

UkraineGate Campaign Finance Violations: No “Quid Pro Quo” Necessary & July 25 Phone Call Only “Tip of the Iceberg”

On September 23, 2019, Common Cause filed a [complaint](#) with the Department of Justice (DOJ) and the Federal Election Commission (FEC) alleging reason to believe that President Trump, Rudy Giuliani and other political operatives violated the federal law ban on soliciting, or substantially assisting the solicitation of, a “contribution” from a foreign national. The following is a summary of the law and facts detailed in the complaint, as well as some additional background information.

A Review of Existing Campaign Finance Law

- The Federal Election Campaign Act (FECA) prohibits a foreign national from directly or indirectly making a contribution of “money or **other thing of value**” in connection with a U.S. election, **and also prohibits a person from soliciting** or accepting such a contribution.
- “Soliciting” a contribution from a foreign national is a violation of FECA even if foreign national does not actually make a contribution. **No quid pro quo is necessary for a violation to occur.**
- FEC regulation prohibits “provid[ing] **substantial assistance** in the solicitation” of a contribution from a foreign national in connection with a U.S. election.
- FECA **defines “contribution”** to include “any gift ... of money or **anything of value** made by any person for the purpose of influencing any election for Federal office.”
- FEC regulation **defines “to solicit”** to mean “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution ... or otherwise provide anything of value.” “A solicitation is an oral or written communication that, **construed as reasonably understood in the context in which it is made**, contains a clear message asking, requesting, or recommending that another person make a contribution ... or otherwise provide anything of value. A solicitation may be made directly or indirectly.”
- Two requirements for criminal prosecution of FECA violations that are **not required for impeachment by Congress** or for civil enforcement by the FEC: Proof beyond a reasonable doubt (1) that the defendant acted “knowingly and willfully,”—i.e., defendant knew generally that his conduct was unlawful and (2) that the amount of the violation was \$2,000 or more for a misdemeanor charge or \$25,000 or more for a felony charge.

Mueller: Opposition Research Could Constitute “Contribution”

- Special Counsel Mueller considered charging Donald Trump Jr., Paul Manafort and Jared Kushner with violating ban on soliciting a contribution from a foreign national for their June 2016 meeting with Russians at Trump Tower to receive opposition research on Hillary Clinton.
- The Mueller Report (p. 184) began an overview of the FECA ban on soliciting a contribution from foreign nationals by quoting Supreme Court Justice Brett Kavanaugh’s [lower court decision in Bluman v. FEC](#), upholding the foreign contribution ban against First Amendment

challenge: “[T]he United States has a compelling interest ... in limiting the participation of foreign citizens in activities of democratic self-government, and in thereby preventing foreign influence over the U.S. political process.”

- Mueller explored “threshold legal question” of whether providing “documents and information” to a campaign would constitute a “contribution.” Mueller noted the “foreign contribution ban is not limited to contributions of money.” It includes a contribution of “money or *other thing of value.*” Mueller wrote: “The phrases ‘thing of value’ and ‘anything of value’ are broad and inclusive enough to encompass at least some forms of valuable information.”
- Mueller 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.*** A campaign can be assisted not only by the provision of funds, but also by the provision of derogatory information about an opponent. Political campaigns frequently conduct and pay for opposition research. ***A foreign entity that engaged in such research and provided resulting information to a campaign could exert a greater effect on an election, and a greater tendency to ingratiate the donor to the candidate, than a gift of money or tangible things of value.***”
- Mueller decided not to prosecute Trump Jr., Manafort and Kushner because of the difficulty he believed he’d have proving beyond a reasonable doubt (1) that they knew that solicitation of a contribution from a foreign national was illegal and (2) that the information they solicited was worth at least \$2,000—***factors not relevant to Congress’ determination of whether President Trump’s campaign finance law violations constitute impeachable offenses.***

July 25 Phone Call Only the Tip of the Iceberg

- President Trump, in a July 25 phone call, seemingly solicited a “contribution” from Ukraine President Zelensky in the form of an investigation into Joe Biden.
- President Trump’s July 25 phone call was not an isolated incident—it was the ***tip of the iceberg.*** As detailed in the Common Cause [complaint](#), Rudy Giuliani and others (Victoria Toensing, Lev Parnas and Igor Fruman) have for months been meeting with Ukraine officials urging them to investigate Joe Biden. President Trump has seemingly for months directed and conspired with Giuliani in the illegal solicitation of a contribution from foreign nationals.
- The [whistleblower complaint](#) confirms that the July 25 phone call was the ***tip of the iceberg***—that “over the past four months, more than half a dozen U.S. officials” had informed the whistleblower of various facts related to President Trump’s solicitation of foreign interference in the 2020 presidential election.
- Rudy Giuliani is referenced five times in the [rough transcript](#) of the July 25 call. Giuliani [stated](#) in May 2019: “My only client is the president of the United States[.] He’s the one I have an obligation to report to, tell him what happened[.]” that his Ukraine efforts have the ***full support of Trump***, and that ***Trump “knows*** what I’m doing, sure, as his lawyer.” Giuliani was representing the interests of ***candidate Trump, not the interests of the American people.***

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