



## Legal Errors in the New York Prosecution of President Trump OGE Forms

The core issue in the trial was how Trump’s payments to Cohen were classified. The trial omitted the fact that the payments were disclosed—and verified by the Office of Government Ethics (OGE) in 2018—to be personal, not campaign, in nature.

### Office of Government Ethics Forms

- As any candidate for government office knows there are plenty of financial disclosure forms to complete, often as a candidate, and particularly once elected.
- These financial disclosures are for *personal* disclosures, not disclosures on behalf of the businesses for which they have a financial interest.<sup>1</sup>
- Thus, even though President Trump owned the Trump Organization, he had no obligation to report the underlying liabilities of the Trump Organization. Just because a Member of Congress must report owning shares of Amazon, it does not mean they have to report on all of Amazon’s underlying liabilities.

### President Trump’s 2018 Financial Disclosure

- In 2018, President Trump reported he had fully paid off a loan to Mr. Cohen.<sup>2</sup>
- OGE examined the disclosure and wrote the Department of Justice, “OGE has concluded that ... the payment made by Mr. Cohen is required to be reported as a liability.”<sup>3</sup> This was also noted in the “Comments of Reviewing Officials” section of President Trump’s 2018 submission.<sup>4</sup>
- No later than May 18, 2018, OGE determined the payment was Donald Trump’s personal liability—not a liability of the Trump Organization or Campaign.
- The NY indictment hinged on the concealment occurring via an enterprise that had liability—i.e., Trump used the Trump Organization to handle the reimbursement. But Trump didn’t disclose the reimbursement as that of the Trump Organization. He disclosed it as personal.

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<sup>1</sup> See *Public Financial Disclosure Guide, OGE Form 278e: Part 8 Liabilities*, U.S. OFFICE OF GOVERNMENT ETHICS, <https://tinyurl.com/44kxkcyp>, (explaining the obligation to report personal liabilities, not the liabilities of an enterprise).

<sup>2</sup> See Donald Trump, Annual Report (Form 278e) (May 15, 2018) (hereinafter “Trump OGE Form”) (available at <https://tinyurl.com/2s3v8d8s>) (“In the interest of transparency, while not required to be disclosed as ‘reportable liabilities’ on Part 8, in 2016 expenses were incurred by one of Donald J. Trump’s attorneys, Michael Cohen. Mr. Cohen sought reimbursement of those expenses and Mr. Trump fully reimbursed Mr. Cohen in 2017. The category of value would be \$100,001 - \$250,000, and the interest rate would be zero”).

<sup>3</sup> Letter from David Apol, Acting Director U.S. Office of Government Ethics, to Rod Rosenstein, Deputy Attorney General (May 16, 2018) (available at <https://tinyurl.com/4ufv6vxh>).

<sup>4</sup> See Trump OGE Form, *supra* note 2 at 1, (“Note 3 to Part 8: OGE has concluded that the information related to the payment made by Mr. Cohen is required to be reported and that the information provided meets the disclosure requirement for a reportable liability”).