



**When Mueller Concludes:
If Conspiracy – by Whatever Name – Occurred,
Congress Must Ensure Accountability**

For two years, the country has been roiled by allegations concerning Russia’s attack on the 2016 election and any connections between President Donald Trump’s campaign and that attack. Trump has moved from asserting that he had no connections to Russia, to claiming he had connections but did nothing wrong, and finally to declaring that “collusion is not a crime.” Special Counsel Robert Mueller is investigating these issues, and that investigation is not just about the Trump campaign’s coordination with Russia; it is about coordination to violate the law. Our accompanying report, [*When Mueller Concludes: If Conspiracy — by Whatever Name — Occurred, Congress Must Ensure Accountability*](#), provides the new Congress with relevant legal analysis to build on the Special Counsel’s investigation. In particular, it explains why this type of conspiracy can constitute many different crimes, can justify impeachment, and cannot be defended as First Amendment activity.

Congress has yet to examine much of the potentially criminal conduct identified by the Special Counsel. His investigation appears likely to yield more facts for Congress to consider as it takes up its constitutional responsibility to assess what happened in 2016, what reforms are necessary to prevent it from happening again, and — if the President was involved — the appropriate measure for accountability.

Mueller has indicted several Russians for election interference that favored Trump, and Trump associates who coordinated with them are the subjects of intense investigation. Current Department of Justice policy may preclude indictment of a sitting president. That policy recognizes that the key check on presidential wrongdoing is political accountability — exercised by Congress through investigation, public hearings, censure, legislative reform, and even impeachment, and by the American people, through their elected representatives and at the voting booth.

Working with a foreign power to influence a federal election is a serious — and criminal — transgression that requires stringent accountability. If Trump, his campaign, or his associates coordinated with Russia to further its criminal interference with the 2016 election, it would constitute a “conspiracy” — a conspiracy to commit not just *a* crime, but potentially *many* crimes.

- Campaign officials who conspired with foreign officials to undermine a federal election would be guilty of conspiracy to defraud the United States, a felony offense.
- By accepting a “thing of value” — in this case, information hacked from a political opponent’s servers — from a foreign source, Trump or others in his campaign could have violated the Federal Election Campaign Act.
- Campaign officials also could have violated the law by aiding or abetting violations of the Computer Fraud and Abuse Act, which criminalizes unlawfully accessing and obtaining information from a protected computer (commonly known as “hacking”), and makes it a felony to do so “in furtherance of any criminal or tortious act” in violation of other laws, such as campaign finance violations, state tort laws, or state privacy statutes.
- Correspondence with foreign government agents to “defeat the measures of the United States” may constitute a felony under the Logan Act.
- Various federal bribery statutes would be triggered if the Trump campaign offered to engage in any “official acts” in return for any assistance with his presidential campaign.
- If campaign officials knew that others had committed these felonies and took affirmative steps to conceal that fact from authorities, they could be guilty of misprision of a felony even if they did not participate in any of these offenses.

Despite contrary arguments from the President’s legal team, the First Amendment doesn’t immunize him from accountability for this conduct. As then-Judge Brett Kavanaugh wrote in 2011, the Supreme Court has made “plain — indeed, beyond rational debate” that the government’s interest in precluding foreign influence over our elections prevents a First Amendment defense here. The Framers, after all, designed the United States Constitution to *resist* foreign influence over the United States government.

The new Congress must consider all the facts surrounding any ties between President Trump and Russia’s attack on the 2016 election, including findings that continue to emerge from the Special Counsel’s work. It must assess that factual record, and if it establishes wrongdoing by the President, determine how to hold him accountable, including whether to seek his impeachment for “high crimes and misdemeanors.” Cooperation with a foreign power to subvert the most foundational expression of our sovereignty — the election of our chief executive — is, perhaps, the quintessential abuse of public trust that our founders thought warranted removal from office.