

Adversarial Avenues

Ten bipartisan ways to make a bill like S. 1 close loopholes autocrats exploit to meddle in U.S. politics

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Introduction and Summary

In his push for bipartisan efforts on voting rights legislation, Senator Joe Manchin (D-WV) [warned](#) that “the lack of transparency in many campaign finance rules provides multiple avenues for foreign and national adversaries to meddle in the American political system.” These loopholes might be called the “adversarial avenues” of malign finance. Manchin went on to explain that this is why he supports two campaign finance provisions included within the [For the People Act](#) (S. 1): The [DISCLOSE Act](#) and the [Honest Ads Act](#).

Manchin is absolutely right. The most comprehensive research on [covert foreign money](#) classified by legal avenue more than 100 cases—adding up to more than \$300 million over the past decade—of authoritarian regimes such as Russia and China funneling money into democratic processes as a geopolitical weapon. Strikingly, 83 percent of this activity was enabled by seven legal loopholes that were identified in this research and are now being [actively tackled](#) by the [European Parliament](#). Two of those seven vulnerabilities would be addressed by DISCLOSE and Honest Ads, which would impose financial transparency on “dark money” non-profits and online political ads, respectively.

But foreign powers do not stop there. As President George Washington warned in his [farewell address](#), they bring “insidious wiles” to their tradecraft of foreign influence. Autocrats invent and exploit cunning ways to secure political power, devising creative tricks to interfere in elections at home and abroad, often through some degree of legal participation by people within the target country. Indeed, a recent [U.S. intelligence assessment](#) found that in the 2020 election the Kremlin’s main innovation since 2016 was more collaboration with U.S.-based conduits. That is why, in addition to Thomas Morley’s and my [year-long research project](#) on malign finance, Jessica Brandt and I worked with a bipartisan team of legal experts to develop [legislative proposals](#) that would outlaw U.S. participation in foreign interference.

Drawing from this extensive body of research developed over the past two years, 10 policy proposals would further address the “multiple avenues for foreign and national adversaries to meddle in the American political system.” The first five proposals offer ways to more thoroughly approach interference issues already under consideration in S. 1, while the second five proposals introduce new resilience measures for consideration.

Part I: Stronger Approaches to Issues Under Consideration

1. **Thing of value:** Further broadening the definition of prohibited foreign political contributions to cover not only “non-public information relating to a candidate” but also any “intangible, difficult-to-value, uncertain, or merely perceived benefits” would outlaw additional forms of potential interference such as Chinese purchases of farm products in swing states for purposes of influencing an election.
2. **Reporting foreign contacts:** Strengthening the requirement of U.S. campaigns to tell law enforcement about offers of assistance from foreign powers could cover a broader range of threats by removing the exemption for contacts with foreign election observers, clarifying a broad definition of agents, mandating reporting by big donors, and more narrowly scoping rules to avoid closing off space for benign foreign relations.
3. **Non-profit transparency:** Complementing the DISCLOSE Act—which would not affect 501(c)(3) charitable organizations—by also making 501(c)(3)s disclose donations from foreign governments would help alleviate risks such as pass-through to 501(c)(4)s, influence over think tanks, and interference via socially divisive issue ads.
4. **Candidates’ tax returns:** Expanding the requirement that presidential and vice-presidential nominees from the two major political parties disclose their tax returns by making the law also cover independent and third-party candidates (which have been supported by Russia in the past) would facilitate public scrutiny of self-funding billionaires who often enter races late and refuse to disclose their tax returns (as Ross Perot and Michael Bloomberg did). Further risks could be mitigated both by extending tax disclosure requirements to any of the president’s or vice president’s family members who have senior campaign or executive branch positions and by granting Congress the clear authority to compel the tax disclosure by Treasury in the event of non-compliance.
5. **Presidents’ blind trusts and informal custodians:** Eliminating the exemption enabling presidents to hide the identities of their business partners and the values of their assets and liabilities by placing them in a blind trust would more comprehensively and reliably give the public visibility into presidents’ financial entanglements. Extending disclosures to cover presidential assets held by cronies through informal custodial arrangements would protect against a secrecy tactic commonly exploited by kleptocrats.

Part II: New Proposals for Related Issues

6. **Foreign emoluments:** Enacting a practical and actionable transparency and enforcement mechanism could help make the U.S. constitution’s foreign emoluments clause operable. One way to do this would be amending the Foreign Gifts and Decorations Act to make presidents (and any businesses they own) publicly disclose the details of any income coming from foreign governments or their proxies. Within 60 days of any such disclosure, unless Congress consents to the foreign emolument, the president would have to hand it over to the U.S. Treasury.
7. **Collaboration with foreign interferers:** Prohibiting American presidents, candidates, and campaigns from collaborating with foreign nationals to influence a U.S. election would help deter U.S.-based collaboration like the strategy exploited by the Kremlin in 2020. One approach would be expanding the scope of Section 219 of the U.S. criminal code, which prohibits public officials from entering into relationships that would be reportable under the Foreign Agents Registration Act.

8. **Outlet libraries:** Making U.S. technology companies maintain publicly accessible archives—modeled after the Honest Ads Act—would help reveal the sources of funding behind the sort of fringe media outlets that Russia used to interfere in the 2020 election.
9. **Small donor disclosures:** Making campaigns, parties, and super PACs report small donor identities to the FEC—which could in turn be required to make the information publicly accessible through a secure, limited, and conditional gating process—would help investigative journalists, watchdogs, and academics spot nefarious activity. The risks range from run-of-the-mill straw donor schemes to state-sponsored bots capable of automating thousands of political [micro-contributions](#) in the names of stolen identities.
10. **Cryptocurrency donations:** Prohibiting donations and political ad purchases through cryptocurrencies would protect U.S. politics from a medium of exchange that [Russian military intelligence](#) uses to hide the funding behind their political interference operations.

All these proposals were crafted with experts from across the political spectrum at the table and could provide strong fodder for a bipartisan process. This may be appealing to Senators who want to not only cherry-pick some provisions they prefer within a bill like S. 1 but also strengthen it as a comprehensive package of policy defenses against the many adversarial avenues of malign foreign influence.

Part I: Stronger Approaches to Issues Under Consideration

1. Thing of Value

Across the 2016 and 2020 election seasons, Donald Trump and his proxies asked Russia, Ukraine, and China for election assistance on a half-dozen known occasions, with the desired help taking the shape of [dirt](#), [hacking](#), [leaks](#), [investigations](#), [more investigations](#), and [agricultural purchases](#). But the Justice Department did not prosecute any of these cases as violations of campaign finance law, usually because the intangible assistance [could not be quantified](#) as a “thing of value.”

The “foreign-source ban” is the section of U.S. campaign finance law that prohibits foreign nationals from providing (and prohibits Americans from soliciting, accepting, or receiving from foreign nationals) contributions, which includes a “donation of money or other thing of value.” Section 4404 of S. 1 would clarify that for purposes of the foreign-source ban, the definition of a contribution “includes the provision of opposition research, polling, or other non-public information relating to a candidate for election for a Federal, State, or local office for the purpose of influencing the election, regardless of whether such research, polling, or information has monetary value, except that nothing in this subsection shall be construed to treat the mere provision of an opinion about a candidate as a thing of value for purposes of this section.”

This would cover some—but not all—forms of assistance Trump sought from foreign powers. Russia’s 2016 [offer](#) of “documents and information that would incriminate Hillary” is indeed “opposition research,” while the catch-all term “other non-public information relating to a candidate” would probably include Trump [saying](#) “Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing.” That catchall term could potentially also cover [efforts](#) by Roger Stone and Jerome Corsi to get Julian Assange to time the public release of non-public information at an advantageous moment on October 7, 2016, as well as the instances of Trump pressuring [Ukraine](#) and [China](#) to announce investigations into Joe Biden and his family (although it is debatable whether a mere announcement would constitute “non-public information” if it was not followed up by an actual investigation that turned up non-public facts, even if the announcement itself provided substantial political benefits). Because this section of S. 1 only covers “information” and not trade, it probably would not prohibit a U.S. president from [asking](#) a Chinese president to deliver “China’s economic capability to affect the ongoing campaigns, pleading with Xi to ensure he’d win, [stressing] the importance of farmers, and increased Chinese purchases of soybeans and wheat in the electoral outcome.”

Our recommendation in [Covert Foreign Money](#) would broaden the statutory definition of a thing of value even further, to cover “intangible, difficult-to-value, uncertain, or merely perceived benefits.”

2. Reporting Foreign Contacts

The largest known case of foreign money apparently infiltrating a recent U.S. election did not involve Trump, Biden, Russia, or China. Rather, it was [George Nader](#)—an American advisor to the ruler of the United Arab Emirates—funneling more than \$3.5 million to the 2016 campaign of Hillary Clinton in order to gain access to and influence with the candidate and then use that to gain favor with, and potential financial support from, the [U.A.E.](#) Nader and his U.S.-based co-conspirators started with donations worth \$275,000 to gain access to the Clinton campaign before graduating to \$1 million contributions to secure a small private meeting with Bill Clinton and allegedly as many as four meetings with Hillary Clinton. Prosecutors never alleged that anyone on the Clinton side knew they were dealing with an Emirati agent operating under the “guidance, instruction and blessing” of an official who seems to have been the U.A.E. ruler. But in a scenario in which a U.S. campaign or its proxy “has reason to know, or reasonably believes” they are dealing with a foreign power, they should be required to immediately inform U.S. law enforcement.

That is what would be required by Section 4002 of S. 1, also known as the [SHIELD Act](#). And while a bill like that would be a major reform over the status quo, in [Covert Foreign Money](#) we recommended four policies that

would cover an even broader range of threats.

First, removing the exemption for contacts with foreign election observers would give law enforcement visibility into efforts like [Russia](#) trying to send its own election observers to U.S. polling places in 2016.

Second, clarifying a broad scope of U.S. campaign “agents” would extend reporting requirements to all manner of intermediaries, including unpaid advisors supposedly traveling in a personal capacity like [Carter Page](#), emissaries purportedly serving as lawyers for the candidate like [Rudy Giuliani](#), and lawmakers using investigations to launder Russian disinformation such as [Sen. Ron Johnson](#) (R-WI).

Third, expanding the scope of reporting entities (i.e., those who must report foreign offers of assistance) to also cover very large donors (such as those who contribute more than \$200,000 in an election cycle) might make big donors with foreign ties—whether they are George Nader and his straw donors or billionaire [Russian expatriates](#) donating heavily in the [United States](#)—think twice before communicating with foreign powers about their U.S. political activity.

Fourth, narrowing the scope of countries for which the broadest part of the bill applies would preserve space for benign foreign relations and lighten the compliance burden. Specifically, while offers of contributions (as defined by U.S. election law) should be reportable no matter what country they come from, campaigns should not have to report “persistent and repeated contact with” NATO countries or major non-NATO allies. Consideration should also be given to *not* limiting these broader (non-contribution) contacts to instances of campaign “coordination or collaboration with” the offer of election assistance.

3. Non-profit Transparency

Because non-profit organizations usually advocate for policies and are not required to disclose the identities of their donors, Russia uses them as bespoke conduits to fund covert operations, such as a [Delaware “adoptions” foundation](#) lobbying against sanctions or [environmental groups](#) opposing U.S. hydraulic fracking. Moscow also uses non-profits as cover for manipulative information operations, such as a [Ghanaian foundation](#) employing trolls who pretend to be African Americans or a [Dutch think tank](#) campaigning against a Ukrainian trade deal with the European Union. Lastly, non-profits have been used as vehicles for elite capture, such as bribery run through [CEFC China Energy](#), Kremlin-linked oligarch Dmytro Firtash’s use of his [British Ukrainian Society](#) to influence elites in London, and Russian covert agents and money launderers working to cultivate top U.S. politicians through the [National Rifle Association](#).

[The DISCLOSE Act](#) (included in S. 1 as sections 4101-4304) has been the leading Democratic approach to imposing transparency on non-profits since the Supreme Court’s 2010 [Citizens United v. FEC](#) decision. DISCLOSE would require U.S. non-profits that advocate for a clearly identified political candidate to publicly disclose the identities of their donors, whether they are foreign or domestic. It covers 501(c)(4) social welfare organizations because they are often used as “dark money” conduits, but not 501(c)(3) charitable organizations because they are not allowed to advocate for political candidates anyway.

A recently introduced Republican alternative called the [Think Tank and Nonprofit Foreign Influence Disclosure Act](#) would make 501(c)(3)s disclose donations by foreign governments, but this bill would not affect 501(c)(4)s—the converse of DISCLOSE. The first time we know of any legislation like this being recommended was in [Covert Foreign Money](#), although our proposal would be stronger in that it would identify beneficial owners behind funding, cover proxies of foreign governments, and require reporting of financial audits to demonstrate how foreign funding is segregated from domestic spending and to show that the two are not fungible.

This proposal to shine a light on foreign powers funding 501(c)(3)s would broaden the regulatory scope beyond the DISCLOSE Act and address several meaningful risks. First, 501(c)(3)s might [pass money](#) to 501(c)(4)s to spend it on politics. Second, 501(c)(3)s such as [think tanks](#) might allow funding by foreign governments to influence their research and advocacy. Third, various 501(c)s could accept foreign funding and buy [issue ads](#) that fan

the flames of socially divisive topics like race, immigration, and guns—activity that represents the bulk of active measures run by the Internet Research Agency. The fact that this is a Republican-only bill and DISCLOSE is a Democrat-only bill offers yet another reason why combining the two could have bipartisan appeal.

4. Candidates' Tax Returns

When a major presidential candidate refuses to disclose their tax returns, it creates a possible avenue for foreign adversaries to secretly support, cultivate, or compromise the candidate. This can be seen by the possible counter-intelligence questions arising from reporting on Trump's personal and business tax filings obtained by the New York Times: To whom does Trump [owe](#) \$421 million? How did his company with a [secret Chinese bank account](#) come by a \$15 million windfall that was quickly withdrawn by Trump in his first year in office? What came of FBI concerns about his [lucrative property sales to Chinese elites](#) in 2016? Who secretly funneled Trump more than \$21 million through a [Las Vegas hotel and various shell companies](#) when he was strapped for cash in 2016? Did an [Egyptian state bank](#) fund Trump's \$10 million self-donation after he met President Abdel Fattah el-Sisi when his campaign was out of money in 2016? Risks of foreign government support and influence have also surrounded [Ivanka Trump's](#) trademarks fast-tracked by China, [Jared Kushner's](#) real estate financing needs, and cash flowing through [Trump Organization](#) properties around the world. Upon seeing Trump take Russian President Vladimir Putin's side over the U.S. intelligence community at the 2018 Helsinki press conference, Special Counsel [Robert Mueller](#) voiced his suspicions that if Trump is compromised by Putin "it would be about money." None of these questions would have come to public light if Mueller and the New York Times had not obtained Trump's tax returns, which illustrates a compelling national security interest in a federal requirement for presidents and presidential candidates to publicly disclose their tax returns.

An important new book called [After Trump](#) by bipartisan legal scholars Bob Bauer and Jack Goldsmith offers several legislative reforms that would protect the presidency from foreign influence. Noting that the tax disclosure requirement introduced in S. 1 would only apply to sitting presidents and presidential and vice-presidential nominees from the two major political parties, Bauer and Goldsmith recommend expanding S. 1 to also cover independent and third-party candidates. There is a non-trivial chance of this distinction mattering, given the propensity of self-financing billionaires to enter races late as independents or third-party candidates refusing to disclose their tax returns. For example, tax returns were never released by [Ross Perot](#) (who ran as an independent in 1992 and a third-party candidate in 1996) or [Michael Bloomberg](#) (who served as New York City Mayor and reportedly considered running for president as an independent in 2008, 2012, and 2016, before running as a Democrat in 2020). Separately, Russia has a track record of supporting third-party candidates in an attempt to swing general election results. In addition to extending the S. 1 tax disclosure requirement to all candidates on the general election ballot in enough states to potentially win the Electoral College, Bauer and Goldsmith also recommend two more changes: also extend it to any of the president's or vice president's family members who have senior campaign or executive branch positions, and grant Congress the clear authority to compel the tax disclosure by Treasury in the event of non-compliance.

5. Presidents' Blind Trusts and Informal Custodians

The fact that the counter-intelligence questions above could not be answered by reporters with access to Trump's income tax returns and financial disclosure forms (with broad valuation ranges and no details about closely or privately held entities) highlights a need for more granular disclosure.

Section 8012 of S. 1 would enhance the financial disclosures required of presidents and vice presidents to include the names of all their business partners and the values and details of any assets and liabilities worth more than \$10,000. But if presidents and vice presidents refuse to comply with those additional disclosure requirements, S. 1 gives them the two alternative options of either divesting their assets (converting them to cash or near equivalents) or placing them in a diversified or blind trust. Moreover, under [current law](#) the only information government officials have to disclose about their interests in blind trusts is the total value, not any details about underlying assets and liabilities.

[Bauer and Goldsmith](#) argue compellingly that the blind trust option should be removed, because the public needs to know about the financial dealings and business associates of any companies or other entities in which presidents hold significant financial interests. Making that change would involve both striking blind trusts as a permissible alternative to divestment and stipulating that disclosures made by presidents and vice presidents must include all the underlying details of any financial interests they hold in blind trusts.

Congress might consider further expanding the scope of presidential disclosures to protect against an autocratic tactic commonly used by kleptocrats like Putin (as detailed in Alexei Navalny's recent exposé, "[Putin's Palace](#)"), which is to have crony friends and other unofficial custodians secretly hold the president's assets on his behalf. This reform could be accomplished by making explicit that financial disclosures by presidents and vice presidents shall include any non-controlling interests and other custodial arrangements—direct or indirect, formal or informal—to retain or potentially recover in the future any meaningful degree of influence or other benefits. If S. gets enacted without this expansion and Donald Trump gets re-elected, he would probably be able to avoid any new financial disclosures by "selling" all his financial interests to one of his adult children for \$1.

Finally, Bauer and Goldsmith recommend prohibiting presidents from performing any role in managing their business interests while serving in office, by making presidents certify annually—subject to criminal punishment for lying—that they have not been in direct or indirect communication with anyone operating or potentially supporting their businesses, from staff to prospective investors. Such a law would have prohibited Trump from calling employees at Trump properties for business updates and receiving private quarterly briefings from his son [Eric Trump](#).

Part II: New Proposals For Related Issues

6. Foreign Emoluments

Even if U.S. presidents are required to disclose their finances and stay away from their private businesses while in office, foreign governments could still send money to prop up presidents that they prefer and cultivate influence by directly enriching them (or their businesses). While that would violate the foreign emoluments clause of the U.S. constitution, the U.S. legal code lacks practical and actionable transparency and enforcement mechanisms that would make the foreign emoluments clause—which has almost never been used—an effective deterrent and disciplinary device for prosecutors, Congress, and the public.

To operationalize the foreign emoluments clause, [Bauer and Goldsmith](#) propose amending the Foreign Gifts and Decorations Act to require presidents and any businesses in which they hold a financial interest to publicly disclose (through reports to Congress and the Office of Government Ethics) the details of any income received or reasonably anticipated that would ultimately come from foreign governments or their proxies. Within 60 days of any such disclosure, unless Congress then votes to affirmatively consent to the foreign emolument, the president or their business would have to hand it over to the U.S. Treasury.

7. Collaboration with Foreign Interferers

Campaign finance is not the only area of U.S. law that could prohibit American presidents, candidates, and campaigns from collaborating with foreign nationals to influence an election.

[Bauer and Goldsmith](#) recommend outlawing political alliances between campaigns and foreign states by amending and extending the scope of Section 219 of the U.S. criminal code, which currently prohibits “public officials” from entering Foreign Agents Registration Act (FARA)-reportable relationships. The statutory term “public officials” currently includes members of Congress and other government employees, but on its face does not include the president and certainly does not cover presidential candidates who are private citizens. In addition to expanding the definition of a “public official,” Section 219 should be amended to cover communications with a foreign national in service of a mutual goal of influencing an election (meaning that Section 219 reporting requirements would be triggered by broader definitions of an “agent” receiving a foreign principal’s “request” for “political activity,” as compared to narrower existing definitions of those terms under FARA, a law that addresses those who serve as agents of foreign principals aiming to influence the U.S. government and does not expressly include collaborations aiming to influence voters).

This reform would prohibit future communications like those that occurred around the 2016 Trump Tower meeting and Trump’s 2019 entreaties to Xi Jinping for electoral assistance via targeted purchases of U.S. agricultural goods.

8. Outlet Libraries

In the 2016 election, Russian interference took the form of secret purchases of online political advertisements. In 2017, Congress developed the [Honest Ads Act](#) (included in S. 1 as sections 4201-4211), which would require social media platforms to maintain publicly accessible “ad libraries” disclosing the sources of payment behind online political ads.

But Russian tradecraft evolved in the 2020 election, and one of their main innovations was the establishment of fringe media outlets targeting voters on the [left](#) and [right](#). The recent [U.S. intelligence assessment](#) confirmed that these purportedly American “news websites” were actually linked to the Kremlin through the Internet Research Agency. Secret cultivation of fringe media outlets is also the cutting edge of Russian interference in Europe, where intelligence services see the Kremlin’s hand behind financial and content support for at least six far-right

news websites in [Sweden](#), thousands of short-lived “junk websites” in [Ukraine](#), and purportedly independent local news outlets based in [Berlin](#) and the [Baltics](#).

This new threat reveals a vulnerability not addressed by S. 1 or any other legislation. As proposed in [Covert Foreign Money](#), one way to impose transparency would be requiring U.S. technology companies to maintain publicly accessible “outlet libraries,” similar to the “ad libraries” required by Honest Ads except that they would mandate disclosure of the beneficial owners who fund online media outlets using internet services provided by U.S. technology companies. Similar to how U.S. banks are employed to enforce sanctions and are responsible for collecting and verifying beneficial ownership information, the legal obligation to operate these proposed outlet libraries could fall to U.S. web hosting providers, domain registrars, search engines, advertising technology firms, and social network platforms. Online media outlets wanting to use these services would need to provide tech companies with the identities of their ultimate funders—including equity owners, lenders, advertisers, and donors—for inclusion in the library. Covered outlets could include news organizations whose websites receive more than 100,000 unique monthly visitors or social media engagements, while excluding publicly traded companies and other outlets already required to disclose beneficial ownership. The scope could be further limited to outlets receiving at least 10 percent of their financial support from abroad and only require public disclosure of those foreign funders.

For traditional media outlets, Congress could require the FCC to again prohibit foreign-owned companies from acquiring more than 25 percent of U.S. broadcast licenses or at least give Congress a chance to overrule allowances. Lawmakers could require public disclosure when foreign agents like Sputnik and RT seek time on U.S. airwaves and clarify on-air disclaimers so that listeners know when they are hearing propaganda sponsored by the Russian government, rather than just receiving an hourly attribution to some parent corporation that most Americans have never heard of such as “ANO TV-Novosti” (RT).

9. Small Donor Disclosures

One emerging technology authoritarian regimes appear to be trying to exploit to conceal financial flows into Western politics is donor bots capable of [automating thousands of political contributions](#) in the names of stolen identities, keeping such operations under wraps by capping donations at the \$200 disclosure threshold.

As proposed in [Covert Foreign Money](#), Congress could amend campaign finance law to make campaigns, parties, and super PACs report small donor identities to the FEC, which could in turn be required to make the information publicly accessible through a secure, limited, and conditional gating process. Any member of the public requesting access to the data would have to complete a security check and commit to not publicly disseminate or misuse personal information. This would deter stalkers, snoops, and other bad actors from abusing the data while enabling investigative journalists, watchdogs, and academics to analyze it for patterns of possible straw donor schemes.

10. Cryptocurrency Donations

Another new technological threat unaddressed by S. 1 is political spending in the form of cryptocurrencies, a medium of exchange that [Russian military intelligence](#) mined, acquired, laundered, and spent on its 2016 hack-and-dump infrastructure because it is easier to keep off the radar of U.S. authorities.

Congress could address this by amending campaign finance law to completely prohibit donations and political ad purchases in the form of cryptocurrencies.