



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ellen L. Weintraub
**Testimony before the Education, Health,
and Environmental Affairs Committee**
Maryland Senate
January 26, 2016

Good afternoon. My name is Ellen L. Weintraub. I am a Commissioner on the Federal Election Commission.

Madame Chairwoman, members of the committee, thank you for this opportunity to testify regarding Senator Simonaire's bill.

This bill will make Maryland a leader in the United States' faltering efforts to respond to the threat of corporate and foreign money in our elections that *Citizens United* created in 2010.

We are at a moment when the threat of foreign influence on American elections has moved past the theoretical to become an active area of great concern to our intelligence agencies and the American people. It is not seriously disputed that Russia engaged in a concerted effort to disrupt our election. Foreign actors have hacked state voter-registration data. And in this past election, we may have spotted the tip of the iceberg in foreign political spending, the true size of which is obscured by a sea of dark money.

Sen. Simonaire's bill represents the sort of reform that may *only* succeed at the local and state levels at the moment, as ideological opposition to campaign-finance law enforcement has effectively paralyzed both the FEC and Congress. Fortunately, state and local governments across the country are stepping into the breach and leading the way with innovative responses to campaign-finance issues.

This particular issue of foreign spending and state-ballot issues is especially appropriate for this body to take up. Under longstanding federal law, foreign nationals are absolutely barred from spending directly or indirectly in U.S. elections at any political level, including state and local.

While it is clear that the federal ban applies to foreign entities who seek to spend money in federal, state, and local *candidate* elections, the Federal Election Commission is split on whether the federal ban also applies to state and local *ballot issues*, and the Commission is unable to enforce it at the federal level.

This makes it totally appropriate – and important – for Maryland to take matters into its own hands.

When Americans go to the polls on Election Day, the choices we make – whether on candidates or ballot issues – are part of the same expression of democratic self-governance. Whether exercising our rights to self-government through *representative* democracy – choosing a candidate for office – or through *direct* democracy – adopting laws through ballot measures – these are choices in which only Americans should have a say.

Imagine, for example, a foreign billionaire dissatisfied with U.S. immigration policy who tries to change it more to his own liking, one statewide ballot measure at a time. The ballot measure is the

mechanism designed to most directly express the will of the American people regarding the laws that govern us. I think most Americans would be disturbed by the notion that a wealthy foreigner could freely spend to rewrite our laws.

It is important to note that bans on foreign political spending are not animated by the typical campaign-finance concerns about preventing corruption. The bans raise more fundamental questions about who gets to fully participate in the American political community, with the attendant rights and privileges. Foreign principals, who have no basic investment in the well-being of this country, do not.

It is also important to note that First Amendment concerns are not implicated by a bar on foreign political spending. In *Bluman v. FEC*, a 2011 decision affirmed by the Supreme Court, a special three-judge D.C. district court held that, quote, “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.” Unquote. The Court noted that, quote, the “government may bar foreign citizens (at least those who are not lawful permanent residents of the United States) from participating in the campaign process that seeks to influence how voters will cast their ballots in the elections.” Unquote.

I applaud Maryland’s leadership role on this important question in American political life. By passing this law, you will be doing not just Maryland but also your country a great service. You will set an example that can be followed by others at the local, state, and, *hopefully* someday, federal levels.

I thank you for considering this, I thank you for the opportunity to speak before you today, and I welcome your questions.