

# Impeachment campaign FAQs

[www.impeachdonaldtrumpnow.org](http://www.impeachdonaldtrumpnow.org)

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## What are you asking Congress to do?

We are calling upon Congress to pass a resolution calling for the House Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of Donald John Trump, President of the United States.

## Why launch this campaign now?

The nation is now witnessing a massive corruption of the presidency, far worse than Watergate. Indeed, Nixon White House Counsel John Dean told reporters: “I don’t think Richard Nixon even comes close to the level of corruption we already know about Trump.”<sup>1</sup> Given the opportunity of ten full weeks between the election and the inauguration to divest his business interests, Mr. Trump chose instead to announce, just nine days before inauguration, a wholly inadequate plan to step away from operations, but not ownership or income streams, of the Trump Organization.<sup>2</sup> Instead, he has chosen to profit from the presidency at public expense, in violation of the United States Constitution. The violations, the corruption, and the threat to our republic are here now.

## How does impeachment work?

The U.S. Constitution provides that “[t]he President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>3</sup>

The House of Representatives has the power to launch impeachment charges.<sup>4</sup> Typically, a resolution calling for an investigation is referred to the House Committee on Rules, which in turn may refer it to the Judiciary Committee for

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<sup>1</sup> McKay Coppins, “*He Is Going to Test Our Democracy as It Has Never Been Tested,*” *The Atlantic*, Jan. 17, 2017, <http://theatlantic.com/story/2017/01/donald-trump-impeachment-qa/418777/>.

<sup>2</sup> See Susanne Craig & Eric Lipton, *Trump’s Plans on Businesses May Fall Short*, *N.Y. Times*, Jan. 11, 2017, <http://nyti.ms/2jWKdjR>; Clare Foran, *Why Trump’s Conflict-of-Interest Plan Won’t Prevent Conflicts of Interest*, *The Atlantic*, Jan. 11, 2017, <http://theatlantic.com/story/2017/01/donald-trump-impeachment-qa/418777/>.

<sup>3</sup> U.S. Const. art. II, § 4.

<sup>4</sup> U.S. Const. art. I, § 2, cl. 5.

investigation.<sup>5</sup> In such an investigation, the Judiciary Committee has the power to subpoena witnesses and documents. The Judiciary Committee may then report articles of impeachment for a full House vote. The House votes on these articles by simple majority.

If the House votes to impeach, then the Senate conducts the impeachment trial. When the President is tried, the Chief Justice of the Supreme Court presides.<sup>6</sup> The Senate requires a two-thirds majority to convict.<sup>7</sup> Conviction results in immediate removal from office.<sup>8</sup>

### What are the grounds for impeachment?

President Trump's personal and business holdings in the United States and abroad present unprecedented conflicts of interest. Indeed, President Trump has *admitted* he has conflicts of interest in some cases. For example, the Trump Organization has licensing deals with two Trump Towers in Istanbul, and has received up to \$10 million from developers since 2014.<sup>9</sup> President Trump admitted recently that "I have a little conflict of interest, because I have a major, major building in Istanbul."<sup>10</sup>

Crucially, some of these business arrangements violate the U.S. Constitution's Foreign Emoluments Clause, which provides: "[N]o Person holding any Office of Profit or Trust under [the United States], 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."<sup>11</sup> The purpose of this provision is to prevent foreign influence or corruption. "Emoluments" from foreign governments include "any conferral of a benefit or advantage, whether through money, objects, titles, offices, or economically valuable waivers or relaxations of otherwise

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<sup>5</sup> Lewis Deschler, *Precedents of the U.S. House of Representatives*, ch. 14 § 5.11; T.J. Halstead, Congressional Research Service, *An Overview of the Impeachment Process* 2-3 (Apr. 20, 2005).

<sup>6</sup> U.S. Const. art. I, § 3, cl. 6-7.

<sup>7</sup> *Id.*

<sup>8</sup> U.S. Const. art. II, § 4.

<sup>9</sup> Drew Harwell & Anu Narayanswamy, *A scramble to assess the dangers of President-elect Donald Trump's global business empire*, Wash. Post, Nov. 20, 2016, <http://wpo.st/KCmP2>.

<sup>10</sup> Michael Keller et al., *Tracking Trump's Web of Conflicts*, Bloomberg, Dec. 13, 2016, <http://bloom.bg/2jamDUu>.

<sup>11</sup> U.S. Const., art. I, § 9, cl. 8. This ban is located within a clause addressing both titles of nobility and foreign payments, and is variously called the Titles of Nobility Clause, the Foreign Corruption Clause, or the Foreign Emoluments Clause.

applicable requirements,” even including “ordinary, fair market value transactions that result in any economic profit or benefit to the federal officeholder.”<sup>12</sup>

Many of the Trump Organization’s extensive business dealings with foreign governments, businesses owned by foreign governments, and other foreign leaders violate this ban. A recent legal analysis by Prof. Laurence Tribe of Harvard Law School, Ambassador (ret.) Norman Eisen (former chief ethics counsel to President Barack Obama), and Professor Richard Painter (former chief ethics counsel to President George W. Bush) concluded that Mr. Trump would be violating the foreign emoluments ban from the *moment he took office*, due to “a steady stream of monetary and other benefits from foreign powers and their agents” deriving from his existing business arrangements.<sup>13</sup> As a result, since he did not divest his business operations before inauguration, he has been violating the Foreign Emoluments Clause since the moment he took office.<sup>14</sup>

Examples of existing business arrangements that constitute violations of the Foreign Emoluments Clause include:

- China’s state-owned Industrial and Commercial Bank of China is the largest tenant in Trump Tower. It is also a major lender to Trump.<sup>15</sup> Both its regular rent payments, and its ongoing extension of credit, are foreign emoluments.
- Foreign diplomats have already begun shifting their D.C. hotel and event reservations to Trump International Hotel, to curry favor or at least avoid insulting the president.<sup>16</sup> Indeed, the Embassy of Kuwait was reportedly *pressured* by the Trump Organization to change an existing reservation and reschedule the event at the Trump International.<sup>17</sup> Payments by foreign

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<sup>12</sup> Norman L. Eisen, Richard Painter, & Laurence H. Tribe, Brookings Governance Studies, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, <http://brook.gs/2i1i3Ht> (Dec. 16, 2016), at 2.

<sup>13</sup> *Id.*

<sup>14</sup> See Norman L. Eisen & Richard W. Painter, *Trump Could Be in Violation of the Constitution His First Day in Office*, The Atlantic, Dec. 7, 2016, <http://theatl.in.tc/2i0ApY4>; see also Richard W. Painter et al., *Emoluments: Trump’s Coming Ethics Trouble*, The Atlantic, Jan. 18, 2017, <http://theatl.in.tc/2jwtnNr>.

<sup>15</sup> Libby Nelson, *All of Donald Trump’s known conflicts of interest in one place*, Vox, <http://bit.ly/2gJbaXa> (last updated Jan. 3, 2017).

<sup>16</sup> Jonathan O’Connell & Mary Jordan, *For foreign diplomats, Trump hotel is place to be*, Wash. Post, Nov. 18, 2016, <http://wpo.st/VemN2>. The motivation is obvious: “Why wouldn’t I stay at his hotel blocks from the White House, so I can tell the new president, “I love your new hotel!” Isn’t it rude to come to his city and say, “I am staying at your competitor?”” said one Asian diplomat.” *Id.*

<sup>17</sup> See Judd Legum & Kira Lerner, *Under political pressure, Kuwait cancels major event at Four Seasons, switches to Trump’s D.C. hotel*, Think Progress, Dec. 19, 2016, <http://thkpr.gs/1f204315d513>.

diplomats for lodging, meeting space, or food at the hotel are foreign emoluments.

- Trump’s business partner in Trump Tower Century City (Manila, Philippines) is Century Properties. (Trump is not the developer; he has a brand licensing contract.) The head of Century Properties is Jose Antonio, who was just named special envoy to the United States by the president of the Philippines.<sup>18</sup> Payments from a company owned by a foreign government official are foreign emoluments.

Similarly, the Constitution’s Domestic Emoluments Clause (also known as the Presidential Compensation Clause) provides: “The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and *he shall not receive within that Period any other Emolument from the United States, or any of them.*”<sup>19</sup> This provision, which is not waivable by Congress, is designed to prevent corruption, as Alexander Hamilton explained:

Neither the Union, nor any of its members, will be at liberty to give, *nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act.* He can, of course, have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution.<sup>20</sup>

President Trump has chosen to continue owning businesses that receive government subsidies and tax breaks in violation of this provision. For example, since 1980, Mr. Trump and his businesses have “reaped at least \$885 million in tax breaks, grants and other subsidies for luxury apartments, hotels and office buildings in New York.”<sup>21</sup> As President, federal and state subsidies and tax breaks violate the Domestic Emoluments Clause.

Furthermore, as noted above, “emoluments” are not limited to monetary payments; they also include economically valuable favorable regulatory actions. President Trump’s control over the vast modern powers of the executive branch means that regulatory action affecting his businesses favorably constitutes an “Emolument from the United States.” For example, President Trump’s ongoing lease of Washington, D.C.’s Old Post Office, in which the Trump International Hotel is

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<sup>18</sup> See Richard C. Paddock et al., *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. Times, Nov. 26, 2016, <http://nyti.ms/2jwr1L1>.

<sup>19</sup> U.S. Const., art. II, § 1, cl. 7 (emphasis added).

<sup>20</sup> The Federalist No. 73 (Alexander Hamilton) (Clinton Rossiter ed., 1961 (emphasis added)).

<sup>21</sup> Charles V. Bagli, *A Trump Empire Built on Inside Connections and \$885 Million in Tax Breaks*, N.Y. Times, Sept. 17, 2016, <http://nyti.ms/2cXa60i>.

located, violates an explicit clause in the General Services Administration lease contract providing: “No . . . elected official of the Government of the United States . . . shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom . . . .”<sup>22</sup> In late November, members of Congress wrote the GSA requesting information about the “imminent breach-of-lease and conflict of interest issues created by President-elect Donald Trump’s lease with the U.S. Government for the Trump International Hotel building in Washington, D.C.”<sup>23</sup> The GSA responded in mid-December that it could not make a determination “until the full circumstances surrounding the president-elect’s business arrangements have been finalized and he has assumed office.”<sup>24</sup> His business arrangements have been announced (not including any divestment of the hotel) and he has assumed office, but the GSA is not pursuing any legal action to enforce the provision. That favorable regulatory treatment provides President Trump a significant financial benefit from the federal government above and beyond his federal salary.

Finally, the Committee should also investigate whether President Trump is violating the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act). The STOCK Act is one of the few federal ethics statutes that specifically includes the President. Among other provisions, it prohibits the President from (1) using nonpublic information for private profit, and from (2) intentionally influencing an employment decision or practice of a private entity solely on the basis of partisan political affiliation.<sup>25</sup>

### **Why is this conduct impeachable?**

The standard for impeachment in the Constitution is “high Crimes and Misdemeanors,” a term of art that the Framers understood from English history.<sup>26</sup> Unlike “petit” crimes, “high” crimes refer to crimes committed against the state by public officials.<sup>27</sup> And the use of “other” implies that high crimes and misdemeanors bear some similarity to the enumerated violations of “treason” and “bribery.”<sup>28</sup> Like

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<sup>22</sup> Steven L. Schooner & Daniel I. Gordon, *GSA’s Trump Hotel Lease Debacle*, Gov’t Executive, Nov. 28, 2016, <http://bit.ly/2k4VNcG>.

<sup>23</sup> Letter from Hon. Elijah E. Cummings et al. (Nov. 30, 2016), available at <http://bit.ly/2k56NqN>.

<sup>24</sup> Allan Smith, *Federal agency responds to letter from Democratic lawmakers claiming it said Trump must fully divest himself of his DC hotel*, Business Insider, Dec. 14, 2016, <http://read.bi/2k4WYZM>.

<sup>25</sup> See Pub. Law 112–105 (2012), §§ 9(a), 18.

<sup>26</sup> Charles Doyle, Congressional Research Service, *Impeachment Grounds: A Collection of Selected Materials*, 1, 26 (Oct. 29, 1998); Gary L. McDowell, “High Crimes and Misdemeanors”: *Recovering the Intentions of the Founders*, 67 *Geo. Wash. L. Rev.* 626, 638 (1999).

<sup>27</sup> McDowell, *supra*, 67 *Geo. Wash. L. Rev.* at 638.

<sup>28</sup> See Laurence H. Tribe, *American Constitutional Law* 170 (3d ed. 1999).

treason, high crimes and misdemeanors may threaten our constitutional order; like bribery, they may abuse the trust of a public position by using such power for corrupt ends.<sup>29</sup> Furthermore, “high crimes and misdemeanors” can include conduct that is not criminal.<sup>30</sup> Justice Joseph Story summarized impeachable offenses as offenses “committed by public men in violation of their public trust and duties.”<sup>31</sup>

Violating the emoluments clauses is grounds for impeachment. At the Constitutional Convention in July 1787, during debate about impeachment, Gouverneur Morris of Pennsylvania (known as the “Penman of the Constitution”) observed that “no one would say that we ought to expose ourselves to the danger of seeing the first magistrate [the President] in foreign pay, without being able to guard against it by displacing him.”<sup>32</sup> Similarly, at the Virginia Ratifying Convention in June 1788, Edmund Jennings Randolph (Governor of Virginia, a delegate to the Constitutional Convention, and later the first Attorney General of the United States and second Secretary of State) responded to a concern about influence over the President by stating in clear terms:

There is another provision against the danger, mentioned by the honorable member, of the President receiving emoluments from foreign powers. *If discovered, he may be impeached.* . . . . By the 9th section of the 1st article, “no person, holding an office of profit or trust, shall accept of any present or emolument whatever, from any foreign power, without the consent of the representatives of the people;” and by the 1st section of the 2d article, his compensation is neither to be increased nor diminished during the time for which he shall have been elected; and he shall not, during that period, receive any emolument from the United States or any of them. I consider, therefore, that he is restrained from receiving any present or emolument whatever. It is impossible to guard better against corruption.<sup>33</sup>

This is consistent with the views of other Framers, including Alexander Hamilton of New York, who described impeachable offenses as arising from “the misconduct of public men, or in other words from the abuse or violation of some public trust,”<sup>34</sup> and future Supreme Court Justice James Iredell of North Carolina, who described impeachable conduct as including instances where the President “acted from some

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<sup>29</sup> See Laurence H. Tribe, *Defining “High Crimes and Misdemeanors”*: *Basic Principles*, 67 *Geo. Wash. L. Rev.* 712, 718 (1999).

<sup>30</sup> See, e.g., *The Federalist* No. 65 (Alexander Hamilton) (Clinton Rossiter ed., 1961); see also Jared P. Cole & Todd Garvey, Congressional Research Service, *Impeachment and Removal* 1, 7–8 (Oct. 29, 2015).

<sup>31</sup> Joseph Story, *Commentaries on the Constitution* § 746, at 547 (5th ed. 1891).

<sup>32</sup> Jonathan Elliot, 2 *The Debates, Resolutions, and Other Proceedings in Convention on the Adoption of the Federal Constitution* 343 (1828).

<sup>33</sup> *Id.* at 358-59 (emphasis added).

<sup>34</sup> *The Federalist* No. 65 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

corrupt motive,” giving the example of a President receiving “a bribe . . . from a foreign power, and under the influence of that bribe . . . [getting Senate] consent to a pernicious treaty.”<sup>35</sup>

This is also consistent with congressional precedent. At least six impeachments have alleged “the use of office for personal gain or the appearance of financial impropriety while in office.”<sup>36</sup> For example, in 1912, Judge Robert W. Archbald was charged with “using his office to secure business favors from litigants and potential litigants before his court”; three other federal judges were charged with “misusing their power to appoint and set the fees of bankruptcy receivers for personal profit.”<sup>37</sup> These have been described under the heading of “Using the Office for an Improper Purpose or Personal Gain.”<sup>38</sup>

Unfortunately, President Trump has been unwilling to separate his presidential duty from his business interests. President Trump’s conduct has the effect of undermining the integrity of the presidency and disregarding his constitutional oath to “faithfully execute the office of the President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”<sup>39</sup> His ongoing receipt of income and other financial benefits through his businesses disregards his constitutional oath to “preserve . . . the Constitution of the United States,” undermines the integrity of the executive branch, and abuses the public trust.

### **If President Trump is impeached, does that mean Vice President Pence would become President?**

Yes, the Twenty-Fifth Amendment to the Constitution provides: “In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.”<sup>40</sup> When President Richard Nixon resigned in 1974 in the face of impeachment proceedings, Vice President Gerald Ford was sworn in as president, and completed the remainder of Nixon’s term. (President Ford ran for election in 1976, but was defeated.)

Anyone becoming president in the wake of an historic impeachment and removal from office of the sitting president based on massive corruption of the Oval Office and defiance of the Constitution will be under even closer scrutiny to follow the Constitution. It would crucially re-affirm the bedrock principle that no one is above

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<sup>35</sup> *Id.* at 289.

<sup>36</sup> Deschler, *supra*, ch. 14 App.

<sup>37</sup> *Id.*

<sup>38</sup> William Brown, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (2011), ch. 27, § 4, at 598.

<sup>39</sup> U.S. Const. art. II, § 1, cl. 8.

<sup>40</sup> U.S. Const., amend. XXV, § 1.

the law, not even the President of the United States. The alternative of allowing President Trump to remain in office while he continues to defy the Constitution and the rule of law is unacceptable and extremely dangerous to the future of our republic.

### **Who is leading the campaign?**

The campaign is led by Free Speech For People, a national non-partisan non-profit organization that works to renew our democracy and our Constitution for the people, not big money and corporate interests, and by RootsAction, an online initiative dedicated to galvanizing people who are committed to economic fairness, equal rights, civil liberties, environmental protection, and defunding endless wars.

*This document may be updated from time to time.*