



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

September 20, 2018

The Honorable Amy J. Klobuchar
Ranking Member, Committee on Rules and Administration
United States Senate
305 Russell Senate Office Building
Washington, DC 20510

Dear Senator Klobuchar:

I deeply appreciate the June 12, 2018 letter you wrote to the Commission, in which you asked three very important questions about the Federal Election Commission's administration and enforcement of the foreign national prohibition in the Federal Election Campaign Act of 1971, as amended ("FECA").

I have waited to reply until my colleagues provided you with their answers to your questions. I dissent.

My views differ substantially from theirs, and I wanted you to have the benefit of them.

1. What steps is the FEC currently taking to protect our national elections from foreign influence?

None. The Federal Election Commission is not currently taking any steps to respond to the ongoing foreign attack on our national elections.

My colleagues have written to you about regulations that were adopted in 2002 and 2004 and the Commission's routine compliance programs. As laudatory as the Commission's efforts are to promote voluntary compliance, they kind of miss the point. At a time when, as you point out, foreign actors are secretly trying to undermine our democracy, voluntary compliance will not address this problem. The Russians did not accidentally violate U.S. laws barring foreign spending in our elections because they failed to read the brochures on the FEC's website.

Your letter was spurred by your concern over the Commission's failure in May 2018 to move forward on a rulemaking to prevent foreign spending in U.S. elections. I share your

concern. The Commission's failure to act in May was just the latest in a long string of failures. Since the *Citizens United* decision upended the U.S. campaign-finance system in 2010, proposals have been brought forward by Commissioners that would have:

- Directed the Office of General Counsel to draft a notice of proposed rulemaking protecting U.S. elections from foreign corporate spending in the immediate aftermath of the *Citizens United* decision.¹ **Blocked.**
- Directed the Office of General Counsel to draft a notice of proposed rulemaking that would allow the Commission to consider every option for reducing the potential for foreign spending in our elections, taking into account the views of all Commissioners.² **Blocked.**
- Directed the Office of General Counsel to draft a notice of proposed rulemaking to reduce the potential for foreign spending in U.S. elections through corporate entities, specifically addressing percentage of foreign ownership, board membership of corporations, foreign government ownership, type of corporation, and implementation measures.³ **Blocked.**
- Revisited the Commission's corporate rulemaking; engaged in factfinding to determine whether any additional Commission rulemakings were warranted; and developed legislative recommendations to Congress to strengthen the foreign-nationals spending prohibition.⁴ **Blocked.**
- Addressed: (1) limits on the percentage of foreign ownership of corporations that seek to spend in U.S. elections; (2) limits on foreign nationals serving on boards of corporations that seek to spend in U.S. elections; (3) whether corporations owned by foreign governments should be allowed to spend in U.S. elections; and (4) whether publicly held corporations, privately held corporations, LLCs, and nonprofits should be treated identically under the foreign-national political spending ban.⁵ **Blocked.**

¹ FEC open meeting minutes, January 20, 2011, at 4, http://www.fec.gov/agenda/2011/approved2011_06.pdf. See also "Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," http://www.fec.gov/agenda/2011/mtgdoc_1102.pdf.

² FEC open meeting minutes, Sept. 15, 2016, at 12, https://www.fec.gov/resources/updates/agendas/2016/approved_16-63-a.pdf.

³ FEC open meeting minutes, Sept. 29, 2016, at 11, http://www.fec.gov/agenda/2016/documents/approved_16-64-a.pdf.

⁴ "Discussion of Commission's Response to Alleged Foreign Interference in American Elections," June 21, 2017, https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/2017-06-21_ELW_Memo_on_Commissions_Response_to_Foreign_Election_Interference.pdf.

⁵ "Revised Proposal to Launch Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence," September 28, 2016, <https://www.fec.gov/resources/about->

- Prevented spending by foreign government-owned or -controlled corporations and prevented the use by foreign nationals of corporate conduits to spend funds on U.S. elections.⁶ **Blocked.**

Each time, despite mounting evidence that our elections were under foreign attack, the Commission's Republicans refused to move forward with even the most basic protections. As I wrote this past May:

So what is America's election agency going to do to better protect those elections? According to the FEC's Republican commissioners today: Nothing. My Republican colleagues continue to block the FEC from acting to protect our 2018 midterms. I proposed today that the agency launch an expedited rulemaking that would harden the defenses of the U.S. campaign finance system against foreign influence. At the very least, we must make it harder for foreign nationals to use shell corporations to disguise their spending on our elections. We should also prevent foreign governments like Russia and China from using companies they own with U.S.-based subsidiaries to influence our elections. My colleagues said no to both of these proposals.⁷

At my urging, the FEC revived a rulemaking process in late 2017 on internet communications disclaimers.⁸ I remain committed to working toward new regulations that will effectively tailor disclaimer requirements to internet activity without restricting innovation, but that deal is far from done.

The public has become intensely interested in this rulemaking. In 2016, when the Commission solicited comment on it, five out of the six commenters supported making changes. But when the Commission solicited additional comment in October 2017, FEC staff found that 98.4% of the 149,772 commenters supported updating or strengthening the disclaimer rules or other government action.

https://www.fec.gov/commissioners/weintraub/statements/Foreign_National_2_Memo_28_Sept_2016.pdf. See also FEC open meeting minutes, Jan. 12, 2017, at 7, https://www.fec.gov/documents/372/January_12_2017_Open_Meeting.pdf.

⁶ "Rulemaking proposal to combat foreign influence in U.S. elections," May 17, 2018, https://www.fec.gov/documents/556/mtgdoc_18-26-a.pdf. See also FEC open meeting minutes, May 24, 2018, at 14, https://www.fec.gov/resources/cms-content/documents/May_24_2018_Open_Meeting.pdf.

⁷ "Statement of Vice Chair Ellen L. Weintraub on the Latest Failure of the Federal Election Commission to Protect American Elections from Foreign Influence," May 24, 2018, https://www.fec.gov/resources/cms-content/documents/ELW_Statement_on_FEC_Failure_to_Protect_American_Elections_from_Foreign_Influence.pdf.

⁸ See "Statement of Commissioner Ellen L. Weintraub on the FEC's Unanimous Bipartisan Decision to Address Internet Political Advertising Disclaimers," Nov. 16, 2017, <https://www.fec.gov/resources/cms-content/documents/ELW-statement-on-FECs-opening-of-a-disclaimer-rulemaking.pdf>.

As you know, however, even if the Commission succeeds in passing a new disclaimer rule, this reform will have at best a modest effect on our ability to identify and detect political spending by foreign sources: The rulemaking only addresses the subset of public communications that are on the internet and contain express advocacy, solicit contributions, or are made by political committees.

2. *Following the 2016 presidential election, has the Commission taken any steps to increase its ability to identify or detect political spending by foreign sources?*

No. Since the 2016 presidential election, the Commission has not taken any steps to increase its ability to identify or detect political spending by foreign sources.

We have passed no rules, issued no policy statements, nor set any significant enforcement precedent since 2016 that would allow us to better identify or detect political spending by foreign sources. On September 15, 2016 (before Election Day), the Commission unanimously agreed to my suggestion that we prioritize enforcement matters related to foreign nationals. But there have been no visible results from that process.

In fact, the country has lost ground since 2016, as the IRS has loosened donor-reporting requirements for 501(c) groups. We have less idea than ever whether foreign funds are coming in to our political system through 501(c)(4) dark-money groups.

3. *Are there any recommendations from the FEC on how Congress or the Administration can prevent illegal foreign spending in the 2018 and 2020 elections?*

These are my recommendations: Congress should pass and the President should sign the Honest Ads Act, the Secure Elections Act, the DISCLOSE Act, and the DETER Act. Additionally, Congress should pass and the President should sign legislation clarifying the foreign nationals prohibition in 52 USC §30121 that some believe was muddled by the D.C. Circuit's opinion in *Bluman v. FEC*, making clear beyond any doubt that foreign entities are prohibited from participating in our elections in any way.

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In January 2017, after my Republican colleagues could not even bring themselves to look into whether we should bar unlimited political contributions from *corporations owned or controlled entirely by foreign governments*, I wrote, “The Department of Defense physically protects our country from foreign attack. The Department of Homeland Security has moved swiftly to help state and local governments protect our voting systems from foreign cyberattacks. The Federal Election Commission is the agency of the United States Government charged with protecting our

federal election financing system from foreign attack. But because of the Republican FEC Commissioners' votes today, the FEC has been obstructed in its ability to do so.”⁹

I am sorry to report – as we near the end of an entire election cycle since then – that an ideologically driven controlling group of commissioners continues to obstruct the Federal Election Commission in its duty to protect America’s elections from foreign attack. This situation will not improve until this Commission has at least four members who are willing to enforce existing law barring foreign-national political involvement and address dark money, and until Congress passes new legislation expanding and clarifying the Commission’s duty in these areas.

Sincerely,



Ellen L. Weintraub
Vice Chair, Federal Election Commission

cc: The Honorable Roy D. Blunt
Chairman, Committee on Rules and Administration
United States Senate

⁹ “Statement of Commissioner Ellen L. Weintraub on the FEC’s Failure to Protect the Federal Election Financing System from Foreign Influence,” Jan. 12, 2017, https://www.fec.gov/resources/about-fec/commissioners/statements/2017-01-12_ELW_statement_on_FEC_failure_to_protect_elections_from_foreign_influence.pdf.