GUEST ESSAY

It Takes a 'Very Stable Genius' to Push the Genius Act

July 29, 2025

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This article has been updated to include information about Fairshake's expenditures in the 2024 election cycle.

President Trump is methodically restructuring the federal regulatory and legislative apparatus. That much is known. What is less well understood is how that will pave the way for the Trump family to make potentially hundreds of millions of dollars from its cryptocurrency ventures.

On March 20, Trump told the Blockworks Digital Assets Summit that his goal was to make America "the undisputed Bitcoin superpower and the crypto capital of the world." So far, Trump, his family and his investment partners are major beneficiaries.

In case anyone forgot, the Constitution prohibits the president from accepting "any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state." Even so, estimates of how much Trump has already profited from crypto are substantial.

In a June article in Forbes, "This Is How Much Trump Has Made From Crypto — So Far," Dan Alexander wrote:

> Donald Trump is cashing in on crypto. Over the last nine months, beginning slightly before the election, he has stirred up new ventures, new coins, new noise. All of it makes the president money, but how much? About $1 billion, according to Forbes's calculations, lifting his net worth to an estimated $5.6 billion.

Bloomberg was more cautious in its estimate, which was published this month: "Crypto ventures have added at least $620 million to Donald Trump's fortune in the span of months, according to the Bloomberg Billionaires Index."

Trump's profiteering has been criticized by Democrats and Republicans.

After GD Culture Group Limited, a Nevada-based firm with ties to China, announced on May 12 that it planned to buy as much as $300 million of $Trump, a memecoin marketed by Trump, a former Republican representative from Pennsylvania, Charles Dent, who was the chairman of the House Ethics Committee, told The Times: "Make no mistake. These foreign entities and governments obviously want to curry favor with the president."

"This is completely out of bounds," Dent added, "and raises all sorts of ethical, legal and constitutional issues that must be addressed."

On Jan. 23, Trump issued an executive order, Strengthening American Leadership in Digital Financial Technology, the first in a series of orders asserting his power over federal agencies overseeing the "use of digital assets, blockchain technology and related technologies across all sectors of the economy."

One of Trump's next steps, on July 18, was to sign into law the Genius Act, establishing federal rules for the issuance of stablecoins, a digital asset with fixed values backed by dollars or other liquid assets. The act bars members of Congress and most federal employees from entering the stablecoin business but exempts the president.

Fred Wertheimer, the founder and president of Democracy 21, a federal ethics watchdog group, wrote me by email to express his indignation:

> The Trump exemption for stablecoins that are prohibited for members of Congress highlights the fact that Trump is obsessed with using the presidency to vacuum up every dollar he can get his hands on.
>
> Since the purchasers of stablecoin are not made public, the stablecoin business provides Trump with the potential to engage in secret influence selling and to do so in violation of the Constitution's emoluments clause. The stablecoin business provides Trump with the potential for secret opportunities to abuse his office to greatly increase his private wealth and to secretly provide benefits to foreign countries at the expense of our country.
>
> Trump is in undisputed presidential first place when it comes to misuse of his public office to rake in enormous personal gain.

On Wednesday the Trump-appointed Presidential Working Group on Digital Asset Markets will issue a report, subject to Trump's approval, outlining a major regulatory overhaul calling for the creation of a "framework governing the issuance and operation of digital assets, including stablecoins, in the United States. The working group's report shall consider provisions for market structure, oversight, consumer protection and risk management."

Trump appointed David Sacks, an outspoken supporter of the crypto industry, as the White House A.I. and crypto czar and chairman of the working group.

The Fairshake network SuperPAC, an alliance of PACs created by members of the crypto industry, has emerged as a crucial Trump ally. In the 2023-24 election cycle, the Fairshake network became the dominant super PAC, spending $195.8 million, according to OpenSecrets. (Fairshake calculates the numbers differently and says it spent $135 million.)

The key role Fairshake appears to have played in the defeat of such Democratic critics of the industry as Senator Sherrod Brown of Ohio and Senator Jon Tester of Montana profoundly influenced the thinking of other Democratic incumbents, persuading many to become supporters of crypto. (In the end, Fairshake did not spend money in Montana; it did spend $40 million in Ohio. It also supported Democratic candidates; it spent $10 million in Arizona supporting Ruben Gallego and $10 million in Michigan supporting Elissa Slotkin, both of whom won their races.) In the final Senate vote on June 17 on the Genius Act, 68 to 30, 18 Democratic senators voted in favor of the bill, and in the final House vote on July 17 on the Genius Act, 308 to 122, 102 House Democrats voted for it.

In other words, crypto now commands a bipartisan majority in both branches of Congress.

In what was, in effect, a warning to potential critics, Politico reported on July 15, in "Crypto Industry Amasses Colossal War Chest for Elections," that the Fairshake network "will enter the upcoming midterm elections with more than $140 million in the bank, a mammoth sum that now looms large over an effort to pass industry-friendly legislation."

"Fairshake is stronger than ever as we remain focused on our mission of building lasting support for crypto and blockchain innovation," Josh Vlasto, a spokesman for the Fairshake PAC group, told Politico. "We are building an aggressive, targeted strategy for next year to ensure that pro-crypto voices are heard in key races across the country."

Molly White, who publishes Citation Needed — which she describes as "a newsletter that critically examines the tech sector, with a particular emphasis on cryptocurrency" — wrote on Bluesky:

> It's no coincidence that the Fairshake crypto super PAC has timed its press release announcing they have $140 million ready for the midterms as Congress is considering three crypto bills during "Crypto Week." Pass our bills, or we will spend millions against you in the midterms.

Let's take a more detailed look at crypto policy since Trump returned to the Oval Office for his second term.

The Jan. 23 executive order I mentioned above amounted to a clear declaration that Trump intended to take control of the regulation of digital assets — the term some experts prefer over cryptocurrency.

Asserting "the authority vested in me as president by the Constitution and the laws of the United States of America," Trump not only ordered the establishment of the president's working group to rewrite digital regulation but also called for the revocation of all cryptocurrency "policies, directives and guidance" proposed by President Joe Biden. Biden was much more critical of the industry than Trump. Instead of pro-crypto regulation, Biden specifically sought, according to one 2022 government blueprint, to "protect consumers, investors and businesses in the United States," to "protect United States and global financial stability and mitigate systemic risk" and to "mitigate the illicit finance and national security risks posed by misuse of digital assets."

On Feb. 18, Trump took control of the policies and regulations adopted by independent agencies, many of which are involved in the regulation of digital assets, in a directive called Ensuring Accountability for All Agencies:

"The Constitution vests all executive power in the president and charges him with faithfully executing the laws," the order reads, but

> previous administrations have allowed so-called independent regulatory agencies to operate with minimal presidential supervision. These regulatory agencies currently exercise substantial executive authority without sufficient accountability to the president, and through him, to the American people.

To remedy the situation, Trump ordered that "all executive departments and agencies, including so-called independent agencies, shall submit for review all proposed and final significant regulatory actions to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President."

In other words, the president will have final approval powers over "all proposed and final significant regulatory actions."

The directive covers a wide range of once independent agencies, including the Securities and Exchange Commission, the Federal Trade Commission, the Consumer Financial Protection Bureau and the Federal Communications Commission. The order applies to the board of governors of the Federal Reserve "only in connection with its conduct and authorities directly related to its supervision and regulation of financial institutions."

Provisions of the directive include:

> Independent regulatory agency chairmen shall submit agency strategic plans developed pursuant to the Government Performance and Results Act of 1993 to the director of O.M.B. for clearance prior to finalization.
>
> No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the president or the attorney general's opinion on a matter of law, including but not limited to the issuance of regulations, guidance and positions advanced in litigation, unless authorized to do so by the president or in writing by the attorney general.

During Senate consideration of the Genius Act, some Democrats were outspoken in their criticism of the exemption granted Trump from the prohibition against engaging in the stablecoin business that applied to members of Congress and federal employees.

The Democratic staff of the Senate Banking Committee issued an analysis that argued:

> The latest Genius Act draft circulating online does not include any provision to prevent Trump and the Trump family from raking in enormous amounts of money from their corrupt cryptocurrency schemes. Instead, it would grow the stablecoin market and fuel Trump's crypto profits.
>
> President Trump's stablecoin, USD1, has become the fifth-largest in the world in just the past month and is now available to the broader public for trading. This means more and more anonymous buyers, big companies and foreign governments can be expected to start using the president's stablecoin as both a shadowy bank account and a way to pay off the president personally.
>
> Foreign countries will be able to curry favor with President Trump by using his stablecoin. The draft bill would impose no new restrictions on government officials or prevent President Trump from accepting fees from foreign adversaries or other foreign entities with business interests in the United States seeking favorable treatment. It would give President Trump more opportunities to reward buyers of his coins with favors like tariff exemptions, pardons and government appointments.
>
> President Trump will functionally regulate his own stablecoin. President Trump has asserted direct control over independent financial regulators with an executive order, meaning regulators would now need permission from President Trump to write and enforce the rules for stablecoin issuers — including for his stablecoin, USD1 — under the bill.

During the final Senate debate on the bill, Democratic senators repeatedly complained that the cloture motion written by the Senate Republican leader, John Thune, precluded votes on amendments, including one that would have included Trump in the prohibition against engaging in the sale of stablecoin.

Senator Michael Bennet, Democrat of Colorado, said on the Senate floor:

> Is it a good idea to have foreign entities making $2 billion investments in currency that is issued by American politicians? We could have fixed that in this legislation. Not only did we not fix it; we didn't even have a debate on it. We didn't even have a single amendment come to the floor.

Senator Elizabeth Warren, Democrat of Massachusetts, described one purchase of Trump stablecoin, also from the Senate floor:

> A U.A.E. state-backed investment firm used Trump's USD1 to finance a $2 billion investment in a crypto exchange whose owner is reportedly lobbying President Trump for a pardon, essentially giving Trump a cut of this $2 billion deal.
>
> This is the model: Deposit your money in the "Bank of Trump" and use his stablecoin to make payments. He earns money by investing those deposits in other assets, like a bank, and also earns money on every transaction that occurs whenever the stablecoin is used as a means of payment.

Not to be outdone, Senator Jeff Merkley, Democrat of Oregon, declared:

> The next time Trump is cut into a corrupt deal by a foreign government using his stablecoin or the next time North Korea uses stablecoins to add to its nuclear arsenal or the next time a person falls victim to a stablecoin scam or the next time the financial system is stressed by a stablecoin run, it is likely that the resulting harm will be traced right back to the inadequacies of the Genius Act.

While the experts in digital assets I contacted voiced varying views of stablecoins, they were generally critical of Trump's involvement and even more critical of Trump's issuance of $Trump.

Timothy Massad, the director of the Digital Assets Policy Project at the Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School and a former chairman of the Commodity Futures Trading Commission, went out of his way to fault Trump for the $Trump memecoin in Feb. 26 testimony to a subcommittee of the Senate Banking Committee:

> Although the Trump memecoins are not part of the subcommittee's agenda, they cannot be ignored when the subcommittee's desire is to create frameworks that can encourage responsible and useful innovation.
>
> It is difficult to imagine an action that the president could take which would be more contrary to the spirit and opening words of the executive order, issued just a few days later, which is to "promote United States leadership in digital assets" and "responsible growth." One does not have to be a digital assets expert to understand why the issuance of the memecoins contradicts the spirit of that order and was plainly wrong.

Massad, who is given to reasonable and careful analysis, was blunt:

> It was a money grab and a conflict of interest. The potential for conflicts of interest will also continue over time. Companies and countries looking to curry favor with the administration or seeking government action may believe it is in their interest to purchase the coins to show their support. That risk is heightened by the structuring of the issuance, because additional tokens will be released over the next four years which will presumably generate additional revenue to the Trump Organization, which creates incentives.

It is, Massad concluded,

> a black eye for digital assets. It is exactly the kind of speculative behavior that we have seen too much of and it reinforces many of the negative perceptions of digital assets. It is simply, as one observer said, a "classic memecoin pump-and-dump scheme."

White, of the Citation Needed newsletter, shared Massad's views, writing by email:

> Trump has made hundreds of millions of dollars from hawking a memecoin — that is, a crypto token that doesn't even try to pretend to have some underlying value or purpose — to his followers and to those hoping to buy influence with the president.
>
> There is really no comparison in American history to the blatant corruption of Trump's pay-for-access memecoin dinner, where hundreds of primarily foreign nationals spent anywhere from $55,000 to more than $37 million for a ticket to the event.
>
> The crypto billionaire Justin Sun was the top memecoin holder at the dinner and earlier this month announced he plans to buy another $100 million $Trump.

Republicans in Congress, White continued,

> would be horrified if any other president, particularly a Democratic one, was profiting from the office of the presidency in the way that Trump is, but they are so terrified of him that they haven't said a word about it.
>
> And the crypto lobby and its hundreds of millions in campaign donations has produced a truly shameful situation among Democrats, who have either sold out to the crypto lobby or who are so afraid of opposition when it comes time for re-election that they're keeping their mouths shut. We should live in a world where selling out to corporate money or being completely spineless and ineffective in office is what threatens re-election.

In fact, it's not just cowardly Republicans and spineless Democrats. Perhaps because of its complexity and perhaps because Trump has been relatively open about his crypto investment — in contrast to the administration's behavior with regard to the Jeffrey Epstein files — the electorate has remained relatively quiescent.

Insofar as that remains true, Trump is very likely to use his remaining three and a half years in office to lift his cryptocurrency profits to new heights. He is already well on his way — if he is not already there — to setting the record for making money while serving as president.

He may, in fact, make more money while in office than all his predecessors combined — an achievement he will probably boast of in retirement, whenever that comes.

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