

117TH CONGRESS
1ST SESSION

S. 3181

To prohibit certain foreign and domestic emoluments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. BLUMENTHAL (for himself, Mr. WHITEHOUSE, Mr. MARKEY, Ms. WARREN, Ms. HIRONO, Mr. BOOKER, Mr. SANDERS, Mr. WYDEN, Mrs. GILLIBRAND, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prohibit certain foreign and domestic emoluments, and
for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign and Domestic
5 Emoluments Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The Founders of the United States believed
9 that political corruption and the interference of for-

1 eign governments were among the gravest threats
2 the Nation faced. As a result, they viewed anti-cor-
3 ruption measures as essential to preserving an en-
4 during democracy.

5 (2) The Founders wanted to ensure that the
6 Nation’s leaders would be dependent on the people
7 alone, not on those offering private financial re-
8 wards—and would be motivated solely by the na-
9 tional interest, not their own personal interests.

10 (3) The Founders were especially worried that
11 foreign powers would interfere with the internal af-
12 fairs of the United States, undermining the Nation’s
13 republican institutions and making its leaders sub-
14 servient to foreign interests. In *The Federalist* No.
15 22, Alexander Hamilton wrote that one of the
16 vulnerabilities of republics “is that they afford too
17 easy an inlet to foreign corruption”. He was aware
18 that eighteenth-century monarchs used lavish pre-
19 sents to ingratiate themselves with ambassadors and
20 ministers from other nations and wanted to avoid
21 the potential for such corruption in the new Govern-
22 ment of the United States.

23 (4) Of particular concern to the Founders was
24 the risk that benefits and rewards given by foreign
25 states would subvert the President’s undivided loy-

1 alty to the Nation’s best interests. As Hamilton
 2 noted during the Constitutional Convention, the per-
 3 sonal interest of a hereditary monarch was “so inter-
 4 woven with that of the Nation . . . that he was
 5 placed above the danger of being corrupted from
 6 abroad.”. By contrast, as James Madison observed,
 7 an elected President would lack “that permanent
 8 stake in the public interest which would place him
 9 out of the reach of foreign corruption.”.

10 (5) The Founders were also concerned that do-
 11 mestic government officials might corrupt the Presi-
 12 dent’s independence and gain the loyalty of the
 13 President by giving the President financial benefits
 14 and advantages. Hamilton observed in *The Fed-*
 15 *eralist* No. 73 that “a power over a man’s support
 16 is a power over his will,” and that if legislatures
 17 could alter the President’s financial circumstances,
 18 they could “tempt him by largesses” and thereby
 19 cause the President “to surrender at discretion his
 20 judgment to their inclinations.”.

21 (6) To increase the likelihood that the Nation’s
 22 leaders would be dependent upon “We the People”
 23 alone, the Founders included in the Constitution a
 24 number of safeguards against corruption, including
 25 article I, section 9, clause 8 (in this section referred

1 to as the “Foreign Emoluments Clause”) and article
2 II, section 1, clause 7 (in this section referred to as
3 the “Domestic Emoluments Clause”).

4 (7) In the Foreign Emoluments Clause, the
5 Founders mandated congressional approval of pre-
6 sents, emoluments, offices, and titles offered by for-
7 eign states to Federal officeholders. They recognized
8 that the dangers of foreign-government influence
9 and divided loyalty would be reduced if officeholders
10 were required to obtain the affirmative consent of
11 Congress before accepting any foreign benefit. As
12 Representative James Bayard explained in the
13 1790s, the Foreign Emoluments Clause requires of-
14 ficeholders “to make known to the world whatever
15 presents they might receive from foreign Courts and
16 to place themselves in such a situation as to make
17 it impossible for them to be unduly influenced by
18 any such presents.”.

19 (8) In the Domestic Emoluments Clause, the
20 Founders provided that Presidents must receive a
21 fixed compensation, which may not be increased or
22 decreased during their time in office, and that Presi-
23 dents are prohibited from accepting anything beyond
24 that compensation from Federal, State, or local gov-
25 ernments. These requirements were meant to pre-

vent Federal, State, and local officials from exerting undue influence over Presidents by manipulating the financial rewards of their office.

(9) At the time of the Founding, the word “emolument” was a broad and commonly used term that meant profit, advantage, gain, or benefit, including payments and other financial rewards derived from private commerce. The use of this broad term in the Foreign Emoluments Clause and the Domestic Emoluments Clause was consistent with the Framers’ goal of preventing the corruption of leaders of the United States through private rewards.

SEC. 3. DEFINITIONS.

In this Act:

(1) **BUSINESS ENTITY.**—The term “business entity”—

(A) means a for-profit corporation, association, partnership, limited liability company, limited liability partnership, other legal entity, or sole proprietorship; and

(B) does not include an entity—

(i) in which 100 or more individuals hold a share or ownership interest;

1 (ii) in which the official covered by
2 this section owns or has a beneficial inter-
3 est in no more than 5 percent of the own-
4 ership interests; and

5 (iii) that—

6 (I) issues securities registered
7 with the Securities and Exchange
8 Commission pursuant to section 12 of
9 the Securities Exchange Act of 1934
10 (15 U.S.C. 78l);

11 (II) is an investment company
12 registered pursuant to section 8 of the
13 Investment Company Act of 1940 (15
14 U.S.C. 80a–8) that does not have a
15 stated policy of concentrating the in-
16 vestments of the investment company
17 in any industry, business, single coun-
18 try other than the United States, or
19 bonds of a single State within the
20 United States; or

21 (III) is a unit investment trust,
22 as defined in section 4 of the Invest-
23 ment Company Act of 1940 (15
24 U.S.C. 80a–4) that—

1 (aa) is a regulated invest-
 2 ment company, as defined in sec-
 3 tion 851 of the Internal Revenue
 4 Code of 1986; and

5 (bb) does not have a stated
 6 policy of concentrating the invest-
 7 ments of the investment company
 8 in any industry, business, single
 9 country other than the United
 10 States, or bonds of a single State
 11 within the United States.

12 (2) EMOLUMENT.—The term “emolument”
 13 means any profit, gain, advantage, or payment (in-
 14 cluding a payment arising from a commercial trans-
 15 action, without regard to whether the payment is at
 16 fair market value) that is received directly or indi-
 17 rectly from—

18 (A) any government of a foreign country;

19 (B) the Federal Government;

20 (C) any State; or

21 (D) any instrumentality of a government
 22 described in subparagraphs (A) through (C).

23 (3) GOVERNMENT OF A FOREIGN COUNTRY.—

24 The term “government of a foreign country” has the
 25 meaning given the term in section 1 of the Foreign

1 Agents Registration Act of 1938, as amended (22
2 U.S.C. 611).

3 (4) PERSON HOLDING ANY OFFICE OF PROFIT
4 OR TRUST UNDER THE UNITED STATES.—The term
5 “person holding any office of profit or trust under
6 the United States”—

7 (A) means any individual holding a posi-
8 tion listed in paragraph (A) through (F) of sec-
9 tion 7342(a)(1) of title 5, United States Code,
10 including any individual appointed pursuant to
11 section 105(a), 106(a), or 107 of title 3, United
12 States Code; and

13 (B) includes the President and the Vice
14 President.

15 **SEC. 4. PROHIBITION ON ACCEPTANCE OF FOREIGN AND**
16 **DOMESTIC EMOLUMENTS.**

17 (a) FOREIGN.—Except as provided in section 7342
18 of title 5, United States Code, it shall be unlawful for any
19 person holding any office of profit or trust under the
20 United States to accept from a government of a foreign
21 country, without first obtaining the consent of Congress,
22 any present, emolument, office, or title.

23 (b) DOMESTIC.—It shall be unlawful for the Presi-
24 dent to accept from the United States, or a State, any

1 emolument other than the compensation for his or her
2 services as President provided for by Federal law.

3 (c) APPLICABILITY.—The prohibitions under this sec-
4 tion apply if the present, emolument, office, or title is—

5 (1) provided directly or indirectly—

6 (A) by the government of a foreign country
7 or an instrumentality thereof; or

8 (B) in the case of the President, provided
9 directly or indirectly by the United States, a
10 State, or an instrumentality of the United
11 States or a State; and

12 (2) provided to—

13 (A) the person holding any office of profit
14 or trust under the United States; or

15 (B) any business entity or trust in which
16 the person holding any office of profit or trust
17 under the United States has a beneficial or
18 ownership interest.

19 (d) CONSENT.—Congress consents to—

20 (1) the acceptance, by any person who holds an
21 office of profit or trust under the United States, of
22 any emolument that has a monetary value below the
23 minimum value set under section 7342(a)(5)(A) of
24 title 5, United States Code;

1 (2) the acceptance, by any person who holds an
2 office of profit or trust under the United States,
3 other than the President or the Vice President, of
4 any emolument that solely constitutes a benefit or
5 compensation—

6 (A) accepted by the spouse or minor child
7 of a person other than the President or Vice
8 President as an employee, consultant, or con-
9 tractor; and

10 (B) that has not been given or enhanced—

11 (i) because of the relationship of the
12 spouse or minor child to the office holder;

13 (ii) in return for the office holder
14 being influenced in the performance of an
15 official act; or

16 (iii) for the purpose of avoiding the
17 requirements of this section;

18 (3) the acceptance of any emolument by any
19 person in the Federal executive branch, other than
20 the President and Vice President, who holds an of-
21 fice of profit or trust under the United States and
22 is not appointee of the President or the Vice Presi-
23 dent, if the emolument—

24 (A) is attributable to such individual solely
25 as a result of the individual or the individual's

1 spouse or minor child having a beneficial or
2 ownership interest in a business entity that ac-
3 cepted the emolument; and

4 (B) has been exempted as part of a class
5 of emoluments, by regulation issued by the Di-
6 rector of the Office of Government Ethics and
7 published in the Federal Register, from the re-
8 quirements of subsection (a) as being too re-
9 mote or too inconsequential to affect the integ-
10 rity of the services of the class or classes of
11 Federal Government officers or employees to
12 which such regulation applies; and

13 (4) the acceptance of any emolument by a
14 Member of Congress or by an officer or employee of
15 the Congress, if the emolument—

16 (A) is attributable to such individual solely
17 as a result of the individual or the individual's
18 spouse or minor child having a beneficial or
19 ownership interest in a business entity that ac-
20 cepted the emolument; and

21 (B) has been exempted as part of a class
22 of emoluments, by the supervising ethics office,
23 as defined in section 109 of the Ethics in Gov-
24 ernment Act of 1978 (5 U.S.C. App.), from the
25 requirements of subsection (a) as being too re-

1 mote or too inconsequential to affect the integ-
 2 rity of the services to the Government of indi-
 3 vidual's to which such exemption applies.

4 (e) ACCEPTANCE.—An emolument is accepted by a
 5 person who holds an office of profit or trust under the
 6 United States if—

7 (1) the emolument is received directly by the of-
 8 ficer holder, the spouse of the office holder (unless
 9 such individual and his or her spouse are separated)
 10 or a dependent, as defined in section 152 of the In-
 11 ternal Revenue Code of 1986, of the office holder; or

12 (2) the emolument is received by—

13 (A) any other person on the basis of des-
 14 ignation, recommendation, or other specification
 15 by an individual described in subparagraph (1);
 16 or

17 (B) a business entity or trust in which an
 18 individual described in (1) has a beneficial or
 19 ownership interest; and

20 (3) the emolument is retained.

21 **SEC. 5. CIVIL ACTIONS BY CONGRESS CONCERNING FOR-**
 22 **EIGN EMOLUMENTS.**

23 (a) CAUSE OF ACTION.—The House of Representa-
 24 tives or the Senate may bring a civil action against any
 25 person for a violation of section 4(a).

1 (b) SPECIAL RULES.—In any civil action described
2 in subsection (a), the following rules shall apply:

3 (1) The action shall be filed in the United
4 States District Court for the District of Columbia.

5 (2) The action shall be heard by a 3-judge
6 court convened pursuant to section 2284 of title 28,
7 United States Code. It shall be the duty of such
8 court to advance on the docket and to expedite to
9 the greatest possible extent the disposition of any
10 such action. Such action shall be reviewable only by
11 appeal directly to the Supreme Court of the United
12 States. Such appeal shall be taken by the filing of
13 a notice of appeal within 10 days, and the filing of
14 a jurisdictional statement within 30 days, of the
15 entry of the final decision.

16 (3) It shall be the duty of the Supreme Court
17 of the United States to advance on the docket and
18 to expedite to the greatest possible extent the dis-
19 position of any such action and appeal.

20 (c) REMEDY.—If the court determines that a viola-
21 tion of section 4(a) has occurred, the court—

22 (1) shall issue an order enjoining the course of
23 conduct found to constitute the violation; and

24 (2) may order, as are appropriate—

1 (A) the disgorgement of the value of any
2 foreign present or emolument;

3 (B) the surrender of the physical present
4 or emolument to the Department of State,
5 which shall, if practicable, dispose of the
6 present or emolument and deposit the proceeds
7 into the general fund of the Treasury;

8 (C) the renunciation of any office or title
9 accepted in violation of section 4(a);

10 (D) a prohibition on the use or holding of
11 such an office or title; and

12 (E) such other relief as the court deter-
13 mines appropriate.

14 (d) USE OF GOVERNMENT FUNDS PROHIBITED.—No
15 appropriated funds, funds provided from any accounts in
16 the Treasury, funds derived from the collection of fees,
17 or any other Government funds shall be used to pay any
18 disgorgement imposed by the court pursuant to this sec-
19 tion.

20 **SEC. 6. DISCLOSURES CONCERNING FOREIGN AND DOMES-**
21 **TIC EMOLUMENTS.**

22 (a) DISCLOSURES.—Section 102(a) of the Ethics in
23 Government Act of 1978 (5 U.S.C. App.) is amended by
24 adding at the end the following:

1 “(9) Any present, emolument, office, or title re-
2 ceived from a government of a foreign country, in-
3 cluding the source, date, type, and amount or value
4 of each present or emolument accepted on or before
5 the date of filing during the preceding calendar year.

6 “(10) Each financial interest or arrangement
7 that is reasonably expected to result in the receipt
8 of any present or emolument from a government of
9 a foreign country during the current calendar year.

10 “(11) With respect to a report filed by the
11 President—

12 “(A) any emolument received from the
13 United States, or any of them, other than the
14 compensation for his or her services as Presi-
15 dent provided for by Federal law; and

16 “(B) any financial interest or arrangement
17 that is reasonably expected to result in the re-
18 ceipt of any emolument from the United States,
19 or any of them.”.

20 (b) RULE OF CONSTRUCTION.—Nothing in the
21 amendments made by this section shall be construed to
22 affect the prohibition against the acceptance of presents
23 and emoluments under section 4.

1 **SEC. 7. ENFORCEMENT AUTHORITY OF THE DIRECTOR OF**
2 **THE OFFICE OF GOVERNMENT ETHICS.**

3 (a) GENERAL AUTHORITY.—Section 402(a) of the
4 Ethics in Government Act of 1978 (5 U.S.C. App.) is
5 amended—

6 (1) by striking “(a) The Director” and insert-
7 ing “(a)(1) The Director”; and

8 (2) by adding at the end the following:

9 “(2) The Director shall provide overall direction of
10 executive branch policies related to compliance with the
11 Foreign and Domestic Emoluments Enforcement Act and
12 the amendments made by that Act, including having the
13 authority to—

14 “(A) issue administrative fines to individuals
15 for violations;

16 “(B) order individuals to take corrective action,
17 including disgorgement, divestiture, and recusal, as
18 the Director deems necessary; and

19 “(C) bring civil actions to enforce such fines
20 and orders.”.

21 (b) SPECIFIC AUTHORITIES.—Section 402(b) of the
22 Ethics in Government Act of 1978 (5 U.S.C. App.) is
23 amended—

24 (1) in paragraph (14), by striking “and” at the
25 end;

1 (2) by striking the period at the end of para-
2 graph (15) and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(16) developing and promulgating rules and
5 regulations to ensure compliance with the Foreign
6 and Domestic Emoluments Enforcement Act and the
7 amendments made by that Act, including estab-
8 lishing—

9 “(A) requirements for reporting and disclo-
10 sure;

11 “(B) a schedule of administrative fines
12 that may be imposed by the Director for viola-
13 tions; and

14 “(C) a process for referring matters to the
15 Office of Special Counsel for investigation in
16 accordance with section 1216(d) of title 5,
17 United States Code.”.

18 **SEC. 8. JURISDICTION OF THE OFFICE OF SPECIAL COUN-**
19 **SEL.**

20 Section 1216 of title 5, United States Code, is
21 amended—

22 (1) in subsection (a)—

23 (A) in paragraph (4), by striking “and” at
24 the end;

1 (B) in paragraph (5) by striking the period
 2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(6) any violation of section 4 of the Foreign
 5 and Domestic Emoluments Enforcement Act and
 6 paragraphs (9), (10), and (11) of section 102(a) of
 7 the Ethics in Government Act of 1978 (5 U.S.C.
 8 App.).”; and

9 (2) by adding at the end the following:

10 “(d)(1) If the Director of the Office of Government
 11 Ethics refers a matter for investigation pursuant to sec-
 12 tion 402 of the Ethics in Government Act of 1978 (5
 13 U.S.C. App.), or if the Special Counsel receives a credible
 14 complaint of a violation referred to in subsection (a)(6),
 15 the Special Counsel shall complete an investigation not
 16 later than 120 days thereafter.

17 “(2) If the Special Counsel investigates any violation
 18 pursuant to subsection (a)(6), the Special Counsel shall
 19 report not later than 7 days after the completion of the
 20 investigation to the Director of the Office of Government
 21 Ethics and to Congress on the results of the investiga-
 22 tion.”.

23 **SEC. 9. SEVERABILITY.**

24 If any provision of this Act or amendment made by
 25 this Act, or the application of a provision or amendment

1 to any person or circumstance, is held to be unconstitu-
2 tional, the remainder of this Act and amendments made
3 by this Act, and the application of the provisions and
4 amendment to any person or circumstance, shall not be
5 affected by the holding.

