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### Commentary

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## Small Potatoes? Not at All

A hush-money payment is obviously not as significant as scheming to find 11,780 votes, conjuring up fake electors, or inciting a mob to storm the U.S. Capitol, but campaign finance laws are just as essential to the integrity of our elections.

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The indictment of the former president alleges a pattern of pay-offs to prevent damage to his presidential campaign. Donald Trump denies that these transactions had anything to do with the election, but testimonial and documentary evidence will either ultimately convince the jury or not.

Various supporters and detractors of Trump have already opined that this is a weak case, or unprecedented, or that the connection between falsifying business records and campaign finance violations is a stretch.

I think they are wrong. (See Karen Friedman Agnifilo and Norman Eisen's [thorough and compelling piece](#) on the case. For a different view, though, see [Bradley A. Smith's analysis](#)).

Needless to say, I—and everyone else—should take a deep breath and wait to hear the evidence.

What I address here is the importance of bringing a case involving campaign finance violations.

To summarize ever-so-briefly: the nub of the indictment is that Trump falsified business records with the intent to commit or conceal campaign finance (and tax) violations in furtherance of the 2016 presidential election.

Although neither the indictment nor [the accompanying statement of facts](#) spells out specific laws, Manhattan District Attorney Alvin Bragg referred at his press conference to the laws on campaign contribution limits, as well as [the law prohibiting a conspiracy to support a candidate by unlawful means](#). Of course, the DA will have to prove Trump's intent to commit or conceal these, and perhaps other, crimes at trial.

So there you have it. Yet even some who believe the case is legally sound think an indictment of Trump that relies on campaign finance violations is small potatoes. After all, such crimes seem almost beside-the-point next to his attempt to overthrow the 2020 election.

A hush-money payment is obviously not as significant as scheming to find 11,780 votes, conjuring up fake electors, or inciting a mob to storm the U.S. Capitol. The scale of the offense charged here is different than the others, but campaign finance laws are just as essential to the integrity of our elections as rules relating to the counting of ballots and respecting election results.

Without campaign finance laws, elections would once again resemble the Wild West. Let me explain.

It used to be that campaign contributors would show up with bags full of money—literally. The heyday of this pay-for-play culture was the 1896 William McKinley presidential race, when corporations would crowd onto his front porch to pony up their greenbacks—summoned by his campaign manager who demanded payment for business-friendly laws.

This changed somewhat after McKinley was shot, and Teddy Roosevelt persuaded Congress to outlaw corporate contributions to federal candidates. Forty years later, unions were likewise prohibited from directly donating to campaigns.

Of course, these reforms did not end the free-for-all. Political action committees (PACs) bloomed, political parties jumped in with both feet, and, most recently, super PACs have become major players.

As the options for contributors grew, new laws were put into place to establish guardrails and level the playing field. One critical element of campaign finance law is disclosure—the periodic filing of campaign contributions and expenditure reports, all of which are publicly available.

This allows voters to know who is backing a candidate and what monies are being spent to sway them. So, when secretive spending occurs to promote a candidate, as is alleged in the Trump case, voters are deprived of critical knowledge before casting a ballot.

It's been widely noted that former presidential candidate John Edwards was [charged with similar crimes](#) a dozen years ago, a case whose central allegation was that his supporters paid hundreds of thousands of dollars to shield his campaign from the details of an ongoing affair.

Edwards' defense was essentially that payments to his paramour were not campaign-related, but made only to protect his marriage. The jury was unconvinced by the prosecutor's theory, and Edwards walked. [Trump's defense is likely to be similar](#), and we shall see how 12 New Yorkers respond.

Whatever the outcome of the Trump prosecution, it is not only reasonable to bring these charges but necessary for the electoral system to function honestly and openly. In the words of the former Department of Justice official who brought the Edwards case: “Our campaign finance system is designed to preserve the integrity of democratic elections—for the presidency and all other elected offices.”

At its core, then, the Trump case—[like so many others](#) brought against elected officials, candidates or political operatives who run afoul of campaign finance laws—is about respect for American voters.

The point here is that the case against Trump is not all that unique. Election laws—whether relating to the electoral college or counting ballots or campaign finance regulations—all serve to sustain our democracy.

Breaking such laws not only warrants an indictment, but acts as a deterrent to would-be law-breakers. Win or lose, a prosecution of this sort against Trump—or any candidate—reinforces the importance of fair and lawful elections, which is fundamental to the health of our republic.

*The opinions expressed in this publication are those of the author. They do not purport to reflect the opinions or views of Stroock & Stroock & Lavan LLP or its attorneys at large.*