

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 4, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This week, President Donald Trump and his attorney, Rudy Giuliani, made a stunning revelation—Donald Trump, while serving as the sitting President, personally “funneled” money through his attorney, Michael Cohen, disguised as a “retainer” for legal services they admit were never provided, to reimburse a secret payment of \$130,000 to Stephanie Clifford, the adult film star known as Stormy Daniels, in exchange for her silence before the election.

As a preliminary matter, this revelation appears to directly contradict President Trump’s statements on Air Force One on April 5, 2018, that he knew nothing about this payment.¹

Although President Trump and Mr. Giuliani appear to be arguing against potential prosecution for illegal campaign donations, they have now opened up an entirely new legal concern—that the President may have violated federal law when he concealed the payment to Ms. Clifford and his reimbursements for this payment by omitting them from his annual financial disclosure form.

Congress passed the Ethics in Government Act in 1978 to require federal officials to publicly disclose financial liabilities that could affect their decision-making on behalf of the American people. The applicable disclosure requirements “include a full and complete statement with respect to ... [t]he identity and category of value of the total liabilities owed to any creditor ... which exceed \$10,000 at any time during the preceding calendar year.”²

The Office of Government Ethics, the federal office charged with implementing and overseeing this law, has issued regulations that require federal officials to disclose any liability over \$10,000 “owed to any creditor at any time during the reporting period,” as well as the

¹ *Trump Says He Didn’t Know About Stormy Daniels Payment*, CNN (Apr. 6, 2018) (online at www.cnn.com/2018/04/05/politics/donald-trump-stormy-daniels/index.html).

² 5 U.S.C. app. § 102(a)(4).

“name of the creditors to whom such liabilities are owed.”³ President Trump was required to report any liabilities incurred during 2016 through the date he filed his disclosure form in 2017.⁴

The Office of Government Ethics also issued an opinion making clear that these requirements are an “unambiguous statutory mandate.” The opinion states, “Liabilities are commonly considered to encompass any debt or financial obligation. Likewise, a creditor normally includes anyone to whom a debt is owed.”⁵

When President Trump signed his financial disclosure form on June 14, 2017, he asserted that it was “true, complete and correct,” but he did not disclose any liability to Mr. Cohen or any reimbursements for that liability.⁶ Under federal law, it is a crime to knowingly and willfully make a false or fraudulent representation to a federal office or entity or to use “any false writing or document” that contains such a false or fraudulent representation.⁷

In response to this revelation, Walter Shaub, the former Director of the Office of Government Ethics—who signed off on President Trump’s financial disclosure form in 2017—issued this statement:

It is absolutely stunning that we’ve reached the point where the President of the United States appears to have lied to U.S. Office of Government Ethics about a payoff to a porn star.⁸

This issue came to light this week when President Trump and Mr. Giuliani appeared to choreograph multiple public statements to reveal that the President reimbursed Mr. Cohen for the payment to Stephanie Clifford in exchange for her silence. During an appearance on *Hannity*, Mr. Giuliani stated, “That money was not campaign money, sorry, I’m giving you a fact now that you don’t know. It’s not campaign money. No campaign finance violation.” When Mr. Hannity stated, “They funneled it through a law firm,” Mr. Giuliani responded, “Funneled it through a law firm and the President repaid it.”⁹

³ 5 C.F.R. § 2634.305.

⁴ Office of Government Ethics, *Public Financial Disclosure Guide Reporting Periods: Part 8* (online at www.oge.gov/Web/278eGuide.nsf/Content/Definitions~Reporting+Periods:+Part+8) (accessed May 3, 2018).

⁵ Office of Government Ethics, *Letter to a Designated Agency Ethics Official* (May 25, 1994) (online at [www.oge.gov/web/oge.nsf/All%20Advisories/BBCD2048C369D0B985257E96005FBD8C/\\$FILE/6279065e8a994d3b9e1de5c413a76bc72.pdf?open](http://www.oge.gov/web/oge.nsf/All%20Advisories/BBCD2048C369D0B985257E96005FBD8C/$FILE/6279065e8a994d3b9e1de5c413a76bc72.pdf?open)).

⁶ Donald Trump, *Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)* (June 14, 2017) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/12DAC79CC95F849085258142002703CA/\\$FILE/Trump,%20Donald%20J.%20%20final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/12DAC79CC95F849085258142002703CA/$FILE/Trump,%20Donald%20J.%20%20final278.pdf)).

⁷ 18 USC § 1001. *See also* 5 U.S.C. app. § 104(a)(1) (providing for a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report).

⁸ Walt Shaub (@waltshaub), Twitter (May 3, 2018) (online at <https://twitter.com/waltshaub/status/992024775978569728>).

⁹ *Rudy Giuliani on Potential Trump Interview for Mueller*, Fox News (May 2, 2018) (online at

With respect to potential campaign finance violations, Mr. Giuliani acknowledged in a subsequent interview with *Fox & Friends* that the payment was made to benefit the Trump campaign directly before the election. He stated, "Imagine if that came out on Oct. 15, 2016, in the middle of the, you know, last debate with Hillary Clinton." Instead, he said, Mr. Cohen "made it go away."¹⁰

In addition, Mr. Giuliani told the *Washington Post* that "it was his understanding that repayment from Trump came in a series of transactions after the election that he believes were completed in 2017 but could have included a reimbursement in 2018."¹¹ Mr. Giuliani also told the *New York Times*, "Some time after the campaign is over, they set up a reimbursement, \$35,000 a month, out of his personal family account." He also stated, "That removes the campaign finance violation."¹²

President Trump confirmed this revelation when he tweeted:

Mr. Cohen, an attorney, received a monthly retainer, not from the campaign and having nothing to do with the campaign, from which he entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA. These agreements are very common among celebrities and people of wealth. In this case it is in full force and effect and will be used in Arbitration for damages against Ms. Clifford (Daniels). The agreement was used to stop the false and extortionist accusations made by her about an affair, despite already having signed a detailed letter admitting that there was no affair. Prior to its violation by Ms. Clifford and her attorney, this was a private agreement. Money from the campaign, or campaign contributions, played no roll in this transaction.¹³

It appears that President Trump and Mr. Giuliani were engaged in a coordinated effort to rebut the legal case that the Trump campaign's failure to report Mr. Cohen's payment was a violation of campaign finance laws. These laws required the campaign to report contributions of "any gift, subscription, loan, advance, or deposit of money or anything of value" made "for the purpose of influencing any election for Federal office."¹⁴ These laws also required the Trump

www.foxnews.com/transcript/2018/05/02/rudy-giuliani-on-potential-trump-interview-for-mueller.html).

¹⁰ *Giuliani: The Basis of the Mueller Case is Dead*, Fox & Friends (May 3, 2018) (online at http://video.foxnews.com/v/5779885548001/?playlist_id=930909787001#sp=show-clips).

¹¹ *Giuliani: Trump Repaid Attorney Cohen for Stormy Daniels Settlement*, Washington Post (May 3, 2018) (online at www.washingtonpost.com/world/national-security/giuliani-trump-repaid-lawyer-cohen-for-stormy-daniels-settlement/2018/05/02/526cde54-4e76-11e8-84a0-458a1aa9ac0a_story.html?utm_term=.255022ad201f).

¹² *Giuliani Says Trump Repaid Cohen for Stormy Daniels Hush Money*, New York Times (May 2, 2018) (online at www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html).

¹³ Donald J. Trump (@realDonaldTrump), Twitter (May 3, 2018) (online at <https://twitter.com/realDonaldTrump>).

¹⁴ 52 U.S.C. § 30101; 52 U.S.C. § 30104.

campaign to report expenditures of Donald Trump's personal funds.¹⁵ The Trump campaign did not report this payment as a contribution to his campaign.

Despite their efforts to counter the case for a campaign finance violation, neither President Trump nor Mr. Giuliani explained why the President concealed this liability and these reimbursements on the financial disclosure form he submitted in June 2017. Although fees for legal services rendered may be exempt from disclosure under these rules, President Trump's payment to Mr. Cohen was not for legal services, but rather to reimburse Mr. Cohen for the payoff to Ms. Clifford.¹⁶ As Mr. Giuliani stated clearly on *Hannity*: "When I heard Cohen's retainer of \$35,000 when he was doing no work for the President, I said that's how he's repaying—that's how he's repaying it."¹⁷

The Department of Justice has confirmed that Michael Cohen is currently under criminal investigation.¹⁸ That investigation does not prohibit our Committee from conducting an independent investigation to determine whether the President, his campaign, and campaign officials complied with laws under our Committee's jurisdiction, such as the Ethics in Government Act.

For these reasons, I request that the Committee launch an investigation into whether President Trump violated federal ethics laws when he failed to disclose the payment to Ms. Clifford or his reimbursement for that payment. The Committee should obtain all documents necessary to determine whether the President or his campaign violated federal laws or rules in their attempt to silence Ms. Clifford in the days before the election.

As part of this investigation, I ask that you join me in requesting the following documents from President Trump and the Donald J. Trump for President campaign:

- (1) documents and communications sufficient to show when President Trump, or any individual or entity on his behalf, made payments to Michael Cohen as reimbursement for Mr. Cohen's payments to Stephanie Clifford or her representative;
- (2) documents and communications sufficient to show the amount of each payment made by President Trump, or any individual or entity on his behalf, to Michael Cohen as reimbursement for Mr. Cohen's payments to Stephanie Clifford or her representative;

¹⁵ 52 U.S.C. § 30104.

¹⁶ Office of Government Ethics, *FAQs: Liabilities* (online at www.oge.gov/Web/278eGuide.nsf/Content/FAQs~FAQs:+Liabilities) (accessed on May 3, 2018).

¹⁷ *Rudy Giuliani on Potential Trump Interview for Mueller*, Fox News (May 2, 2018) (online at www.foxnews.com/transcript/2018/05/02/rudy-giuliani-on-potential-trump-interview-for-mueller.html) (emphasis added).

¹⁸ *DOJ: Michael Cohen 'Under Criminal Investigation'*, CNN (Apr. 14, 2018) (online at www.cnn.com/2018/04/13/politics/michael-cohen-hearing-fbi-raid/index.html).

- (3) documents sufficient to show the identity of any individual or entity who made a payment on behalf of President Trump or on behalf of the Donald J. Trump for President campaign to Stephanie Clifford or her representative or to Michael Cohen as reimbursement for payment to Stephanie Clifford or her representative;
- (4) documents and communications sufficient to show whether any entity was used to “funnel” payments from President Trump to Michael Cohen as reimbursement for Mr. Cohen’s payments to Stephanie Clifford or her representative;
- (5) all documents and communications related to President Trump’s commitment to pay Michael Cohen related to Mr. Cohen’s payment to Stephanie Clifford or her representative;
- (6) all documents and communications related to President Trump’s June 2017 financial disclosure report and any amendments made to that report; and
- (7) all documents and communications related to the request by Sheri Dillon to the Office of Government Ethics for President Trump to avoid the requirement of personally signing the certification on his June 2017 financial disclosure report.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Elijah E. Cummings". The signature is written in a cursive, slightly stylized font with a large, sweeping flourish at the end of the name.

Elijah E. Cummings
Ranking Member