



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

September 28, 2018

The Honorable Rodney P. Frelinghuysen
Chairman

U.S. House of Representatives Committee on Appropriations
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member

The Honorable Richard C. Shelby
Chairman

U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Patrick J. Leahy
Vice Chairman

Dear Chairmen Frelinghuysen and Shelby, Vice Chairman Leahy and Ranking Member Lowey:

The Explanatory Statement for the Financial Services and General Government Appropriations Act, 2018 directed the Chair of the Federal Election Commission to report to the Committees on Appropriations of the House and Senate on the FEC's role in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future to continue these efforts. See Explanatory Statement, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018).

The Chair of the FEC sent her response to you on Sept. 20, 2018 on behalf of the Commission. The report sent by the Chair describes the FEC's past actions with respect to the foreign national prohibition. However, what is left out bears noting. A careful review of that report reveals that there have been no new initiatives, no increased scrutiny, no real response by the Federal Election Commission to the now-undeniable ongoing threat of foreign interference in our elections. I write separately to express my own views, as Vice Chair of the Federal Election Commission, on this important topic.

The Chair's report goes into great detail about the Commission's efforts to encourage voluntary compliance with the law, as if that will solve the problem. This attitude naively and dangerously ignores the new reality in which we are living.

Earlier this year, Sens. Richard Burr (R-N.C.) and Mark Warner (D-Va.), chair and vice-chair of the Senate Select Committee on Intelligence, released a joint statement addressing foreign

interference in past and future U.S. elections. They minced no words. “There is no doubt that Russia undertook an unprecedented effort to interfere with our 2016 elections,” Sen. Burr wrote. “[W]hile our Committee’s investigation remains ongoing,” wrote Sen. Warner, “one thing is already abundantly clear – we have to do a better job in the future if we want to protect our elections from foreign interference.”¹

The intelligence community agrees; as Dan Coats, the director of national intelligence, said in July, “The warning lights are blinking red.”² The Federal Election Commission needs to step up to plug the loopholes through which foreign money may be deployed to influence our elections. That would require a greater willingness to investigate credible allegations of foreign intervention and a renewed commitment to limit the dark-money pathways that provide an opening for foreign interference.

ENFORCEMENT

The Chair’s response describes at length the Commission’s disposition of Enforcement matters related to foreign nationals. A closer look at these 22 matters shows a striking difference in the Commission’s resolution of matters before and after the 2016 elections.

In the thirteen matters decided between 2005 and early 2016, the Commission pursued nine foreign-national cases and dismissed four (a 31% dismissal rate). But in the nine foreign-national matters decided since the 2016 election, the Commission has pursued just *one* case and eight were dismissed (an 89% dismissal rate). Thus, instead of becoming more vigilant in pursuing – or at least investigating – allegations of foreign spending, the Commission has, if anything, become more lax.

One recent FEC enforcement matter³ provides a troubling example of my colleagues’ unwillingness to move past old ways of thinking about these issues. Faced with credible allegations that Chinese foreign nationals had provided the funds behind real-estate LLCs that

¹ “Senate Intel Completes Review of Intelligence Community Assessment on Russian Activities in the 2016 U.S. Elections” (May 16, 2018), <https://www.burr.senate.gov/press/releases/senate-intel-completes-review-of-intelligence-community-assessment-on-russian-activities-in-the-2016-us-elections>. See also, e.g., Miles Parks, “Russian Threat To Elections To Persist Through 2018, Spy Bosses Warn Congress,” NPR (Feb. 13, 2018), <https://www.npr.org/2018/02/13/584672450/intelligence-leaders-testify-about-global-threats-in-senate-hearing> (“There should be no doubt that Russia perceived that its past efforts as successful and views the 2018 U.S. midterm elections as a potential target for Russian midterm operations,” testified Director of National Intelligence Dan Coats before the Senate intelligence committee).

² Julian E. Barnes, “‘Warning Lights Are Blinking Red,’ Top Intelligence Officer Says of Russian Attacks,” NY TIMES (July 13, 2018), <https://www.nytimes.com/2018/07/13/us/politics/dan-coats-intelligence-russia-cyber-warning.html>.

³ MUR 7081 (Floridians for a Strong Middle Class), <https://www.fec.gov/data/legal/matter-under-review/7081/>.

had contributed to a Super PAC that then spent funds in a U.S. Senate campaign in Florida – allegations the respondents did not even bother to deny – my colleagues declined to undertake even the most limited investigation to get at the truth of the matter.⁴

New threats require new responses. Whatever other Commissioners’ views are on how vigorously to enforce the FECA in other circumstances, when it comes to potential foreign interference, the Commission ought to be able to come together to protect our democracy. Sadly, that has not happened.

RULEMAKINGS

Beginning shortly after the *Citizens United* decision upended the U.S. campaign-finance system in 2010, I have tried repeatedly – solely or in combination with colleagues – to initiate rulemakings that would protect U.S. elections from foreign spending.⁵ Some of these efforts focused on the various ways foreigners might seek to route money through various for-profit and nonprofit corporate entities. Most recently, in May 2018, I re-introduced a bare-bones proposal to prevent spending by corporations owned, or controlled, or used as conduits by foreign governments.⁶ Every one of these rulemaking proposals was blocked from going forward.

At my urging, the FEC revived a rulemaking process in late 2017 on internet communications disclaimers.⁷ I remain committed to working toward new regulations that will effectively tailor

⁴ See “Statement of Reasons of Commissioners Ellen L. Weintraub and Ann M. Ravel” (Feb. 28, 2017), <http://eqs.fec.gov/eqsdocsMUR/17044430165.pdf>.

⁵ See FEC open meeting minutes (Jan. 20, 2011), at 4, http://www.fec.gov/agenda/2011/approved2011_06.pdf; “Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations” (Jan. 20, 2011), http://www.fec.gov/agenda/2011/mtgdoc_1102.pdf; Ann M. Ravel, Ellen L. Weintraub, Petition for Rulemaking (June 8, 2015), https://www.fec.gov/resources/about-fec/commissioners/statements/Petition_for_Rulemaking.pdf; “Proposal to launch rulemaking to ensure that U.S. political spending is free from foreign influence” (Sept. 9, 2016), https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/Weintraub-Foreign_Political_Spending_Rulemaking.pdf; FEC open meeting minutes (Sept. 15, 2016), at 12, https://www.fec.gov/resources/updates/agendas/2016/approved_16-63-a.pdf; “Revised Proposal to Launch Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence” (Sept. 28, 2016), https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/Foreign_National_2_Memo_28_Sept_2016.pdf; FEC open meeting minutes (Sept. 29, 2016), at 11, http://www.fec.gov/agenda/2016/documents/approved_16-64-a.pdf; 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 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>.

disclaimer requirements to internet activity without restricting innovation, but that deal is far from done. 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 addresses only the subset of public communications that are on the internet and contain express advocacy, solicit contributions, or are made by political committees.

DOMESTIC SUBSIDIARIES

I would like to draw your attention to one particular passage in the Chair's report, at the top of page 14: "Generally, the Commission has determined that domestic subsidiaries of foreign parent corporations may engage in certain election-related activities, so long as the funds used are not from foreign nationals, and no foreign nationals participate in the decision-making process concerning the activities in question." This sentence relies on two pre-*Citizens United* Advisory Opinions, one concerning state and local elections, and the other concerning the payment of administrative expenses of a PAC. The Commission has never acted to allow domestic subsidiaries of foreign corporations to use their treasury funds directly in federal campaigns, and there is no consensus on the Commission that would allow such activities. Given everything we have learned about foreign willingness to intervene in our elections, allowing foreign-owned or -controlled corporations to spend money to influence federal elections, as long as they authorize an American citizen to cut the checks, seems imprudent at best.

THE COMMISSION'S PLANS FOR ENFORCING THE FOREIGN NATIONAL PROHIBITION

The Federal Election Commission has no plans to counter this ongoing foreign attack on our democracy. In January 2017, my 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*.⁸

I am sorry to report – as we near the end of an entire election cycle since then – that nothing has changed. 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.

There is plenty Congress can do to help the situation. 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.

⁸ See "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.

Even in the absence of new legislation, however, I believe that the Federal Election Commission can and must do more to protect our democracy from foreign interference. The situation is critical. I felt it imperative to speak out.

Thank you for considering my views.

Sincerely,

A handwritten signature in blue ink that reads "Ellen L. Weintraub". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Ellen L. Weintraub
Vice Chair, Federal Election Commission