

DID PRESIDENT TRUMP VIOLATE FEDERAL LAW WITH HIS ALABAMA RANT?

I wrote yesterday about the racial, social and football implications of Trump's rant in the history and home of George Wallace.

But a new, and by all appearances excellent, commenter on that post noted this:

"It occurs to me that his tweets are at least arguably in violation of 18 U.S. Code § 227. That section prohibits the POTUS (among others), from "attempting to influence or interfere" in a private company's labor matter, to urge a "political" firing. This is especially true where the basis for the POTUS's urging of the firing of such a private company employee (union covered, collective bargaining agreement governed) – is (as here) centered on protected political first amendment expression."

So, is that right? Well, it is a LOT closer call than most would dismissively think. Let's look at the language of the relevant statute, 18 USC §277:

18 U.S. Code § 227 – Wrongfully influencing a private entity's employment decisions by a Member of Congress or an officer or employee of the legislative or executive branch:

(a) Whoever, being a covered government person, with the intent to influence, solely on the basis of partisan political affiliation, an employment decision or employment practice of any private entity–

(1) takes or withholds, or offers or threatens to take or withhold, an official act, or
(2) influences, or offers or threatens to influence, the official act of another,
shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(b) In this section, the term “covered government person” means—

(1) a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress;

(2) an employee of either House of Congress; or

(3) the President, Vice President, an employee of the United States Postal Service or the Postal Regulatory Commission, or any other executive branch employee (as such term is defined under section 2105 of title 5, United States Code).

Read the statute. It is a lot closer call than you think. Will Trump’s own Department of Justice pursue this? No, no chance, nor probably should it be. Is it a viable question, and one that ought be discussed in the public and media, yes, absolutely.

As sports law “experts” would say, let’s break it down. There are elements to a crime. Trump is unequivocally a “covered person” within the ambit of the statute. Also unequivocal is the fact that his words in Alabama were meant to influence “an employment decision or employment practice of any private entity”, in this case, the National Football League.

The problem lies in section (a)(1) of the relevant statute, which requires:

takes or withholds, or offers or threatens to take or withhold, an

official act

It is easy to see and admit that Trump would do just that in a heartbeat. But Trump did not do that per se in his Alabama speech.

No. That element cannot be met by Donald J. Trump's Alabama Song of hate. So, no, there is no exposure to 18 USC §227.

It is a great thought and question though.

And it is a perfect example of the precipice of racism, bigotry and ignorance on which the political discussion in the United States, and our Article II Executive Branch, courtesy of President Trump, nows perilously treads nearly every day.

The events and actions in and from the NFL today, tomorrow, and in the next few weeks pale in comparison. They are a symbol and a voice. But it is so much more and bigger than that.