



FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
 MindGeek S.A.R.L. f.k.a.) MUR: 6678
 Manwin Licensing International S.A.R.L.;)
 Fabian Thylmann)
 Andrew Link)
 Froytal Services Limited)
 No on Government Waste/No on Measure B)
 —Major funding by Manwin USA)

**STATEMENT OF REASONS OF VICE CHAIRMAN MATTHEW S. PETERSEN AND
 COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN**

This matter presented a straightforward question: does a state or local ballot initiative¹ constitute an “election” under the Federal Election Campaign Act of 1971, as amended (the “Act”)? The Act’s text and relevant Commission interpretation, as well as court precedents, clearly demonstrate that the answer is *no*. Because the complaint in this matter involved alleged contributions by foreign nationals to a local ballot measure committee, we agreed with the Office of General Counsel’s recommendation and voted to dismiss this matter.²

The Act prohibits donations by foreign nationals “in connection with a Federal, state, or local election,” as well as the solicitation, acceptance, or receipt of such donations.³ The term “election” encompasses only candidate elections.⁴ Accordingly, for over three decades the Commission has recognized a limit on the Act’s scope: activities in connection with elections of

¹ We use the terms “ballot measure,” “ballot referenda,” and “ballot initiative” interchangeably.

² See generally MUR 6678 (MindGeek), Compl.; see also *id.*, Certification (March 17, 2015). The ballot measure committee was formed under California law in 2012 to oppose the electorate’s passage of a ballot initiative known as Measure B, “Safer Sex in the Adult Film Industry Act,” which proposed enactment of a local health ordinance relating to adult films shot in Los Angeles County. The ballot measure committee engaged in activities related only to the ballot initiative. See MUR 6678 (MindGeek), First General Counsel’s Report at 18.

³ 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441e(a)).

⁴ See 11 C.F.R. § 100.2(a) (defining “[e]lection” as “the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office”).

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candidates fall under the Act's purview, but activities in connection with votes on ballot initiatives do not.⁵

Indeed, as explained in *Bluman v. FEC*⁶ — a decision summarily affirmed by the Supreme Court⁷ — the Act “does not bar foreign nationals from issue advocacy” or other forms of civic engagement in this country, such as lobbying.⁸ This includes financial support or opposition of ballot initiatives, which directly implement the electorate’s public-policy preferences. *Bluman* specifically addressed ballot initiatives and accepted that the Act does not regulate that type of foreign national participation in the political process.⁹

Our colleagues, in explaining why they did not support dismissing this matter, largely ignore Commission precedents and the relevant judicial analysis in *Bluman*. Rather, they make policy arguments focused on perceived vulnerabilities of the ballot-initiative process to advocate for FEC regulation in this area.¹⁰ Such arguments are irrelevant as a legal matter. Unless and until Congress expands the Act’s foreign national ban to encompass state and local ballot initiatives, we are constrained by the law Congress actually has written. The Commission has no authority to otherwise interpose itself as arbiter of who can participate in state and local ballot initiatives.¹¹

In short, dismissal of this matter was required as a matter of law. Accordingly, we supported the Office of General Counsel’s recommendation and disposed of this matter.

⁵ See, e.g., Advisory Op. 1984-62 (B.A.D. Campaigns), at 1 n.2 (“[C]ontributions or expenditures exclusively to influence ballot referenda issues are not subject to the Act.” (citing Advisory Op. 1980-95 (First Nat’l Bank of Fla.))). No developments in the intervening years — including passage of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) — have altered this understanding of the Act’s scope. Cf. Concurring Op. of Vice Chairman Michael E. Toner & Commissioner David M. Mason, Advisory Op. 2005-10 (Berman/Doolittle), at 1 (“Commission regulations . . . define election as limited to candidate elections.” (citing 11 C.F.R. § 100.2(a)). Indeed, after passage of BCRA, the Commission continued to advise the public that ballot measures are not elections covered by the Act and that the Act does not regulate foreign nationals’ participation in such elections. *FEC, Foreign Nationals* (July 2003), available at <http://www.fec.gov/pages/brochures/foreign.shtml>.

⁶ 800 F. Supp. 2d 281 (D.C. Cir. 2011).

⁷ 132 S. Ct. 1087 (2012) (Mem.).

⁸ *Bluman*, 800 F. Supp. 2d at 292; see also Foreign Agents Registration Act of 1938, 22 U.S.C. § 611–621 (imposing registration and disclosure requirements on individuals or organizations who lobby on behalf of “foreign principals,” which include foreign governments, political parties, organizations, and individuals).

⁹ See *Bluman*, 800 F. Supp. 2d at 291 (analyzing and rejecting plaintiffs’ argument that 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e) is unconstitutionally “underinclusive and not narrowly tailored because it permits foreign nationals to make contributions and expenditures related to ballot initiatives”).

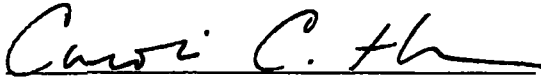
¹⁰ See generally MUR 6678 (MindGeek), Statement of Reasons of Chair Ann M. Ravel; MUR 6678 (MindGeek), Statement of Reasons of Commissioner Ellen L. Weintraub.

¹¹ We note that, although not addressed by federal law, a California statute in effect for over fifteen years appears to prohibit the donations at issue in this matter. See Cal. Gov’t Code § 85320 (“No . . . foreign principal shall make, directly or through any other person, any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure.”).



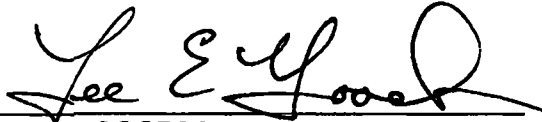
MATTHEW S. PETERSEN
Vice Chairman

4/30/2015
Date



CAROLINE C. HUNTER
Commissioner

4/30/15
Date



LEE E. GOODMAN
Commissioner

April 30, 2015
Date

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