Testimony of Richard W. Painter

before the United States Senate Committee on Banking

Hearing on July 9, 2025 titled

"From Wall Street to Web3: Building Tomorrow's Digital Asset Markets"

Mr. Chairman, Ranking Member, and Members of the Committee:

Thank you for inviting me to testify today on the CLARITY Act and similar legislation for federal regulation of the market structure for cryptocurrency.

I am a law professor at the University of Minnesota, and I was the chief White House ethics lawyer for President George W. Bush from 2005 to 2007. I specialize in corporate law, securities regulation, lawyers' ethics, and government ethics. My testimony today reflects my own views and not those of the University of Minnesota.

The CLARITY Act and similar proposed bills aim to create a clear regulatory framework for crypto currency, while protecting investors and our financial system. I support legislation that accomplishes those objectives. This Committee, however, should hear from a wide range of experts in the crypto industry and the broader financial sector to determine whether the CLARITY Act accomplishes those objectives. I strongly urge that you pay particularly close attention to the testimony of Timothy Massad, an experienced financial services lawyer and former Chairman of the Commodity Futures Trading Commission.

I am not testifying on specifics of the CLARITY Act. Mr. Massad and the other crypto currency experts here today can assist you with that. My objective is to emphasize how important it is that you get this right. Too often in the past Congress has failed to regulate a financial services sector which becomes intoxicated with itself, leaving the nation with a massive hangover while American families experience the misery of economic collapse. I implore you not to allow that to happen this time.

Furthermore, public officials who regulate financial services should not be conflicted by investing in the financial instruments they regulate. Congress, and the Executive Branch should focus on sound regulation, not propping up the market price of their own investments. Sound regulation in the financial sector requires not just expertise, but ethics. And ethics means divestment by public officials to remove conflict of interest.

The perils of unregulated financial markets

I implore this Committee not to repeat the mistakes of the past when Congress failed to regulate new methods of banking and finance that fell into reckless hands.

One hundred years ago, banking committees in both the House and Senate held hearings on a new bill that supposedly would bring American banking into the modern age. On February 11, 1924, Representative Louis T. McFadden (R PA), a prominent banker and Chairman of the House Committee on Banking and Currency, introduced a bill that would become the McFadden Act of 1927.[1] This Act imposed a controversial ban on interstate branch banking, and yet contained other provisions that deregulated banking, and dangerously so. The Act allowed the largest banks that were members of the Federal Reserve system to engage in a broad range of risky business practices, so they could compete with nonmember banks. Member banks were allowed to own and operate subsidiary corporations; and the McFadden Act allowed them to invest more money in real estate and to loan larger sums to a single borrower.[2]

Even worse, Congress left unregulated an entire sector of our financial system, the securities industry which without federal regulation of issuers, underwriters and dealers, took advantage of loose credit to feed a stock market bubble. The McFadden Act, and Congress's inaction with respect to the securities industry, fit in with the "Roaring 20's" when the economy was expanding rapidly, loosely regulated markets were believed to be "efficient," and the stock market was going nowhere but up.

Then the bubble burst in 1929. The decade long Great Depression was caused in large part by lax government regulation, loose credit, inflation of asset prices, irrational exuberance and then inevitable panic and collapse. A round of tariffs and a trade war in 1930 sealed the world's fate as other nations retreated into protectionism and some, such as Germany and Japan, into totalitarianism.

When his framework for banking regulation failed, Representative McFadden blamed the usual scapegoats for financial collapse. First, he blamed the Federal Reserve which McFadden falsely claimed had conspired to cause the Great Depression (conspiracy theories about the Fed are nothing new). Then, in keeping with the tenor of his times, he blamed the Jews, zeroing in on Paul Warburg, a prominent banker who had supported the Federal Reserve Act of 1913. McFadden, after losing his reelection bid in 1934 ran for president on a platform to expel Jews from the Republican Party and from banking.[3] He never did become President, although other nations, Germany in particular, elected leaders who shared similar views. The Depression, and the human misery arising from it, could have been prevented, but Congress out of neglect and self-interest did not do so.[4]

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[1] Public Law 69-639, 69th Congress, H.R. 2, 44 Stat. 1224 (1927).

[2] See H.H. Preston, The McFadden Banking Act, *The American Economic Review*, Vol. 17, No. 2 (June 1927), pp. 201-218.

[3] McFadden Renews Attack on Jews, Roosevelt, Jewish Daily Bulletin, March 12, 1935, https://www.jta.org/archive/mcfadden-renews-attack-on-jews-roosevelt

[4] Congress had been aware of abuses in the banking industry since the progressive era. See Louis D. Brandeis, Other People's Money and How the Bankers Use it (1914).

Sixty years was enough time for many people to forget. The 1980's and 1990's was again an era of irrational exuberance on Wall Street. Members of Congress received campaign contributions from the financial services sector, and passed laws dismantling much of the financial services regulation of the 1930's.

This amnesia for the calamity of the 1930's was bipartisan – much of the deregulation of banking was during the Clinton Administration. Wall Street saw an explosion of new financial instruments – securities-based swap agreements, mortgage-backed securities and other derivative products. Everyone, including the Treasury Department seemed to be in love with these financial instruments even if very few people understood what they really were. The Securities and Exchange Commission tried to regulate Wall Street but as SEC Chairman Arthur Levitt disclosed in his 2002 book, there was stiff resistance from Congress.[5] Stock prices were rising and everyone was supposedly happy.

I was the chief White House ethics lawyer from 2005-07, toward the end of the mortgage-backed securities bubble. During the Clinton Administration and then the Bush Administration, the financial services industry was constantly jockeying to get its own people appointed to lead regulatory agencies, and they usually succeeded. The academic dogma of efficient markets theory suggested that all these complex new financial instruments were traded by sophisticated "rational actors" who would contribute to the common good by expanding access to housing if only they were left alone by the government.

We know what happened in 2008. Bankers recklessly destroyed their own institutions, and the economy, but never were held personally responsible for their actions. Many hid behind the corporate veil and retired wealthy while Americans suffered through years of foreclosures and joblessness. If we do not want to repeat this experience, the law regulating financial services, and the institutions themselves, will demand more personal responsibility not less.[6]

It was not long before the crypto currency industry displayed some of the same arrogance that had brought down the banking industry in 2008.

First came "effective altruism," a philosophy which celebrated making money, no matter how that's done, on the theory that having more money enables one to give more money to good causes. This restatement of the rationalizations used by 19th Century robber barons, dressed up as a new version of utilitarianism, was embraced by too many people in Silicon Valley, including one of the most infamous moguls of the crypto industry, Sam Bankman-Fried.

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[5] See Arthur Levitt, Take on the Street (2002); Richard W. Painter, Standing Up to Wall Street, and Congress, 101 MICHIGAN LAW REVIEW 1512 (book review) (2003) (reviewing Levitt's book and discussing the role of Congress in undermining SEC enforcement).

[6] Claire A. Hill and Richard W. Painter, Better Bankers, Better Banks: Promoting Good Business Through Contractual Commitment (University of Chicago Press, 2015).

Crypto currency interests then poured millions of dollars into campaign coffers for federal elections. Bankman Fried donated over $40 million in the 2022 election cycle,[7] supporting Democrats and a few powerful Republicans. The Justice Department secured a conviction of Bankman-Fried for fraud but dropped its campaign finance felony indictment,[8] probably a welcome development for politicians who had taken the money.

After the FTX scandal, political spending only increased. The crypto industry contributed $119 million to candidates from both parties in the 2024 elections.[9] Many people then cozied up to the winners. Donations poured in for the fund set up to celebrate President Trump's second inauguration.[10] Bankman-Fried could not attend because he was serving a twenty-five-year prison term, but he did manage to sneak an interview with Tucker Carlson, suggesting he was switching sides and supporting President Trump.

Some crypto moguls may switch blue hats for red hats, replacing "effective altruism" with "America First" as they go with the prevailing political winds. But the message is much the same: Crypto will make America a better place by decentralizing financial services, if there is minimal government regulation. Crypto might even replace both the dollar and the Federal Reserve.

We've come a long way since 2022 when former President Bill Clinton was fawning over Bankman Fried who paid him $250,000 to speak at the FTX crypto conference in the Bahamas, and a long way from 2021 when former and future President Donald Trump said of "Bitcoin, it just seems like a scam…. I don't like it because it's another currency competing against the dollar."[11]

The lessons of history do not necessarily prove that Trump was right about Bitcoin in 2021 but do suggest caution. He might have been right. Crypto market capitalization and trading volume is not as large as with derivative securities before 2008, so for now the danger is limited. But there are proposals to create a national crypto reserve, to allow banks to invest more in crypto, and for Fannie Mae and Freddie Mac to consider crypto holdings in calculating total assets for

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[7] Sam Bankman-Fried donated over $40 million in the 2022 election cycle. Where did it go? CBS News, December 15, 2022.

[8] Luc Cohen, Bankman-Fried Campaign Finance Charge Dropped, Lessening Trial's Political Focus, REUTERS (July 27, 2023).

[9] Public Citizen, Big Crypto, Big Spending: Crypto Corporations Spend an Unprecedented $119 million influencing elections, https://www.citizen.org/article/big-crypto-big-spending-2024/

[10] Crypto Companies Spent Big on Donald Trump's Inauguration: The president raised a record amount of cash from corporate financiers, Crypto was thick in the mix., Inc. April 21, 2025, https://www.inc.com/sam-blum/crypto-companies-spent-big-on-donald-trumps-inauguration/91178995

[11] Mary-Ann Russon, Donald Trump calls Bitcoin 'a scam against the dollar', BBC, June 7, 2021, https://www.bbc.com/news/business-57392734

mortgages.[12] President Trump has changed his mind about crypto, and in his first few days in office issued an executive order promoting expansion of the American crypto industry.[13] Putting these actions together the federal government could put considerable pressure on the "buy" side of crypto markets, driving up prices.

And now the Trump Administration is dismantling the Consumer Financial Protection Bureau. It looks like we are going once again in a direction where there will be less protection for users of financial services, whether in crypto currency or anything else.

I ask again the same questions that Congress should have asked before 1929 and before 2008: Will poorly regulated financial markets experience yet another bubble that inevitably collapses and leaves havoc and misery in its wake? If we are worried about that, what are we doing to prevent it?

Conflicts of Interest

Elected officials who decide such important matters should be free of financial conflicts of interest.

In most of the federal government financial conflicts of interest with official duties are a criminal offense. The conflict-of-interest statute imposes criminal penalties on anyone who participates personally and substantially as a government officer or employee in a particular matter in which he has a financial interest.[14] This criminal statute applies to every Executive Branch officer or employee, except for two: the President and the Vice President. It also does not apply to Members of Congress.

In my 2009 book on government ethics, I urged that this conflict-of-interest statute should apply to everybody including Presidents, Vice Presidents and Members of Congress.[15]

I have also urged that Congressional stock jobbing - Members of the House and Senate voting on bills while trading in stocks affected by those bills - needs to stop.[16] Some of this may even be

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[12] Alex Veiga, Fannie Mae, Freddie Mac ordered to consider crypto as an asset when buying mortgages, AP, June 25, 2025.

[13] Exec. Order No. 14,178, 90 Fed. Reg. 8647 (Jan. 23, 2025) (stating that it is "the policy of my Administration to support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy").

[14] 18 U.S.C. Section § 208(a).

[15] Richard W. Painter, Getting the Government America Deserves: How Ethics Reform Can Make a Difference, Chapter 2 (Oxford U. Press 2009)

[16] Richard W. Painter, Why Members of Congress Should not Trade Stocks, Bloomberg News (January 25, 2022)

criminal insider trading, yet House and Senate leaders from both political parties have failed to stop it.

Past Presidents avoided personal financial conflicts of interest with official duties. Jimmy Carter sold his peanut farm and George W. Bush, when he started running for President in 1998, sold his interest in the Texas Rangers. But one President, Donald Trump, did not sell his business holdings at the beginning of his first term in 2017 because he believed he did not have to. Because the criminal financial conflict of interest statute does not apply to the President, he was technically correct, although as Laurence Tribe, Norman Eisen and I pointed out in December 2016 serious problems under the Constitution's Emoluments Clause remained.[17]

And now, at the beginning of President Trump's second term, his business empire has expanded into two momentously important new areas: social media and crypto currency. The President, once a skeptic of crypto currency, now has a substantial portion of his personal assets in cryptocurrency (perhaps as much as $7 billion).[18] He has a large stake in Liberty Financial, and he has issued his own meme coin.[19] Buyers of the meme coin recently were invited to a dinner with the President. Crypto mogul Justin Sun was under investigation by the SEC, but that investigation was recently dropped. Sun also purchased $30 million in tokens from World Liberty Financial.[20] A venture fund backed by the government of Abu Dhabi in the United Arab

[17] Norman Eisen, Richard W. Painter and Laurence H. Tribe, The Emoluments Clause: Its text, meaning and application to Donald J, Trump, with Norman Eisen and Laurence H. Tribe, Brookings Institution Governance Studies Paper Series (December 2016).

[18] See Ben Protess, Andrea Fuller and David Yaffe-Bellany, What Is Trump's Net Worth? Here's What We Know and Can't Know, New York Times July 2, 2025 (estimating Trump's investments in cryptocurrencies to be as much as $7.1 billion, his stocks, bonds and cash to be at least $2.2 billion, and his holdings in real estate and other businesses to be at least $1.3 billion).

[19] Lex Harvey, Auzinea Bacon & Matt Egan, Donald and Melania Trump Launch a Pair of Meme Coins Ahead of Inauguration, Raising Serious Ethics Concerns, CNN (Jan. 20, 2025) ("I believe it is very dangerous to have the people who are supposed to oversee regulating financial instruments investing in them at the same time,' Richard Painter, a law professor at the University of Minnesota, told CNN. 'There's no precedent for a head of state to launch a personal cryptocurrency.").

[20] Press Release, Sec. & Exch. Comm'n, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase (Feb. 27, 2025); Allison Morrow, A Crypto Mogul Who Invested Millions into Trump Coins Is Getting a Reprieve on Civil Fraud Charges, CNN (Feb. 28, 2025). On July 7, 2025, the $Trump meme coin announced that it will launch on the Tron blockchain, backed by Sun. Brian Danga, TRUMP hops to Tron, deepening ties between MAGA memecoins and Justin Sun, July 7, 2025, https://crypto.news/trump-hops-to-tron-deepening-ties-between-maga-memecoins-and-justin-sun/

Emirates is reportedly conducting a business transaction using $2 billion in a stablecoin offered by World Liberty Financial.[21]

Unless proven otherwise, I assume that President Trump cannot be bought. Still, it is vital that he avoid the appearance of that being possible. President Trump should instill public confidence in his Administration, and in the integrity of crypto markets, by divesting from this industry that his Administration will regulate. His sworn duty under the Constitution is to take care that the laws are faithfully executed. It is also his moral duty to reassure the public that he will put America first, not himself.

Some Members of Congress also are heavily invested in crypto assets, and they will profit if prices of those assets go up,[22] Now is the time for them also to divest this conflict of interest.

Members of Congress, the President and Vice President also should be prohibited from issuing their own meme coins or endorsing other crypto currencies. This is impermissible use of public office for private gain, which is already prohibited for other federal officers and employees.[23]

Without divestment by both the President and Members of Congress, these conflicts of interest create the impression if not the reality that government officials will feed a financial bubble to personally profit from it. Instead of a soundly regulated trading market for crypto currency we could get a government sponsored pump and dump.

There would be nothing new about that. In 2006 when I was in the White House and storm clouds were gathering over the mortgage-backed securities market, I gave the University of Chicago Law School's annual legal history lecture. While I mostly avoided commenting on present-day affairs, which would not have pleased the White House, my theme was what we could learn from Britain's South Sea Company stock bubble of 1720. Members of Parliament and officials in the Exchequer bought shares of the stock which ascended to new heights while Parliament voted on bills to facilitate the Company's pretend trade in the South Seas. The Company's real business was a scheme to refinance government debt. Insiders bought low and sold high. When the inevitable crash came in 1720, some of the scammers fled to France, a few were dispatched to the Tower of London and Prime Minister Robert Walpole opened a Parliamentary inquiry into what happened. The MP's, however, knew what happened; some of

[21] See Norman Eisen, Virginia Canter and Richard W. Painter, A Plane From Qatar? C'mon, Man, New York Times, May 14, 2025 (discussing and citing a detailed report on the President's crypto holdings in the context of potential emoluments from foreign governments).

[22] See e.g. Chris Katje, Congressman Buys Up to $850K In Bitcoin In 2025: Late Disclosure, Close Trump Ties Wave Red Flags, Yahoo Finance (discussing investments by Rep., Brandon Gill, (R TX), Benzinga, Yahoo Finance, June 5, 2025. https://finance.yahoo.com/news/congressman-buys-850k-bitcoin-2025-094613387.html

[23] See 5 C.F.R. § 2635.702, Use of public office for private gain.

them made money, which they kept if they got out in time.[24] It was a government sponsored pump and dump.

The Founders did not intend our Country to work that way. The monopolistic East India Company, another darling of Britain's corrupt Parliament, lost hundreds of chests full of its overpriced tea, tossed into Boston Harbor in 1773 by colonists who were fed up with a government beholden to corporate cronies rather than to its citizens.[25]

We have since had many speculative bubbles, including the 1929 crash and the mortgage meltdown of 2008. It does not have to work that way. Success of private enterprise requires markets where trading prices reflect actual values as much as possible, and an even playing field, without government favoritism. This in turn requires a President and Members of Congress who are not bought by special interests and do not have large investment holdings directly impacted by their official duties.

Summary

There are honest people in crypto markets, including surely the industry experts of esteemed reputation who sit with me at this witness table today. But Congress in the past has heard testimony from others not so honest, including one witness who defrauded customers while spending millions on campaign contributions and testifying about how Congress should regulate the industry.[26]

There are sharks in these waters, and ordinary investors should not go in if lifeguards are not on duty.

Public officials cannot ethically or competently regulate crypto markets while investing heavily in crypto themselves. I urge this Committee to forward to the Senate legislation that would require all elected officials to divest from industries they regulate, including crypto currency.

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[24] Richard W. Painter, Ethics and Corruption in Business and Government: Lessons from the South Sea Bubble and the Bank of the United States (published by the University of Chicago Law School) (2006 Maurice and Muriel Fulton Lecture in Legal History), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1003&context=fulton_lectures

[25] See Richard W. Painter, Taxation only With Representation: The Conservative Conscience and Campaign Finance Reform (2016) (front cover drawing of chests full of campaign contributions to Congress being tossed into the harbor)

[26] Testimony of Sam Bankman-Fried, Co-founder and CEO of FTX, "Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States" Hearing Before the U.S. House of Representatives Committee on Financial Services December 8, 2021, https://www.congress.gov/117/meeting/house/114305/witnesses/HHRG-117-BA00-Wstate-Bankman-FriedS-20211208.pdf

This is the rule Congress has already imposed on appointed officials and employees in the executive branch,[27] and the same rule should apply to everybody.

Richard W. Painter

[27] 18 U.S.C. Section § 208(a) supra.