.ly/2Hxp6S7>.

(statement of Walter M. Shaub, Jr.) (recognizing the use of blind trusts); *see also* Memorandum. from Laurence H. Silberman, Deputy Att’y Gen., to Richard T. Burrell, Office of the President at 7 (Aug. 28, 1974) (explaining how the use of blind trusts “has been accepted by the Senate committees considering nominations of officers in the executive branch, who for various reasons were unable to fully divest themselves of their financial interests”).

Most instructive however is the Executive Branch’s own efforts to avoid conflicts of interest that might stem from a president’s personal finances. Like this Court’s decision in *Mississippi Valley Generating Company*, President Lyndon B. Johnson recognized that our government is only as strong as the confidence each citizen has in “the integrity of his government.” *See* 3 C.F.R. 306; *see also* 364 U.S. at 562. President Johnson acknowledged that there was a gap between the Executive Branch and conflict of interest laws. *See* Exec. Order No. 11,222, 3 C.F.R. 306 (1964-1965). He enacted Executive Order 11,222 in an attempt to attach these laws to high-ranking government officials and close the gap. *See* 3 C.F.R. 306. Through this order, President Johnson intended to promote the People’s faith in the government by ensuring “each individual officer, employee, or adviser of government . . . help to earn and . . . honor that trust,” and required high-ranking officials to disclose their personal finances to avoid conflicts of interest in office. *See id.* §§ 101, 401.

Although Executive Order 11,222 was short lived, the economic restraints within it have reverberated far beyond the Johnson administration. Since then, all presidents—from Carter to Obama—have utilized a blind trust or, at the very least, “limit[ed] their investments to non-conflicting assets . . . .” Walter M. Shaub, Jr., Dir., Office of Gov’t Ethics, Remarks at the Brookings Inst. 2 (Jan. 11, 2017).

**B. Throughout the Nation’s history, various presidents have placed restraints on their personal financial interests to avoid conflicts of interest.**

Over two-hundred years ago, soon-to-be President Thomas Jefferson demonstrated the importance of avoiding any appearance of impropriety. Near the end of the Revolutionary War, Jefferson was presented with the opportunity to purchase land out-west from Loyalists. See RANDALL, *supra*, at 353. However, because he was not a “private man,” Jefferson knew it was better to remain free from becoming entangled with the Loyalists and ensure his judgment was not called into question. *Id.*

During the modern era, presidents have continued to value the importance of avoiding the appearance of impropriety. Presidents with varying amounts of wealth, have voluntarily taken action to avoid the appearance that their actions benefited their personal financial interests. Numerous leaders have taken steps to ensure their individual financial interests are subordinate to the interests of the People, but also do

not pose a conflict with their duty to “faithfully execute the Office of President of the United States.” Lindsey Bever, *I, Donald John Trump . . . : The 38 Most Momentous Words President Trump said at his inauguration*, WASH. POST (Jan. 20, 2017, 12:16 PM).<sup>6</sup> Previous leaders have “understood that even the appearance of decisions tainted by financial self-interest undermines the president’s legitimacy” and accordingly, divested themselves of their financial interests and provided previous tax returns. See Daniel Weiner, *Strengthening Presidential Ethics Law*, BRENNAN CTR. FOR JUSTICE (Dec. 13, 2017);<sup>7</sup> see also Tim Lau & Rudy Mehrbani, *The Debate Over Trump’s Tax Returns*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2019) (“Presidents have been disclosing their personal tax information for decades.”).<sup>8</sup>

The most effective means to ensure that presidential actions are not driven by his financial interests are divestiture of potentially conflicting financial interests and the release of tax returns. See Block, *supra*; see also Lau & Mehrbani, *supra*. By making full divestiture of their financial interests and releasing tax returns, presidents reassure the People that their official decisions within the Oval Office are

---

<sup>6</sup> Available at <https://www.washingtonpost.com/news/morning-mix/wp/2017/01/20/i-do-solemnly-swear-the-35-most-momentous-words-donald-trump-will-say-at-his-inauguration/>.

<sup>7</sup> Available at <https://www.brennancenter.org/our-work/policy-solutions/strengthening-presidential-ethics-law>.

<sup>8</sup> Available at <https://www.brennancenter.org/our-work/analysis-opinion/debate-over-trumps-tax-returns/>.

not aimed at increasing their own wealth. Lau & Mehrbani, *supra*. For example, divestment of real estate interests in a foreign country would demonstrate that a president's decision not to impose sanctions against that country whose citizens participated in terrorist acts in the United States is not based on a concern that the value of his assets in that country might be diminished. See Karl A. Racine & Elizabeth Wilkins, *Enforcing the Anti-Corruption Provisions of the Constitution*, 13 HARV. L. & POL'Y REV. 449, 453-54 (2019) (explaining how divestment verifies that presidents are not influenced by their individual finances). Historically, when a president could not fully divest, he often engaged in the common practice of establishing a blind trust. See Daphna Renan, *Presidential Norms and Article II*, 131 HARV. L. REV. 2187, 2219 (2018). Blind trusts are an especially effective form of divestiture for individuals who possess "extremely complicated holdings." See Anne Vandermev & Nicolas Rapp, *Who Needs a Blind Trust?*, FORTUNE (Oct. 22, 2012, 4:55 PM).<sup>9</sup> At the very least, they've disclosed.

Concerns that presidential financial interests could impact decision-making is not new. See Perkins, *supra*, at 1134. During his term, President Dwight D. Eisenhower divested of his personal finances by establishing a blind trust. See Renan, *supra*, at 2217-18; *but see id.* at 2218 n.162 (stating economic restraints can be tracked back to President

---

<sup>9</sup> Available at <https://fortune.com/2012/10/22/who-needs-a-blind-trust/>.



Harry Truman). President Eisenhower's trust was "intended to obviate conflict problems arising from substantial stockholdings and other financial interest." See Memorandum from Laurence H. Silberman, *supra*, at 7; see also Memorandum from Antonin Scalia, Assistant Att'y Gen., Office of Legal Counsel, to Hon. Kenneth A. Lazarus, Assoc. Counsel to the President at 2-3 (urging the President and Vice President to avoid regulated conduct even if not governed by it). Through divestment, President Eisenhower demonstrated that his individual financial interests must come second to the appearance of impartial decision making.

After Watergate rocked public confidence in the presidency, President Jimmy Carter followed Eisenhower's lead and voluntarily established a blind trust while in office. Philip Taubman, *Carter Drops Blind Trust Secrecy And Divulges Finances for 1978-79*, N.Y. TIMES (May 31, 1979).<sup>10</sup> He also provided multiple years of tax returns. See STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A at 3 (Comm. Print 2019). President Reagan, who maintained a multi-million dollar net worth, further built upon the divestiture tradition and established a blind trust upon entering office. See Edward T. Pound, *Reagan's Worth Put at \$4 Million*, N.Y. TIMES, A, at 1 (Feb. 23,

---

<sup>10</sup> Available at <https://www.nytimes.com/1979/05/31/archives/carter-drops-blind-trust-secrecy-and-divulges-finances-for-19789.html>.

1981).<sup>11</sup> The purpose of his trust was “to handle and invest his personal assets during his Presidency.” *Id.* President Reagan’s blind trust served its purpose because while his “trustee provide[d] the President and Mrs. Reagan summary information for their tax returns,” President Reagan lacked any knowledge of the specific details of his assets. Jeff Gerth, *Bush’s Blind Trust: Guarding Against Conflicts of Interest*, N.Y. TIMES, A at 22 (Sept. 28, 1984).<sup>12</sup> Thus, the People had confidence that his official decisions were not driven by his personal financial interests.

President George H.W. Bush also placed many of his assets in a trust while he served as Vice President. *See id.* More importantly, his blind trust continued through his term as President. *See id.* He even provided multiple years of tax returns. *See* STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A at 2 (Comm. Print 2019). Following “the *tradition* of all modern presidents by setting up a blind trust,” President Clinton did the same. Stephen Labaton, *Most of Clintons’ Wealth Held by Mrs. Clinton, Disclosure Form Shows*, N.Y. TIMES (May 18,

---

<sup>11</sup> Available at <https://www.nytimes.com/1981/02/23/us/reagan-s-worth-put-at-4-million.html>.

<sup>12</sup> Available at <https://www.nytimes.com/1984/09/28/us/bush-s-blind-trust-guarding-against-conflicts-of-interest.html>.

1994) (emphasis added).<sup>13</sup> Additionally, President Clinton willingly released multiple years of tax returns. See STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A at 2 (Comm. Print 2019). President George W. Bush implemented the same economic restraints on his personal finances. See *id.* (documenting the years President Bush released his tax records); see also Jennifer Wang, *Why Trump Won't Use A Blind Trust And What His Predecessors Did With Their Assets*, FORBES (Nov. 15, 2016, 9:00 AM) (explaining how President Bush used a blind trust).<sup>14</sup>

In the rare circumstances where divestment has not been necessary or feasible, presidents and vice-presidents engaged in full disclosure of both their finances and tax return history. See S. Exec. Rep. No. 93-34, at 178 (1974); see also Peter Overby, *4 Questions About Donald Trump's Potential Conflicts of Interest If He's Elected*, NPR (June 9, 2016, 5:04

---

<sup>13</sup> Available at <https://www.nytimes.com/1994/05/18/us/most-of-clintons-wealth-held-by-mrs-clinton-disclosure-form-shows.html>.

<sup>14</sup> Available at <https://www.forbes.com/sites/jenniferwang/2016/11/15/why-trump-wont-use-a-blind-trust-and-what-his-predecessors-did-with-their-assets/#a2c1a3629c05>.

AM).<sup>15</sup> For example, President Obama did not divest from his personal finances because his assets were clear, relatively uncomplicated and did not pose any risks to the American People. *See id.* However, President Obama still continued his predecessors' practice by voluntarily disclosing his assets and providing previous tax return statements from multiple years. *Id.*; *see also* STAFF OF JOINT COMM. ON TAXATION, 116TH CONG., BACKGROUND REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF FEDERAL TAX RETURNS, app. A at 2 (Comm. Print 2019).

Most informative, however, is the nomination of Nelson A. Rockefeller, a member “of one of the nation’s wealthiest families.” Andrew Glass, *Rockefeller Sworn in as Vice President, Dec. 19, 1974*, POLITICO (Dec. 19, 2017, 12:16 AM).<sup>16</sup> While the Senate ultimately concluded that, due to Rockefeller’s impact on the economy, it would be in the public’s best interest for him to engage in full disclosure instead of divestiture, he did demonstrate a willingness to fully divest. *See* S. EXEC. REP. No. 93-34, at 178-79 (1974).

At the time of his nomination for Vice President, Rockefeller’s business holdings extended worldwide. *Id.* at 91. He announced that his net worth, together with his wife’s, amounted to \$62,500,000. *See* Linda

---

<sup>15</sup> Available at <https://www.npr.org/2016/06/09/481351291/if-elected-president-would-trump-put-his-investments-in-a-blind-trust>.

<sup>16</sup> Available at <https://www.politico.com/story/2017/12/19/rockefeller-sworn-in-as-vice-president-dec-19-1974-297732>.

Charlton, *Rockefeller Says His Assets Are Valued at \$62-Million*, N.Y. TIMES, at 81 (Sept. 20, 1974).<sup>17</sup> In addition, his assets included over \$120,000,000 held in trusts. *Id.* He asserted that the “total assets owned outright and in the two trusts amount to approximately \$182.5 million.” *Id.* Yet regardless of his extensive, complicated financial holdings, Rockefeller was prepared to comply with the practice of his predecessors and divest of his enormous financial interests by transferring his assets into a blind trust. *See* Nomination of Nelson A. Rockefeller of New York to Be Vice President of the United States: Hearings Before the S. Comm. on Rules & Admin., 93d Cong. 20 (1974) (statement of Nelson A. Rockefeller). Due to his family’s vast finances, however, the Senate concluded that the most appropriate option was full public financial disclosure. *See* S. Exec. Rep. No. 93-34, at 178-79 (1974).

Not only did Vice President Rockefeller willingly comply with the committee’s request for full financial disclosure, but he also submitted previous tax return statements. *See* H.R. Rep. No. 93-1609, at 8, 10 (1974). Over the course of his confirmation hearing, Vice President Rockefeller provided “federal, state, city, and foreign tax returns for years 1967 through 1973 . . . as well as income tax returns for various trusts established for the benefit of his wife, and himself; schedules of securities held in trust; trust

---

<sup>17</sup> Available at <https://www.nytimes.com/1974/09/20/archives/rockefellersays-his-assets-are-valued-at-62million-rockefeller.html>.

documents; and supporting financial record.” H.R. Rep. No. 93-1609, at 10. Vice President Rockefeller understood the importance of economic restraints on his personal finances—regardless of his family’s sizable wealth.

Historical practice demonstrates that presidents have taken various actions to ensure that the public has confidence that their decisions are not based on personal financial considerations. During the modern era specifically, a president has not refused to take actions to avoid an appearance of impropriety by asserting that they have complicated financial holdings or vast wealth. Instead, decades of practice affirm that the interest of the People should override any president’s objections.

## **II. PRESIDENT TRUMP’S DISCLOSURE AND DIVESTMENT DECISIONS DEPART FROM MODERN PRACTICE, RENDERING CONGRESSIONAL ACTION ESSENTIAL.**

### **A. President Trump’s failure to divest or create blind trusts departs from presidential norms imposed by ethics-related statutes.**

Since the Act became law in 1978, presidents have released both periodic financial reports as required, and have gone beyond the statutory command to also release their tax returns. *Trump v. Mazars USA, LLP*, 940 F.3d 710, 735 (D.C. Cir. 2019). Unlike his predecessors, President Trump has chosen not to disclose or divest in a manner consistent with presidents throughout history. Shaub, Remarks at

the Brookings Inst., *supra*, at 2.

The Trump Organization is comprised of over 500 businesses that are not required to release financial information publicly. Anita Kumar, *A Trump hotel mystery: Giant Reservations Followed by Empty Rooms*, POLITICO (Oct. 2, 2019, 5:00 AM).<sup>18</sup> Indeed, “shortly after he was elected, President Trump’s lawyer stated that his ‘business empire’ was ‘massive’ with ‘investments and business assets ... comprising hundreds of entities.” Remarks of Sherri Dillon at Jan. 11, 2017 News Conference.<sup>19</sup> President Trump is thus in a unique position because he has a “more extensive and eclectic” group of holdings than previous presidents. Matt O’Brien, *Donald Trump Won’t Do What Ronald Reagan, George H.W. Bush, Bill Clinton and George W. Bush Did*, WASH. POST (Nov. 15, 2016, 8:11 AM). Consequently, the Office of Government Ethics and other experts in the ethics field have repeatedly urged President Trump to completely divest his assets, to create a blind trust, or, at the very least, to disclose fully his financial interests and tax returns. Andy Sullivan, et. al., *Trump says won’t divest from his business while*

---

<sup>18</sup> Available at <https://www.politico.com/news/2019/10/02/trump-hotel-empty-rooms-016763>.

<sup>19</sup> Available at <https://www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html>.

*president*, REUTERS (Jan. 11, 2017, 11:33 AM).<sup>20</sup>

Instead, President Trump retains ownership of his businesses and passed management responsibilities to his eldest sons, Eric and Donald Jr., through a revocable trust, from which President Trump retains authority to withdraw funds. Marissa L. Kibler, Note, *The Foreign Emoluments Clause: Tracing the Framers' Fears About Foreign Influence over the President*, 74 N.Y.U. ANN. SURV. AM. L. 449, 492 (2019). President Trump's ability to withdraw funds from this trust originally went unreported as it was not part of the initial arrangement. Jeremy Venook, *Trump's Interests vs. America's, Dubai Edition*, ATLANTIC (Aug. 9, 2017).<sup>21</sup> Today, if President Trump's trustees merely deem the withdrawal "appropriate," he may withdraw money and draw on his business profits without making any public disclosures. *Id.* The revocable trust is contrary to the very purpose of blind trusts, which serve to distance the president from his assets and to remove the incentive to "consciously act in his own financial interest." *Id.* For this reason, the Office of Government Ethics has expressly indicated that this arrangement does not absolve the President of his potential and perceived conflicts. Walter M. Shaub,

---

<sup>20</sup> Available at <https://www.reuters.com/article/us-usa-trump-finance/trump-says-wont-divest-from-his-business-while-president-idUSKBN14V21I>.

<sup>21</sup> Available at <https://www.theatlantic.com/business/archive/2017/08/donald-trump-conflicts-of-interests/508382/>,



Jr., Dir., Office of Gov't Ethics, Letter to Hon. Thomas R. Carper, Ranking Member, Comm. on Homeland Sec. and Gov't Affairs 5 (Dec. 12, 2016).

Despite promises to remain separated from his businesses, President Trump's sons regularly update him on their status. Karen Yourish & Larry Buchanan, *Trump Still Makes Money from His Properties. Is This Constitutional?*, N.Y. TIMES (Dec. 19, 2018).<sup>22</sup> Though the President has claimed he will remain wholly independent from his business, a fundamental problem exists as to enforcement. Richard Painter, former chief ethics lawyer to George W. Bush, correctly noted that mere delegation does not remove the conflicts that come with owning a business. Dan Alexander, *After Promising Not to Talk Business with Father, Eric Trump Says He'll Give Him Financial Reports*, FORBES (Mar. 24, 2017, 9:00 AM).<sup>23</sup> Whereas a blind trust is specifically designed to ensure the government official has no influence over investments chosen or decisions made, President Trump remains in a position of influence and power over his assets and, at any given time, he may reclaim full control. President Trump's actions present potential conflicts of interest that cannot adequately

---

<sup>22</sup> Available at <https://www.nytimes.com/interactive/2018/12/17/us/politics/trump-emoluments-money.html>,

<sup>23</sup> Available at <https://www.forbes.com/sites/danalexander/2017/03/24/after-promising-not-donald-talk-business-with-father-eric-trump-says-president-give-him-financial-reports/#63589cf359a1>.

be assessed absent disclosure. Without clear divestment or at least disclosure of his financial holdings, even Republican ethics experts have suggested there may be an appearance of corruption as individuals seek to influence the administration through business transactions. Susanne Craig & Eric Lipton, *Trump's Plans on Businesses May Fall Short*, N.Y. TIMES (Jan. 11, 2017).<sup>24</sup>

**B. President Trump's failure to divest or disclose his financial interests creates the appearance of impropriety with respect to his foreign and domestic business relationships**

President Trump's business relationships with foreign countries present the most disconcerting aspect of the President's decisions. The Trump Organization's business enterprises extend far beyond the United States. Notably, the President has business deals or properties across the world, is indebted to both Russia and the Bank of China on his properties, and has marketing deals in numerous countries including Turkey, South Korea, and the United Arab Emirates. Jeff Nesbit, *A Handy List of Donald Trump's Biggest Conflicts of Interest*, TIME (Nov. 21, 2016).<sup>25</sup> Indeed, over 100 of the Trump

---

<sup>24</sup> Available at <https://www.nytimes.com/2017/01/11/us/politics/trump-organization-business-conflicts.html>.

<sup>25</sup> Available at <https://time.com/4578431/donald-trump-conflicts-of-interest-list/>.

Organization companies have done business in eighteen foreign countries. *Id.* Consequently, President Trump is the first president in modern history to have control over a “global business empire.” Kevin Sullivan, *For a President Trump, Global Real Estate Deals Present Unprecedented Gray Areas*, WASH. POST. (May 30, 2016).<sup>26</sup> President Trump’s business interests involve financial ties that may be affected by his economic and monetary policy as well as his political decisions.

Since President Trump has taken office, his business enterprises have apparently experienced substantial profits. *See, e.g.*, Alexandra Berzon, *Trump Hotel in Washington Saw Strong Profit in First Four Months of 2017*, WALL ST. J. (Aug. 11, 2017, 4:35 PM).<sup>27</sup> Foreign spending has increased at President Trump’s hotels, golf courses, and restaurants around the world, though the total spending is unknown to the public because of President Trump’s failure to disclose his financial records. Shelby Hanssen & Kevin Dilanian, *Reps of 22 Foreign Governments Have Spent Money at Trump*

---

<sup>26</sup> Available at [https://www.washingtonpost.com/politics/for-a-president-trump-global-real-estate-deals-present-unprecedented-gray-areas/2016/05/30/beac0038-15fa-11e6-aa55-670cabef46e0\\_story.html](https://www.washingtonpost.com/politics/for-a-president-trump-global-real-estate-deals-present-unprecedented-gray-areas/2016/05/30/beac0038-15fa-11e6-aa55-670cabef46e0_story.html).

<sup>27</sup> Available at <https://www.wsj.com/articles/trump-hotel-in-washington-saw-strong-profit-in-first-four-months-of-2017-1502424589>.

*Properties*, NBC NEWS (June 12, 2019, 4:30 AM).<sup>28</sup> Even Trump Organization filings, which are intended to be comprehensive documents, fail to fully identify necessary details on his foreign accounts. Drew Harwell & Anu Narayanswamy, *A Scramble to Assess the Dangers of President-elect Donald Trump's Global Business Empire*, WASH. POST (Nov. 20, 2016).<sup>29</sup> Though the Trump Organization purportedly has donated the profits traceable to foreign governments to the U.S. Treasury, the Organization has admitted the difficulty of ascertaining exactly which payments represent such patronage. Cristina Alesci, *Questions Remain Over Trump Organization's Donation of Foreign Profits*, CNN (Feb. 27, 2018, 9:37 PM).<sup>30</sup> Shortly after President Trump's inauguration, the Trump Organization indicated it could not and would not attempt to identify which foreign agents stayed at his properties and, instead, relied on foreign governments to identify themselves. Venook, *supra*.

President Trump donated just \$343,000 to the U.S. Treasury between 2017 and 2018, *id.*, and the

---

<sup>28</sup> Available at <https://www.nbcnews.com/politics/donald-trump/rep-22-foreign-governments-have-spent-money-trump-properties-n1015806>.

<sup>29</sup> Available at [https://www.washingtonpost.com/business/economy/a-scramble-to-assess-the-dangers-of-president-elects-global-business-empire/2016/11/20/1bbdc2a2-ad18-11e6-a31b-4b6397e625d0\\_story.html](https://www.washingtonpost.com/business/economy/a-scramble-to-assess-the-dangers-of-president-elects-global-business-empire/2016/11/20/1bbdc2a2-ad18-11e6-a31b-4b6397e625d0_story.html).

<sup>30</sup> Available at <https://www.cnn.com/2018/02/27/politics/trump-organization-foreign-profits/index.html>.

underlying numbers to support that figure have not been released. News reports have indicated, however, that representatives from at least twenty-two foreign governments have spent money at Trump Organization properties since President Trump took office. Dean Obeidallah, *Trump Still Doesn't Get Why He Should Avoid Conflicts of Interest*, CNN (Oct. 21, 2019, 5:59 AM).<sup>31</sup> More recently, NPR reported that foreign governments paid over one million dollars to the Trump Organization, 90 percent of which was spent at President Trump's D.C. hotel. Terry Gross, *From Mar-A-Lago to Trump Hotels, Reporter Says Trump Profits as President*, NPR (Sept. 5, 2019).<sup>32</sup>

Since President Trump's election, foreign officials have increased their patronage at Trump owned properties. Kuwait, for example, moved its annual national day event to the Trump Hotel in D.C. following President Trump's election. Obeidallah, *supra*. Counselor to the President, Kellyanne Conway attended the 2018 festivities. *Id.* Conway's appearance suggests to foreign individuals that time and money spent at Trump properties could effectively lead to access to the President. Consequently, Afghanistan, the United Arab Emirates, and Turkey have similarly hosted events at

---

<sup>31</sup> Available at <https://www.cnn.com/2019/10/21/opinions/trump-g7-doral-conflicts-of-interest-obeidallah/index.html>.

<sup>32</sup> Available at <https://www.npr.org/2019/09/05/757867502/from-mar-a-lago-to-trump-hotels-reporter-says-trump-profits-as-president>.

Trump properties. Editorial, *Trump Adds to His Endless Parade of Corruption and Conflicts of Interest*, WASH. POST (June 23, 2019, 7:42 PM).<sup>33</sup> Iraq and China have also rented or purchased property in Trump owned buildings, and other countries have upgraded their infrastructure, which has “helped Trump properties within their borders.” *Id.* While not all of President Trump’s foreign properties increased in revenue, in 2018 six properties across Scotland, Ireland, Canada, the United Arab Emirates, and the Dominican Republic, collectively brought in nearly \$7 million in additional revenue. Anita Kumar, *Trump Resort Revenue Has Gone Up After Presidential Visits*, POLITICO (June 6, 2019, 5:02 AM).<sup>34</sup> Particularly, Trump Turnberry, one of President Trump’s Scottish properties, raised an additional \$3.1 million the same year he visited. *Id.* Foreign countries routinely appear to provide economic patronage to President Trump’s businesses in a manner disconcerting to the People and to Congress.

A key factor in seeking President Trump’s financial records is his dealings with Saudi Arabia, a country President Trump has expressly indicated he

---

<sup>33</sup> Available at [https://www.washingtonpost.com/opinions/trump-adds-to-his-endless-parade-of-corruption-and-conflicts-of-interest/2019/06/23/0cda6ab0-8ede-11e9-8f69-a2795fca3343\\_story.html](https://www.washingtonpost.com/opinions/trump-adds-to-his-endless-parade-of-corruption-and-conflicts-of-interest/2019/06/23/0cda6ab0-8ede-11e9-8f69-a2795fca3343_story.html).

<sup>34</sup> Available at <https://www.politico.com/story/2019/06/06/trump-resort-revenue-1355525>.

hopes to protect. Mark Hensch, *Trump: I would want to protect Saudi Arabia,* HILL (Jan. 5, 2016, 7:41 AM).<sup>35</sup> Between November 2016 and February 2017, Saudi Arabia reportedly spent approximately \$270,000 at the Trump Hotel in Washington. Venook, *supra*; see also Michelle Cottle, *Merry Griftmas, Mr. Trump!*, N.Y. TIMES (Dec. 6, 2019).<sup>36</sup> These expenditures were particularly troubling as they were part of a lobbying campaign against the Justice Against Sponsors of Terrorism Act. Scott Simon, *'This is Crossing the Line': Saudis Co-Opted Veterans' Voices to Lobby Congress*, NPR (Dec. 15, 2018).<sup>37</sup> The Saudi government's payments have already been the subject of the emoluments lawsuits against the President, and are equally important in illuminating the Congressional need for President Trump's personal financial records. *Id.* The concern is particularly acute where President Trump has vetoed bipartisan legislation blocking arms sales to Saudi Arabia and ending U.S. participation in Yemen's civil war. *Vetoes by President Donald J. Trump*, U.S.

---

<sup>35</sup> Available at <https://thehill.com/blogs/ballot-box/presidential-races/264748-trump-we-made-iran-a-power>.

<sup>36</sup> Available at <https://www.nytimes.com/2019/12/06/opinion/donald-trump-william-barr-hotel.html>.

<sup>37</sup> Available at <https://www.npr.org/2018/12/15/677015776/this-is-crossing-the-line-saudis-co-opted-veterans-voices-to-lobby-congress>.

SENATE (last visited Mar. 3, 2020).<sup>38</sup> His vetoes of legislation aimed at curbing some of Saudi Arabia's actions have the effect of strengthening U.S. diplomatic relations with Saudi Arabia and, perhaps, his own financial interests. Andrew Desiderio, *Trump Vetoes Resolution on Ending U.S. Role in Yemen Civil War*, POLITICO (Apr. 16, 2019, 8:16 PM).<sup>39</sup>

Many also question the Administration's favorable policies toward the increasingly authoritarian leadership of Turkey. As early as 2017, President Trump "praised President Erdogan as a stalwart ally" while simultaneously ignoring tensions between the United States and Turkey, and concerns with Erdogan's "authoritarian crackdown" on his people. Julie Hirschfeld Davis & Mark Landler, *Trump Praises Erdogan as Ally in Terrorism Fight, Brushing Aside Tensions*, N.Y. TIMES (May 16, 2017).<sup>40</sup> In 2018, President Trump pulled American troops from Syria, further "clearing the way" for President Erdogan's "long-sought incursion into the country." Michael Crowley & Carlotta Gall, *In Trump, Turkey's Erdogan Keeps Finding a Sympathetic Ear*, N.Y. TIMES (Oct. 8,

---

<sup>38</sup> Available at <https://www.senate.gov/legislative/vetoes/TrumpDJ.htm>.

<sup>39</sup> Available at <https://www.politico.com/story/2019/04/16/trump-vetoes-resolution-yemen-civil-war-1278627>.

<sup>40</sup> Available at <https://www.nytimes.com/2017/05/16/world/middleeast/erdogan-turkey-trump.html>.



2019).<sup>41</sup> Congress, however, through bipartisan legislation and resolutions, has vehemently opposed President Trump’s withdrawal of U.S. troops from Syria and his overarching policies toward the Turkish President. David Welna, *Trump Sweet, Congress Sour on Turkey*, NPR (Nov. 13, 2019, 4:45 PM).<sup>42</sup> Additionally, in 2012, Istanbul, Turkey opened a set of skyscrapers—deemed Trump Towers—and set out to pay the Trump Organization a licensing fee. David Kirkpatrick & Eric Lipton, *Behind Trump’s Dealings with Turkey: Sons-in-Law Married to Power*, N.Y. TIMES (Nov. 12, 2019).<sup>43</sup> In the first years after it opened, Turkey paid the Trump Organization approximately \$5–\$10 million per year. *Id.* The Trump Organization continues to receive somewhere between \$100,000 and \$1 million per year from the Turkish government. *Id.* President Trump recognized this “little conflict of interest” with Turkey in 2015, before assuming the presidency, but has failed to divest or disclose the extent of his business opportunities with that country. *Id.*

Furthermore, President Trump’s foreign business

---

<sup>41</sup> Available at <https://www.nytimes.com/2019/10/08/us/politics/trump-erdogan-turkey-visit.html>.

<sup>42</sup> Available at <https://www.npr.org/2019/11/13/778998792/trump-sweet-congress-sour-on-turkey>.

<sup>43</sup> Available at <https://www.nytimes.com/2019/11/12/us/politics/trump-erdogan-family-turkey.html>.

partners raise questions as to his conflicts. In 2017, the Trump Organization sold a \$16 million penthouse to a consultant company that aids in U.S. business relationships with China. Gretchen Frazee, *Trump Criticizes the Bidens, but His Own Family's Business Raises Questions*, PBS NEWS HOUR (Oct. 17, 2019, 2:50 PM).<sup>44</sup> In June 2019, the Trump Organization sold a Beverly Hills Mansion to a corporate entity connected to an Indonesian businessman and Trump business partner for \$13.5 million, a 93 percent increase in what President Trump previously paid for the home. *Id.* Notably, this Indonesian business partner has worked with President Trump on two projects reportedly worth over \$500 million upon completion. Jonathan O'Connell, et al., *Trump's Company Sells California Mansion to Firm Linked to Indonesian Billionaire, a Business Partner*, WASH. POST (June 13, 2019, 4:37 PM).<sup>45</sup> The now infamous call with President Zelensky of Ukraine, in which President Zelensky proudly stated that he stayed at Trump Tower, further emphasizes the underlying concerns with a president who is still intimately connected with his business enterprises. Cottle, *supra*.

---

<sup>44</sup> Available at <https://www.pbs.org/newshour/politics/trump-criticizes-the-bidens-but-his-own-family-s-business-raises-questions>.

<sup>45</sup> Available at [https://www.washingtonpost.com/politics/trumps-company-sells-california-mansion-to-firm-linked-to-indonesian-billionaire-a-business-partner/2019/06/13/5d73206a-8de5-11e9-adf3-f70f78c156e8\\_story.html](https://www.washingtonpost.com/politics/trumps-company-sells-california-mansion-to-firm-linked-to-indonesian-billionaire-a-business-partner/2019/06/13/5d73206a-8de5-11e9-adf3-f70f78c156e8_story.html).

More troubling still, President Trump's presidential duties have not deterred him from discussing his private businesses or taking proactive steps to prevent even the appearance of corruption. Rather, he continues to promote his international businesses with foreign officials in official remarks and through social media. Alesci, *supra*. President Trump has additionally invited over 100 officials from over fifty countries to several of his business properties, while China, Saudi Arabia, and South Korea continue to build Trump Resorts. *Id.*

There also is evidence that President Trump's domestic policies may be influenced by U.S. based industry leaders seeking to curry favor with the Trump Administration. Notably, after announcing a potential merger with Sprint, telecommunications giant and the nation's third-largest wireless carrier, T-Mobile, spent at least fifty-two nights at President Trump's D.C. hotel. Jonathan O'Connell, et. al., *T-Mobile Executives Seeking Merger Approval Booked More than 52 Nights at Trump's D.C. Hotel – More than Previously Known*, WASH. POST (Feb. 6, 2019, 9:15 PM).<sup>46</sup> Nine executives were expected to check-in on the same day the merger was made public. *Id.* Importantly, T-Mobile previously made repeated attempts to merge with its rivals and was barred from

---

<sup>46</sup> Available at [https://www.washingtonpost.com/politics/t-mobile-executives-seeking-merger-approval-booked-more-than-52-nights-at-trumps-hotel--more-than-previously-known/2019/02/06/cd6fa7e6-29ca-11e9-b011-d8500644dc98\\_story.html](https://www.washingtonpost.com/politics/t-mobile-executives-seeking-merger-approval-booked-more-than-52-nights-at-trumps-hotel--more-than-previously-known/2019/02/06/cd6fa7e6-29ca-11e9-b011-d8500644dc98_story.html).

doing so by the Obama administration to prevent harm to customers. *Id.* In October 2019, however, the Federal Communications Commission approved the merger in a 3-2, party-line vote. Richard Gonzales, *FCC Clears T-Mobile/Sprint Merger Deal*, NPR (Nov. 5, 2019).<sup>47</sup>

Similarly, in March 2018, the American Petroleum Institute (“API”) an oil-industry lobbying group, held a two-day meeting of its board of directors at Trump’s Washington, D.C. hotel. Obeidallah, *supra*. Shortly thereafter, API executives met with President Trump. *Id.* Political groups have also joined American businesses in spending substantially more money than previously seen at Trump properties. Since President Trump took office in January 2017, political candidates and organizations have spent at least \$5.6 million at Trump properties. Cottle, *supra*. This number stands in stark contrast to the collective \$119,000 Trump hotels and properties received in the four years before President Trump began his presidential bid. *Id.* These transactions, standing alone, raise serious questions as to President Trump’s interests. The People deserve to know whether and to what extent the President’s domestic policies are intertwined with his business interests, so that they can properly assess his commitment to his duties as President versus his potential use of his office for personal gain.

---

<sup>47</sup> Available at <https://www.npr.org/2019/11/05/776578139/fcc-clears-t-mobile-sprint-merger-deal>.

Beyond foreign businesses and American corporate interests, President Trump's travel alone raises questions as to his conflicts of interest. Since becoming president, he has spent more than 300 days at his own properties. Obeidallah, *supra*. Of course, President Trump does not travel alone. The Secret Service, for example, has reportedly spent more than \$500,000 on golf carts at President Trump's properties, which does not include taxpayer funded guest suites for the secret service and other advisors traveling alongside President Trump. *Id.* Domestically, President Trump's actions suggest he has personally profited from the office at the taxpayer's expense. In addition, President Trump's financial obligations, such as his outstanding loans to Deutsche Bank, which total over \$300 million for his properties, further entangle his administration and the Trump Organization. Gross, *supra*. Should President Trump succeed in lowering interest rates, Bloomberg reports he would save an estimated \$850,000 per year for each quarter of a percentage point. *Id.*

President Trump has effectively intertwined his business interests with the presidency. He still owns his businesses. His holdings are visible to him. He receives and perhaps exerts some control when receiving updates on his business interests. He can, and perhaps does, withdraw money from the revocable trust without alerting the public. And he promotes those businesses to people with whom he conducts official government business. This level of entanglement is unprecedented.

President Trump pledged to separate his business from the presidency. Instead, the White House and the Trump Organization have enjoyed a seemingly symbiotic relationship. As political watchdog Citizens for Responsibility and Ethics in Washington (CREW) reports, the Trump administration routinely promotes and supports Trump's businesses through social media and various political events at his properties, and the Trump Organization routinely references the presidency. CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, *Trump's 2,000 Conflicts of Interest (And Counting)*, [hereinafter CREW, *Conflicts*]<sup>48</sup> There should be no occasion where the American electorate and Congressional committees need to question whether the President is acting on behalf of American interests. But President Trump's vast business empire and his failure to disentangle his administration from the Trump Organization has consistently undermined the ethics of his administration and standardized an appearance of impropriety.

**C. The House Committee on Financial Oversight and the Intelligence Committee appropriately subpoenaed President Trump's financial records to investigate legislative reform.**

The Mazars USA, LLP, Deutsche Bank, and Capital One subpoenas, issued by House Committees,

---

<sup>48</sup> Available at <https://www.citizensforethics.org/2000-trump-conflicts-of-interest-counting/>.

were both proper and expected, given President Trump's unprecedented failure to divest or disclose his financial holdings. Congress may investigate specific issues that "in the future could be the subject[] of appropriate legislation." *Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968). Congressional oversight, as depicted by the Circuit Courts below, is therefore appropriate as applied to the President, as a preliminary investigation into the need and desirability of remedial legislative action. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

Though the current conflict of interest rules do not "legally bind the President," the Executive Branch and the Justice Department have consistently maintained that a president should comply with 18 U.S.C. § 208 (criminalizing acting on matters affecting one's financial interests) as if he were personally bound. Memorandum from Antonin Scalia, *supra*, at 3. Notably, Antonin Scalia, as former head of the Justice Department's Office of Legal Counsel, stated it is "undesirable" for the President to violate the requirements of Section 208. *Id.* The Office of Government Ethics has taken an identical position. See Letter from David H. Martin, Dir., Office of Gov't Ethics, to Richard Hauser, Deputy Counsel to the President (Oct. 20, 1983). The central justifications for Section 208 and the Act, as outlined above, are particularly important where the President has touted his immunity from the law. Isaac Arnsdorf, *Trump: "The President can't have a conflict of interest," POLITICO* (Nov. 22, 2016, 2:26 PM). Mere legality, however, does not equate to propriety.

The policy rationales set forth above are relevant where the President has been the subject of multiple inquiries into potential conflicts of interest. Over the course of his presidency, CREW has identified over 2,000 conflicts resulting from President Trump's failure to divest his business interests in a blind trust. *CREW Conflicts, supra*. Congressional oversight, as exercised in the case at bar, thus stems directly from President Trump's failure to fully divest or place his assets in a blind trust or at least engage in full disclosure.

Consequently, the House Oversight Committee, which retains a particular focus on ethics laws, as well as the House Committee on Financial Services and the Intelligence Committee did not act without reason. This is especially true where, in 1989, Congress deliberately exempted the President and Vice President from federal conflict of interest statutes. *Block, supra*. Congress is empowered to research whether to amend the ethics laws to require presidential divestment and disclosure to prevent the appearance of presidential misdeeds. For instance, in response to Congressional concerns, Senator Elizabeth Warren reintroduced a 2017 bill that would require the President and Vice President to fully divest financial interests that would result in potential conflicts. *Warren Leads 30 Colleagues in Reintroducing Bill to Require the President and Vice President to Fully Divest Their Financial Conflicts of*



*Interests*, SENATE.GOV (Mar. 27, 2019).<sup>49</sup> Subsequently, in September 2019, Senator Gary Peters, Ranking Member of the Senate Homeland Security and Government Affairs Committee, led 34 of his colleagues in introducing the *Heightened Oversight of Travel, Eating, and Lodging (HOTEL) Act*, which would immediately stop the federal government from spending taxpayer dollars at properties owned by the President, Vice President, and Cabinet officials. Press Release, U.S. Senate Committee on Homeland Security & Governmental Affairs, Peters Leads Colleagues in Introducing Bill to Stop Use of Taxpayer Dollars at Trump Properties (Sept. 16, 2019).<sup>50</sup> The legislation aims to prevent potential conflicts of interest and abuse of taxpayer dollars by making clear that all three branches of government may not approve any spending, including travel expenditures, at businesses owned or controlled by the President and other high-ranking government officials. *See id.* These legislative proposals establish that some members of Congress are interested in enacting legislation on conflicts of interest and the President. Information on President Trump's finances and presidential actions will further shape

---

<sup>49</sup> Available at <https://www.warren.senate.gov/newsroom/press-releases/warren-leads-30-colleagues-in-reintroducing-bill-to-require-the-president-and-vice-president-to-fully-divest-their-financial-conflicts-of-interests>.

<sup>50</sup> Available at <https://www.hsgac.senate.gov/media/minority-media/peters-leads-colleagues-in-introducing-bill-to-stop-use-of-taxpayer-dollars-at-trump-properties>.

congressional legislation.

As early as 2017, President Trump's unclear relationship to his financial holdings resulted in at least three lawsuits involving the Foreign Emoluments Clause, found in Article I, § 9 of the U.S. Constitution. These concerns have been articulated and considered by the D.C. Circuit below. *Mazars*, 940 F.3d at 734. The President's financial records will be helpful in future determinations of a president's compliance with the ostensibly unclear Emoluments Clause of the Constitution.

The Congressional subpoenas in dispute before this Court, however, result from information released in 2018, when the Office of Government Ethics identified an error with one of President Trump's mandatory annual reports. *Id.* at 716. The Office reported that President Trump had failed to report a liability under the Ethics in Government Act. *Id.* President Trump's failure to divest or disclose consequently suggested potential impropriety.

As the "authorizing Committee for Government Ethics," the House Committee on Oversight and Reform retains authority to both legislate and conduct oversight related to ethics laws and regulations. Letter from Elijah E. Cummings, Chairman, House Committee on Oversight and Reform, to Emory A. Rounds III, Director, Office of Government Ethics 7-8 (Jan. 22, 2019). Following the OGE's findings, Representative Elijah E. Cummings, then Chairman of the Oversight Committee, first requested documents from the White House to help determine

why President Trump's reports were inaccurate. *Id.* at 9. President Trump declined to supply all the requested documentation. *Id.*

Shortly thereafter, Michael Cohen appeared before the Oversight Committee and testified that he believed President Trump was purposefully manipulating his financial records. *See Hearing with Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the H. Committee on Oversight and Reform*, 116th Cong. 13 (Feb. 27, 2019). Mr. Cohen provided documentation, prepared by Mazars USA, that predated the presidency and seemingly supported his testimony. *Mazars*, 940 F.3d at 716.

Only after these inaccuracies came to light, —after President Trump refused to provide the requested documentation, and after Cohen set forth plausible evidence that President Trump misrepresented his financial affairs—did the House Oversight Committee issue subpoenas to Mazars USA for President Trump's financial records. Charlie Savage *Congress Can Seek Trump's Financial Records, Appeals Court Rules*, N.Y. TIMES (Oct. 11, 2019).<sup>51</sup> Representative Cummings has repeatedly stated that these subpoenas were issued solely to determine whether Congress should update its financial disclosure laws. *Id.* In particular, it was imperative for the House Committee to determine whether Section 208, which does not currently bind the President, should be updated to

---

<sup>51</sup> Available at <https://www.nytimes.com/2019/10/11/us/politics/mazars-trump-tax-returns.html>.

prevent future conflicts of interest such as those at issue before this Court. And, regarding the Deutsche Bank subpoenas, any information obtained therein would provide valuable insight into the need for industry-wide changes related to money laundering and lending practices.

President Trump has asked this Court to deny Congress its duly authorized oversight power, which this Court has repeatedly recognized. *See, e.g., Quinn v. United States*, 349 U.S. 155 (1955); *Sinclair v. United States*, 279 U.S. 263, 295 (1929); *McGrain*, 273 U.S. at 174; *Kilbourn v. Thompson*, 103 U.S. 168, 194-95 (1881). The President asks this Court to dismantle a vital check on the executive branch in times of potential abuse and corruption and to significantly reduce Congress' oversight power despite the Constitution's fundamental mandate of separation of powers. At bottom, considering President Trump's failure to disclose or divest his financial holdings, the House Committees acted appropriately and reasonably to determine whether remedial legislation is needed to prevent future presidents appearing to act pursuant to conflicts of interest.

**CONCLUSION**

This Court should affirm the rulings below.

Respectfully submitted,

PATRICIA E. ROBERTS  
WILLIAM & MARY LAW  
SCHOOL APPELLATE AND  
SUPREME COURT CLINIC  
P.O. Box 8795  
Williamsburg, VA 23187  
Telephone: 757-221-3821

DWAYNE D. SAM\*  
PIERCE BAINBRIDGE BECK  
PRICE & HECHT LLP  
601 Pennsylvania Ave., NW  
Suite 700S  
Washington, DC 20004  
Telephone: 202-843-8342  
dsam@piercebainbridge.com

\*Counsel of Record

*Counsel for Amici Curiae*

**APPENDIX: THE AMICI AND THEIR  
QUALIFICATIONS**

Marilyn Glynn – Former OGE Acting Director and General Counsel (career)

Karen Kucik – Former ethics official for DOJ, Department of Commerce, and Department of Health & Human Services (career)

Lawrence D. Reynolds – Former Assistant General Counsel for the Department of Housing and Urban Development with responsibility for ethics (career; also served at the Department of Labor in career ethics capacity)

Amy Comstock Rick – Former Director of the Office of Government Ethics; former Associate Counsel to President Clinton for ethics (originally career ethics official at Department of Education)

Irwin B. Rothschild, III – Former Associate General Counsel at the Nuclear Regulatory Commission

Richard M. Thomas – Former Associate General Counsel, Office of Government Ethics; Former Ethics Counsel, Department of Health and Human Services (career)

Harvey Wilcox – Former Navy Deputy General Counsel (career) and Designated Agency Ethics Official

Leslie Wilcox – Former Associate General Counsel for OGE (career), and principal author of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635)