

Russian government influence and potential Trump campaign coordination in the 2016 election

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Following this report, on December 12, 2016, Senator Mitch McConnell (R-Ky.) and Representative Paul Ryan (R-Wis.) called for an inquiry into possible Russian interference in the 2016 election.⁴

On January 6, 2017, the Office of the DNI released an unclassified report titled *Assessing Russian Activities and Intentions in Recent US Elections (Assessing Russian Activities)*.⁵ This report was an abbreviated, declassified version of a still-classified detailed report provided to the President and presidentially-approved recipients at the highest levels of the U.S. government. The unclassified report states unequivocally in its header that “its conclusions are identical to those in the highly classified assessment.”⁶

As set forth in *Assessing Russian Activities*, the Central Intelligence Agency, Federal Bureau of Investigation (FBI), and National Security Agency jointly concluded that “Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election.” The tactics of this influence campaign included “state-funded media, third-party intermediaries, and paid social media users or ‘trolls.’” In pursuing this campaign, “Russia’s goals were to undermine public faith in the US democratic process, denigrate [former U.S. Secretary of State Hillary] Clinton, and harm her electability and potential presidency,” and reflected Russia’s “clear preference for President-elect Trump.”⁷

II. Russia’s Motive to Interfere in the U.S. Presidential Election

According to *Assessing Russian Activities*, Russia had numerous motives for interfering in the U.S. presidential election and, in particular, for working to assist the Trump campaign. In addition to a history of animosity against Secretary Clinton, Russian President Vladimir Putin has had a consistent preference for “Western political leaders whose business interests made them more disposed to deal with Russia[.]”⁸

For the past several years, President Trump’s business empire has received outsized financial support from Russia. In 2008, Mr. Trump’s son Donald Jr. said that

⁴ Jennifer Steinhauer, *Senate and House Leaders Call for Inquiry of Russian Hacking in Election*, N.Y. Times, Dec. 12, 2016, <http://nyti.ms/2hfQtFq>.

⁵ Office of the DNI, *Assessing Russian Activities and Intentions in Recent US Elections*, ICA 2017-01D, Jan. 6, 2017, <https://go.usa.gov/xXB8m>.

⁶ *Id.* Notably, none of the Members of Congress with access to the classified version have disputed its conclusions.

⁷ *Assessing Russian Activities*, at ii.

⁸ *Assessing Russian Activities*, at 1.

“Russians make up a pretty disproportionate cross-section of a lot of our assets.”⁹ In 2014, Mr. Trump’s other son Eric reportedly told a golf writer: “[W]e don’t rely on American banks. We have all the funding we need out of Russia.”¹⁰ As for President Trump himself, in 2013, discussing meetings regarding a potential hotel project in Moscow, Mr. Trump stated: “The Russian market is attracted to me. I have a great relationship with many Russians, and almost all of the oligarchs were in the room.”¹¹ In 2015, on Hugh Hewitt’s radio program, Mr. Trump stated: “[T]wo years ago, I was in Moscow . . . I was with the top-level people, both oligarchs and generals, and top-of-the-government people. I can’t go further than that, but I will tell you that I met the top people, and the relationship was extraordinary.”¹² Although Mr. Trump’s characterizations of his relationship with President Putin himself have evolved over time, in 2013 he told MSNBC that he had “a relationship” with Putin, who Mr. Trump said was personally “very interested” in Trump’s investment objectives in Russia.¹³

Furthermore, several staff and advisers to the Trump campaign, including Paul Manafort, Lieutenant General (ret.) Michael Flynn, Carter Page, and Roger Stone, had histories of close ties to the Russian government and its allies. For example, Manafort served as President Trump’s campaign manager from approximately early April 2016 until August 19, 2016.¹⁴ Before his work on the Trump campaign, Manafort had long been associated with Russian interests. According to a March 2017 Associated Press exclusive report, Manafort “proposed in a confidential strategy plan as early as June 2005 that he would influence politics, business dealings and news coverage inside the United States, Europe and former Soviet republics to benefit President Vladimir Putin’s government.”¹⁵ This plan, proposed to “aluminum magnate Oleg Deripaska, a close Putin ally,” led to a \$10 million annual contract beginning in 2006.¹⁶ Manafort also made millions of dollars as a consultant to pro-Russian elements of Ukrainian

⁹ Tom Hamburger *et al.*, *Inside Trump’s Financial Ties to Russia and His Unusual Flattery of Vladimir Putin*, Wash. Post, June 17, 2016, <http://wapo.st/2n5VROl>.

¹⁰ Bill Littlefield, *A Day (And A Cheeseburger) With President Trump*, WBUR, May 5, 2017, <http://wbur.fm/2qJ0j2V> (quoting James Dodson). Eric Trump has since denied making this remark. See *id.*

¹¹ Julie Strickland, *The Donald, Sapir Mull Bringing Trump Soho to Moscow*, *The Real Deal*, Nov. 12, 2013, <http://bit.ly/2n5T3kl>.

¹² Hugh Hewitt, *Donald Trump Returns*, Sept. 21, 2015, <http://www.hughhewitt.com/donald-trump-returns/>.

¹³ Nicholas Hautman, *Donald Trump In Resurfaced 2013 Interview: ‘I Do Have a Relationship’ With Vladimir Putin*, *US Magazine*, Jan. 11, 2017, <http://usm.ag/2n5Olmr>.

¹⁴ Accounts differ over exactly when Manafort, who began as a “delegate wrangler,” took over full campaign manager duties, but it appears that he assumed control in early April 2016. See Meghan Keneally, *Reviewing Ex-Manager Paul Manafort’s Rise and Fall in the Trump campaign*, *ABC News*, Mar. 22, 2017, <http://abcn.ws/2noGOza>.

¹⁵ Jeff Horowitz & Chad Day, *AP Exclusive: Before Trump job, Manafort worked to aid Putin*, *AP*, Mar. 22, 2017, <http://apne.ws/2pAAAtBP>.

¹⁶ *Id.*

government and politics, including managing the successful 2014 election campaign of Viktor Yanukovych, which itself was reportedly aided by the Russian government.¹⁷

Other Trump campaign advisers had similar Russia connections:

- General Flynn had a history of appearing on, and being paid by, the Russian government's television network, RT (formerly "Russia Today"), including a \$33,750 payment for a 2015 speech in Moscow, despite having been warned by the Defense Intelligence Agency in 2014 not to accept compensation from foreign governments without advance approval.¹⁸
- Carter Page, for whose communications the FBI sought and received a Foreign Intelligence Surveillance Act warrant in the summer of 2016 "after convincing a Foreign Intelligence Surveillance Court judge that there was probable cause to believe Page was acting as an agent of a foreign power, in this case Russia,"¹⁹ visited Russia mid-campaign with the approval of the Trump campaign.²⁰
- Stone has stated that he has "mutual friends" with WikiLeaks publisher Julian Assange,²¹ and recently admitted having interacted online in August 2016 with "Guccifer 2.0," the online persona of the hacker(s) involved in releasing the private email messages of key Clinton allies.²²

At this time, the public record does not provide enough information to ascertain whether these individuals (re-)entered the employ of the Russian government during, or after terminating, their engagements with the Trump campaign.

¹⁷ See Tom Winter & Ken Dilanian, *Donald Trump Aide Paul Manafort Scrutinized for Russian Business Ties*, NBC News, Aug. 18, 2016, <http://nbcnews.to/2bKHf3e>; Andrew E. Kramer et al., *Secret Ledger in Ukraine Lists Cash for Donald Trump's Campaign Chief*, N.Y. Times, Aug. 14, 2016, <http://nyti.ms/2n6845p>.

¹⁸ Michael Crowley, *All of Trump's Russia Ties, in 7 Charts*, Politico, Mar.-Apr. 2017, <http://politi.co/2m3t4X4>; Fredreka Schouten, *Michael Flynn received more than \$33,000 from Russian TV*, USA Today, Mar. 16, 2017, <http://usat.ly/2m6q5kN>; Letter from Defense Intelligence Agency to LTG Flynn, Oct. 8, 2014, <https://go.usa.gov/x5EEE>.

¹⁹ Ellen Nakashima et al., *FBI obtained FISA warrant to monitor Trump adviser Carter Page*, Wash. Post, Apr. 11, 2017, <http://wapo.st/2pr7kpE>.

²⁰ Ivan Nechepurenko, *Carter Page, Ex-Trump Advisor With Russian Ties, Visits Moscow*, N.Y. Times, Dec. 8, 2016, <http://nyti.ms/2hGddMj>.

²¹ See Andrew Blake, *Trump ally Roger Stone willing to speak with FBI, rejects ties to Russia and WikiLeaks*, Wash. Times, Oct. 15, 2016, <http://bit.ly/2gJEXxY>.

²² Andrew Blake, *Roger Stone, Trump confidant, acknowledges 'innocuous' Twitter conversation with DNC hackers*, Wash. Times, Mar. 10, 2017, <http://go.shr.lc/2msQ6YG>; see also Peter Stone et al., *Donald Trump and Russia: a web that grows more tangled all the time*, The Guardian, July 30, 2016, <http://bit.ly/2hCUvrQ> (listing more campaign advisors with Russia ties).

III. The Russian Influence Campaign

According to both media reporting and *Assessing Russian Activities*, the Russian government's efforts to influence or alter the U.S. election were extensive. Taken as a whole, they suggest a Russian campaign of *aktivniye meropriyatiya* (active measures)—political warfare to influence the 2016 U.S. election.²³

The phishing attack. Key members of the Democratic National Committee and Secretary Clinton's campaign were victimized by a "phishing" attack. The attack involved communications transmitted directly to the targets in the United States. The information obtained through the phishing attack permitted hackers to gain access to thousands of internal Democratic Party and campaign emails stored on U.S. servers, including those of Clinton campaign chairman John Podesta. Hackers then transmitted a database of the stolen e-mails to WikiLeaks, a web site that released this information beginning in the summer of 2016, just before the Democratic National Convention. The release of these email messages is widely agreed to have had the purpose of harming Secretary Clinton's electoral chances and of benefitting her competitor Mr. Trump.²⁴

The U.S. government has concluded that the phishing attacks, subsequent hacking of e-mails, and the distribution of the stolen e-mails to WikiLeaks were performed by individuals employed or paid by the Russian government.²⁵ Furthermore, U.S. intelligence agencies concluded that "Guccifer 2.0," supposedly an independent Romanian hacker who transferred stolen data to WikiLeaks, was actually a persona used by the Russian government. Similarly, a website named simply "DCLeaks.com" was also a Russian government operation.²⁶

Cyber intrusions into state and local election boards. Separately, also according to *Assessing Russian Activities*, the Russian government sponsored cyber intrusions directly into U.S. state and local electoral boards.²⁷ According to published reports,

²³ See John R. Schindler, *The 9 Russian Words That Explain KremlinGate*, *The Observer*, Mar. 28, 2017, <http://bit.ly/ChekaVocab>.

²⁴ See *Assessing Russian Activities*, *supra*, at 2; Rachel Revesz, *Hillary Clinton blames Russia hacking and FBI director James Comey for her election loss*, *The Independent*, Dec. 16, 2016, <http://ind.pn/2gTmqCQ>; Clint Watts & Andrew Weisburd, *How Russia Wins an Election*, *Politico*, Dec. 13, 2016, <http://politi.co/2glt3cJ>; Fred Kaplan, *Did the WikiLeaks Email Dump Cost Hillary the White House?*, *Slate*, Nov. 14, 2016, <http://slate.me/2pwPHaH>; Thomas Rid, *How Russia Pulled Off the Biggest Election Hack in U.S. History*, *Esquire*, Oct. 20, 2016, <http://bit.ly/2hCOLOW>.

²⁵ *Assessing Russian Activities*, *supra*, at 1.

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 3.

Russian hackers targeted more than 20 state election systems, and successfully infiltrated four.²⁸

Influence campaign. Finally, the Russian government paid individuals to communicate political messages to persons in the United States for the purpose of influencing the election. In 2015, *the New York Times* reported on “an army of well-paid ‘trolls’” in St. Petersburg, Russia, trying to “wreak havoc” in “real-life American communities.”²⁹ The group had become known for “employing hundreds of Russians to post pro-Kremlin propaganda online under fake identities, including on Twitter.”³⁰ The author of the *New York Times* article later tracked the “Russian trolls” his reporting had uncovered, and found that by late 2015, many of them had “turned into conservative accounts” and were “all tweeting about Donald Trump.”³¹

This Russian government-paid team posted substantial amounts of pro-Trump, anti-Clinton material on various third-party web sites and communications media, such as Twitter. One of the methods used by these Russian government-paid actors was to use false or deceptive profiles suggesting that they were actually American citizens.³² Many of these paid Russian bloggers used profile names that explicitly incorporated language supporting a specific political candidate, such as the phrase “for Trump,” e.g., “Moms for Trump” and “Veterans for Trump.”³³ Classic *dezinformatsiya* (disinformation) techniques were updated for the Internet era.

As reported by the *Washington Post*:

The flood of “fake news” this election season got support from a sophisticated Russian propaganda campaign that created and spread misleading articles online with the goal of punishing

²⁸ See, e.g., Mike Levine & Pierre Thomas, *Russian Hackers Targeted Nearly Half of States’ Voter Registration Systems, Successfully Infiltrated 4*, ABC News, Sept. 29, 2016, <http://abcn.ws/2cNnR3x>.

²⁹ Adrian Chen, *The Agency*, N.Y. Times, June 2, 2015, <http://nyti.ms/1M0bqtC>.

³⁰ *Id.*

³¹ Longform, *Podcast #171: Adrian Chen*, Dec. 9, 2015, <http://bit.ly/2n6GHs9>; Andrew Weisburd & Clint Watts, *How Russia Dominates Your Twitter Feed to Promote Lies (And, Trump, Too)*, Daily Beast, Aug. 6, 2016, <http://thebea.st/2b0eMGk>.

³² See Craig Timberg, *Russian propaganda effort helped spread ‘fake news’ during election, experts say*, Wash. Post, Nov. 24, 2016, <http://wpo.st/jT3N2>; Andrew Weisburd et al., *Trolling For Trump: How Russia Is Trying To Destroy Our Democracy*, War on the Rocks, Nov. 6, 2016, <http://bit.ly/TrollingForTrump>; Louise Mensch, *How Russia’s Twitter Bots and Trolls Work with Donald Trump campaign Accounts*, HeatStreet, Oct. 20, 2016, <http://heat.st/2eq0kUo>; Natasha Bertrand, *It looks like Russia hired internet trolls to pose as pro-Trump Americans*, Business Insider, July 27, 2016, <http://read.bi/2a9J2yg>; see also PropOrNot, *Black Friday Report: On Russian Propaganda Network Mapping*, <https://goo.gl/oEzRek> (Nov. 26, 2016).

³³ See Mensch, *supra* (providing examples).

Democrat Hillary Clinton, helping Republican Donald Trump and undermining faith in American democracy, say independent researchers who tracked the operation. . . . There is no way to know whether the Russian campaign proved decisive in electing Trump, but researchers portray it as part of a broadly effective strategy of sowing distrust in U.S. democracy and its leaders . . . “*The way that this propaganda apparatus supported Trump was equivalent to some massive amount of a media buy,*” said the executive director of PropOrNot, who spoke on the condition of anonymity to avoid being targeted by Russia’s legions of skilled hackers. “*It was like Russia was running a super PAC for Trump’s campaign. . . . It worked.*”³⁴

A *Bloomberg* report also described “[m]aterial stolen by Russia’s intelligence services” that was “feverishly promoted by online personas and numerous fake accounts,” referencing an analysis of thousands of online postings, links, and documents.³⁵

IV. Evidence Suggesting Coordination Between the Trump campaign and the Russian government

Considering the Russian government’s clear preference for Mr. Trump, numerous personal connections to the Trump campaign, and the Trump campaign’s documented disregard for laws concerning foreign involvement in U.S. elections (as demonstrated by soliciting monetary contributions from foreign nationals, including foreign government officials, even after prior solicitations had been made public and identified as illegal),³⁶ the existing record of public communications between the Trump campaign and Russian government actors provides a *prima facie* case justifying a complete investigation into whether the Russian government coordinated its expenditures with the Trump campaign.

Dramatically, on June 27, 2016, Donald Trump publicly called upon the Russian government to gain unauthorized access to, and publish, Secretary Clinton’s emails. Mr. Trump stated at a news conference: “Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing. I think you will probably be rewarded

³⁴ Craig Timberg, *Russian propaganda effort helped spread ‘fake news’ during election, experts say*, *Wash. Post*, Nov. 24, 2016, <http://wpo.st/jQ8N2> (emphasis added).

³⁵ Chris Strohm, *Russia Weaponized Social Media in U.S. Election, FireEye Says*, *Bloomberg*, Dec. 1, 2016, <http://bloom.bg/2g9qtYl>.

³⁶ Jonathan Swan & Harper Neidig, *Trump campaign Solicits Illegal Foreign Donations Despite Warnings*, *The Hill*, July 16, 2016, <http://bit.ly/2mR5Kxa>.

mightily by our press.”³⁷ As then-White House Press Secretary Joshua Earnest later articulated:

It's just a fact—you all have it on tape—that the Republican nominee for president was encouraging Russia to hack his opponent because he believed that that would help his campaign.

I don't know if it was a staff meeting or if he had access to a briefing or he was just basing his assessment on a large number of published reports, but Mr. Trump obviously knew that Russia was engaged in malicious cyberactivity that was helping him and hurting Hillary Clinton's campaign.³⁸

Then, in July 2016, respected computer security experts searching for malware discovered a pattern of suspicious electronic communications “that began during office hours in New York and continued during office hours in Moscow. The researchers recognized that this wasn't an attack, but a sustained relationship between a server registered to the Trump Organization and two servers registered to [a Russian financial firm] called Alfa Bank” in Moscow.³⁹ While subsequent commentary from additional computer experts has also offered the possibility that “there could be an innocuous explanation, like a marketing email or spam, for the computer contacts,” other computer scientists and engineers doubt this explanation.⁴⁰ According to a March 2017 report, the FBI's counterintelligence team is still investigating the “odd” computer link between Alfa Bank and the Trump Organization.⁴¹

Moreover, close associates of the Trump campaign appeared to have advance knowledge of WikiLeaks publication of stolen e-mails. In particular, Roger Stone specifically identified John Podesta as someone who would be “in the barrel,” before it was known that Podesta's e-mails had been compromised.⁴² Then, just six days before WikiLeaks released a tranche of Clinton-related e-mails, Stone tweeted,

³⁷ Ashley Parker & David E. Sanger, *Donald Trump Calls on Russia to Find Hillary Clinton's Missing Emails*, N.Y. Times, June 27, 2016, <http://nyti.ms/2aKnwvY>.

³⁸ Michelle Kosinski & Kevin Liptak, *Gloves-off White House creates rift between Obama and Trump teams*, CNN, Dec. 15, 2016, <http://cnn.it/2hG8J8E>.

³⁹ Franklin Foer, *Was a Trump Server Communicating With Russia?*, Slate, Oct. 31, 2016, <http://slate.me/2dWggCd>.

⁴⁰ See Franklin Foer, *Trump's Server, Revisited*, Slate, Nov. 2, 2016, <http://slate.me/2hFBsdU>.

⁴¹ Pamela Brown & Jose Pagliery, *Sources: FBI investigation continues into 'odd' computer link between Russian bank and Trump Organization*, CNN, Mar. 10, 2017, <http://cnn.it/2nboh6U>.

⁴² Roger Stone (@RogerJStoneJr), Twitter (Aug. 21, 2016, 7:24 AM), <https://twitter.com/rogerjstonejr/status/767366825743097856>.

"Wednesday@HillaryClinton is done. #Wikileaks."⁴³ There is no reasonable interpretation of this other than that Stone had advance knowledge of both the content and timing of the WikiLeaks release of documents stolen by agents of the Russian government.

In addition to these tell-tale electronic signs, multiple high-level members of (and surrogates for) the Trump campaign had direct communications with senior Russian government officials. Such extensive communications are not routinely conducted by a political campaign, outside of formal diplomatic channels. Among other things:

- Attorney General (then Senator) Jeff Sessions, a key Trump campaign surrogate, met twice during the campaign with the Russian ambassador to the United States, including during the Republican National Convention. After being sworn in, he admitted that he had not disclosed these communications despite having been questioned about Russian contacts during his confirmation hearing, and has since recused himself from any Department of Justice investigation into these matters;⁴⁴
- In July 2016, Trump campaign adviser Carter Page traveled to Moscow to give a speech and, while there, met with the leadership of Russian energy companies Gazprom (wholly state owned) and Rosneft (majority state owned).⁴⁵ Page's contacts with Russian intelligence were so extensive that the FBI obtained a Foreign Intelligence Surveillance Act warrant to monitor Page's communications in the summer of 2016.⁴⁶

V. Post-Election Events Supporting the Need for Investigation

Unusual activity by Mr. Trump's presidential transition team, senior advisers, and Mr. Trump himself *after* the election supports the need for investigation. These actions may help elucidate the existence and nature of relationships with the Russian government, including potential corruption:

⁴³ Roger Stone (@RogerJStoneJr), Twitter (Oct. 1, 2016, 9:52 PM), <https://twitter.com/RogerJStoneJr/status/782443074874138624>.

⁴⁴ Zach Beauchamp, *The 3 Trump-Russia Scandals Explained*, Vox Media, Feb. 15, 2017, <http://bit.ly/Vox3TrumpRussia>.

⁴⁵ Josh Meyer & Kenneth Vogel, *Trump campaign Approved Adviser's Trip to Moscow*, Politico, Mar. 7, 2017, <http://politi.co/2nvXupD>.

⁴⁶ Ellen Nakashima *et al.*, *FBI obtained FISA warrant to monitor Trump adviser Carter Page*, Wash. Post, Apr. 11, 2017, <http://wapo.st/2pr7kpE>.

- In December 2016, General Flynn and Jared Kushner (President Trump’s son-in-law and a key campaign official) met, apparently in secret, with the Russian ambassador to the United States in New York City’s Trump Tower. This meeting was not disclosed until March 2017.⁴⁷ Also in December 2016, General Flynn had several private communications with the Russian ambassador, including about newly-imposed sanctions. Flynn’s dissembling about these communications ultimately led to his resignation.⁴⁸ Recently, federal prosecutors in Virginia issued grand jury subpoenas to associates of General Flynn.⁴⁹ And on May 10, 2017, the Senate Intelligence Committee issued a subpoena to General Flynn for certain documents relevant to the Committee’s investigation into Russian interference with the 2016 election.⁵⁰
- In January 2017, President Trump’s personal lawyer, Michael Cohen, hand-delivered a “peace plan” for Ukraine to General Flynn (then serving as National Security Advisor), which Cohen had received at his home from Felix Sater (a Russian-born former Trump business associate and convicted felon) and a pro-Russia Ukrainian legislator.⁵¹
- President Trump gave senior governmental positions to persons with close historical ties to Russia. Besides General Flynn, these included Secretary of State Rex Tillerson, who had been awarded the “Order of Friendship” by Russian President Putin in 2013, and Secretary of Commerce Wilbur Ross, who owned a bank in Cyprus that reportedly “caters to wealthy Russians.”⁵²

⁴⁷ Christopher Brennan & Jessica Schladebeck, *Jared Kushner Was At Meeting Between Disgraced Adviser Michael Flynn and Russian Ambassador*, N.Y. Daily News, Mar. 2, 2017, <http://nydn.us/2mRgsnq>. Because media photographers had cameras constantly trained on the main entrances to Trump Tower during December 2016 and did not observe the Russian ambassador entering, it appears that the ambassador may have been ushered in through a back or private entrance, suggesting a desire to conceal the meeting. See Nick Allen, *Donald Trump brands Democrats ‘hypocrites’ over Russian links*, Telegraph, Mar. 2, 2017, <http://bit.ly/2n6zN64>.

⁴⁸ Greg Miller & Philip Rucker, *Michael Flynn Resigns as National Security Adviser*, Wash. Post, Feb. 14, 2017, <http://wapo.st/2mXWk4D>.

⁴⁹ Evan Perez et al., *CNN exclusive: Grand jury subpoenas issued in FBI’s Russia investigation*, CNN, May 9, 2017, <http://cnn.it/2pxsbrA>.

⁵⁰ Richard Gonzales, *Senate Intelligence Panel Subpoenas Former National Security Adviser Michael Flynn*, NPR, May 10, 2017, <https://n.pr/2qtkN4M>

⁵¹ Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates*, N.Y. Times, Feb. 19, 2017, <http://nyti.ms/2mDAQHD>.

⁵² Philip Bump, *The Web of Relationships Between Team Trump and Russia*, Wash. Post, Mar. 3, 2017, <http://wapo.st/2m3VCCy>.

Peculiarly, President Trump has repeatedly claimed that none of his advisers have ties to Russia. For example, on February 16, 2017, Trump stated: "I have nothing to do with Russia. To the best of my knowledge no person that I deal with does."⁵³

Potential Legal Violations

This information, in the public record, suggests many possible legal violations. Depending on the ultimate factual findings, members of the Trump campaign (including, potentially, Mr. Trump himself) may have violated the Foreign Agents Registration Act,⁵⁴ the espionage statutes,⁵⁵ or other laws.

With respect to *election interference*, the Federal Election Campaign Act is at issue. The Federal Election Campaign Act (FECA) was enacted to protect the republican system of the United States against corruption⁵⁶ and its democratic self-government against foreign influence.⁵⁷

On May 4, 2017, Free Speech For People and Campaign for Accountability filed a complaint with the Federal Election Commission requesting a formal investigation of Russian government election spending and potential Trump campaign coordination.⁵⁸ The Federal Election Commission is a bipartisan, independent commission with extensive investigative powers, including subpoena power for witnesses and documents, compelling testimony under oath, and requisitioning personnel and facilities from other federal agencies.⁵⁹ Despite some limitations, the Federal Election Commission is an important component of federal investigative efforts into potential Trump campaign coordination with Russian electoral interference.⁶⁰

FECA prohibits foreign nationals, including foreign governments, from spending money to influence federal elections. Under FECA and the Federal Election

⁵³ Conor Friedersdorf, *President Trump's Untruths are Piling Up*, The Atlantic, Mar. 3, 2017, <http://theatlantic.com/2oY6SOS>; John Kelly & Steve Reilly, *Trump Team Issued At Least 20 Denials of Contacts with Russia*, USA Today, Mar. 2, 2017, <http://usat.ly/2oYmjqr>.

⁵⁴ 22 U.S.C. §§ 611 *et seq.* General Flynn served as an unregistered foreign agent of Turkey during the campaign. See Peter Baker & Matthew Rosenberg, *Michael Flynn Was Paid to Represent Turkey's Interests During Trump campaign*, N.Y. Times, Mar. 10, 2017, <https://nyti.ms/2multm7>.

⁵⁵ 18 U.S.C. §§ 793-94, 798.

⁵⁶ See *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per curiam).

⁵⁷ See *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011) (three-judge court), *aff'd*, 132 S. Ct. 1087 (2012)

⁵⁸ See *Free Speech For People v. Gov't of the Russian Fed.*, FEC MUR 7207, <http://bit.ly/FSFPComplaint7207> (amended complaint filed May 4, 2017).

⁵⁹ See 52 U.S.C. §§ 30106-07.

⁶⁰ See Ron Fein & Julian Schreiber, *Did the Trump campaign collude with Russia? Follow the money*, Newsweek, May 6, 2017, <http://bit.ly/NewsweekFEC>.

Commission's regulations that implement FECA, it is unlawful for "a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election," or to make an "expenditure" to influence a federal election.⁶¹

Notably, FECA provides a precise legal definition for "coordination" that is highly relevant to the question of whether and how the Trump campaign may have coordinated with the Russian government. Under FECA and its regulations, a public campaign communication is deemed "coordinated" if *either* of two "conduct standards" are met.⁶² Under the "request or suggestion" conduct standard, a campaign communication is "coordinated" if (1) the campaign communication is created, produced, or distributed at the request or suggestion of the candidate or his committee, or, alternatively, (2) it is created, produced, or distributed at the suggestion of whoever paid for it, and the candidate or his committee agrees to the suggestion.⁶³ Based on (1) Mr. Trump's public request for the Russian government to gain unauthorized access to, and conduct further distribution of, Secretary Clinton's e-mails, (2) unexplained communications between a Trump server and a Moscow-based server, and (3) various undisclosed meetings between Trump campaign advisers and Russian government officials, there is reason to investigate whether these communications were coordinated under the "request or suggestion" conduct standard.

Alternatively, under the "former employee or contractor" conduct standard, a campaign communication is deemed to be "coordinated" if two prongs are met. The first prong is satisfied if "the communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days."⁶⁴ In this case, for a campaign communication paid for by the Russian government, the question is whether the Russian government was be "the employer of a person, who was an employee or independent contractor of [Mr. Trump or his authorized campaign committee] during the previous 120 days." In other words, for any given payment for a campaign

⁶¹ 52 U.S.C. §§ 30121(a)(1)(A), (C); 11 C.F.R. §§ 110.20(b), (f). An "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift 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(9)(A). Notably, this provision does not require, as an element of proof, that the violation altered the ultimate outcome of the election.

⁶² There are five conduct standards that could establish coordination, but this report focuses on the two most likely to apply to Trump campaign coordination with the Russian government.

⁶³ 11 C.F.R. §§ 109.21(d)(1)(i)-(ii).

⁶⁴ 11 C.F.R. § 109.21(d)(5)(i).

communication made by the Russian government, was the Russian government on that date employing a person [e.g., Manafort, Flynn, Page, etc.] who had worked for Mr. Trump or his campaign within the past four months? The second prong is satisfied if the former employee or contractor conveyed useful non-public information to the Russian government.⁶⁵ That information need not be classified—it could be as simple as “[i]nformation about the campaign plans, projects, activities, or needs” of Mr. Trump or Secretary Clinton.⁶⁶

If Russian-funded campaign communications were “coordinated” with the Trump campaign under FECA, then the Trump campaign violated several distinct legal provisions.⁶⁷ Most importantly, FECA prohibits a campaign from coordinating a communication with a foreign government.⁶⁸

Conclusion

These charges are extraordinarily serious. The American people are entitled to a thorough, credible investigation without regard to partisan politics. The future of our democracy demands no less.

⁶⁵ 11 C.F.R. §§ 109.21(d)(5)(ii)(A)-(B).

⁶⁶ *Id.* § 109.21(d)(5)(ii)(A).

⁶⁷ Any payment for a communication made for the purpose of influencing a federal election that meets the definition of “coordinated communication” under 11 C.F.R. § 109.21 must be reported as an expenditure by the candidate whom it was intended to benefit, and is deemed, except in specific circumstances, to be an in-kind contribution to that candidate. 11 C.F.R. §§ 109.20, 109.21(b)(1)-(2). Any political committee, including a candidate committee, that receives a contribution (including the value of an in-kind contribution) exceeding \$200 must report that receipt. 11 C.F.R. §§ 104.3, 104.8. Similarly, political committees, including candidate committees, must report expenditures (including expenditures by others that are deemed to be made by the campaign because they are coordinated) exceeding \$200. 11 C.F.R. §§ 104.3, 104.9. Notably, none of these provisions require, as an element of proof, that the violation altered the ultimate outcome of the election.

⁶⁸ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

About the Author

Ron Fein is the Legal Director for Free Speech For People. Mr. Fein previously served as Assistant Regional Counsel in the United States Environmental Protection Agency's New England office, where he received the EPA's National Gold Medal for Exceptional Service. Earlier, Mr. Fein clerked for the Honorable Kermit Lipez of the United States Court of Appeals for the First Circuit and the Honorable Douglas Woodlock of the United States District Court for the District of Massachusetts. He graduated Order of the Coif from Stanford Law School and *summa cum laude* from Harvard College.

About Free Speech For People

Free Speech For People works to renew our democracy and our United States Constitution for we the people. Founded on the day of the Supreme Court's Citizens United ruling, Free Speech For People envisions a democratic process in which all people have an equal voice and an equal vote. We educate, we organize, we fight in the courts, and we press for a constitutional amendment to reclaim our democracy. To learn more, please visit our website: www.freespeechforpeople.org.