

PRESIDENTIAL CONFLICTS OF INTEREST ACT OF 2017

President-elect Trump has “more potential...conflicts of interest than any other president in U.S. history”

As Chairman and President of the Trump Organization, President-elect Donald J. Trump heads a “sprawling” international business network with “deep ties” to global financiers and foreign officials from countries around the globe, including China, Libya, and Turkey.¹ Because of these ties, he will take office with “more potential business and financial conflicts of interest than any other president in U.S. history.”²

Unless he takes steps to address these conflicts, President-elect Trump will risk being in violation of the Constitution on “Day One” of his presidency.³ Article I, Section 9 of the Constitution prohibits officeholders, including the President,⁴ from “accept[ing] any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.” Experts have concluded that “[c]orporations owned or controlled by a foreign government are presumptively foreign states under the Emoluments Clause.”⁵

New legislation is needed to ensure compliance with the Constitution

Although the president and vice president are now exempt from many federal financial conflict of interest rules, the Office of Government Ethics has concluded that “the President and the Vice President should conduct themselves as if they were so bound” by them,⁶ and every president in the last 40 years has voluntarily complied. Yet President-elect Trump has resisted taking these steps, even boasting that “the president can’t have a conflict of interest.”⁷ He has announced no plans to divest from his businesses, announcing instead that his sons will manage the Trump Organization during his presidency.⁸

For decades, U.S. presidents have addressed concerns regarding foreign and domestic conflicts of interest by divesting their financial interests and placing them in a true blind trust or the equivalent.

The bill codifies this longstanding practice and implements the Emoluments Clause by:

- Requiring the president, vice president, their spouses, and minor or dependent children to divest all interests that create financial conflicts of interest placing those assets in a true blind trust. The trust will be managed by an independent trustee who will oversee the sale of assets and place the proceeds in conflict-free holdings;
- Adopting a sense of the Congress that the president’s violation of financial conflicts of interest laws or the ethics requirements that apply to executive branch employees constitute a high crime or misdemeanor under the impeachment clause of the U.S. Constitution; and
- Prohibiting presidential appointees from participating in matters that directly involve the financial interests of the president, the president’s spouse, or businesses controlled by the president or the president’s spouse.

The bill also includes Senator Ron Wyden’s Presidential Tax Transparency Act, which requires the sitting president and presidential nominees of a major political party to make public federal income tax returns for the three most recent tax years.

¹ Kurt Eichenwald, How the Trump Organization's Foreign Business Ties Could Upend U.S. National Security," *Newsweek* (September 14, 2016) (online at <http://www.newsweek.com/2016/09/23/donald-trump-foreign-business-deals-national-security-498081.html>).

² Timothy L. O'Brien, The Conflicts-on-Interest President, *Bloomberg* (November 11, 2016) (online at <https://www.bloomberg.com/view/articles/2016-11-11/the-conflicts-of-interest-president>)

³ Heidi M. Przybyla, Trump's foreign deals risk Constitution clash, *USA Today* (December 9, 2016) (online at <http://www.usatoday.com/story/news/politics/2016/12/08/trump-foreign-deals-risk-constitution-clash/95074030/>).

⁴ See e.g., Josh Gerstein, New stash of legal opinions detail hurdles for Trump on emoluments ban, *Politico* (December 1, 2016) (online at <http://www.politico.com/blogs/under-the-radar/2016/11/a-foreign-emoluments-clause-library-232027>).

⁵ Memorandum Opinion for the Counsel to the President, Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize (December 7, 2009) (online at <https://www.justice.gov/sites/default/files/olc/opinions/2009/12/31/emoluments-nobel-peace.pdf>); see also Eric Lipton and Susanne Craig, "Donald Trump's Far-Flung Holdings Raise Potential for Conflicts of Interest," *New York Times* (Nov. 14, 2016) (online at <http://www.nytimes.com/2016/11/15/us/politics/donald-trump-holdings-conflict-of-interest.html>).

⁶ Office of Government Ethics, Letter to a Deputy DAEO dated October 20, 1983 (online at [https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/\\$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open](https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open)).

⁷ *The New York Times*, "Donald Trump's New York Times Interview: Full Transcript," *The New York Times* (November 23, 2016) (online at: <http://www.nytimes.com/2016/11/23/us/politics/trump-new-york-times-interview-transcript.html>).

⁸ Elisa Viebeck, Trump says he will hand over control of businesses to sons before inauguration, *Washington Post* (December 12, 2016) (online at https://www.washingtonpost.com/news/powerpost/wp/2016/12/12/trump-postpones-announcement-on-how-he-will-avoid-conflicts-of-interests/?utm_term=.e146cf67fa9c).