



CHAIR ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D. C. 20463

June 18, 2019

The Honorable Lindsey Graham
Chairman

The Honorable Dianne Feinstein
Ranking Member

United States Senate
Committee on the Judiciary
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

Thank you for convening a hearing on Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other Reforms. As the Chair of the Federal Election Commission (“FEC”),¹ I am particularly concerned about the risk of illicit funds and foreign support influencing our political system. Foreign dark money represents a significant vulnerability for American democracy. We do not know the extent to which our political campaigns receive foreign dark money, but we do know that political money can be weaponized by well-funded hostile powers.²

These hostile foreign powers may deploy a number of tactics. Under today’s campaign finance laws, a foreign adversary can transfer money to a 501(c) organization that can in turn contribute funds to a super PAC without disclosing the foreign source of money.³ A foreign-owned LLC can contribute to a 501(c) or a super PAC without those entities ever disclosing the true owners of the LLC.

Even money spent by U.S. corporations with foreign parents raises the specter of illegal foreign influence. In a recent enforcement action, the FEC levied record fines against a super PAC and a number of individuals—including foreign nationals—that orchestrated the donation of \$1.3 million from foreign nationals to a super PAC supporting a 2016 presidential candidate.⁴ These contributions were funneled into our political system through a foreign-owned subsidiary operating in the United States. This is just another way that foreign nationals are making their influence felt at even the highest levels of our political campaigns.

¹ I am writing as Chair of the Federal Election Commission. The opinions expressed are my own.

² See, Neil Barnett & Alastair Sloan, *Democracy in the Crosshairs: How Political Money Laundering Threatens the Democratic Process*, ATLANTIC COUNCIL (Sept. 2018), <http://bit.ly/2LQ8g6Z>.

³ See Written Testimony of Chair Ellen L. Weintraub Before the House Oversight and Reform Subcommittee on National Security (May 22, 2019), <https://go.usa.gov/xme4c>.

⁴ Statement of Reasons of Chair Ellen L. Weintraub, MUR 7122 (Right to Rise USA, *et al.*) (Apr. 12, 2019), <https://go.usa.gov/xmdAK>.

Last week our national political conversation turned to illegal electoral support from foreign sources. I wanted to ensure that the American public and all U.S. candidates are aware of the laws that govern that aspect of our campaign finance system. Thus, I issued a statement to explain in no uncertain terms the law against receiving political contributions from foreign nationals in connection with U.S. elections.⁵

As I wrote: It is illegal for any person to solicit, accept, or receive *anything of value* from a foreign national in connection with a U.S. election.⁶ The term “foreign nationals” includes foreign principals, foreign governments, and certain non-United States citizens.⁷ The term “anything of value” is broad, as discussed in the context of contributions. The Act broadly defines “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁸ The Commission has considered a wide variety of goods and services to be contributions, including, for example, stocks and commodities;⁹ a gold coin;¹⁰ a rent-stabilized apartment;¹¹ the production elements of a benefit concert;¹² a severance payment;¹³ and an

⁵ Chair Ellen L. Weintraub’s Statement Regarding Illegal Contributions From Foreign Governments, June 14, 2019, <https://go.usa.gov/xy38U>.

⁶ 52 U.S.C. § 30121(a)(2). This includes elections at the federal, state, and local levels. The Act also prohibits foreign nationals from directly or indirectly providing anything of value in connection with an election or making an express or implied promise to do so. 52 U.S.C. § 30121(a)(1)(A). Commission regulations define “solicit” to mean “ask[ing], request[ing], or recommend[ing], explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” 11 C.F.R. § 110.20(a)(6) (citing 11 C.F.R. § 300.2(m)).

⁷ *Id.* § 30121(b)(2) (defining “foreign national” to mean “an individual who is not a citizen of the United States or a national of the United States . . . and who is not lawfully admitted for permanent residence”). A “foreign principal” is defined as, among other things, “a government of a foreign country.” *Id.* § 30121(b)(1) (citing 22 U.S.C. § 611(b)); *see also* Factual & Legal Analysis, MUR 4583 (Devendra Singh and the Embassy of India) (finding reason to believe that the Indian Embassy as well as an embassy official knowingly and willfully violated the Act’s ban on foreign national contributions).

⁸ 52 U.S.C. § 30101(8)(A)(i) (emphasis added). “[A]nything of value includes all in-kind contributions” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge.” 11 C.F.R. § 100.52(d)(1); *see* Advisory Op. 2007-22 at 5 (Hurysz).

⁹ *See* Advisory Op. 2000-30 (pac.com) (stock); Advisory Op. 1980-125 (Cogswell for Senate Committee 1980) (silver coins).

¹⁰ Factual and Legal Analysis at 3, 7-8, MUR 6725 (Ron Paul 2012) (Mar. 7, 2013) (finding reason to believe a committee failed to disclose the value of a gold coin as an in-kind contribution).

¹¹ Factual and Legal Analysis at 10-11, MUR 6040 (Rangel for Congress, *et al.*) (Mar. 5, 2010) (finding reason to believe that a rent-controlled apartment occupied by political committees under terms and conditions that differed from other tenants was an excessive in-kind contribution).

¹² General Counsel’s Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (detailing approximately \$395,000 worth of in-kind contributions arising from an unreported fundraising concert); Certification at 2-3, MUR 5225 (Oct. 20, 2005) (finding probable cause).

¹³ Factual and Legal Analysis at 21-28, MUR 6718 (John Ensign, *et al.*) (Feb. 6, 2013) (finding reason to believe a payment made by a candidate’s parents to a former committee employee was in-kind contribution).

activist's contact list.¹⁴ Information can qualify as a thing of value—political campaigns pay millions of dollars to acquire polling data, contact lists, and opposition research services.

Any amount of U.S. election spending by a foreign national is illegal. There is no exception for small or intangible contributions.¹⁵ In *Bluman v. FEC*, the Supreme Court affirmed then-Judge Brett Kavanaugh's decision to uphold the ban on foreign-national political spending in a case involving \$700 and the copying costs for political flyers.¹⁶ He reasoned thusly:

It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.¹⁷

This is not a novel concept. Our wariness of foreign influence dates back to the Nation's beginnings. Alexander Hamilton cautioned, "One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption." Our Founders recognized that individuals chosen by their fellow citizens to serve this country might abandon the duties of their office to pursue the interests of a foreign government. Rather than a bleak prognosis, these words call on U.S. candidates and officeholders to safeguard the American political system from external interference. We must put American sovereignty and our national security above any shortsighted political advantage offered from abroad.

Anyone who solicits, accepts, or receives electoral support from a foreign source risks being on the wrong end of a federal investigation. Knowing and willful violators of the ban on foreign-national contributions face the prospect of criminal prosecution by the Department of

¹⁴ First General Counsel's Report at 10, MUR 5409 (Grover Norquist) (Aug. 31, 2004) (finding reason to believe that a respondent's use of resources to obtain and compile materials regarding conservative activists was an in-kind contribution to a presidential campaign but taking no further action based on the limited value of the contribution); Certification at 1-2, MUR 5409 (Oct. 20, 2004).

¹⁵ The Commission has long recognized the broad scope of this prohibition and found that even where the value of a good "may be nominal or difficult to ascertain," such contributions are nevertheless banned. Advisory Op. 2007-22 at 6 (citing *Explanation and Justification for Regulations on Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69928, 69940 (Nov. 19, 2002)) ("As indicated by the title of section 303 of BCRA, "Strengthening Foreign Money Ban," Congress amended [52 U.S.C. § 30121] to further delineate and *expand* the ban on contributions, donations, and other things of value by foreign nationals." (emphasis added)); *see also* General Counsel's Brief at 24, MUR 4250 (Republican National Committee, *et al.*) (describing the legislative history of the foreign national prohibition which, "unlike other provisions of the Act, has its origins in, and essentially remains, a national security provision with broad application").

¹⁶ *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012) (holding that foreign national political spending ban properly applies to plaintiffs, including Canadian citizen residing in the United States who sought to make three \$100 contributions to political candidates and print and distribute flyers in New York's Central Park).

¹⁷ 800 F. Supp. 2d at 288.

Justice. Alternatively, they may face a civil enforcement action from the Federal Election Commission. Anyone—especially any officeholder, political campaign, or political committee—that receives an offer of electoral assistance from a foreign source should immediately report that offer to the Federal Bureau of Investigation.

I appreciate the attention that the Senate Judiciary Committee has devoted to these important topics. Thank you for the opportunity to comment on them.

Sincerely,

A handwritten signature in blue ink that reads "Ellen L. Weintraub" with a stylized flourish at the end.

Ellen L. Weintraub, Chair
Federal Election Commission