



Democracy For Sale: How Our Broken Campaign Finance System Allows Foreign Governments to Buy Influence in Our Elections and What We Can Do About It

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**Submitted testimony: How Secret, Foreign Political Spending Threatens Our National Security
– and What the DISCLOSE Act Does to Fix It**

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Our systems for funding election campaigns and regulating the use of money in politics are broken. This has serious consequences for our democratic society and our ability to govern ourselves freely and fairly. Congress must address these problems, and should start by passing the DISCLOSE Act of 2017.

The Center for American Progress strongly believes that Members of Congress should crack down on the secret, big money political spending bolstering political campaigns. Secret money, though no longer a new problem, is a growing one. More than \$900 million dollars in secret money has been spent to influence elections in the last five election cycles.¹ Voters have a right to know the source of major funding behind political messages that are deployed to influence political behavior and outcomes. Transparency is necessary in order for voters to make informed choices, and to exercise accountability over elected representatives in terms of the company they keep and the actions they may take that align with the financial interests of their backers.

Alongside this problem, however, we are now beginning to see the extent of another related threat—a threat to our national security, and to the integrity of our self-government. That threat is foreign political spending and influence. In a recent case affirmed by the Supreme Court, the District Court of the District of Columbia stated that the ability to exclude foreigners from our elections is “fundamental to the definition of our national political community.”² Moreover, making that distinction “is part of a common international understanding of the meaning of sovereignty and shared concern about foreign influence over elections.”³ When we fail to stem the tide of foreign influence, our very national sovereignty is threatened.

One of the principal sources of this threat is the funneling of secret money into our elections. Although the focus of this testimony is on secret, foreign political spending, it is important to note that such spending is particularly nefarious as one piece of a broader foreign influence toolkit. This toolkit includes other forms of bribery both implicit and explicit. It also includes more direct subterfuge, such as the hacking of elections. The fight to protect our democracy will need to be fought on multiple fronts.

¹ Author calculations from data at “Political Nonprofits (Dark Money),” *Open Secrets*, https://www.opensecrets.org/outsidespending/nonprof_summ.php (last accessed July 14, 2017).

² *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff’d*, 132 S. Ct. 1087 (2012) (Mem.).

³ *Id.* at 292.

America’s founders were highly attuned to the threat of foreign influence. Thomas Jefferson wrote eloquently about the need to protect the United States from “entanglement” in foreign politics, which he and his contemporaries viewed with “perfect horror” due to their apparent corruption.⁴ According to Jefferson, the Europeans had “so many other bye-interests of greater weight, that some one or other will always be bought off.”⁵ Indeed, the framers of the Constitution included a clause to prevent foreign gifts to government officials, known as the emoluments clause, which they viewed as an important measure to prevent corruption.

As noted by Susan Hennessey, a national security fellow at the Brookings Institution, “Fundamentally, ethics policies governing the Executive and his cabinet are national security protections.”⁶ We now need to consider transparency for money in politics to be a national security protection as well. Foreign states and citizens must not be able to direct untold sums of shady money to support their chosen candidates and to attack American candidates and members of government who they perceive as unfriendly to their interests. We need only look to the ‘thing of value’ offered by the ‘Russian government attorney’ and gleefully welcomed by the Trump campaign to see the intersection of campaign finance laws and foreign intrigue, and to see the timeliness and urgency of taking action.

The Opening for Foreign Political Spending

Under the Federal Election Campaign Act (FECA), it is illegal for foreign nationals, “directly or indirectly,” to spend money or provide things of value in connection with U.S. elections.⁷ The term “Foreign national” is defined to include foreign individuals, as well as foreign governments and other foreign entities.⁸

However, there are two main weaknesses in our system that are undermining this prohibition:

- (1) a lack of strong guidance about when corporations (or other organizations) are acting on the part of foreign nationals; and
- (2) gaping loopholes in campaign finance disclosure, which make foreign national spending difficult or impossible to detect.

Imagine that a representative of a foreign government wanted to influence U.S. elections. They might simply channel their own funds through a dark money organization to be spent to impact elections. If they wanted to go to even greater lengths to hide the source of the funds, they might buy an interest in an American corporation, or a U.S. subsidiary of a foreign corporation, along with some U.S. citizen partners.⁹ In the post-*Citizens United* world, they could funnel the corporate money—in whatever quantity they could muster¹⁰—to a dark money tax exempt group of their choosing. And finally, that dark

⁴ Letter from Thomas Jefferson to William Short (Oct. 3, 1801), in 10 THE WRITINGS OF THOMAS JEFFERSON 284, 287 (1903), available at <https://books.google.com/books?id=4dnSCIToke0C&pg=PA284#v=onepage&q&f=false>.

⁵ *Id.*

⁶ Susan Hennessey, “Ethics Rules are National Security Rules,” *LawFare*, January 10, 2017, available at <https://www.lawfareblog.com/ethics-rules-are-national-security-rules>.

⁷ 52 U.S.C. § 30121(a).

⁸ 52 U.S.C. § 30121(b).

⁹ Under existing guidance from the FEC (which pre-dates the unlimited spending ushered in by *Citizens United*), corporate spending by subsidiaries is not considered to be foreign national spending if: (1) the spending is funded with funds generated in the United States; and (2) “all decisions concerning the donations and disbursements will be made by individuals who are U.S. citizens or permanent residents, except for setting overall budget amounts.” FEC Advisory Opinion 2006-15 (TransCanada) at 2.

¹⁰ The only limitation would be whether the corporation made sufficient U.S. revenue that the funds could arguably have been “generated in the United States.” *See Id.* Since money is fungible, it would be a difficult to prove, particularly for a U.S. subsidiary, where the funds originated.

money tax exempt group could spend the money on ads to influence U.S. elections, without revealing the corporate donor, and in some cases without reporting the ad itself.

The public might never discover the source of the funds; and even if we did, it's far from certain, in our hyper-partisan climate, that law enforcement, or a majority of commissioners on the Federal Election Commission, would be willing to look past the corporate shell and determine the foreign source. Loopholes in our campaign finance system have undermined both detection and enforcement.

To make matters even worse, a foreign national armed with this dark money arsenal might then use the mere *threat* of dark money spending to influence their U.S. allies and adversaries.¹¹ To be sure, explicit bribery can be a criminal offense.¹² But winks and nods are difficult to prosecute, and with no easy way to detect whether a threat was carried out, allegations of bribery or blackmail would be difficult to prove.

One of the great dangers of secret political spending is that we simply can't determine how much of this activity is taking place. But we can say for certain that there are foreign nationals seeking to exert political influence by providing funding and other things of value. For example:

- In 2015, a Chinese businessman, Gordon Tang, reportedly gave \$1.3 million to Jeb Bush's Right to Rise super PAC, funneling the money through a U.S. corporation.¹³
- Through September of 2013, a wealthy Mexican businessman allegedly provided approximately \$600,000, through a U.S. corporation, to local mayoral candidates and to a committee supporting federal candidates.¹⁴
- According to the Wall Street Journal, "In the spring of 2016, U.S. intelligence officials' suspicions about Russian meddling in the election grew after their counterparts in Europe warned that Russian money might be flowing into the presidential election."¹⁵
- Finally, as you are aware, a declassified version of a report released by the Director of National Intelligence states that the Russian government financed communications through "state funded media, third party intermediaries, and paid social media users," as part of an effort to influence the outcome of the 2016 U.S. presidential election.¹⁶

Quite simply, examples like these are a threat to our political community—and in some circumstances, they can put our national security at risk.

¹¹ See, e.g., Daniel Tokaji & Renata Strauss, *THE NEW SOFT MONEY: OUTSIDE SPENDING IN CONGRESSIONAL ELECTIONS* (2014), at 80 (stating that, although *explicit* threats may be rare, one congressional staffer and one former Senator stated, in interviews, that a lobbyist had directly threatened that their client would finance independent ads against them if they didn't take the position the client wanted on particular legislative action).

¹² 18 U.S.C. § 201.

¹³ Lee Fang, Jon Schwarz & Elaine Yu, "Power Couple: Meet the Chinese Husband-and-Wife Team Whose Company Spent \$1.3 Million Trying to Make Jeb Bush President," *The Intercept*, August 3, 2016, <https://theintercept.com/2016/08/03/chinese-couple-million-dollar-donation-jeb-bush-super-pac/>.

¹⁴ *United States v. Matsura*, 129 F. Supp. 3d 975, 977 (S.D. Cal. 2015).

¹⁵ Shane Harris, "Russian Officials Overheard Discussing Trump Associates Before Campaign Began," *Wall Street Journal*, July 12, 2017, https://www.wsj.com/article_email/russian-officials-overheard-discussing-trump-associates-before-campaign-began-1499890354-IMyQjAxMTI3MjE5MjExMzI0Wj/.

¹⁶ Office of the Director of National Intelligence, "Background to 'Assessing Russian Activities and Intentions in Recent US Elections': The Analytic Process and Cyber Incident Attribution," https://www.dni.gov/files/documents/ICA_2017_01.pdf. For more information on Russian disinformation campaigns, see a recent CAP report: Max Bergmann & Carolyn Kenney, "War By Other Means: Russian Active Measures and the Weaponization of Information," Center for American Progress, Jun 7, 2017, at <https://www.americanprogress.org/issues/security/reports/2017/06/06/433345/war-by-other-means/>.

The Threat to U.S. National Security

We already know that President Trump’s dangerous, unprecedented, and unconstitutional conflicts of interests endanger America’s national security and the integrity of our democracy and our economy. There are at least three mechanisms through which foreign inference, including foreign election spending, can undermine our national security.

First, foreign nationals may use their ill-gotten leverage to exert influence over U.S. officials. There is an alarming amount of evidence that this may be what is happening with the Trump Administration’s deep ties to Putin’s regime. Trump’s businesses reportedly have seen significant investment from Russian sources, making up, according to Donald Trump Jr., a “pretty disproportionate cross-section of a lot of [their] assets.”¹⁷ After the financial crisis of 2008, Donald Trump was able to borrow Russian money “when others in the west apparently would not lend to him.”¹⁸ And it has now come to light that Donald Trump Jr., Trump campaign chairman Paul Manafort, Jared Kushner, and unknown others met with a Russian government attorney for the purpose of getting information from the Russian government intended to help now-President Trump win the election.¹⁹

All of this has coincided with an Administration which has not only been uniquely uncritical of Russia, but has taken numerous steps to develop closer ties to Russia and to advance a pro-Russian agenda. The Trump administration has tended to take positions that align with Russia against the advice of the U.S. military and intelligence community.²⁰ What at first was a striking correlation is looking increasingly like cause and effect. The results are astonishing:

- As Former U.S. Ambassador to NATO Ivo Daalder wrote on Twitter, “Trump is more critical of NATO, EU, & Germany—all close allies—than he’s ever been of Putin & Russia.”²¹
- President Trump provided the Russians with highly classified information that endangered an Israeli intelligence source, possibly compromising “a vital source of information on the Islamic State and possibly Iran.”²²
- President Trump has indicated a desire to lift sanctions imposed against Russia for hacking U.S. elections and for the invasion of Ukraine, saying ““If you get along and if Russia is really helping us, why would anybody have sanctions if somebody’s doing some really great things?”²³
- President Trump has been highly critical of NATO, a key pillar of postwar stability. Trump stated, “I think NATO is obsolete,”²⁴ echoing Putin’s statement that NATO has “outlived itself.”²⁵

¹⁷ Glenn Kessler, “Trump’s claim that ‘I have nothing to do with Russia,’” *The Washington Post*, July 27, 2016, available at https://www.washingtonpost.com/news/fact-checker/wp/2016/07/27/trumps-claim-that-i-have-nothing-to-do-with-russia/?utm_term=.d5baf2d66293.

¹⁸ Jay Elwes, “Interview: Richard Dearlove—I spy nationalism,” *Prospect Magazine*, April 13, 2017, <https://www.prospectmagazine.co.uk/magazine/interview-richard-dearlove-europe-intelligence-mi6>.

¹⁹ Jo Becker, Matt Apuzzo & Adam Goldman, “Trump’s Son Met With Russian Lawyer After Being Promised Damaging Information on Clinton,” *New York Times*, July 9, 2017, <https://www.nytimes.com/2017/07/09/us/politics/trump-russia-kushner-manafort.html>.

²⁰ Carolyn Kenney & John Norris, “A Putin-Trump Policy Scorecard,” *Center for American Progress*, Feb. 16, 2017, available at <https://www.americanprogress.org/issues/security/news/2017/06/14/433954/trumps-conflicts-interest-russia/>.

²¹ Stephen Collinson, “Trump’s blast sends a chill across Europe,” *CNN*, January 17, 2017, available at <http://www.cnn.com/2017/01/17/politics/donald-trump-nato-europe/>.

²² Kavitha Surana, Dan De Luce & Robbie Gramer, “Israeli Intelligence Furious Over Trump’s Loose Lips,” *Foreign Policy*, May 19, 2017, available at <http://foreignpolicy.com/2017/05/19/israeli-intelligence-furious-over-trumps-loose-lips-russia-iran-syria/>.

²³ Daniella Diaz, “Trump suggests he would be open to lifting sanctions on Russia,” *CNN*, January 14, 2017, available at <http://www.cnn.com/2017/01/13/politics/donald-trump-russia-sanctionstaiwan/>.

During a recent NATO summit, Trump declined to specifically reaffirm Article 5,²⁶ the mutual defense pact that serves as a centerpiece of the alliance’s security framework. As noted by journalist and author Michael Weiss, this attitude on behalf of the Administration is unprecedented: “Since its founding in 1949, no major presidential candidate from either party has ever treated the alliance as anything other than sacrosanct.”²⁷

Even though the intelligence community, the President’s own secretary of defense, and congressional republicans have condemned the Russians for hacking U.S. elections, the Trump administration has done nothing to protect U.S. elections from Russian cyberattacks, or even to squarely assign Russia the blame for those attacks. President Trump stated as recently as July 6th that, “it could have been other people and other countries.”²⁸ In the two-hour meeting between Trump and Putin earlier this month, rather than demanding an end to Russia’s hacking and issuing a strong warning about consequences should Russia continue to attack the US and its allies, Trump instead reports “I said to [Putin], ‘Were you involved in the meddling with the election?’ . . . He said, ‘Absolutely not. I was not involved.’ He was very strong on it. I then said to him, in a totally different way, ‘Were you involved with the meddling?’ He said, ‘I was not — absolutely not.’”²⁹

According to colleagues at the Center for American Progress, “the Intelligence Community Assessment on Russian activity in the election found that this was but the most recent and aggressive expression to date of a longstanding Russian desire to sow chaos and instability in the United State,” one that should serve as “a wake-up call to every American about the diverse ways in which Russian malicious cyberactivity could affect every aspect of their lives.”³⁰

Russian cyber-meddling is a threat not just to U.S. elections, but also to America’s economy and financial system. Russian hackers have targeted U.S. and international banks, stealing up to \$900 million in 2015 alone.³¹ They’ve also stolen logins for tens of millions of online accounts, and developed malware that may have allowed them to steal personal information from millions of iPhones and other devices.³² As former National Security Agency Director Michael S. Rogers recently told the U.S. House of Representatives’ Intelligence Committee, hacking attacks, including those from Russia, are costing the

²⁴ The New York Times, “Transcript: Donald Trump Expounds on His Foreign Policy Views,” March 26, 2016, available at https://www.nytimes.com/2016/03/27/us/politics/donald-trump-transcript.html?_r=1.

²⁵ Michael Weiss, “When Donald Trump Was More Anti-NATO Than Vladimir Putin,” *The Daily Beast*, November 4, 2016, available at <http://www.thedailybeast.com/articles/2016/11/04/when-donald-trump-was-more-anti-nato-than-vladimir-putin.html>.

²⁶ Rosie Gray, “Trump Declines to Affirm NATO’s Article 5,” *The Atlantic*, May 25, 2017, available at <https://www.theatlantic.com/international/archive/2017/05/trump-declines-to-affirm-natos-article-5/528129/>.

²⁷ *Id.*

²⁸ Eugene Kiely, “Trump Misleads on Russia Hacking,” *Factcheck.org*, July 6, 2017, available at <http://www.factcheck.org/2017/07/trump-misleads-russia-hacking/>.

²⁹ Maggie Haberman & Mark Landler, “Trump Backed Off Putin Because ‘What Do You Do? End Up in a Fistfight?’,” *New York Times*, July 13, 2017, available at <https://www.nytimes.com/2017/07/13/us/politics/trump-russia-putin.html>.

³⁰ Michael Fuchs, Carolyn Kenney, Anna Perina & Francesca Van Doorn, “Why Americans Should Care About Russian Hacking,” *Center for American Progress*, Feb. 14, 2017, available at <https://www.americanprogress.org/issues/security/reports/2017/02/14/415073/why-americans-should-care-about-russian-hacking/>.

³¹ *Id.*

³² *Id.*

United States “hundreds of billions of dollars” and will lead to “truly significant, almost catastrophic failures if we don’t take action.”³³

A second mechanism through which foreign meddling can undermine national security is that foreign interests who engage in election spending and other forms of interference may be in a position to blackmail U.S. officials. Here, too, it is useful to draw an analogy to a conflict of interest in this Administration—the failure of former national security advisor Michael Flynn to disclose contacts with Russian officials. Flynn lied about these contacts to Vice President Pence. As a result, in the words of former acting attorney general Sally Yates, “General Flynn was compromised with respect to the Russians,”³⁴ and susceptible to blackmail by the Russian government.

This is not the first time that Flynn’s foreign entanglements raised national security risks. Flynn had previously failed to report that he was paid more than half a million dollars to lobby on behalf of the Turkish government—and he subsequently delayed a key military operation against the Islamic State that Turkey had opposed.³⁵

These examples also implicate the third way that foreign influence threatens national security: it undermines America’s legitimacy abroad. If America appears to be in the pocket of foreign powers, particularly corrupt leaders that do not respect democratic and human rights, that fractures U.S. alliances and weakens military and diplomatic efforts to promote peace and stability. As my colleague and I wrote in February, even the perception of foreign meddling could undermine the reputation and diplomatic strength of the United States:

“Even in the event that Trump does not allow his judgment to be clouded by his indebtedness to foreign countries and actors, the mere appearance of corruption on the part of the president and his dealings with foreign entities is enough to do lasting damage to the United States’ reputation on the world stage. In a February 17, 2017, press conference, Sen. John McCain (R-AZ), warned that people ‘are giving up on the West.’”³⁶

This is no small matter. Consider, for example, that earlier this year, President Trump reversed his position on the “one China” policy, and shortly thereafter the Trump Organization was rewarded with long sought-after trademarks by the Chinese government.³⁷ If foreign powers believe that American foreign policy is being determined by illicit means, allies have no reason to trust that bargains will be kept in good faith. Not only does this undermine American security, it undermines the U.S. as a global leader and as a promoter of free and democratic governments around the world.

³³ Owen Matthews, “Russia’s Greatest Weapon May Be Its Hackers,” *Newsweek*, May 7, 2015, available at <http://www.newsweek.com/2015/05/15/russias-greatest-weapon-may-be-its-hackers-328864.html>.

³⁴ “Full transcript: Sally Yates and James Clapper testify on Russian election interference,” *Washington Post*, May 8, 2017, available at https://www.washingtonpost.com/news/post-politics/wp/2017/05/08/full-transcript-sally-yates-and-james-clapper-testify-on-russian-election-interference/?utm_term=.b5edd03b220c.

³⁵ Vera Bergengruen, “Michael Flynn stopped military plan Turkey opposed – after being paid as its agent,” *McClatchy*, May 17, 2017, at <http://www.mcclatchydc.com/news/politics-government/white-house/article151149647.html#storylink=cpy>.

³⁶ See Liz Kennedy & Danielle Root, “Top 10 Risks and Remedies for Trump’s Conflicts of Interest,” *Center for American Progress*, February 24, 2017, available at <https://www.americanprogress.org/issues/democracy/reports/2017/02/24/426939/top-10-risks-and-remedies-for-trumps-conflicts-of-interest/>.

³⁷ See Carolyn Kenney & John Norris, “Trump’s Conflicts of Interest in China,” *Center for American Progress*, June 14, 2017, at <https://www.americanprogress.org/issues/security/news/2017/06/14/433915/trumps-conflicts-interest-china/>.

Although few of these examples directly implicate spending on campaigns, it's easy to imagine that they could. The same kind of influence that can be gained from investing in a public official's businesses (for example) can also be purchased by investing in their re-election. Since secret money is already flowing into our elections, this could already be happening out of sight from the American public and the entities charged with enforcing our campaign laws. Only better disclosure and stronger enforcement will ensure that our country is safe from this kind of interference.

The Solutions Contained in the DISCLOSE Act

The DISCLOSE Act fights the problem of illicit foreign money in elections by requiring greater transparency so that the identities of big political spenders are publicly known. Under the Act, organizations that previously concealed their donors would have to file reports with the Federal Election Commission within 24 hours once they have reached \$10,000 of political spending. They would have the option of either reporting all their donors, or establishing a separate fund for election-related spending and reporting the contributions to that fund. Donors who give less than \$10,000 in an election cycle would be excluded from disclosure.

These requirements work in tandem with other provisions of the DISCLOSE Act that crack down on the use of limited liability corporations (LLCs) and other organizations that donors use to hide their identities. The Act requires these shell companies to report the true source of their funds, making it much harder to hide election-related spending from public scrutiny.

Furthermore, having forced this spending into the open, the DISCLOSE Act would also strengthen rules that prohibit foreign national contributions. One current gap in those rules is a failure to explicitly define when money funneled through U.S. corporations should be treated as a prohibited foreign national contribution. To correct for this, the DISCLOSE Act provides that whenever a foreign national has the power to "direct, dictate, or control" decision-making about corporate political spending, or the corporation's U.S. interests, that spending will be subject to the prohibition. Furthermore, where a foreign government owns 5 percent or more of the voting shares of a company, or a foreign national owns 20 percent or more of the voting shares of a company, the DISCLOSE Act provides that that company will be subject to the ban on foreign national contributions and election spending.

These are common-sense solutions. Although there is no silver bullet in this fight, the DISCLOSE Act would make major progress in deterring and exposing foreign influence in our elections, and alleviating a threat to our national security and helping restore the integrity of our process and practice of self-government.

Enforcing the Existing Ban on Solicitation of Foreign Nationals

Finally, on a parallel track, Congress should take action on the recent discovery that officials working for President Trump's campaign, including his son, his son-in-law, and his campaign manager, met with foreign nationals who they were told were acting on behalf of the Russian government in order to obtain information damaging to Hillary Clinton as part of the Russian government's efforts to aid the election campaign of now-President Trump. Congress should: (1) continue to support Special Prosecutor Robert Mueller's investigation, including into this additional misconduct; and (2) accelerate congressional investigations into the Trump campaign and its solicitation of a foreign national.

Although there are many deficiencies in the existing law, direct solicitation or receipt of a thing of value from a foreign national is clearly and unequivocally prohibited.³⁸ Information about the meeting continues

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

to surface—including that a former Russian intelligence operative was in attendance.³⁹ However, there is *already* substantial publicly available information indicating that the law on the books was violated. A matter of this gravity deserves a thorough and expeditious investigation; not only because it implicates concerns about foreign nationals having leverage in U.S. politics, but because it does so at the highest levels of our government. Only by sending a clear message that no one is above the law can we protect our democratic institutions and the faith the public has in them.

³⁹ Ken Dilanian, Natasha Lebedeva & Hallie Jackson, “Former Soviet Counterintelligence Officer at Meeting With Donald Trump Jr. and Russian Lawyer,” *NBC News*, July 14, 2017, available at <http://www.nbcnews.com/news/us-news/russian-lawyer-brought-ex-soviet-counter-intelligence-officer-trump-team-n782851>.