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RULES AND ADMINISTRATION

United States Senate  
WASHINGTON, DC 20510

October 8, 2019

Ellen L. Weintraub, Chair  
Federal Election Commission  
1050 First Street NE  
Washington, D.C. 20463

Dear Chair Weintraub:

I write to request further information regarding the Commission's interpretation and enforcement of 52 U.S.C. § 30121, the Federal Election Campaign Act's (FECA) ban on foreign contributions to U.S. elections and the solicitation of such contributions. I am requesting additional information to clarify the fact that it is not only wrong - but also illegal - to solicit foreign assistance to diminish a domestic political opponent.

On Wednesday, September 25, the White House released a memorandum of the President's July 25 call with Ukrainian President Volodymyr Zelensky in which he solicited a foreign leader to investigate a political rival and indicated that he would direct the Attorney General to coordinate with the Ukrainians in any potential investigation. On the same day, the Department of Justice (DOJ) made a determination that the President did not criminally violate FECA after prosecutors reviewed a rough transcript of the July 25 call between President Trump and Ukrainian President Zelensky.

To be a crime, a FECA violation must have been committed knowingly and willfully and, except for campaign misrepresentations and certain coerced contributions, must have involved at least \$2,000 in a calendar year.<sup>1</sup> FECA violations that either: (1) do not present knowing and willful violations, or (2) involve sums below the statutory minimums for criminal prosecution, are handled non-criminally by your agency, the Federal Election Commission (FEC).

Federal law, FEC regulations, and precedent recognize that the foreign contribution and solicitation ban is not limited to contributions and solicitations of money. The law bans soliciting "a contribution or donation of money *or other thing of value*."<sup>2</sup>

A "contribution" is defined throughout campaign finance law to include "any gift, subscription, loan, advance, or deposit of money or anything of value."<sup>3</sup>

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<sup>1</sup> FECA crimes aggregating \$25,000 or more are five-year felonies, and those that involve illegal conduit contributions and aggregate over \$10,000 are two-year felonies. 52 U.S.C. § 30109(d)(1)(A), (D).

<sup>2</sup> 52 U.S.C. § 30121 (a)(1)(A), (a)(2)

<sup>3</sup> 52 U.S.C. § 30101(8)(A)(i)

The term "anything of value" includes "the provision of any goods or services without charge," such as "membership lists" and "mailing lists."<sup>4</sup> In prior cases, the FEC has concluded that "anything of value" includes such things as a state-by-state list of activists, and that polling data provided to a campaign constitutes a "contribution." In the specific context of the foreign-contribution ban, the FEC has concluded that nominal contributions that are difficult to quantify are also prohibited.<sup>5</sup> Based on these decisions and precedent, the Department of Justice Report On The Investigation Into Russian Interference In The 2016 Presidential Election concluded that "candidate-related opposition research given to a campaign for the purpose of influencing an election could constitute a contribution to which the foreign-source ban could apply." The Report also notes that campaigns can be assisted not only by funds, but by information, and that since campaigns frequently pay for opposition research, such information has monetary value.<sup>6</sup>

A Memorandum of Understanding between the DOJ and the FEC stipulates that when the DOJ declines to criminally prosecute a violation, but finds that there is a probable violation, the Department is required to refer the matter to the FEC. Reports indicate that the DOJ did not refer the matter and on October 2, I sent the Commission a letter requesting further information. In addition to the information requested on October 2, I respectfully request the following documents and information by October 18:

- From July 25, 2019, to the present, any documents relating to communications between the FEC (including any Commissioner or employee) and the Department of Justice (including any officer or employee) regarding any potential violations of 52 U.S.C. 30121 or its implementing regulations by the President, his personal attorneys, the Attorney General, or any other member of the Administration.
- A formal determination from the Commission as to whether the MOU between the Department and the FEC is active, and the dates of any cases referred to the Commission in the last 15 years.
- Information regarding how the Commission defines a "thing of value" and "anything of value" and any relevant information on recent cases in which the FEC has applied 52 U.S.C. § 30121, *or* deadlocked on whether or not to apply the ban.

Thank you for your prompt attention to this important matter.

Sincerely,



Amy Klobuchar  
United States Senator

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<sup>4</sup> 11 C.F.R. § 100.52(d)(1)

<sup>5</sup> Federal Election Commission, Advisory Opinion 2007-22 (Hurszy), (December 3, 2007)

<sup>6</sup> Mueller Report, pg. 187