

New Friend Request: Russia, Cyber-Warfare, and the Threat to U.S. Elections

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Introduction

The 2016 presidential election was a historical event, politically and culturally. In front of cameras at rallies in every city, candidates were competing for the most powerful position in the United States: Commander in Chief. We later found out some were playing dirtier than others. Ad and campaign videos splashed across T.V.s, hoping to sway voters their way. Un-suspecting Americans trusted the process and had no reason to think foreign entities were secretly at work. Social media was flooded with headlines and clickbait eerily outfitted to a person's ideological standpoint. Protesters filled the streets; tensions were at an all-time high and so were the stakes. The American people all believed Donald Trump and Hillary Clinton were set to compete in a fair and open election within the confines of a democratic and lawful system. This electoral process has taken place in the U.S. for the last 231 years without major incident. Our founding fathers foresaw a potential threat to our democracy by foreign nations if left unchecked. George Washington proclaimed in his final farewell address of 1796,

“Against the insidious wiles of foreign influence ... the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government”.¹

¹ George Washington, *George Washington Papers*, Letterbooks, Series 2, 1754-1799: Letterbook 24, April 3, 1793 - March 3, 1797, <https://www.loc.gov/resource/mgw2.024/?sp=229&st=text>

The bedrock and pillar of freedom that defines American society is the right granted to every United States citizen to vote and have their voices heard fairly.

Government agencies in conjunction with lawmakers are entrusted with protecting citizens and institutions from foreign meddling in our domestic elections. Corruption, smear campaigns and greed are nothing new in politics but at what point does it become illegal and infringe on U.S. law? Behind the scenes of Facebook ads and tweets, something more disturbing and diabolical was taking place. The American election and society itself were under attack. Special counsel Robert Mueller's groundbreaking report published in 2018 shed a fierce light into the foreign interference and meddling that took place during the 2016 elections. The report was able to identify multiple Russian agencies and actors involved in a scheme to infiltrate and manipulate our elections. The goal of these foreign advisories was to penetrate the hearts and minds of vulnerable, un-suspecting Americans by causing civil strife within communities across the country and divide the nation. Their motive was to smear Hillary Clinton in order to sway the election towards Donald Trump.²

However, Russia was not the only actor implicated and found guilty of foreign meddling. Domestically, U.S. lobbyists and those with connections to the government were also found guilty of corrupt and deceitful practices that violated U.S. laws related to foreign meddling. This paper highlights some of the events of Russian interference in the 2016 presidential election as described in the report prepared by special counsel, Robert Mueller. This paper will focus on the Foreign Agents Registration Act and its purpose. In addition, it will highlight some of the

² Robert S. Mueller, *Report on The Investigation Into Russian Interference In The 2016 Presidential Election* (2019), <https://www.justice.gov/storage/report.pdf>

indictments issued by the grand jury that was convened as part of Mueller's investigation, and the prosecutions related to this investigation. The evaluation of laws and cases related to this issue are explored to see what still needs to be done to further protect the integrity of American elections.

Foreign Agent Registration Act Makes a Comeback

Currently the most significant and relevant law protecting U.S. elections from foreign meddling is the Foreign Agents Registration Act ("FARA") 22 U.S. Code Subchapter II—Registration of Foreign Propagandists. FARA was enacted in 1938 to prevent Nazi and foreign propaganda from spreading within the U.S. and thwarting any proposed support for Adolph Hitler proceeding WWII.³ Prior to 2016, FARA was a rarely used statute but was propelled to the forefront after the Robert Mueller report was published. Before Mueller's report, the Department of Justice brought only seven criminal prosecutions under FARA between 1966 and 2015.⁴ What makes a "FARA" case difficult to prosecute is the requirement that the person(s) involved must "willfully" violate FARA and know they are committing a crime by not registering in accordance with the act's requirements.⁵

According to Section 611 of FARA, its purpose is to insure the people of the United States are informed of the source of information (propaganda)

³ *Foreign Agents Registration Act: An Overview*, (Mar. 7, 2019), Congressional Research Service, <https://fas.org/sgp/crs/misc/IF10499.pdf>.

⁴ David Laufman, *Paul Manafort Guilty Plea Highlights Increased Enforcement of Foreign Agents Registration Act*, LAWFARE (2018), <https://www.lawfareblog.com/paul-manafort-guilty-plea-highlights-increased-enforcement-foreign-agents-registration-act>.

⁵ 22 U.S. Code § 618, *Enforcement and penalties (a)(1)*, GOVINFO, <https://www.govinfo.gov/app/details/USCODE-2011-title22/USCODE-2011-title22-chap11-subchapII-sec618>.

and the true identity of persons attempting to influence U.S. public opinion policy and laws.⁶ FARA requires any person, lobbyist, and/or private citizen within the U.S. working on behalf of a “foreign principal” to register with the Department of Justice and submit copies of all written agreements and terms and conditions and proposed activities under the agreement, including any funds or expenditures received by foreign agents, a complete list of registrant employees and nature of work, and the nature of the amount of contributions, income, money or thing of value the registrant has received within the preceding sixty days. This ensures transparency of a foreign entity’s efforts to influence U.S. politics.

How FARA defines a person, agent, and foreign entity is broad and encompassing. Any “person” working on behalf of a “foreign principal” that seeks to influence U.S. public opinion or elections must register under FARA. The term “person” is defined as an individual, partnership, association, corporation or any of the other combination of individuals.⁷ The term “foreign principal” includes any government of a foreign country, political party, organization or corporation having its principal place of business in a foreign country.”⁸ The term “agent of a foreign principal” means any person who acts as an agent, representative, employee, or servant, under the direction or control of a foreign principal. Agents working on behalf of a foreign principal, such as Russia, can range anywhere from lobbyists, government officials to law firms.

⁶The United States Department of Justice, *What Is The Purpose Of FARA?* (2017), <https://www.justice.gov/nsd-fara/general-fara-frequently-asked-questions#2>.

⁷ 22 U.S.C. § 618 (a), GOVINFO, <https://www.govinfo.gov/app/details/USCODE-2011-title22/USCODE-2011-title22-chap11-subchapII-sec618>.

⁸ 22 USC § 611(b), GOVINFO, <https://www.govinfo.gov/app/details/USCODE-2011-title22/USCODE-2011-title22-chap11-subchapII-sec618>.

Political activities by an agent of a foreign principal include any actions that seek to influence an official government agency or section of the public with the intent to change domestic or foreign policy. This can include manipulating public perception on certain issues or influencing a political election.⁹ Essentially, any person who is not a citizen of the United States or permanent resident that seeks to influence U.S. politics or policy, directly or in-directly, must register with the DOJ about activities and finances. Anyone who fails to do so is in violation of the law. Under Section 618 of FARA, any person who willfully violates any provisions or makes false statements, shall, upon conviction, be punished by a fine of no more than \$10,000 or by imprisonment for not more than five years, or both.¹⁰

Robert Mueller's FARA Indictments of Trump Allies

In the wake of special counsel Robert Mueller's report, two high profile associates of President Donald Trump were found guilty of violating FARA. Mueller's in-depth investigation took place with the assistance of multiple government agencies and Congress, including the U.S. Senate, House Intelligence Committees, and the Senate Judiciary Committee. It began with an inquiry into foreign meddling in the 2016 election and subsequently led to over thirty-seven indictments of individuals who violated U.S. laws.¹¹ President Trump has not been indicted on any formal charges relating to accusations he conspired with the Russian

⁹ 22 USC § 611(o), *Foreign Relations and Intercourse*, GOVINFO, <https://www.govinfo.gov/app/details/USCODE-2009-title22/USCODE-2009-title22-chap11-subchapII-sec611>.

¹⁰ 22 U.S. Code § 618. Chapter 11, *Enforcement and Penalties*, <https://www.law.cornell.edu/uscode/text/22/618>

¹¹ *Key Findings of the Mueller Report*, AMERICAN CONSTITUTION SOCIETY, <https://www.acslaw.org/projects/the-presidential-investigation-education-project/other-resources/key-findings-of-the-mueller-report/>

government to influence the election to date. However, Mueller did bring charges against two of President Trump's close associates, former campaign chairperson, Paul Manafort, and former national security advisor, Michael Flynn. Both men were indicted and found in violation of 22 U.S.C. §611 from activities proceeding the election and while President Trump was in office.¹²

In Paul Manafort's case, he was lobbying on behalf of political parties in Ukraine in order to influence U.S. public policy with pro-Russian positions. Prosecutors accused him of conspiracy against the United States for failure to disclose that he was lobbying for Ukraine.¹³ This led to the revelation that millions of dollars were being funneled through offshore accounts from foreign governments into Manafort's hands. Prior to 2016, Manafort was paid over \$60 million by Ukrainian oligarchs to promote Ukrainian and Russian interests in the U.S. According to the indictment against Manafort, he arranged meetings between top U.S. and Ukrainian officials and strategically placed articles promoting Ukraine in American newspapers. Mueller also claims in Part II of his report that Manafort and his associate, Rick Gates, shared critical polling data and voter information from swing states with Russian spies leading up to the election.¹⁴ Manafort lied to the F.B.I. about these activities and denied any wrongdoings.

What made this case so strong was the fact that Manafort *deliberately* avoided registering as a foreign agent. A person must "willingly" know

¹² Id.

¹³ *U.S. v. Paul J. Manafort, Jr. & Richard W. Gates III*, (2017), <https://www.justice.gov/file/1007271/download>.

¹⁴ Robert S. Mueller III, *Report on The Investigation Into Russian Interference In The 2016 Presidential Election* Volume II (2019), https://www.justice.gov/storage/report_volume2.pdf.

they are committing a crime to be found in violation of FARA. Robert Mueller was able to establish that Manafort willfully and knowingly failed to follow the registration requirements under FARA. This was established after an extensive investigation and interviews with Manafort's many business acquaintances. Mueller states: "Manafort viewed secrecy for himself and for the actions of his lobbyists as integral to the effectiveness of the lobbying offensive he orchestrated for Ukraine. Filing under the Foreign Agents Registration Act would have thwarted the secrecy Manafort sought in order to conduct an effective campaign for Ukraine to influence both American leaders and the American public." Manafort took deliberate steps to avoid disclosing his lobbying efforts under the FARA. To illustrate, Manafort hired "Company E" in 2007 to lobby in the United States for the Ukrainian government. Manafort tried to dissuade "Company E" from filing under FARA. Only after Manafort ceased to use "Company E" in the fall of 2007 did "Company E" disclose its work for Ukraine, in a belated filing under the Act in 2008".¹⁵ Manafort ultimately pled guilty to conspiracy to defraud the U.S. for failing to register as an agent of Ukraine. This shed a huge spotlight on the underworld of foreign meddling and gave FARA a new life.

Trump Tower Meeting and the Murky Waters of Foreign Campaign Contributions

In a separate incident, Manafort was also involved in the infamous 2016 meeting inside Trump Tower. The meeting included himself, Trump Jr., Jared Kushner, Rob Goldstone and Russian attorney and Kremlin associate Natalia Veselnitskaya. Rob Goldstone is a Russian businessperson with ties to the Kremlin as well as connections to Russian counterintelligence operations. The men on President Trump's side

¹⁵ *U.S. v. Paul J. Manafort, Jr. & Richard W. Gates III*, *supra* note 13.

attended the meeting under the assumption they would be receiving dirt on political rival, Hilary Clinton.¹⁶

Correspondences beginning on June 3, 2016 between Trump Jr. and Rob Goldstone indicate that Goldstone promised incriminating information on Clinton. The email sent to Trump Jr., later made public, illustrates Goldstone making an offer to provide the Trump campaign with official documents and information that would incriminate Clinton and that “would be very useful to your father”. Goldstone states, “[t]his is obviously very high level and sensitive information but is part of Russia and its government’s support for Mr. Trump”.¹⁷ The source of this alleged dirt was the Crown Prosecutor of Russia. Goldstone asked for the best way to deliver this information and Trump Jr. replied, “If it’s what you say I love it”.¹⁸ The circumstances of this exchange are prohibited and considered a felony under Title 52 U.S.C. § 30121, relating to contributions and donations by foreign nationals. This law, similar to FARA, deals directly with voting and elections. The statute makes unlawful for a foreign national to “directly or indirectly” make a contribution or donation or thing of value, express or implied, in connection with a Federal, State, or local election. It also prohibits a person to “solicit, accept, or receive” a contribution or donation from a

¹⁶ Ryan Goodman, *Guide to the Mueller Report’s Findings on “Collusion,”* Just Security (April 29, 2019), <https://www.justsecurity.org/63838/guide-to-the-mueller-reports-findings-on-collusion/>.

¹⁷ Mueller III, *supra* note 14.

¹⁸ *Materials from Inquiry into Circumstances Surrounding Trump Tower Meeting*, Senate Judiciary Committee (2018), <https://www.judiciary.senate.gov/press/releases/materials-from-inquiry-into-circumstances-surrounding-trump-tower-meeting?peek=JnLNybHsog26L1cFm8AR63234MDsncYLzYhn7Ze9%2FdDXzs%2B6>.

foreign national. The term foreign national includes an actor that is of a foreign political party, foreign government, or partnership.

There seems to be multiple violations of the law relating to this Trump Tower meeting due to the fact it is unlawful for any foreign national to make a contribution, donation or “thing of value” that applies to a U.S. election. One could presume that obtaining dirt on Hillary Clinton is a “thing of value” since the Trump campaign could arguably benefit from it. While the scope of Title 52 concerning disclosure of campaign funds is beyond the scope of the article, a “contribution” can mean a thing of value in excess of \$2,000 per calendar year punishable by not more than one year in jail, and amounts of \$25,000 or more per year are punishable as a felony of not more than five years in prison.¹⁹ In order to successfully prosecute such a charge, U.S. prosecutors would have to show that the information being solicited was a “thing of value”. It is hard to determine exactly the value of this information provided by the Russian actors because the details of the purported incriminating information are unknown.

Trump Jr. agreed to accept this incriminating information on a political rival from a foreign entity. He agreed in the emails to set up a meeting under the assumption he would be discussing issues relating to the 2016 election and receiving information on Hillary Clinton. Thus, in this author’s opinion, such actions constitute a violation of 52 U.S.C. § 30121(2), which prohibits individuals to “solicit, accept or receive a contribution from a foreign national.” Although it seems there are many indicators of illegal and unlawful activities in order to prove a violation of Title 52, the actor must “willfully and knowingly act in an illegal

¹⁹ 52 U.S.C. § 30109(d), Federal Election Campaigns, [https://uscode.house.gov/view.xhtml?req=\(title:52%20section:30109%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:52%20section:30109%20edition:prelim)).

manner”. Mueller states that his investigation had not developed evidence that the participants in the meeting were familiar with the foreign contribution and donation ban. It must also be determined that a thing of value was being offered or solicited. Both of these elements are difficult to prove in these instances therefore a conviction was not guaranteed.

Social Media Under Attack

The Mueller report also brought charges against thirteen Russian nationals and three Russian companies for attempting to interfere in the U.S. presidential election in 2016. The defendants are accused of conducting “informational warfare against the United States” with political and electoral interference through social media beginning in 2015. The main conspirator is the Internet Research Agency also known as the IRA. This entity has ties to the Kremlin government and is labeled a Russian troll farm. The IRA is allegedly funded by Vladimir Putin’s business associate and close friend Yevgeniy Prigozhin.²⁰ In his report, Mueller accuses the IRA of “posing as U.S. persons, creating false U.S. personas and operated social media pages and groups designed to attract U.S. audiences. These fictional groups and pages, which addressed divisive U.S. political and social issues, falsely claimed to be controlled by U.S. activists when, in fact, they were controlled by the Russian defendants.” The Mueller report begins by saying it is strictly unlawful for any foreign entities to engage, influence or interfere in any U.S. election. It is required by law that any foreign national register with the Attorney General and fulfill all requirements under FARA.²¹

²⁰ *U.S. v. Internet Research Agency LLC*, 1:18-cr-00032 (D.C. 2018), Court Listener, <https://www.courtlistener.com/docket/6386795/united-states-v-internet-research-agency-llc/>.

²¹ 22 USC § 611(b).

The Department of Homeland Security worked jointly with the Mueller investigation and published a report from the Intelligence Community Assessment stating:

“Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russia’s goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency...Putin and the Russian government developed a clear preference for President- elect Trump”²²

The IRA was formally indicted on charges to defraud the United States for “attempts to obstruct the lawful functions of the United States Government through fraud and deceit, including by making expenditures in connection with the 2016 U.S. presidential election without proper regulatory disclosure; failing to register as foreign agents carrying out political activities within the United States and obtaining visas through false and fraudulent statements”²³ Specifically, the IRA is accused of purchasing over 3,500 advertisements on Facebook and creating numerous fraudulent accounts. Russian specialists disguised as Americans created fake social media accounts about controversial subjects within the country such as immigration and the economy. The objective was to show support for Donald Trump and to vilify Hilary Clinton.

²² *Exposing Russia’s Effort to Sow Discord Online: The Internet Research Agency and Advertisements*, U.S. House of Representative’s Permanent Select Committee on Intelligence, <https://intelligence.house.gov/social-media-content>.

²³ *U.S. v. Internet Research Agency*, *supra* note 20.

The method or device was to manipulate Americans, pit them against each other and sow political discord in the American electoral process. The defendants staged fake political rallies across the country disguised as grassroots groups. Fake accounts represented a multitude of hot button topics such as immigration (“Secured Borders”), Black Lives Matter (“Blacktivist”), and religion (“United Muslims of America” and “Army of Jesus”). These accounts reached 29 million Americans and over 126 million people. For example on July 10, 2016 a “Black Lives Matter” protest rally was held in Dallas. At exactly the same place and time a “Blue Lives Matter” counter protest had been organized across the street. The “Blue Lives Matter” protest was later discovered to be organized by a Facebook group called the “Heart of Texas” controlled by IRA. Unbeknownst to protesters they had been strategically placed there by Russians to help further their mission of divide and conquer.²⁴ The IRA controlled over 3,814 accounts on Twitter that had tens of thousands of followers. Disturbingly many of these fraudulent tweets were re-tweeted by high profile U.S. figures such as Sean Hannity, former U.S. Ambassador to Russia, and Michael Flynn Jr.²⁵

Mueller’s report established these accounts were used to spread propagandist messages and deceive the American public. In or about October 2016, an account controlled by the IRA operating under the name “Woke Blacks” posted the following on Instagram: “A particular type of hype and hatred for Trump is misleading people and forcing them to vote for Killary. We cannot resort to the lesser of two devils. Then we’d be better off without voting at all”.²⁶ This sort of rhetoric was devised to suppress the minority vote who traditionally tends to vote

²⁴ Id.

²⁵ *Exposing Russia’s Effort to Sow Discord Online: The Internet Research Agency and Advertisements*, *supra* note 22.

²⁶ *U.S. v. Internet Research Agency*, *supra* note 20.

Democrat. The goal was not to get African Americans to vote for Trump, but ultimately not to vote at all!

The Russian defendants also paid for advertisements on the social media platform Facebook and Twitter claiming that the Democratic Party was committing voter fraud. In or about August 2016 “defendants posted that allegations of voter fraud were being investigated in North Carolina” on the IRA controlled Twitter handle @TEN_GOP. This account was disguised as a U.S. political party under the unassuming name Tennessee GOP. These tactics confused, misled and deceived the American people in regards to the integrity of the voting system.²⁷

Deputy Attorney General Rod Rosenstein said it best when commenting on the charges against the IRA and other Russian actor, “this indictment serves as a reminder that people are not always who they appear to be on the internet and this indictment alleges that the Russian conspirators want to promote discord in the U.S. and undermine public confidence in democracy.”²⁸

Conclusion

What can we do to protect integrity of U.S. elections from future threats? Said another way, what is being done now to protect our institutions from future attacks? The unfortunate reality is lawmakers have not improved or presented any aggressive legislation that addresses the electoral cyber threats of the 21st century. FARA is an archaic law with many loopholes that needs major overhauling in the wake of the Mueller investigation. FARA only requires that foreign agents register with the Department of

²⁷ Id.

²⁸ *Grand Jury Indicts Thirteen Russian Individuals and Three Russian Companies for Scheme to Interfere in the United States Political System*, U.S Department of Justice, <https://www.justice.gov/opa/pr/grand-jury-indicts-thirteen-russian-individuals-and-three-russian-companies-scheme-interfere>.

Justice and complete proper forms that entail their purposes and financial dealings. However, it lacks the statutory specificity outlawing particular behaviors and, as a result, is left up to interpretation.

Some progress has been made with a proposed amendment that would close some of the loopholes that exists. The new bill uses specific language that addresses inconsistencies in current statutes and pinpoints issues that occurred in our previous presidential election. Representative Elissa Slotkin-MI (D) introduced the bill on April 4, 2019 to combat foreign interference in future elections. The bill H.R. 2153-PAID AD Act seeks to “prevent foreign adversaries from influencing election by prohibiting foreign nationals from purchasing at any time a broadcast, cable, or satellite communication that mentions a clearly identified candidate for Federal office”.²⁹ The acronym “PAID AD Act” stands for “Preventing Adversaries Internationally from Disbursing Advertising Dollars Act”. This bill would increase the latitude of the law to prohibit any foreign expenditures that “promote, support, attack, or oppose” candidates running for office in the forms of ads and digital communications.³⁰

The current law only prohibits foreign financing of ads that directly support or oppose candidates running for office. In the Russian meddling case, their tactics included voter suppression, confusion and misleading voters to influence the election. What distinguishes the proposed act is that it addresses the online threat. Section 319 seeks to include online platforms as a violation of the current Title 52 U.S.C. 30121, et. seq., Contributions and Donations by Foreign Nationals. Any foreign entity would be barred from financially purchasing political advertisements on

²⁹ *House Bill PAID AD ACT H.R. 2135*, (April 08, 2019), GOVTRACK, www.govtrack.us/congress/bills/116/hr2135.

³⁰ *Id.*

the web including public websites or digital applications that have more than 50,000,000 U.S. hits in the last 12 months. Furthermore, it would bar foreign adversaries from purchasing any ads, including broadcast or digital, during an election year that mention any governmental or domestic issues within the U.S.³¹ The bill was passed in the House but is unlikely to pass in the Senate. It has faced a lot of opposition especially from Republicans. Mitch McConnell (R-Ky.) labeled the bill the “Democrat Politician Protection Act”³² and has refused to consider any legislation to protect citizens from foreign meddling during elections. Americans having the right under the law to be protected from misleading foreign intrusion seems like a no brainer but unfortunately cannot make it past party lines.

³¹ *Id.*

³² Maggie Miller, *Klobuchar, Warner introduce bill to limit foreign involvement in US political ads*, THE HILL (June 25, 2019), <https://thehill.com/policy/cybersecurity/450287-sens-klobuchar-warner-introduce-legislation-to-limit-foreign-involvement>.