To address financial conflicts of interest of the President and Vice President.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2017

Ms. Warren (for herself, Mr. Cardin, Mrs. Feinstein, Mr. Coons, Mr. Durbin, Mr. Merkley, Mr. Leahy, Mrs. Murray, Mr. Wyden, Mr. Reed, Ms. Stabenow, Mr. Brown, Mr. Casey, Ms. Klobuchar, Mr. Whitehouse, Mr. Bennet, Mrs. Gillibrand, Mr. Franken, Mr. Blumenthal, Ms. Baldwin, Mr. Markey, Mr. Booker, Mr. Peters, and Ms. Duckworth) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To address financial conflicts of interest of the President and Vice President.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Presidential Conflicts of Interest Act of 2017”.

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SEC. 2. DIVESTITURE OF PERSONAL FINANCIAL INTERESTS
OF THE PRESIDENT AND VICE PRESIDENT
THAT POSE A POTENTIAL CONFLICT OF INTEREST.

(a) Definitions.—

(1) In general.—In this section—

(A) the term “conflict-free holding” means a financial interest described in section 102(f)(8) of the Ethics in Government Act of 1978 (5 U.S.C. App.);

(B) the term “financial interest posing a potential conflict of interest” means a financial interest of the President, the Vice President, the spouse of the President or Vice President, or a minor child of the President or Vice President, as applicable, that—

(i) would constitute a financial interest described in subsection (a) of section 208 of title 18, United States Code—

(I) if—

(aa) for purposes of such section 208, the terms “officer” and “employee” included the President and the Vice President; and
(bb) the President or Vice
President, as applicable, partici-
pated as described in subsection
(a) of such section 208 in rela-
tion to such financial interest;
and
(II) determined without regard to
any exception under subsection (b) of
such section 208; or
(ii) may constitute a present, emolu-
ment, office, or title, of any kind whatever,
from any king, prince, or foreign state (in-
cluding from an entity owned or controlled
by a foreign government), within the
meaning of article I, section 9 of the Con-
stitution of the United States;
(C) the term “qualified blind trust” has
the meaning given that term in section
102(f)(3) of the Ethics in Government Act of
1978 (5 U.S.C. App.), unless otherwise speci-
fied in this Act; and
(D) the term “tax return”—
(i) means any Federal income tax re-
turn and any amendment or supplement
thereto, including supporting schedules, at-
tachments, or lists which are supplemental to, or part of, the return for the taxable year; and

(ii) includes any information return that reports information that does or may affect the liability for tax for the taxable year.

(2) APPLICABILITY OF ETHICS IN GOVERNMENT ACT OF 1978.—For purposes of the definition of “qualified blind trust” in this section, the term “supervising ethics officer” in section 102(f)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) means the Director of the Office of Government Ethics.

(b) INITIAL FINANCIAL DISCLOSURE.—

(1) SUBMISSION OF DISCLOSURE.—

(A) IN GENERAL.—Not later than 30 days after assuming the office of President or Vice President, respectively, the President and Vice President shall submit to Congress and the Director of the Office of Government Ethics a disclosure of financial interests.

(B) APPLICATION TO SITTING PRESIDENT AND VICE PRESIDENT.—For any individual who is serving as the President or Vice President on
the date of enactment of this Act, the disclosure of financial interests shall be submitted to Congress and the Director of the Office of Government Ethics not later than 30 days after the date of enactment of this Act.

(2) CONTENTS.—

(A) PRESIDENT.—The disclosure of financial interests submitted under paragraph (1) by the President shall—

(i) describe in detail each financial interest of the President, the spouse of the President, or a minor child of the President;

(ii) at a minimum, include the information relating to each such financial interest that is required for reports under section 102 of the Ethics in Government Act of 1978 (5 U.S.C. App.); and

(iii) include the tax returns filed by or on behalf of the President for—

(I) the 3 most recent taxable years; and

(II) each taxable year for which an audit of the return by the Internal
Revenue Service is pending on the date the report is filed.

(B) Vice President.—The disclosure of financial interests submitted under paragraph (1) by the Vice President shall—

(i) describe in detail each financial interest of the Vice President, the spouse of the Vice President, or a minor child of the Vice President;

(ii) at a minimum, include the information relating to each such financial interest that is required for reports under section 102 of the Ethics in Government Act of 1978 (5 U.S.C. App.); and

(iii) include the tax returns filed by or on behalf of the Vice President for—

(I) the 3 most recent taxable years; and

(II) each taxable year for which an audit of the return by the Internal Revenue Service is pending on the date the report is filed.

(e) Divestiture of Financial Interests Posing A Potential Conflict of Interest.—
(1) IN GENERAL.—The President, the Vice President, the spouse of the President or Vice President, and any minor child of the President or Vice President shall divest of any financial interest posing a potential conflict of interest by transferring such interest to a qualified blind trust.

(2) TRUSTEE DUTIES.—Within a reasonable period of time after the date a financial interest is transferred to a qualified blind trust under paragraph (1), the trustee of the qualified blind trust shall—

(A) sell the financial interest; and

(B) use the proceeds of the sale of the financial interest to purchase conflict-free holdings.

(d) REVIEW BY OFFICE OF GOVERNMENT ETHICS.—

(1) IN GENERAL.—The Director of the Office of Government Ethics shall submit to Congress, the President, and the Vice President an annual report regarding the financial interests of the President, the Vice President, the spouse of the President or Vice President, and any minor child of the President or Vice President.

(2) CONTENTS.—Each report submitted under paragraph (1) shall—
(A) indicate whether any financial interest of the President, the Vice President, the spouse of the President or Vice President, or a minor child of the President or Vice President is a financial interest posing a potential conflict of interest;

(B) evaluate whether any previously held financial interest of the President, the Vice President, the spouse of the President or Vice President, or a minor child of the President or Vice President that was a financial interest posing a potential conflict of interest was divested in accordance with subsection (c); and

(C) redact such information as the Director of the Office of Government Ethics determines necessary for preventing identity theft, such as social security numbers or taxpayer identification numbers.

(e) Enforcement.—

(1) In general.—The Attorney General, the attorney general of any State, or any person aggrieved by any violation of subsection (c) may seek declaratory or injunctive relief in a court of competent jurisdiction if—
(A) the Director of the Office of Government Ethics is unable to issue a report indicating whether the President or the Vice President is in substantial compliance with subsection (c); or

(B) there is probable cause to believe that the President or the Vice President has not complied with subsection (c).

(2) FAIR MARKET VALUE.—In granting injunctive relief to the plaintiff, the court shall ensure that any divestment procedure shall ensure the fair market return for any asset that is liquidated.

SEC. 3. RECUSAL OF APPOINTEES.

Section 208 of title 18, United States Code, is amended by adding at the end the following:

“(e)(1) Any officer or employee appointed by the President shall recuse himself or herself from any particular matter involving specific parties in which a party to that matter is—

“(A) the President who appointed the officer or employee, which shall include any entity in which the President has a substantial interest; or

“(B) the spouse of the President who appointed the officer or employee, which shall include any enti-
ty in which the spouse of the President has a sub-
stantial interest.

“(2)(A) Subject to subparagraph (B), if an officer or
employee is recused under paragraph (1), a career ap-
pointee in the agency of the officer or employee shall per-
form the functions and duties of the officer or employee
with respect to the matter.

“(B)(i) In this subparagraph, the term ‘Commission’
means a board, commission, or other agency for which the
authority of the agency is vested in more than 1 member.

“(ii) If the recusal of a member of a Commission
from a matter under paragraph (1) would result in there
not being a statutorily required quorum of members of the
Commission available to participate in the matter, not-
withstanding such statute or any other provision of law,
the members of the Commission not recused under para-
graph (1) may—

“(I) consider the matter without regard to the
quorum requirement under such statute;

“(II) delegate the authorities and responsibil-
ities of the Commission with respect to the matter
to a subcommittee of the Commission; or

“(III) designate an officer or employee of the
Commission who was not appointed by the President
who appointed the member of the Commission
recused from the matter to exercise the authorities and duties of the recused member with respect to the matter.

“(3) Any officer or employee who negligently violates paragraph (1) shall be subject to the penalties set forth in section 216.

“(4) For purposes of this section, the term ‘particular matter’ shall have the meaning given the term in section 207(i).”.

SEC. 4. CONTRACTS BY THE PRESIDENT OR VICE PRESIDENT.

(a) Amendment.—Section 431 of title 18, United States Code, is amended—

(1) in the section heading, by inserting “the President, Vice President, or a” after “Contracts by”; and

(2) in the first undesignated paragraph, by inserting “the President or Vice President,” after “Whoever, being”.

(b) Table of Sections Amendment.—The table of sections for chapter 23 of title 18, United States Code, is amended by striking the item relating to section 431 and inserting the following:

“431. Contracts by the President, Vice President, or a Member of Congress.”.
SEC. 5. PRESIDENTIAL TAX TRANSPARENCY.

(a) IN GENERAL.—Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) by inserting after section 102 the following:

“SEC. 102A. DISCLOSURE OF TAX RETURNS.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘covered candidate’ means an individual—

“(A) required to file a report under section 101(c); and

“(B) who is nominated by a major party as a candidate for the office of President; and

“(2) the term ‘covered individual’ means—

“(A) a President required to file a report under subsection (a) or (d) of section 101; and

“(B) an individual who occupies the office of the President required to file a report under section 101(e);

“(3) the term ‘major party’ has the meaning given the term in section 9002 of the Internal Revenue Code of 1986; and

“(4) the term ‘income tax return’ means, with respect to any covered candidate or covered individual, any return (within the meaning of section 6103(b) of the Internal Revenue Code of 1986) re-
lated to Federal income taxes, but does not in-
clude—

“(A) information returns issued to persons
other than such covered candidate or covered
individual, and

“(B) declarations of estimated tax.

“(b) DISCLOSURE.—

“(1) COVERED INDIVIDUALS.—

“(A) IN GENERAL.—In addition to the in-
formation described in subsections (a) and (b)
of section 102, a covered individual shall in-
clude in each report required to be filed under
this title a copy of the income tax returns of the
covered individual for the 3 most recent taxable
years for which a return have been filed with
the Internal Revenue Service as of the date on
which the report is filed.

“(B) FAILURE TO DISCLOSE.—If an in-
come tax return is not disclosed under subpara-
graph (A), the Director of the Office of Govern-
ment Ethics shall submit to the Secretary of
the Treasury a request that the Secretary of
the Treasury provide the Director of the Office
of Government Ethics with a copy of the in-
come tax return.
“(C) PUBLICLY AVAILABLE.—Each income tax return submitted under this paragraph shall be filed with the Director of the Office of Government Ethics and made publicly available in the same manner as the information described in subsections (a) and (b) of section 102.

“(D) REDACTION OF CERTAIN INFORMATION.—Before making any income tax return submitted under this paragraph available to the public, the Director of the Office of Government Ethics shall redact such information as the Director of the Office of Government Ethics, in consultation with the Secretary of the Treasury (or a delegate of the Secretary), determines appropriate.

“(2) CANDIDATES.—

“(A) IN GENERAL.—Not later than 15 days after the date on which a covered candidate is nominated, the covered candidate shall amend the report filed by the covered candidate under section 101(c) with the Federal Election Commission to include a copy of the income tax returns of the covered candidate for the 3 most recent taxable years for which a return has been filed with the Internal Revenue Service.
“(B) Failure to disclose.—If an income tax return is not disclosed under subparagraph (A) the Federal Election Commission shall submit to the Secretary of the Treasury a request that the Secretary of the Treasury provide the Federal Election Commission with the income tax return.

“(C) Publicly available.—Each income tax return submitted under this paragraph shall be filed with the Federal Election Commission and made publicly available in the same manner as the information described in section 102(b).

“(D) Redaction of certain information.—Before making any income tax return submitted under this paragraph available to the public, the Federal Election Commission shall redact such information as the Federal Election Commission, in consultation with the Secretary of the Treasury (or a delegate of the Secretary) and the Director of the Office of Government Ethics, determines appropriate.

“(3) Special rule for sitting presidents.—Not later than 30 days after the date of enactment of this section, the President shall submit to the Director of the Office of Government Ethics
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a copy of the income tax returns described in para-

graph (1)(A).”; and

(2) in section 104—

(A) in subsection (a)—

(i) in paragraph (1), in the first sen-
tence, by inserting “or any individual who
knowingly and willfully falsifies or who
knowingly and willfully fails to file an in-
come tax return that such individual is re-
quired to disclose pursuant to section
102A” before the period; and

(ii) in paragraph (2)(A)—

(I) in clause (i), by inserting “or
falsify any income tax return that
such person is required to disclose
under section 102A” before the semi-
colon; and

(II) in clause (ii), by inserting
“or fail to file any income tax return
that such person is required to dis-
closed under section 102A” before the
period;

(B) in subsection (b), in the first sentence
by inserting “or willfully failed to file or has
willfully falsified an income tax return required
to be disclosed under section 102A” before the
period;
(C) in subsection (c), by inserting “or fail-
ing to file or falsifying an income tax return re-
quired to be disclosed under section 102A” be-
fore the period; and
(D) in subsection (d)(1)—
(i) in the matter preceding subpara-
graph (A), by inserting “or files an income
tax return required to be disclosed under
section 102A” after “title”; and
(ii) in subparagraph (A), by inserting
“or such income tax return, as applicable,”
after “report”.
(b) Authority To Disclose Information.—
(1) In general.—Section 6103(l) of the Inter-
nal Revenue Code of 1986 is amended by adding at
the end the following new paragraph:
“(23) Disclosure of return information
of presidents and certain presidential can-
didates.—
“(A) Disclosure of returns of presi-
dents.—
“(i) In general.—The Secretary
shall, upon written request from the Direc-
tor of the Office of Government Ethics pursuant to section 102A(b)(1)(B) of the Ethics in Government Act of 1978, provide to officers and employees of the Office of Government Ethics a copy of any income tax return of the President which is required to be filed under section 102A of such Act.

“(ii) Disclosure to public.—The Director of the Office of Government Ethics may disclose to the public the income tax return of any President which is required to be filed with the Director pursuant to section 102A of the Ethics in Government Act of 1978.

“(B) Disclosure of returns of certain candidates for president.—

“(i) In general.—The Secretary shall, upon written request from the Chairman of the Federal Election Commission pursuant to section 102A(b)(2)(B) of the Ethics in Government Act of 1978, provide to officers and employees of the Federal Election Commission copies of the applicable returns of any person who has been
nominated as a candidate of a major party
(as defined in section 9002(a)) for the of-

cice of President.

“(ii) DISCLOSURE TO PUBLIC.—The
Federal Election Commission may disclose
to the public applicable returns of any per-
son who has been nominated as a can-
didate of a major party (as defined in sec-
tion 9002(6)) for the office of President
and which is required to be filed with the
Commission pursuant to section 102A of
the Ethics in Government Act.

“(C) APPLICABLE RETURNS.—For pur-
poses of this paragraph, the term ‘applicable re-
turns’ means, with respect to any candidate for
the office of President, income tax returns for
the 3 most recent taxable years for which a re-
turn has been filed as of the date of the nomi-
nation.”.

(2) CONFORMING AMENDMENTS.—Section
6103(p)(4) of such Code, in the matter preceding
 subparagraph (A) and in subparagraph (F)(ii), is
amended by striking “or (22)” and inserting “(22),
or (23)” each place it appears.
SEC. 6. SENSE OF CONGRESS REGARDING VIOLATIONS.

It is the sense of Congress that a violation of section 2 of this Act or the Ethics in Government Act of 1978 (5 U.S.C. App.) by the President or the Vice President would constitute a high crime or misdemeanor under article II, section 4 of the Constitution of the United States.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act or an amendment made by this Act shall be construed to violate the Constitution of the United States.

SEC. 8. SEVERABILITY.

If any provision of this Act or any amendment made by this Act, or any application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and the amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.