



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 21, 2017

MEMORANDUM

TO: The Commission

FROM: Ellen L. Weintraub *ELW*
Commissioner

SUBJECT: Discussion of Commission's Response to Alleged Foreign Interference in American Elections

The American public is justifiably alarmed by the reports of foreign attempts to influence the 2016 U.S. presidential election. They want action from their federal government – including the Federal Election Commission. Members of Congress are similarly alarmed and have demanded that we act.¹

It is this Commission's duty to respond, and to respond forcefully. Whether a hostile foreign power provided anything of value in connection with a federal, state, or local election goes to the very heart of the Federal Election Commission's mission and jurisdiction.² This Commission is sworn to fulfill "the sovereign's obligation to preserve the basic conception of a political community."³

This is an all-hands-on-deck moment for our democracy. Former Vice President Dick Cheney has said that Russia's alleged actions could be considered "an act of war" against the United States.⁴ Every part of our government that has jurisdiction over these issues must exercise every scrap of its jurisdiction as fully as it can.

¹ Klobuchar, *Senators Urge the FEC to Examine the Role of Foreign Political Spending in U.S. Elections* (June 1, 2017), <https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=F8E28FCE-7149-46AC-AD32-C31EAB259CC4>.

² See *When Collusion with a Foreign Government Becomes a Crime* (June 2, 2017), Bob Bauer, MORE SOFT MONEY HARD LAW, <http://www.moresoftmoneyhardlaw.com/2017/06/collusion-foreign-government-becomes-crime/>.

³ *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (Kavanaugh, J.).

⁴ *Cheney: Russian election interference could be 'act of war'* (March 27, 2017), Morgan Chalfant, THE HILL, <http://thehill.com/policy/cybersecurity/325928-cheney-russian-election-interference-could-be-act-of-war>.

The mere allegation that foreign interference may have occurred shakes the faith of Americans in our democracy. The FEC must find out the facts of what happened during the 2016 U.S. presidential election and move swiftly and firmly to fix any problems we find. Only then can we begin to restore the American people's resilient but battered faith that our federal elections belong to us – and not to some foreign power.

Since I last broached the issue of foreign money in our elections at the Commission's January 12, 2017, meeting, the Commission and the American public have learned quite a bit about the possible scope of foreign intrusions into the 2016 presidential election. Just last week, Bloomberg News reported the shocking news that Russia had made incursions into voter databases and software systems in 39 states.⁵ TIME reported in May that American intelligence officials have found that Russian agents bought ads on Facebook to target specific American populations with election-related propaganda.⁶ *The Intercept* reported earlier this month that "Russian military intelligence executed a cyberattack on at least one U.S. voting software supplier and sent spear-phishing emails to more than 100 local election officials just days before last November's presidential election."⁷

The Federal Election Campaign Act⁸ prohibits foreign nationals from directly or indirectly making contributions or donations of money or other things of value in connection with any federal, state, or local election,⁹ and gives the FEC the exclusive civil legal authority to enforce that provision and the rest of the Act.¹⁰ This extraordinarily broad ban on foreign spending in our elections – and the Commission's authority to enforce it – is fully endorsed by the Supreme Court.¹¹

The Commission must respond to complaints regarding foreign spending in our elections as quickly and as completely as possible. While we cannot speak publicly about any pending

⁵ *Russian Cyber Hacks on U.S. Electoral System Far Wider Than Previously Known*, Michael Riley and Jordan Robertson, BLOOMBERG NEWS (June 13, 2017), <https://www.bloomberg.com/politics/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections>.

⁶ *Inside Russia's Social Media War on America* (May 18, 2017), Massimo Calabresi, TIME, <http://time.com/magazine/us/4783906/may-29th-2017-vol-189-no-20-u-s/>.

⁷ *Top-Secret NSA Report Details Russian Hacking Effort Days Before 2016 Election* (June 5, 2017), Matthew Cole, Richard Esposito, Sam Biddle, and Ryan Grim, THE INTERCEPT, <https://theintercept.com/2017/06/05/top-secret-nsa-report-details-russian-hacking-effort-days-before-2016-election/>.

⁸ Federal Election Campaign Act of 1971 ("FECA," "the Act," 52 U.S.C. § 30101 *et seq.*).

⁹ 52 U.S.C. § 30121.

¹⁰ 52 U.S.C. § 30106(b)(1). Contributions are defined by the Act as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A).

¹¹ *Bluman*, 800 F. Supp. 2d 281.

complaints or enforcement matters, we *can* provide assurances to the American people that we have prioritized expedited treatment of complaints regarding foreign national contributions.¹²

Our authority and responsibility to keep American elections free from foreign influence obviously do not stop with our enforcement function, which is just one of the tools provided to us by the Act. I asked that this agenda item be added to our June 22 open meeting so we can discuss what the rest of our toolbox looks like and explore the full range of our possible responses to the alleged foreign interference in our elections. I submit that we should consider taking these actions:

1. **Receive open- and closed-door briefings.** Typically when we address foreign money in our elections, it is regarding contributions made directly by foreign nationals or made indirectly through corporations or other entities.

What's being reported here is different: TIME's report of Facebook ads being bought by Russia in the hopes of swaying the election is new. Bloomberg's report that Russia attacked state voter-registration and campaign-finance databases is new.¹³

We and our staff need to know what happened, what is happening now, and what may happen next. We should receive briefings by such entities as DOJ or FinCEN¹⁴ so we may be sure we are conducting rulemakings and informing the public armed with the most up-to-date information on whatever foreign interference occurred in our elections, and how foreign money may have financed it.

2. **Examine the Commission's enforcement function.** We must ensure that our Enforcement Division has the resources it needs to pursue any foreign-influence matters that have been filed or are likely to be filed in the foreseeable future. Are additional financial resources needed? Should we request that specialized personnel be detailed from other agencies? Do we need to create a task force within the agency to handle any such matters?
3. **Provide public assurances on FEC data integrity.** Russians reportedly attempted to breach state campaign-finance databases. The American people deserve assurances that the FEC's federal campaign-finance data is safe and has not been tampered with.
4. **Revisit corporate rulemaking:** Re-examine whether enough facts have emerged about foreign influence in our elections to bring us to consensus to embark upon a rulemaking to ensure that U.S. political spending is free from foreign influence through corporations. I will not repeat all the arguments in favor of our taking action to stem foreign spending through corporations, but incorporate by reference my

¹² See *FEC Approves Two Notices of Availability to Seek Public Comment* (Sept. 15, 2016), FEDERAL ELECTION COMMISSION PRESS RELEASE, <https://www.fec.gov/updates/fec-approves-two-notice-availability-seek-public-comment/>.

¹³ *Russian Cyber Hacks on U.S. Electoral System Far Wider Than Previously Known*, Michael Riley and Jordan Robertson, BLOOMBERG NEWS (June 13, 2017), <https://www.bloomberg.com/politics/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections>.

¹⁴ Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury, <https://www.fincen.gov/>.

memorandum of September 9, 2016¹⁵ and my revised memorandum of September 28, 2016.¹⁶

5. **Determine whether any additional rulemakings are warranted.** Engage in fact-finding to determine whether we need to tighten up existing regulations or write new ones to prevent foreign influence in our elections. The Commission has broad powers to hold hearings, compel testimony, and require production of documents. We have not generally used these powers outside the enforcement context, but FECA is clear that our powers are not bound by our enforcement duties.¹⁷
6. **Develop any necessary legislative recommendations.** Given the alleged activity, what recommendations should we make to Congress to strengthen FECA's foreign-spending prohibitions, if any? Which bills moving through the Congress now would provide a stronger legal defense against foreign incursions?

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This issue need not be – and *must* not be – a partisan issue. Recently, 97 members of the U.S. Senate, from Mitch McConnell to Bernie Sanders, agreed to extend sanctions against Russia. They take foreign threats to our electoral integrity seriously. So should we.

Julian Schreibman, a former CIA employee and federal prosecutor, and Ron Fein, legal director of Free Speech for People, wrote in *Newsweek* in May that allegations of Russian interference in the 2016 election “represents the greatest threat to the integrity of our elections that the nation has ever seen,” adding that if “the FEC can rise to the challenge, this could be its finest hour.”¹⁸

I agree. Russia's alleged activities in our 2016 presidential election may represent an unprecedented threat to the very foundations of our American political community. This Commission is divided on many issues, but we can be united in finding foreign influence in our elections to be totally unacceptable. I believe that this Commission can indeed rise to the challenge of understanding what happened in the 2016 election and plugging any legal or procedural holes that could allow foreign actors to interfere with our future elections.

¹⁵ *Proposal to Launch Rulemaking to Ensure That U.S. Political Spending is Free From Foreign Influence* (Sept. 9, 2016), http://www.fec.gov/agenda/2016/documents/mtgdoc_16-40-a.pdf.

¹⁶ *Revised Proposal to Launch Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence* (Sept. 28, 2016), https://beta.fec.gov/resources/about-fec/commissioners/weintraub/statements/Foreign_National_2_Memo_28_Sept_2016.pdf.

¹⁷ See 52 USC §30107(1) & (3) (giving the Commission the power to compel documents and sworn testimony and, notably, not tying these powers to any proceeding or investigation, unlike §30107(4)).

¹⁸ *Did the Trump Campaign Collude With Russia? Follow the Money* (May 6, 2017), Ron Fein and Julian Schreibman, NEWSWEEK, <http://www.newsweek.com/did-trump-campaign-collude-russia-follow-money-595661>.