

**AMERICAN CONFIDENCE IN ELECTIONS:
PROHIBITING FOREIGN INTERFERENCE**

HEARING

BEFORE THE

**COMMITTEE ON HOUSE
ADMINISTRATION**

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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DECEMBER 18, 2024
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AMERICAN CONFIDENCE IN ELECTIONS: PROHIBITING FOREIGN INTERFERENCE

December 18, 2024

COMMITTEE ON HOUSE ADMINISTRATION,
HOUSE OF REPRESENTATIVES,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room 1310, Longworth House Office Building, Hon. Bryan Steil [Chairman of the Committee] presiding.

Present: Representatives Steil, Griffith, Bice, Carey, D'Esposito, Lee, Morelle, Torres, and Kilmer.

Staff present: March Bell, General Counsel; Jackie Bossman, Counsel; Annemarie Cake, Professional Staff and Deputy Clerk; Alexander Deise, Counsel; Thomas Lane, Elections Counsel and Director of Elections Coalitions; Kristen Monterroso, Director of Operations and Legislative Clerk; Marissa Mullen, Deputy Director of Member Services; Michael Platt, Staff Director; Jordan Wilson, Director of Member Services; Khalil Abboud, Minority Deputy Staff Director; Jamie Fleet, Minority Staff Director; Sarah Nasta, Minority Senior Advisor and Director; Owen Reilly, Minority Professional Staff; Matt Schlesinger, Minority Senior Counsel; and Sean Wright, Minority Chief Counsel.

OPENING STATEMENT OF HON. BRYAN STEIL, CHAIRMAN OF THE COMMITTEE ON HOUSE ADMINISTRATION, A U.S. REP- RESENTATIVE FROM WISCONSIN

Chairman STEIL. The Committee on House Administration will come to order.

I note that a quorum is present. Without objection, the chair may declare a recess at any time.

Also without objection, the hearing record will remain open for 5 legislative days so Members may submit any materials they wish to be included therein.

Thank you, Ranking Member Morelle, Members of the Committee, and our witnesses, for participating at today's hearing.

Today, the Committee on House Administration is continuing our oversight of Federal elections.

For too long now, Americans have been concerned about the threat of foreign interference in our elections and attempts to destabilize the democratic processes. As Chairman of the Committee, I have worked to restore Americans' faith in our elections, but foreign adversaries still have loopholes they can exploit to influence American elections.

Today, we will explore two key things: There are current laws on the books that prohibit foreign interference. We will explore how these laws are working in practice and how they are enforced. There are also loopholes that exist under current law that still allow foreign actors to influence U.S. elections.

Let us dive into how that is possible. Federal law generally prohibits non-citizens or foreign businesses from directly giving to candidates' campaigns, super-PACs, or running ads in support for or against candidates. However, it is currently legal for foreign nationals to indirectly funnel money through 501(c) organizations. These organizations can then channel that money to super-PACs or another 501(c) to directly help a candidate or influence a policy.

As Chairman of the Committee on House Administration, I introduced, and the Committee passed, the Preventing Foreign Interference in American Elections Act that closes this specific loophole.

It is important that we continue to evaluate the current legal system and focus on strengthening and enforcement of our laws to prevent foreign interference in American elections.

On the other hand, we have also had to address the illegal methods utilized by foreign adversaries to funnel illicit money into U.S. campaigns.

For example, it is currently illegal for someone to donate to a political campaign in the name of another person; yet there are concerns foreign adversaries are utilizing identities of unwitting U.S. citizens in order to donate to U.S. campaigns. We have shown that there are vulnerabilities in our campaign finance system that will allow a foreign actor to use a U.S. citizen as a straw donor in order to contribute. This method would be very challenging to detect but may involve the use of gift cards in the name of an unwitting straw donor to avoid detection when facilitating such transactions.

Bad actors may also illegally exploit multiple unwitting identities to break large donations into smaller amounts, allowing them to circumvent individual contribution limits.

These efforts effectively disguise illegal donations and allow foreign actors to violate campaign finance laws that are currently in place.

In the last year, the Committee on House Administration has been reviewing online donation platform policies that have vulnerabilities that may allow foreign interference to occur. I uncovered recently that major Democratic fundraising platform ActBlue did not automatically reject the use of prepaid gift cards or require users input the card verification value, the CVV—that is that three-or four-digit code on the back of your credit card—that could have been creating a loophole that foreign bad actors could have exploited.

In August of this year, I wrote a letter to the Financial Crimes Enforcement Network, FinCEN, requesting information on its work to combat illicit election funding efforts, particularly from foreign actors. To this day, the Committee has not yet received a response to our questions or a briefing from FinCEN. This is unacceptable.

In October, I requested information from the Treasury Department on potential election interference through fraudulent donations and asked to review any suspicious activity reports related to ActBlue. The Treasury Department has yet to allow this Com-

mittee or the Committee on Oversight, chaired by James Comer, to review those SARs.

Following my investigation into the methods used by foreign adversaries to funnel money into U.S. elections, I introduced the SHIELD Act, which will prohibit political committees from accepting contributions without the disclosure of the CVV or from gift cards. I am pleased to say that this bill passed the House and now awaits Senate passage.

Unfortunately, foreign interference in U.S. elections is not confined to the campaign finance space. We have also seen foreign actors try to influence our elections through disinformation campaigns and cyber attacks.

Foreign-backed disinformation campaigns take advantage of First Amendment protections and spread false and misleading narratives to undermine trust, polarize voters, and sway public opinion. This is a serious vulnerability.

Cyber attacks can illegally target election infrastructure, including voter registration data bases or email systems of political campaigns, in an attempt to disrupt processes or steal sensitive information. We saw an example of this during the most recent Presidential election when President-elect Trump's campaign was allegedly hacked by Iranian nationals.

We must ensure that America's election system is secure and fair. Democrats and Republicans agree that elections should be free from foreign interference. This should not be a partisan issue. It is imperative that we continue working to prevent foreign interference, and it starts with closing the loopholes that exist under current Federal law.

Throughout this Congress, this Committee has worked to improve Americans' confidence in our elections system. Again, today, we will focus on laws that are currently on the books to prevent foreign interference as well as explore current loopholes that exist. There is more work to be done.

I would like to thank our witnesses for joining us today, and I look forward to a robust conversation on these critical issues.

I will now recognize the Ranking Member, Mr. Morelle, for 5 minutes for the purpose of providing an opening statement.

[The prepared statement of Chairman Steil follows:]

PREPARED STATEMENT OF CHAIRMAN OF THE COMMITTEE ON HOUSE ADMINISTRATION BRYAN STEIL

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**OPENING STATEMENT OF HON. JOSEPH MORELLE, RANKING
MEMBER OF THE COMMITTEE ON HOUSE ADMINISTRATION,
A U.S. REPRESENTATIVE FROM NEW YORK**

Mr. MORELLE. Good morning, and thank you, Chairman Steil.

Thank you to all of our witnesses for being here, particularly so close to the holidays. We greatly appreciate your participation.

At the outset, let me say, House Democrats care deeply about the integrity of our elections. That will always be our North Star. Foreign interference in our elections strikes at the very heart of democratic self-government. When we find opportunities to deter foreign interference and protect the integrity of our elections, House Democrats have worked and will continue to work to find bipartisan solutions.

As the chair referenced, earlier this week I was proud to support him in passage of H.R. 9488, the SHIELD Act, which will provide additional privacy and security protections for Americans who donate to political campaigns online. The final bill was a product of extensive bipartisan negotiations and reflects, I think, critical revisions that had been secured by Committee Democrats as we worked through the process. Again, grateful to him and to the staff for that work.

Regrettably, however, today's hearing is not truly about only protecting and promoting election integrity but an effort at additional partisan posturing, as the majority appears fixated on ActBlue, the prominent fundraising platform, and the majority has made in the past some specious claims unaccompanied by facts—all smoke, in many respects, no fire.

If we truly care about deterring election interference, we would look in everyone's backyard. We would look in—and the Republicans would look in their own backyard. I will apologize if I missed this, but I have not seen an oversight letter or subpoena to WinRed, the prominent conservative fundraising platform which was created in response to the tremendous success of ActBlue.

According to CNN, WinRed had nearly seven times more Federal Trade Commission complaints than ActBlue from January 1922 through June 2024.

One 82-year-old woman, who wore pajamas with holes in them because she did not want to spend money on new ones, did not realize she had given Republicans more than \$350,000 while living in a 1,000-square-foot Baltimore condo since 2020. Committee Republicans have not said anything about that or the blatant scheme to swindle older Americans.

Focusing on ActBlue is about politics, pure and simple. There are things to get to here, we agree, but not picking one side and ignoring entirely the actions of the other side.

Now, my colleagues are also focused on foreign funding of ballot initiatives, and, to their credit, this is a very pressing issue. Some of the testimony before this Committee seeks to blame the problem squarely on the shoulders of a single donor, but, in my neighborhood, we would call that something else but here I will just refer to that approach as “malarkey.” We all agree, ballot initiatives are a basic expression of our uniquely American expression of self-government and experience with self-government.

Without a doubt, ballot initiatives should be protected from foreign intervention, we agree. Federal campaign finance law bars foreign nationals from contributing or donating money in connection with a Federal, State, or local election.

In 2015, I note, however, three Republican Commissioners on the FEC voted to dismiss an enforcement action brought against foreign corporate special interests who spent \$327,000 to oppose a California public health ballot measure.

In doing so, those Republican Commissioners opened a loophole foreign special interests have exploited. For example, in Maine, a Canadian-owned utility funneled over \$20 million opposing a Maine citizen ballot initiative in 2020, dwarfing all other spenders on that campaign. Similar outside, foreign special-interest spending defeated a local Oregon ballot measure opposing the development of a natural gas pipeline in 2017.

As we will hear more today, foreign corporate money defeated a 2018 water quality ballot initiative in Montana. You will hear from a native Montanan about the harms foreign corporate spending poses in ballot initiatives—a disquieting story of a foreign company that donated \$288,000 to oppose the ballot initiative, which, if passed, quote, “would increase Montana’s ability to avoid polluting the State’s waters,” end quote—to put profits over people.

As one Democratic Federal Election Commissioner put it, a—Commissioner put it, “A company based halfway around the world made a sizable donation, interjecting itself, in hopes of future profits, into a political debate in Montana over mining and the quality of Montana’s waters.”

This story has a lamentable but unsurprising ending: The FEC dismissed the matter, allowing the foreign corporation’s spending to influence a local Montana election to go unpunished. This outcome has real-world consequences. Montana’s water is now more likely to be less clean, harming public health, the environment, agriculture, ranching, the outdoor recreation industry, and everyday quality of life in Montana.

Unfortunately, three Republican FEC Commissioners opened a loophole for foreign corporations to exploit. We need to close this loophole, we agree. We cannot stop there. Since the Supreme Court’s disastrous Citizens United decision, our campaign finance system, to put it lightly, has been broken, and it is going to continue to be broken until we make a fix.

It is broken in a significant way. This year, one donor, one single donor, billionaire Elon Musk, spent at least \$277 million of his own money backing Donald Trump and other Republican candidates. Also this year, just coincidentally, Musk’s net worth climbed by more than \$200 billion, with the vast bulk of the increase, \$170 billion, coming just since election day. According to OpenSecrets, five donors gave over \$100 million during the 2024 election.

We need to fix this broken special-interest big-money campaign finance system. The vast majority of Americans support that and understand that getting money—big money out of politics is important for them to have their influence over their Government.

We need to stem all avenues of potential foreign interference. We need meaningful disclosure of campaign funds and a functioning

FEC. That is why Democrats will continue to support the Freedom to Vote Act.

If we are serious about preventing foreign interference, please, let us do this in a bipartisan manner. I welcome it, and I would urge us to do it together. Sadly, given some of the work as it relates to elections here, I suspect that will not happen.

Before yielding back, I want to ask unanimous consent to enter into the record the CNN article titled “How Elderly Dementia Patients Are Unwittingly Fueling Political Campaigns,” which includes an observation that, quote, “elderly, vulnerable consumers have unwittingly given away six-figure sums to political campaigns—most often to Republicans.”

I also ask unanimous consent to enter into the record a Washington Post article entitled “Elon Musk Put \$277 Million Into the Election. He’s \$200 Billion Richer This Year.”

And, with that, I yield back my time.

Chairman STEIL. Without objection.

[The CNN and Washington Post articles referred to follow:]

How elderly dementia patients are unwittingly fueling political campaigns

A CNN investigation reveals how deceptive political fundraising has misled elderly Americans into giving away millions of dollars

By [Blake Ellis](#), [Melanie Hicken](#), [Yahya Abou-Ghazala](#), [Audrey Ash](#), [Kyung Lah](#), [Anna-Maja Rappard](#), [Casey Tolan](#), [Lou Robinson](#) and [Byron Manley](#), CNN

CNN Investigates

Published October 22, 2024

(CNN) — The 80-year-old communications engineer from Texas had saved for decades, driving around in an old car and buying clothes from thrift stores so he'd have enough money to enjoy his retirement years.

But as dementia robbed him of his reasoning abilities, he began making online political donations over and over again — eventually telling his son he believed he was part of a network of political operatives communicating with key Republican leaders. In less than two years, the man became one of the country's largest grassroots supporters of the Republican Party, ultimately giving away nearly half a million dollars to former President Donald Trump and other candidates. Now, the savings account he spent his whole life building is practically empty.

The story of this unlikely political benefactor is one of many playing out across the country.

More than 1,000 reports filed with government agencies and consumer advocacy groups reviewed by CNN, along with an analysis of campaign finance data and interviews with dozens of contributors and their family members, show how deceptive political fundraisers have victimized hundreds of elderly Americans and misled those battling dementia or other cognitive impairments into giving away millions of dollars — far more than they ever intended. Some unintentionally joined the ranks of the top grassroots political donors in the country as they tapped into retirement savings and went into debt, contributing six-figure sums through thousands of transactions.

To provide a snapshot of who these vulnerable donors are and how much money they have lost to increasingly aggressive fundraising campaigns, reporters reached out to more than 300 of the biggest and most frequent small-dollar political donors and their family members. Through these interviews and consumer complaints, reporters collected the accounts of more than 50 unwitting elderly donors and traced the path of where their money went.

Often coming in \$5 or \$10 at a time, contributions from this small sampling of donors alone added up to more than \$6 million over the last five years — the majority of which ended up with Trump and a long list of other Republican candidates, CNN found.

While this is a small fraction of the billions raised by political campaigns, for many of the individuals who made the donations, the sums represented huge portions of their life savings.

Deceptive fundraising [tactics](#), including those that trick elderly donors, were [exposed](#) in the wake of the 2020 election. While [studies show](#) that older Americans tend to lean more Republican, both parties have continued to

rake in donations from elderly voters. And mainstream Republican candidates have only doubled down on this strategy, using more aggressive and predatory tactics than those used by Democrats, according to donor complaints, interviews with experts and a review of solicitations. The Republican fundraising machine has been subject to more than 800 complaints to the Federal Trade Commission since 2022 — nearly seven times more than the number of complaints lodged against the other side.

“The fact there are lots of complaints means this is likely a huge problem,” said Prentiss Cox, a law professor at the University of Minnesota and former manager of consumer protection at the Minnesota Attorney General’s Office, when presented with CNN’s reporting. “From a consumer protection standpoint, this raises red flag level concerns about consumer misinformation and deception.”

Donors identified by CNN were often in their 80s and 90s. They included retired public workers, house cleaners and veterans, widows living alone, nursing home residents and people who donated more money than they paid for their homes, according to records and interviews.

The money they gave came from pensions, Social Security payments and retirement savings accounts meant to last decades. Donors took out new credit cards and mortgages to pay for the contributions. In some cases, they gave away most of their life savings. Their cell phones and email inboxes were so full of pleas for money that they missed photos of their grandkids and other important messages.

At least one person continued to be charged for contributions after his death.

Donors or their families often learned of the extent of their donations from CNN reporters. The family members of some said their loved ones had also

been the targets of common elder scams. Most asked CNN not to name them out of concern that they would be further victimized or ashamed.

WinRed had nearly seven times more FTC complaints than ActBlue

Number of Federal Trade Commission complaints filed against WinRed and ActBlue, from January 2022 through June 2024.

- WinRed
- ActBlue

Source: Federal Trade Commission

One 82-year-old woman, who wore pajamas with holes in them because she didn't want to spend money on new ones, didn't realize she had given Republicans more than \$350,000 while living in a 1,000 square-foot Baltimore condo since 2020.

By the time a Taiwanese immigrant from California passed away from lung cancer this year at age 80, she had given away more than \$180,000 to Trump's campaign and a litany of other Republican candidates – writing letters to candidates apologizing for not getting donations to them on time because she was going into heart surgery. She had only \$250 in her bank account when she died, leaving her family scrambling to cover the cost of her funeral.

And a 78-year-old, a widow who limited showers to save on her water bill and canceled her long-term care insurance, didn't understand why the retirement savings her husband had left her was dwindling so quickly. After CNN reached out to her family, they learned that the woman gave more than \$200,000 in donations to Democratic political groups and candidates.

Have you or a loved one had an experience that you would like to share about WinRed, ActBlue or a political group soliciting donations? CNN wants

to hear your story. Email us at watchdog@cnn.com.

The federal government has gone after non-political companies for similar tactics, such as making false statements in ads or making them seem as if they were written directly to the recipient. But regulators have done little to stop fundraisers from using misleading and deceptive advertisements to target vulnerable donors. And the lawmakers who experts say would need to act to protect consumers at both the state and federal levels are the same ones benefiting from the current fundraising machines.

The biggest beneficiary of the small-dollar donations from unwitting donors identified by CNN was Donald Trump. His current and former campaigns and affiliated political committees brought in more than \$400,000 from these elderly consumers between July 2019 and June 2024, which included multiple election cycles. The national committees which raise money to support House and Senate races across the nation also received hundreds of thousands of dollars from such donors, according to CNN's analysis, and in all, the long list of Republican candidates and causes took in nearly \$4 million.

A spokesperson for the Trump campaign and the Republican National Committee noted that fundraising efforts over the years have varied and said Trump ads were designed to be respectful, including such language as "don't sweat it" if donors couldn't afford to contribute on a regular basis.

On the Democratic side, much of the money went to left-leaning political action committees known as PACs, not mainstream Democratic candidates. The Progressive Turnout Project and its affiliated group, Stop Republicans, took in the most, with roughly \$150,000 coming from the vulnerable donors identified by CNN. President Joe Biden's presidential campaign was not among the top recipients, taking in only about 10% of the \$400,000 Trump

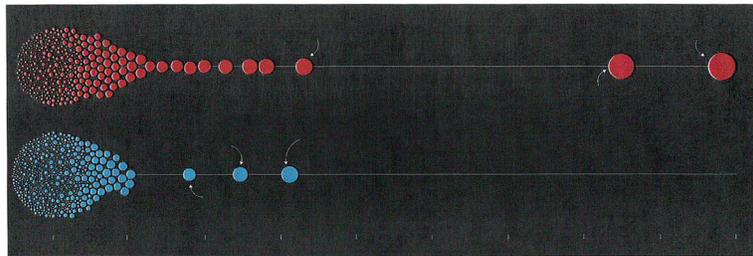
brought in from those elderly donors.

Vice President Kamala Harris had not yet launched her presidential bid during the fundraising period covered in CNN's analysis, though more recent campaign finance reports show her campaign has taken in several thousand dollars from this snapshot of donors. The Harris campaign did not respond to a request for comment.

Donald Trump and other Republicans took in millions from this small sampling of vulnerable seniors

Over \$6 million in contributions from just 52 elderly, unwitting donors identified by CNN were spread out among nearly 2,000 campaigns and political action committees (PACs). Most of the money went to Republican candidates, and Trump's political operation was the top recipient.

Total contributions to campaigns and political action committees from vulnerable donors identified by CNN



Trump campaigns and
associated committees

\$440,033

National Republican

Congressional Committee

\$165,479

National Republican

Senatorial Committee

\$373,586

Democratic Congressional

Campaign Committee

\$123,472

Progressive Turnout Project/

Stop Republicans

\$155,837

Democratic Senatorial

Campaign Committee

\$90,044

Notes: These totals do not include refunds received by donors, which were typically only a small fraction of the total amount they had given. Trump's 2020 and 2024 campaigns, along with several fundraising committees

associated with those campaigns, are included together in this chart.

Sources: CNN reporting and analysis of FEC individual contributions through WinRed and ActBlue from July 2019 to June 2024

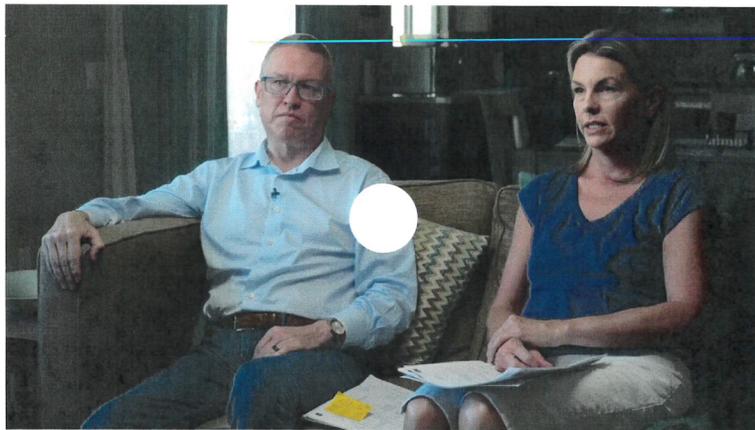
The fundraising operations that have solicited money from vulnerable senior citizens use either WinRed or ActBlue, two juggernaut digital platforms that unite hundreds of political groups and campaigns under a single umbrella. Each platform charges a fee of about 4% of every transaction, although WinRed is a for-profit company and ActBlue is a nonprofit. Campaign finance records show that the two groups took in more than \$100 million in fees from federal campaigns and political committees in the last two years alone.

WinRed, founded by a former Trump staffer in 2019, and ActBlue, which has been around for two decades, say it is the campaigns themselves that are choosing the frequency and tenor of the pleas for donations. WinRed did not respond to multiple requests for comment. A spokesperson for ActBlue said the platform is designed to give "donors full control" over their contributions, saying donors or their families can contact their in-house support team with any concerns.

But it is the fundraising platforms that have made it easier than ever for campaigns to bring in as much money as possible from their bases. Both have boasted of record-breaking hauls this campaign cycle, with WinRed saying this summer it was processing more than 2,700 donations per minute — a jump of more than 40% from 2020.

The controversial feature that fools many donors is a pre-checked box campaigns use to automatically authorize recurring donations. Donors often don't realize they need to uncheck that box, so while attempting to make a one-time small donation, they are unknowingly signing up for weekly or monthly recurring donations. Sometimes it takes months or years before

they realize a campaign has been regularly charging their credit card or taking money out of their bank account.



Richard Benjamin's family tells CNN he was "manipulated" into donating his life savings to Republican causes while suffering from dementia.

While many mainstream Democratic candidates have backed away from the practice, both the Trump and Harris campaigns have recently been using donation pages with pre-checked recurring boxes to raise money, a CNN

analysis of fundraising emails and Facebook and Instagram ads found.

Trump's campaign said two of his current fundraising committees only returned to the use of pre-checked boxes in September after pausing the practice in January 2023. The spokesperson, however, did not address whether another Trump-affiliated committee still receiving donations this year had been using the tactic. Trump Campaign Senior Advisor Brian Hughes said "we strive to be direct and transparent by informing them immediately when they have registered for recurring donations, sending a notice three days before processing, notifying them when the processing is complete, and having staff on-hand to assist with refunds and cancellations."

Recurring donations only multiply as confirmed donors become valuable political currency — their names and contact information quickly swapped and sold. And once WinRed or ActBlue has a donor's financial information, donations can be triggered by actions including a response to an online survey, an order of campaign merchandise or a one-word reply to a text message.

As a result, records show, some donors ended up being charged in excess of 100 times in a single day.

'Lonely and isolated'

Richard Benjamin, an 81-year-old from Arizona, believed he had been in personal communication with former president Trump through all the messages he was receiving.

At one point, he told his children the former president invited him to a luxurious reception at Mar-a-Lago. He had grown up on a farm and worried he would feel out of his element at such a fancy venue. But when he

received what he described to his children as an invitation to be a VIP at a rally in Arizona, he was thrilled he would finally meet the former president himself. He started making travel plans and asking his sister-in-law if she would like to accompany him, since his wife had passed away in 2018.



**I WANT TO
MEET YOU!!!**



A Personal Note from
President Donald J.
Trump:

**I'm hosting a very special
reception at Mar-a-Lago next
month...**

**Right after securing our
status as the presumptive
Republican nominee to defeat
Crooked Joe, I will deliver
remarks and a pep talk to our**

**team as we shift 100% of our
time and resources to
the REAL MISSION of 2024:
firing Crooked Joe and
SAVING our country!**

**...And as a critical part of
Team Trump, I'd love to
have YOU there.**

**That's right, I want YOU to
join me at Mar-a-Lago as my
VIP GUEST for this once-in-a-
lifetime MAGA reception on
February 16!**

I'll fly you and a guest of your choice out to the event for FREE. I'll cover your hotel, you'll get to enjoy drinks and hors d'oeuvres on me, you'll get a hat signed by me, and to top it all off, you'll even get to take a special photo with yours truly so that you can remember this amazing night forever!

So please, make a contribution of any amount to MAKE AMERICA GREAT

**AGAIN – and you'll be
automatically entered to WIN
this exclusive VIP trip to Mar-
a-Lago.**

Excerpts from a WinRed ad inviting donors to Mar-a-Lago Source: *Trump Save America Joint Fundraising Committee*

Later, he told his son how angry he was that Donald Trump Jr. wouldn't call him back even though the former president's son had sent Benjamin so many nice messages.

"He was old, lonely and isolated," his son, Jason Benjamin, told CNN, saying the pandemic only compounded that isolation. "'Save America, help save America,' that was the constant message. He would get thanked for helping to save America."

Richard Benjamin, who now lives in a memory care unit at an assisted living facility, would look forward to the emails and texts, and especially to the ones thanking him for being a true American and patriot when he donated his money. This eventually led him to give about \$80,000, leaving him tens of thousands of dollars in debt and his children angry at the campaigns who they say tricked their dad and took advantage of his compromised state of mind. "He really, in his heart, believed that Donald Trump and Donald Trump Jr. and other politicians were personally reaching out to him," Jason

Benjamin said.

Richard Benjamin and his family showed CNN that he continues to be inundated with text messages and phone calls from politicians to this day. Yet he often couldn't identify the politicians he financially supported.

"There's no excuse for them to allow something like this to happen," Jason Benjamin said of the campaigns behind the many solicitations. An employee from Richard Benjamin's bank even lodged a complaint to the Federal Trade Commission about deceptive practices, saying Benjamin had never intended to donate close to the amount he did, according to FTC records.

Forensic geriatrician Kathryn Locatell said what Richard Benjamin felt each time he received a "thank you" message or made a donation is the same "dopamine hit" a lot of elderly Americans are seeking. And the solicitations are crafted in a way that intentionally suck elderly donors into their web, providing "a feeling of belonging to a thrilling, special club."

"You and I could call these demands for money laughable but to a person who's lost their capacity to judge reality, and who's been soaking up all the toxic misinformation out there, on the internet and TV, it's a perfectly coherent reality and they're happy to join in and become a part of it," she said. "That's how all their money will be drained until it's gone."

Watch the full investigation:



CNN's Kyung Lah reveals how deceptive political fundraisers have misled hundreds of elderly Americans into unwittingly giving away millions of dollars.

Because the text informing donors they are enrolling in recurring donations is often so tiny, particularly on WinRed donation pages, it would be very easy for someone who isn't actually processing what they're reading to miss it, according to Locatell and other experts interviewed by CNN. Elderly donors who have short-term memory issues could be making one-time donations

again and again, not remembering that they made a donation even an hour earlier, they added.

"These ads are a form of misleading, undue influence," Locatell said. "One simple rule could be enacted: Ads can't contain these pre-checked boxes; the person has to actively choose recurring donation."

Behavioral symptoms such as getting hooked by solicitations like these and making poor financial decisions often happen in the early stages of dementia, before family members even realize their loved ones are experiencing any sort of cognitive decline.



overcome Kamala's \$650 million war chest.

I truly mean this: you're worth far more than hundreds of millions of dollars to me.

So now that we're just 28 days away from Election Day, I'm inviting my top consultants like you to join my Official Advisory Board.

**ACCEPT
INVITATION**





Donald J. Trump

45th President of the United States

P.S. I also really hope you can donate weekly to the MAGA Movement all the way through Election Day.

(It would mean the world to me if you can afford to give weekly. If you can't, don't sweat it and make sure you select "donate once.")

● How many years have you been a supporter of President Trump?

<input type="radio"/> Less than 1
<input type="radio"/> 1-2
<input type="radio"/> 3-4
<input type="radio"/> 5+

● Was America better off under President Trump's leadership?

Yes

No

Was America's economy stronger under President Trump's leadership?

Yes

No

Was America safer under President Trump's leadership?

Yes

No

Did you vote for President Trump in 2016?

Yes

No

Did you vote for President Trump in 2020?

Yes

No

Do you think President Trump is unfairly censored by Big Tech?

Yes

No

SHOULD COMRADE KAMALA AND HER CAMPAIGN GO BEFORE A GRAND JURY ON THE IRAN CORRUPTION CASE?

YES

NO

Do you support President Trump's America First agenda?

Yes

No

Do you think President Trump is the greatest President in American history?

Yes

No

Will you be voting for Donald J. Trump on November 5th?

Yes

No

\$5 just donated by Judy S. \$5.25 just donated

just donated by Jerry P. \$26.03 just donated

\$10	\$20.24	\$47	\$100
\$250	\$500	\$1,000	\$3,300

Other

Your contribution will benefit Trump National Committee JFC.

I would like to cover the processing fee of \$0.83 so 100% of my donation goes to Trump National Committee JFC

● I AM DONALD TRUMP, AND I AM ASKING YOU FOR A HUGE FAVOR! I'M GOING TO NEED YOU TO DONATE WEEKLY RIGHT NOW ALL THE WAY TO ELECTION DAY. CAN I COUNT ON YOUR SUSTAINED SUPPORT?

Yes, count me in!

No, donate once

[Make this a weekly recurring donation until 11/5](#)

MESSAGE FROM TRUMP: PLEASE! I CAN'T WIN WITHOUT YOUR HELP RIGHT NOW. IF KAMALA WINS, IT'S DOOMSDAY FOR AMERICA. CAN I COUNT ON YOU TO GIVE ONE MORE TIME FOR A TRUMP LANDSLIDE VICTORY?

Donate an additional \$20.24 automatically on 10/16

MESSAGE FROM TRUMP: WE NEED

TO REGISTER THOUSANDS OF NEW TRUMP PATRIOTS SO WE CAN SWAMP THE VOTE! CAN YOU GIVE ONE MORE TIME & MAKE IT TOO BIG TO RIG?

Donate an additional \$20.24 automatically on 10/17

Enter your contact information:

First name*	Last name*
Email*	
Address*	Zip*
City*	State* <input type="button" value="v"/>
Mobile	

By providing your phone number, you are consenting to receive calls and recurring SMS/MMS messages, including autodialed and automated calls and texts, to that number from each of the participating committees in Trump National Committee JFC Inc. ("TNC"), a joint fundraising committee of Donald J. Trump for President 2024, Inc. ("DJTFP"), the principal campaign committee of Donald J. Trump, and the Republican National Committee ("RNC"). Msg & data rates may apply. Terms & conditions/privacy policy apply. [txterms.co/88022-2](https://www.txterms.co/88022-2)

Campaign finance law requires us to collect your employment information.

I'm retired.

Employer* Occupation*

HARRIS

VICTORY FUND

Donate Weekly to Elect Kamala Harris and Support Democrats Nationwide.

Our fight is more important now than ever before. **Will you chip in weekly?**

Choose an amount:

Your contribution will benefit Harris Victory Fund.

\$25	\$50	\$100	\$250
\$500	\$1,000	\$2,000	\$

Make it weekly until the 2024 General Election
Recurring contributions help us create budgets, hire staff, and plan ahead.

Checkout

 Have an ActBlue Express account? [Sign in to give faster.](#)

    **Pay with card**

Or

 **PayPal**

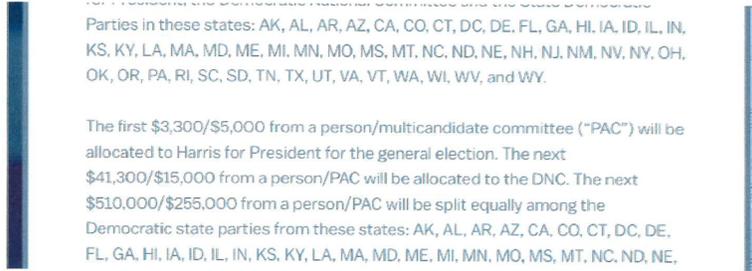
 **Pay**

Contribution rules

1. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).
2. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
3. I am at least eighteen years old.
4. I am not a federal contractor.
5. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.

Contributions or gifts to Harris Victory Fund are not tax deductible.

Paid for by Harris Victory Fund, a joint fundraising committee authorized by Harris for President, the Democratic National Committee and the State Democratic



Calls from CNN reporters asking about donations prompted some family members to rush over to their loved ones' homes to help look through statements or to begin the long process of taking over their finances. Other families CNN spoke with said it was the unusually large number of political donations – which took precedence over expenses as important as electricity bills and taxes -- that alerted them something was wrong.

In the case of the 80-year-old retired communications engineer who gave away close to half a million dollars, one of the man's sons discovered his savings account was nearly drained from all his donations. The son said he took him to a neurologist where he was diagnosed with dementia and spent weeks canceling credit cards and disputing charges, attempting to turn off recurring donations one by one. He ultimately received refunds from WinRed for his father's most recent donations. Still, his father remains out roughly \$300,000.

"When I found this out and started showing Dad, he was shocked, he had no idea," his son said. "He's not a man to give anyone what he considered his life savings."

It often falls on families to try to help their loved ones.

The daughter of an 81-year-old woman with Alzheimer's disease told CNN that when she visited her mother at her home last month, her mom got a call from Ted Cruz's campaign and a text with an ActBlue link within minutes of each other. She said her mother was going to donate to each before she stopped her. Her mother's cognitive decline has gotten so bad, she said, that she believed when someone asked her for money, she needed to give it. The daughter, who lives in another city, said she has been trying to coordinate her mother's medical care while also sorting through the credit card debt she accrued after giving away more than \$100,000.

No oversight

When an elderly man discovered thousands of dollars' worth of political charges on his credit card he said he never authorized, he turned to the agency that oversees campaign donations – the Federal Election Commission – for help.

"I am an 89-year-old widower, a retired architect who lives alone," he wrote in a 2022 complaint. He said he had been plagued by robocalls and scam mail and it appeared ActBlue was "rife with fraud." By the time the FEC completed its investigation, he had died, collapsing "on his way to the post office to mail postcards to voters in Texas," according to his obituary. But the agency hadn't planned on doing anything about his complaint anyway, writing in a response that the matter was "rated as low priority" for an enforcement action based on criteria including the severity of the allegation and the dollar amount involved.

The agency shut down another complaint made about WinRed by the daughters of an elderly woman who said their mother had lost more than \$6,700 to "elder abuse" with the same boiler plate response, noting the "low dollar amount involved."

The FEC would not comment on WinRed or ActBlue specifically but said in a [2023 report](#) on legislative recommendations that it had been regularly hearing from donors who had signed up for recurring donations without their knowledge or consent. The report noted consumers had often attempted to cancel the donations without success before contacting agency staff for help. Agency officials said the outcry from donors "strongly suggests that many contributors are unaware of the 'pre-checked boxes' and are surprised by the already completed transactions appearing on account statements." But it said it didn't have the authority to ban the practice, and that Congress should introduce legislation to change this — a recommendation agency officials first made [after](#) the New York Times [reported](#) on the issue in 2021.

Read what some victims and their families are saying to government watchdogs

"I'm a retired cleaning lady. I just can't believe anyone would do this to me."

"I gave Trump \$20 6 years ago that was just once. Since then I've been hounded by REPUBLICANS BEGGING FOR MONEY. On the RNC Convention day I received 77 text messages of more begging."

"My father is elderly and isn't able to manage his finances anymore, so this went on undetected for a while until we realized that he was running out of money and didn't know why."

"I was recently helping my 93 year old father, who suffers from a cognitive impairment, sort through a pile of mail and saw a massive fraud that someone in ActBlue is perpetrating on my father.... these fraudsters need to stop defrauding older people, especially ones with mental impairments."

"I can't afford you taking all my Social security payments. You drained my bank account, before I can even get food or pay my bills."

"I am distressed by what appears to be outright fraud on behalf of the Republicans."

"I may never contribute again. You are greedy and illegally fool people into taking our money. Not American. not what I thought the party stood for."

"My grandmother, utterly confused and frustrated by the situation has paid her bills and been draining her financial accounts... she was absolutely floored and clearly did not understand the gravity of the deception."

Source: Complaints submitted online and to state and federal agencies

Dan Weiner, director of the Brennan Center's Elections & Government Program, said federal campaign finance law is primarily intended to police political corruption but offers few protections for donors. He said seeking recurring donations "from someone who is not of sound mind" is "unscrupulous behavior [that] falls into a legal gray area."

The Federal Trade Commission criticized pre-checked boxes in a [2022 staff report](#) as an example of a "trick" and "psychological tactic" used by retailers and direct marketers "to get consumers to part with their money." But the agency — which enforces laws governing deceptive advertising, among other regulations — told CNN it did not have jurisdiction over ads used by political campaigns, or over the operations of WinRed and ActBlue, despite fielding hundreds of complaints from consumers.

Currently, pre-checked boxes for recurring donations are allowed in almost every state despite widespread condemnation of the practice from consumer advocates. Federal legislation introduced in recent years that would have prevented their use died in committee without gaining traction.

And while four Democratic attorneys general have been [investigating](#) the

fundraising tactics of WinRed and ActBlue, no action has been taken to date. A number of Republican lawmakers have specifically targeted ActBlue with investigations after right-wing influencers claimed the large volume of transactions from some donors suggested money laundering. CNN has found no evidence of money laundering, instead finding that many elderly donors simply didn't realize how much they were giving.

Individual complaints made to state attorneys general around the country, meanwhile, have not resulted in any apparent action taken against the fundraising platforms or campaigns, according to records obtained by CNN. And in what some donors and experts have pointed to as a potential conflict of interest, the same attorneys general receiving complaints about these platforms have also used WinRed and ActBlue for their own fundraising efforts.

Making it stop

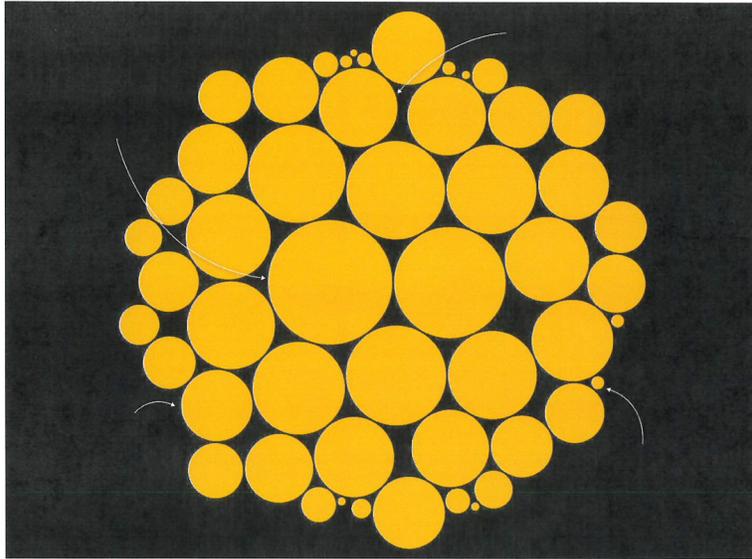
In Utah, a 69-year-old woman, who had a tube surgically placed in her brain to drain fluid from it and had such severe dementia that she required around-the-clock home care, donated nearly \$20,000 to Republican candidates in less than four months.

WinRed continued to charge her even after the attorney overseeing her financial affairs informed the company of her condition and sent a cease-and-desist letter. He filed a lawsuit in 2021 against the platform, which remains ongoing. But it still took a year to make the donations stop. Just seven days after she made her last donation to the Republicans, public records show that more donations were charged to her accounts. This time, to a political group supporting Democrats.

A snapshot of unwitting elderly donors identified by CNN

These 52 elderly donors, many suffering from dementia, gave more than \$6 million to political campaigns — far more than they ever intended.

Total contribution by individual donor



This Taiwanese immigrant had never been involved in American politics until she became lonely and isolated during the pandemic

This 80-year-old engineer gave away nearly half a million dollars

This 89-year-old stroke victim suffers from short-term memory loss and does not remember making donations

This 88-year-old
dementia patient's son
filed a complaint about
WinRed to the Florida
attorney general

Note: These totals do not include refunds received by donors, which were typically only a small fraction of the total amount they had given.

Source: CNN reporting and analysis of FEC individual contributions through WinRed and ActBlue from July 2019 to June 2024.

Matthew Hurtt, the chairman of Virginia-based Arlington County Republican Committee, said he has fielded more than 200 calls and emails from frustrated donors located all over the country. Many of them are elderly donors who say they have struggled to stop their recurring contributions and receive refunds. Hurtt is not affiliated with WinRed, but said he receives the angry inquiries because WinRed is registered in Arlington, so charges made through the platform can sometimes show up with "Arlington" on credit card statements.

Hurtt, like other experts, told CNN he believes such aggressive fundraising tactics are short-sighted and will turn off voters in the long run.

"We don't have to trick people into giving money to our candidates and to our causes," Hurtt said. "Any platform that tricks older donors into giving money unwittingly seems like a scheme to me."

Both [WinRed](#) and [ActBlue](#) have said they notify donors of each recurring

Both [WinRed](#) and [ActBlue](#) have said they notify donors of each recurring contribution and have guides on their websites explaining how donors or their families can request refunds and cancel recurring donations.

ActBlue told CNN it has trained its customer service staff to be on the lookout for those donors who use keywords that indicate confusion or cognitive issues and escalate them to a higher level of service. The platform said this situation is rare and that employees do what they can to accommodate refunds beyond the standard 90-day refund window.

WinRed's website meanwhile says it "is happy to refund any donation made in error," but notes that it can only provide refunds for those contributions made in the last 60 days.

Some of the candidates and PACs who CNN identified as receiving the most money from elderly, unwitting donors said they try to work with contributors to refund mistaken donations.

But many of those interviewed by CNN said it was hard to determine which campaigns to contact, especially since donations were often spread out among hundreds of groups. They usually contacted WinRed or ActBlue instead and found the process confusing, difficult and frequently unsuccessful.

Karen tells CNN her mother was inundated with text messages from political campaigns, leading her to donate nearly \$200,000 in the months before she died: "It's unconscionable what they've done."



Karen, who asked CNN not to use her last name, holds a stack of her late mother's credit card bills,

almost all of which reflect charges to WinRed. *Gabe Ramirez/CNN*



Karen's mother's now-empty house is being prepared for lease. *Gabe Ramirez/CNN*

In the case of WinRed specifically, many said they couldn't even figure out how to reach a representative on the phone. One frustrated son who filed a complaint with the Massachusetts Attorney General's Office told CNN he resorted to tracking down a company intern he found on LinkedIn in the hopes of finally turning off his mother's recurring donations. He said she had lost more than \$20,000 and that after contacting WinRed and even cancelling her debit card, she continued to be charged.

In Washington state, meanwhile, WinRed was quick to dismiss an 80-year-old woman's plea for the state to investigate the platform for "senior abuse" -- saying the woman had agreed to the company's terms of use, which make clear it provides refunds only as required by law. By the time she had filed her complaint, her money was long gone. It was up to her to reach out to the campaigns for any refunds.

"With all due respect," WinRed's attorney wrote, "there is nothing here to investigate."

Elon Musk put \$277 million into the election. He's \$200 billion richer this year.

The tech mogul made a big bet on Donald Trump. By one measure, it has paid off handsomely.

Yesterday at 7:55 a.m. EST

7 min    1561

By [Faiz Siddiqui](#) and [Trisha Thadani](#)

Elon Musk's net worth has climbed by more than \$200 billion in 2024, a massive increase in the same year that the world's richest person spent at least \$277 million backing [Donald Trump](#) and other Republican candidates.

The bulk of the increase, more than \$170 billion, has come since Election Day.

Trump's election sent stock in electric-vehicle maker Tesla, a company central to Musk's wealth and where he is CEO, soaring. Shares were trading at prices about 70 percent higher on Friday than on Election Day.

As of Friday, Musk's fortune was [about \\$442 billion](#), according to the Bloomberg Billionaires Index. That estimate includes a pay package from Tesla worth [more than \\$50 billion](#) that is held up in court after a Delaware judge ruled to [strike it down](#) in January and [upheld her decision](#) this month. Tesla [has pledged](#) to appeal.

Trump has indicated he will be friendly to businesses and investors of all kinds when he returns to office. Musk's empire is poised to especially benefit from the president-elect's promised cuts to regulation — and potentially also overt favors to the tech billionaire, who has become a loyal political lieutenant.

Trump picked Musk to co-chair a nongovernmental advisory group on cuts to federal spending and regulation known as the "Department of Government Efficiency," or DOGE, potentially allowing the tech entrepreneur to shape policies that affect his businesses. Musk did not respond to a request for comment.

"Elon Musk is a once in a generation business leader and our federal bureaucracy will certainly benefit from his ideas and efficiency," said Brian Hughes, a spokesman for the Trump-Vance transition. He described Musk and Trump as "great friends and brilliant leaders working together to Make America Great Again."

Musk launched his entrepreneurial career in 1995 when he abandoned a graduate program at Stanford to found a start-up later called Zip2 that created online city guides. It was sold for about \$300 million in 1999.

He went on to co-found an online banking company, X.com, that merged with another start-up to create PayPal. Auction site eBay acquired PayPal in 2002 for \$1.5 billion.

Musk went on to pivot into the more physical ventures that have come to define him, most prominently Tesla and rocket-maker SpaceX; but also brain interface developer Neuralink; and a tunnel construction start-up, the Boring Co.

The huge success of Tesla and SpaceX catapulted him to the rank of world's richest person — and arguably the United States' most successful immigrant.

"Elon stuck his neck out, he made a big bet — and he was right," said Gene Munster, managing partner at investment firm Deepwater Asset Management.

The fortunes of Tesla, the jewel in Musk's portfolio, are entangled with federal regulation. The billionaire has staked the company's future on self-driving vehicles and taken the largely unique approach of trying to enable cars bought by consumers to drive themselves without supervision — a concept for which there is not yet a well-established regulatory regime.

Musk said in a July earnings call that regulators are "morally obligated" to clear the path for autonomous vehicles if a company can prove a reliable safety record.

Federal approval for Tesla's Cybercab, an autonomous vehicle the company hopes to deploy by around 2027, is now seen as more likely because of Trump's promises to cut regulation and his close relationship with Musk.

Musk also said in October he would use the future DOGE panel to help create a federal approval process for autonomous vehicles. On Friday, Reuters reported that Trump's transition team had recommended axing a federal reporting requirement for crashes involving vehicles with driver-assistance features — a policy that it said Tesla opposes.

The National Highway Traffic Safety Administration has used that public data in investigations and recalls into the company's technology. Removing the reporting requirement could ease the scrutiny on Tesla and autonomous-vehicle makers.

Dan Ives, an analyst at financial firm Wedbush Securities, wrote last month that "Trump will fast track the autonomous and AI initiatives in our view over the next 12 to 18 months." That would be a "game changer" for Tesla, he said.

Jessica Caldwell, head of insights at auto industry ratings and research provider Edmunds, said that significant uncertainty remains for the company's work on autonomous driving but that the regulatory outlook now appeared clearer. "I imagine that things will go in Tesla's direction — at least for the next four years," she said.

Musk's assets also include significant shares in four private companies where he is an executive or owner: SpaceX, Neuralink, social media company X and artificial intelligence developer xAI.

SpaceX and Neuralink also operate in heavily regulated industries that could benefit from Musk's role on the efficiency commission and his desire to ease regulations across the federal government. The rocket maker has become essential to the U.S. space program and could benefit from policy changes made by Trump or his pick to lead NASA, billionaire entrepreneur Jared Isaacman.

Isaacman has twice orbited the planet on private SpaceX flights including a September mission that saw him perform the first spacewalk by a private citizen. The company recently completed a tender offer that made it the world's most valuable private start-up, Bloomberg News reported, adding roughly \$50 billion to Musk's net worth.

The performance of Musk's social media platform has been less robust. Fidelity recently put the value of one of its stakes in X about 70 percent lower than when it was purchased, highlighting the challenges the social network faced before the election. After Musk purchased the platform, then known as Twitter, some advertising clients fled following his loosening of content moderation.

Saudi Prince Alwaleed bin Talal, the second-largest investor in X after Musk, previously told The Washington Post that he didn't believe the company had lost any value. He cited X's investment in artificial intelligence development through xAI, which Musk launched as a rival to ChatGPT-maker OpenAI.

The Trump transition has said it will ensure those involved with the DOGE group Musk was picked to co-chair are compliant with legal guidelines on conflicts of interest.

Democrats in Congress said the combination of Musk's election spending, expectations that Trump will create policies favorable to the tech mogul and the recent increase in Musk's net worth could ethically compromise the incoming administration.

"There is an outrageous and urgent conflict of interest for Elon Musk, a billionaire with business interests like Tesla, but also covering a wide range of industries, to be given any responsibility for corporate welfare disguised as government efficiency," Sen. Richard Blumenthal (D-Connecticut) said.

"Dismantling safety rules and oversight concerning self-driving vehicles simply drives up the stock price and undermines safety — with benefits to him and shareholders but not to drivers and others on the road."

Blumenthal said Musk recently lobbied Republicans on Capitol Hill to clear a regulatory pathway for autonomy, the issue that later sent Tesla's stock price soaring.

Sen. Edward J. Markey (D-Massachusetts), a longtime critic of Tesla's approach to advanced driver-assistance features, said on X earlier this month that Musk is "already getting a return on his investment in Trump."

In a statement to The Post, Markey said that relaxing rules for self-driving cars would "turn our public roads into one big testing facility for a company owned by the world's richest man."

"I will do everything in my power to make sure Elon Musk doesn't get to recklessly bend the rules to line his pockets," Markey said.

Clara Ence Morse contributed to this report.

[The prepared statement of Ranking Member Morelle follows:]

**PREPARED STATEMENT OF RANKING MEMBER OF THE
COMMITTEE ON HOUSE ADMINISTRATION JOSEPH MORELLE**

At the outset, let me say, House Democrats care deeply about the integrity of our elections. That will always be our North Star. Foreign interference in our elections strikes at the very heart of democratic self-government. When we find opportunities to deter foreign interference and protect the integrity of our elections, House Democrats have worked and will continue to work to find bipartisan solutions.

As the chair referenced, earlier this week I was proud to support him in passage of H.R. 9488, the SHIELD Act, which will provide additional privacy and security protections for Americans who donate to political campaigns online. The final bill was a product of extensive bipartisan negotiations and reflects, I think, critical revisions that had been secured by Committee Democrats as we worked through the process. Again, grateful to him and to the staff for that work.

Regrettably, however, today's hearing is not truly about only protecting and promoting election integrity but an effort at additional partisan posturing, as the majority appears fixated on ActBlue, the prominent fundraising platform, and the majority has made in the past some specious claims unaccompanied by facts—all smoke, in many respects, no fire.

If we truly care about deterring election interference, we would look in everyone's backyard. We would look in—and the Republicans would look in their own backyard. I will apologize if I missed this, but I have not seen an oversight letter or subpoena to WinRed, the prominent conservative fundraising platform which was created in response to the tremendous success of ActBlue.

According to CNN, WinRed had nearly seven times more Federal Trade Commission complaints than ActBlue from January 1922 through June 2024.

One 82-year-old woman, who wore pajamas with holes in them because she did not want to spend money on new ones, did not realize she had given Republicans more than \$350,000 while living in a 1,000-square-foot Baltimore condo since 2020. Committee Republicans have not said anything about that or the blatant scheme to swindle older Americans.

Focusing on ActBlue is about politics, pure and simple. There are things to get to here, we agree, but not picking one side and ignoring entirely the actions of the other side.

Now, my colleagues are also focused on foreign funding of ballot initiatives, and, to their credit, this is a very pressing issue. Some of the testimony before this Committee seeks to blame the problem squarely on the shoulders of a single donor, but, in my neighborhood, we would call that something else but here I will just refer to that approach as “malarkey.” We all agree, ballot initiatives are a basic expression of our uniquely American expression of self-government and experience with self-government.

Without a doubt, ballot initiatives should be protected from foreign intervention, we agree. Federal campaign finance law bars foreign nationals from contributing or donating money in connection with a Federal, State, or local election.

In 2015, I note, however, three Republican Commissioners on the FEC voted to dismiss an enforcement action brought against foreign corporate special interests who spent \$327,000 to oppose a California public health ballot measure.

In doing so, those Republican Commissioners opened a loophole foreign special interests have exploited. For example, in Maine, a Canadian-owned utility funneled over \$20 million opposing a Maine citizen ballot initiative in 2020, dwarfing all other spenders on that campaign. Similar outside, foreign special-interest spending defeated a local Oregon ballot measure opposing the development of a natural gas pipeline in 2017.

As we will hear more today, foreign corporate money defeated a 2018 water quality ballot initiative in Montana. You will hear from a native Montanan about the harms foreign corporate spending poses in ballot initiatives—a disquieting story of a foreign company that donated \$288,000 to oppose the ballot initiative, which, if passed, quote, “would increase Montana’s ability to avoid polluting the State’s waters,” end quote—to put profits over people.

As one Democratic Federal Election Commissioner put it, a—Commissioner put it, “A company based halfway around the world made a sizable donation, interjecting itself, in hopes of future profits, into a political debate in Montana over mining and the quality of Montana’s waters.”

This story has a lamentable but unsurprising ending: The FEC dismissed the matter, allowing the foreign corporation’s spending to influence a local Montana election to go unpunished. This outcome has real-world consequences. Montana’s

water is now more likely to be less clean, harming public health, the environment, agriculture, ranching, the outdoor recreation industry, and everyday quality of life in Montana.

Unfortunately, three Republican FEC Commissioners opened a loophole for foreign corporations to exploit. We need to close this loophole, we agree. We cannot stop there. Since the Supreme Court's disastrous Citizens United decision, our campaign finance system, to put it lightly, has been broken, and it is going to continue to be broken until we make a fix.

It is broken in a significant way. This year, one donor, one single donor, billionaire Elon Musk, spent at least \$277 million of his own money backing Donald Trump and other Republican candidates. Also this year, just coincidentally, Musk's net worth climbed by more than \$200 billion, with the vast bulk of the increase, \$170 billion, coming just since election day. According to OpenSecrets, five donors gave over \$100 million during the 2024 election.

We need to fix this broken special-interest big-money campaign finance system. The vast majority of Americans support that and understand that getting money—big money out of politics is important for them to have their influence over their Government.

We need to stem all avenues of potential foreign interference. We need meaningful disclosure of campaign funds and a functioning FEC. That is why Democrats will continue to support the Freedom to Vote Act.

If we are serious about preventing foreign interference, please, let us do this in a bipartisan manner. I welcome it, and I would urge us to do it together. Sadly, given some of the work as it relates to elections here, I suspect that will not happen.

Chairman STEIL. The gentleman yields back.

Without objection, all other Members' opening statements will be made part of the hearing record if they are submitted to the Committee clerk by 5 p.m. today.

Today, we have one witness panel. We welcome Mr. Matthew O'Neill, Ms. Caitlin Sutherland, Mr. Bradley Bowman, and Mr. Derf Johnson.

Our first witness, Matthew O'Neill, is a former managing director of the Secret Service Global Cyber Investigative Operations, a position in which he directed and participated in worldwide cyber investigations.

Our next witness, Ms. Caitlin Sutherland, is the executive director for Americans for Public Trust. Americans for Public Trust has been at the forefront of reporting on foreign influence in U.S. elections.

Our next witness, Mr. Bradley Bowman, is the senior director for the Center on Military and Political Power at the Foundation for Defense of Democracies. Mr. Bowman has expertise on the broad spectrum of actions undertaken by foreign state actors to influence American elections.

Our last witness, Derf Johnson, is the deputy director for the Montana Environmental Information Center.

We appreciate all of you being here today and look forward to your testimony.

Pursuant to paragraph (b) of Committee Rule 6, the witnesses will please stand and raise their right hand.

[Witnesses sworn.]

Chairman STEIL. Let the record show the witnesses all answered in the affirmative.

You may be seated.

Let me remind the witnesses that we have read your written statements and they will appear in full in the hearing record. Under Committee Rule 9, you are to limit your oral presentation to a brief summary of your written statement.

I will now begin and recognize Mr. Matthew O'Neill for 5 minutes for an opening statement.

STATEMENT OF MATTHEW K. O'NEILL, CO-FOUNDER AND PARTNER, 50H CONSULTING; CAITLIN SUTHERLAND, EXECUTIVE DIRECTOR, AMERICANS FOR PUBLIC TRUST; BRADLEY BOWMAN, SENIOR DIRECTOR, CENTER ON MILITARY AND POLITICAL POWER, FOUNDATION FOR DEFENSE OF DEMOCRACIES; AND DERF JOHNSON, DEPUTY DIRECTOR, MONTANA ENVIRONMENTAL INFORMATION CENTER

STATEMENT OF MATTHEW K. O'NEILL

Mr. O'NEILL. Good morning, Chairman Steil, Ranking Member Morelle, and distinguished Members of the Committee. Thank you for the opportunity to discuss the urgent threat—

Chairman STEIL. I am going to—would you just pull the microphone a little bit closer—

Mr. O'NEILL. Oh, I am sorry.

Chairman STEIL [continuing]. since—I want to make sure people online are able to hear you as well.

Mr. O'NEILL. Copy that.

Chairman STEIL. Thank you.

Mr. O'NEILL. OK.

Thank you for the opportunity to discuss the urgent threat of financial interference in U.S. elections through financial crimes. Addressing this issue is not just about protecting our democracy; it is a national security imperative.

Foreign actors exploit gaps in our financial systems to fund operations designed to disrupt U.S. elections. These efforts often overlap with broader financial crime schemes like money laundering and fraud, which cost the U.S. economy billions every year. In 2023 alone, Americans lost over \$12.5 billion to financial crimes—

Chairman STEIL. Apologies. The speaker in the room is what is low. We are going to turn it up.

Mr. O'NEILL. OK. I will speak louder.

Chairman STEIL. I apologize. A little bit louder—

Mr. O'NEILL. OK.

Chairman STEIL [continuing]. and I think some of us can—

Mr. O'NEILL. OK. Thank you.

Chairman STEIL. Thank you.

Mr. O'NEILL. The world once looked to the U.S. as a leader in combating financial crime, but, today, other countries are advancing faster, implementing modernized frameworks and technologies, while the U.S. struggles with outdated systems and insufficient collaboration. Without action, we risk falling further behind.

Foreign actors exploit weaknesses in U.S. systems to fund election interference and other malign activities by leveraging shell companies; emerging platforms and digital ecosystems, such as crowdfunding sites and unregulated fintech platforms with minimal AML or KYC requirements; money mule networks. These networks launder money through witting and unwitting individuals, complicating traceability.

Our key challenges include: Outdated systems. Tools like section 314(a) of the USA PATRIOT Act rely on slow batch processing, de-

laying law enforcement's ability to act. SARs often lack key metadata, such as IP addresses, that are critical to tracking cyber-enabled financial crimes.

There are regulatory gaps such as: Platforms like crowdfunding sites and payment processors operate in a gray area with little or no oversight. Cryptocurrencies, while valuable for innovation, are being exploited to bypass traditional financial controls.

There are limited incentives for financial institutions such as 314(b), which allows voluntary information-sharing. Participation is inconsistent because institutions lack tangible incentives to collaborate.

To address these challenges, I recommend the following actions:

One, modernize section 314(a) and 314(b). Fund FinCEN to implement real-time, automated query systems under 314(a) to enhance responsiveness. Expand 314(a) and 314(b) to include crowdfunding platforms, payment processors, and fintech companies, applying these updates across the Bank Secrecy Act. Incentivize financial institutions to engage in 314(b) information-sharing through tax breaks or grants.

Close regulatory gaps. Extend AML and KYC requirements to include cryptocurrency exchanges, crowdfunding platforms, and payment processors. Mandate unique transaction identifiers to improve traceability across all payment systems.

Enhance reporting standards. Require SARs to include metadata, such as IP addresses and geolocation data, for better traceability. Develop feedback mechanisms to show financial institutions how their reports contribute to investigations, encouraging more meaningful filings.

Leverage advanced technology. Equip law enforcement with AI and blockchain analytics to identify patterns of illicit behavior. Support privacy-preserving technologies like fully homomorphic encryption to secure data-sharing without compromising privacy.

Last and probably most important, encourage private-to-private collaboration. Expand safe-harbor protections similar to 314(b) of the USA PATRIOT Act to include social media platforms, ISPs, telecommunications providers, domain registrars, and other technology companies.

This would allow entities to lawfully share information with each other about suspicious activity, potential threats, and malicious actors, fostering collaboration across industries while mitigating liability concerns. Such a framework would significantly enhance the identification and disruption of election interference and other illicit activities.

Addressing election interference through financial crime is not just about closing gaps; it is about reestablishing U.S. leadership on the global stage. The tools we need already exist, but modernization incentives are necessary to fully realize their potential.

By expanding information-sharing frameworks, closing regulatory gaps, and leveraging technology, we can protect our democracy and restore public trust in our financial systems.

Thank you for your time and attention, and I look forward to answering your questions.

[The prepared statement of Mr. O'Neill follows:]

PREPARED STATEMENT OF MATTHEW K. O'NEILL

**WRITTEN TESTIMONY
OF**

Matthew O'Neill

Co-Founder – 5OH Consulting LLC

United States Secret Service (Retired – Deputy Special Agent in Charge - Cyber)



BEFORE

**Committee on House Administration
United State House of Representatives**

ON

“American Confidence in Elections: Prohibiting Foreign Interference.”

**December 18, 2024
Washington, DC**

Introduction

Good morning, Chairman Steil, Ranking Member Morelle, and distinguished Members of this Committee. Thank you for the opportunity to address the pressing challenge of foreign interference in U.S. elections through money laundering and financial crimes. The topic of today's hearing—"American Confidence in Elections: Prohibiting Foreign Interference"—underscores the urgent need for a coordinated response to safeguard our democracy. Combating these threats requires modernizing regulatory frameworks, leveraging advanced technology, and fostering collaboration across the public and private sectors.

Foreign dollars interfering in U.S. elections pose a profound threat to national security and the integrity of democratic processes. Tackling this issue requires employing the same tools used to combat money laundering and terror financing, such as robust information-sharing systems and closing systemic gaps. By strengthening these mechanisms, we can address not only election interference but also a broad spectrum of financial and cyber threats.

Providing safe harbors for telecommunications companies, ISPs, social media platforms, email providers, domain registrars, and others, to share information, and pairing that with incentives for financial institutions to participate beyond their legally mandated obligations. These changes made in recognition of advancing technology will go a very long way to overcoming the rapidly widening gap between law enforcement and the expanding successes associated with bad actors. These steps will result in a major and fast leap forward toward creating a unified and secure framework for sharing critical information while preserving privacy. Addressing vulnerabilities in one area inherently strengthens protections across all sectors.

While the United States was once a global leader in combating financial crime through landmark legislation like the Bank Secrecy Act (BSA) and the USA PATRIOT Act, it has struggled to adapt to the rapidly evolving global marketplace and technological advancements. Other countries have recognized these shifts and are actively implementing new legislative and regulatory frameworks to address emerging threats.

Today, the U.S. is no longer viewed as a proactive leader in this fight. Global partners, who once looked to the U.S. for leadership, are increasingly forging their own paths, focusing on modernized information-sharing frameworks and advanced technological solutions. The U.S.'s failure to address critical gaps in information sharing and to incentivize collaboration among financial institutions, technology providers, and law enforcement has allowed bad actors to exploit these weaknesses.

This inability to modernize not only diminishes the U.S.'s global standing but also directly harms its citizens by enabling the expansion of illicit activities, including money laundering, fraud, and election interference. Without decisive action, the United States risks falling further behind in its ability to protect its financial system, its democratic institutions, and its citizens from these threats.

The Role of the Secret Service in Combating Money Laundering and Financial Crimes

As a retired second-generation U.S. Secret Service agent, I hold immense pride in the agency's integrated mission of investigation and protection. For nearly 50 years, my family has been deeply committed to uncovering financial crimes and safeguarding national security. Ours is a family of patriots united by a common goal: to make this country safer and better for all.

During my tenure as Deputy Special Agent in Charge of Cyber Operations, I led global investigations into transnational organized crime groups, spearheading initiatives in cryptocurrency tracing, ransomware disruption, and critical infrastructure protection. Under my leadership, the Secret Service expanded its cryptocurrency analysis capabilities by 300% and seized \$60 million in illicit assets in a single year. These accomplishments underscore the indispensable role of proactive, technology-driven investigative efforts in combating sophisticated threats.

The investigative mission of the U.S. Secret Service, established 159 years ago, remains foundational to its identity and success. The agency's 43 Cyber Fraud Task Forces, deployed worldwide, are staffed with federal, state, and local law enforcement officers who collaborate to combat complex cyber-enabled fraud. This collaboration has been instrumental in addressing a 200% increase in cyber fraud losses, which surged from \$4 billion in 2017 to over \$12 billion in 2023, as reported by the FBI's Internet Crime Complaint Center (IC3).

During the pandemic alone, the Secret Service recovered more than \$2 billion in stolen funds. Additionally, from FY2019 to FY2023, the agency seized and returned over \$687 million to victims of financial crimes, further demonstrating its effectiveness in combating large-scale fraud.

The Secret Service has a long history of success in combating cybercrime and financial fraud. It played a pivotal role in dismantling ransomware networks, including identifying and disrupting the infrastructures behind AlphV and Hive. The agency also investigated the 2020 Twitter hack, where high-profile accounts of political figures were breached. Investigative efforts linked the perpetrator to prior cryptocurrency fraud cases, exemplifying the synergy between the agency's expertise in cybercrime and fraud investigations. Additionally, the Secret Service has disrupted darknet platforms soliciting cryptocurrency donations for targeted violence against elected officials, emphasizing its critical role in mitigating threats to national security.

Since retiring, I have continued to work with government agencies and the financial sector to combat transnational organized crime groups and money laundering. The broader perspective I've received during this time by working with the public and private sectors has only reinforced in my mind the necessity for increased collaboration between public and private entities to counter financial crime and protect democratic institutions.

The Growing Threat of Financial Fraud and Cybercrime

Financial crime has become a global epidemic. In 2023, the Federal Trade Commission's Consumer Sentinel Network reported over 5.39 million consumer complaints, including more than 2.5 million fraud reports, resulting in \$10 billion in losses—a record high. Imposter scams alone accounted for \$2.7 billion in losses, while investment-related fraud totaled \$4.6 billion. The median loss across all fraud reports was \$500, with investment fraud yielding median losses as high as \$7,768.

Globally, an estimated \$2 trillion is laundered annually, representing 2–5% of global GDP. These staggering losses fuel transnational organized crime (TOC) groups, nation-state actors, and other malign entities, jeopardizing economic stability and national security.

Bad actors exploit every available payment system, from open-loop gift cards to cryptocurrency, to obscure illicit funds. Open-loop gift cards are particularly attractive due to their anonymity and ease of transfer, making them a preferred tool for laundering proceeds.

Cryptocurrencies provide another layer of concealment, enabling seamless cross-border transfers with minimal oversight.

According to industry leaders like Cloudburst Technologies, platforms like Telegram have emerged as key hubs for money laundering through gift card exchanges. Fraudsters advertise U.S. gift cards from companies such as Amazon, Walmart, and Roblox in public forums, accepting cryptocurrency in return. These schemes allow bad actors to "wash" illicit funds and reintegrate them into legitimate financial systems.

Modernizing and Enhancing Regulatory and Financial Institution Frameworks

The technology sector, including social media platforms, ISPs, telecom companies, and hosting providers, plays a crucial role in addressing these challenges. However, their ability to act is constrained by liability concerns and a lack of regulatory clarity.

Expanding safe harbor protections akin to those under Section 314(b) of the USA PATRIOT Act to the technology sector would empower these entities to share critical information without fear of legal repercussions. Failure to do so will be akin to casting a blind eye to the impacts the fast-growing technological landscape is having around the globe. And explicitly recognizing the intersection of fraud and money laundering by unequivocally extending these protections to be inclusive of those activities would significantly enhance the identification and disruption of criminal networks.

There is also an urgent need to incentivize financial institutions to fully leverage the existing 314(b) framework. Although regulations permit information sharing to combat money laundering, participation among eligible financial institutions remains inconsistent.

Financial institutions often hesitate to collaborate due to competing priorities and perceived risks. Providing incentives such as tax breaks, grants, or reduced regulatory scrutiny for active participants could overcome the voluntary nature of 314(b) and transform it into a cornerstone of the fight against financial crime. Enhanced guidance and feedback mechanisms from regulators would further encourage participation and ensure that collaborations are impactful and compliant with privacy laws.

Sections 314(a) and 314(b) are critical tools in combating financial crime but urgently require updates to address evolving threats.

Section 314(a) enables law enforcement to query financial institutions about accounts or transactions linked to suspected money laundering or terrorism financing. However, the current system relies on, among other things, outdated batch processing methods, delaying responses to urgent queries by up to 28 days. These delays, coupled with an insecure and inefficient information-sharing process based on 22-year-old technology with no substantial updates, significantly reduces the effectiveness of this vital tool.

To address these shortcomings, Congress must fund FinCEN to implement real-time, automated query systems and federated search capabilities. These upgrades are not only technologically feasible but also long overdue. Implementing these improvements will enable law enforcement to detect and disrupt illicit activities with greater efficiency and precision, ensuring a timely and effective response to emerging threats.

Section 314(b) facilitates voluntary information-sharing among financial institutions to detect suspicious activity. However, participation remains inconsistent due to liability concerns and ambiguities in permissible sharing. As noted above, expanding safe harbor protections to include digital platforms, such as social media companies, ISPs, and domain registrars, would empower these entities to share threat intelligence without fear of legal repercussions.

Clarifying these ambiguities, particularly concerning fraudulent activities, would further enhance collaboration and foster a more holistic approach to combating financial crime.

Addressing Inefficiencies in Information Sharing

Siloed information-sharing practices and defensive Suspicious Activity Report (SAR) filings create inefficiencies that hinder the fight against financial crime. Financial institutions regularly file SARs out of caution, overwhelming law enforcement with low-value reports that dilute investigative focus.

Improving feedback mechanisms and reducing the volume of defensive SARs would dramatically enhance their utility. Financial institutions rarely know if their SAR filings lead to investigations or add value. Developing a robust feedback system would help calibrate monitoring systems, streamline reporting processes, and ensure that SARs align with investigative priorities.

Leveraging Advanced Technologies

Technological advancements have widened the gap between law enforcement's ability to detect and deter illicit activities and bad actors' exploitation of systemic vulnerabilities. Criminals leverage sophisticated technology while law enforcement operates within the constraints of a regulatory framework implemented over two decades ago.

Advancements in artificial intelligence (AI) exacerbate these challenges. AI-powered tools like deepfakes, generative text, and synthetic identities lower the barrier of entry for bad actors, enabling even low-skilled individuals to execute sophisticated fraud schemes. Deloitte projects that business email compromise (BEC) losses could rise to \$11.5 billion annually by 2027 due to AI adoption, with synthetic identity fraud potentially costing at least \$23 billion by 2030.

Despite these challenges, AI also offers transformative potential when harnessed correctly. Fully homomorphic encryption (FHE), for example, enables secure, privacy-preserving data sharing and analysis, allowing institutions to collaborate without compromising sensitive information. By adopting AI-driven analytics and FHE, financial institutions can identify patterns across massive datasets, enhancing fraud detection and prevention.

Regulatory incentives, such as tax breaks or grants, could accelerate the adoption of these tools, closing gaps in the current system and empowering law enforcement to stay ahead of emerging threats.

Fostering Collaboration Across Sectors

Money mule networks remain a critical enabler of money laundering, facilitating the movement of illicit funds across borders. Disrupting these networks requires enhanced monitoring, stricter controls, and coordinated efforts across industries and jurisdictions.

Emerging payment systems, such as open-loop gift cards and cryptocurrencies, further complicate this landscape. These systems are frequently exploited by bad actors due to their anonymity and ease of transfer. Strengthening oversight and implementing stricter controls will be essential to mitigating their misuse.

Fraud and money laundering are deeply intertwined with foreign interference in elections. Bad actors exploit the same systemic vulnerabilities—gaps in identity verification, payment systems, and information-sharing frameworks—to fund malign activities. Addressing these vulnerabilities will not only reduce fraud but also strengthen the integrity of democratic institutions.

Solving fraud and money laundering is a dual-purpose strategy. By improving identity verification, enhancing payment system monitoring, and fostering cross-industry

collaboration, we can dismantle the networks enabling these threats and protect the democratic processes at the heart of our nation.

Recommendations

To address these challenges, I recommend:

1. **Modernizing Section 314(a):** Fund FinCEN to implement real-time, automated query systems and federated searches.
2. **Expanding Section 314(b):** Extend safe harbor protections to digital platforms and clarify sharing guidelines to align with privacy laws.
3. **Modernizing Identity Systems:** Reduce reliance on Social Security numbers and adopt robust digital authentication technologies.
4. **Adopting Advanced Technologies:** Leverage AI and FHE for privacy-preserving data sharing and enhanced fraud detection.
5. **Providing Regulatory Incentives:** Offer tax breaks, grants, and reduced regulatory scrutiny to encourage participation in information-sharing initiatives.
6. **Targeting Money Mule Networks:** Enhance cross-industry efforts to identify and disrupt laundering hubs.
7. **Strengthening Oversight of Payment Systems:** Implement stricter controls on open-loop gift cards and cryptocurrency transactions.
8. **Improving SAR Feedback Mechanisms:** Develop robust systems to provide financial institutions with actionable feedback on SAR filings

Conclusion

Foreign interference in elections through financial crime poses a direct and ongoing threat to the United States. By modernizing regulatory tools, fostering collaboration across industries, and leveraging advanced technologies, we can effectively combat these vulnerabilities. Addressing fraud and money laundering is not merely a financial priority—it is a national security imperative that demands immediate attention.

Thank you, and I look forward to your questions.

Chairman STEIL. Thank you very much, Mr. O'NEILL.

Ms. Caitlin Sutherland, you are recognized for 5 minutes.

Before we begin, the speaker in the room is the challenge for us. We are used to having it incredibly loud. The microphones are working, and those watching online are able to hear.

STATEMENT OF CAITLIN SUTHERLAND

Ms. SUTHERLAND. Chairman Steil, Ranking Member Morelle, and Members of the Committee, my name is Caitlin Sutherland. I am the founding executive director of Americans for Public Trust, a nonprofit, nonpartisan organization dedicated to restoring trust in Government by holding politicians and political groups accountable.

Since our inception, APT has devoted extensive resources to uncovering and publicizing outside money and influence in politics and policy, including tracing foreign dark money.

I thank you for the invitation and opportunity to again join you to discuss the important topic of foreign interference in U.S. elections.

The majority of Americans agree that foreign nationals should be prohibited from influencing our elections. In fact, that has been Federal law for 40 years. Unfortunately, Federal law is inadequate when defining what foreign nationals can and cannot do.

Essentially, foreign nationals are only prohibited from contributing to a candidate, committee, or super-PAC or participating in a campaign's decision-making process. This means foreign nationals can largely still influence a whole host of other election-related vehicles with zero repercussions.

It is currently legal for foreign nationals to pay for get-out-the-vote operations, voter registration, issue advocacy, voter education, ballot harvesting, door-knocking—like how the U.K.'s Labour Party actively recruited British nationals to knock on doors to support Kamala Harris—and State and local ballot issue campaigns. Congress should act to close all these foreign influence loopholes.

The issue of foreign nationals influencing our elections is not a hypothetical one but a real and ongoing threat made easier when organizations like ActBlue have failed to put basic protections in place.

As I have testified before, a significant source of foreign cash is flowing into our politics from Swiss billionaire Hansjörg Wyss, who is not a U.S. citizen but whose goal is to, quote, "reinterpret the American Constitution in the light of progressive politics," end quote.

According to The New York Times, Mr. Wyss's, quote, "political activism is channeled through a daisy chain of opaque organizations that mask the ultimate recipients of his money," end quote. Through a detailed accounting of publicly available records, APT has been able to trace that at least a quarter of a billion dollars of this foreign money has been funneled through the Arabella Advisors-managed Sixteen Thirty Fund.

Sixteen Thirty Fund—the, quote, "indisputable heavyweight of Democratic dark money," end quote, according to The Atlantic—receives this foreign money and then turns around and bankrolls political battles all across the country.

How much? Well, in the absence of laws restricting foreign nationals from contributing to ballot issue campaigns, Sixteen Thirty Fund has poured \$130 million into ballot issue campaigns in 25 States. Ballot issues, while an important democratic tool, are also used to drive voter turnout to influence candidate races and often push the most extreme version of policies that would not withstand the legislative process.

During the 2024 election cycle, Sixteen Thirty Fund spent over \$37 million in foreign-backed cash targeting ballot issues in Alaska, Arizona, Florida, Missouri, Montana, Nebraska, Nevada, and Ohio.

Sixteen Thirty Fund also heavily invests in super-PACs, with their total giving approaching \$90 million over the last four cycles. During this year's elections, their millions went toward financing competitive U.S. House races in Nebraska, Iowa, Montana, and Wisconsin; supporting a so-called independent U.S. Senate candidate in Nebraska; as well as propping up a Libertarian Presidential candidate to act as a spoiler to Donald Trump.

Mr. Wyss's foreign money has also been allocated to groups like Indivisible, known for disrupting congressional townhalls; to Eric Holder's National Redistricting Action Fund, which works to skew congressional maps to favor Democrats; to Climate Power, which ran television ads backing Biden's Build Back Better agenda and is now seeking to torpedo the nomination of Governor Doug Burgum for Interior Secretary; and even to fake news outlets, like States Newsroom, which operates under local-sounding papers in your State, like Wisconsin Examiner, Florida Phoenix, Oklahoma Voice, and Ohio Capital Journal.

Any vehicle that broadly influences the electoral process, from door-knocking to ballot issues, should not be paid for by foreign dollars. These are simple, commonsense loopholes to close. I think we can all agree, foreign billionaires, the U.K.'s Labour Party, and CCP officials should stay out of our politics.

I look forward to discussing ways to prevent foreign influence in our elections.

Thank you.

[The prepared statement of Ms. Sutherland follows:]

PREPARED STATEMENT OF CAITLIN SUTHERLAND

**AMERICANS FOR
PUBLIC
TRUST**

WRITTEN TESTIMONY OF
AMERICANS FOR PUBLIC TRUST

BY

CAITLIN SUTHERLAND
EXECUTIVE DIRECTOR

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION

FOR A HEARING ENTITLED

“AMERICAN CONFIDENCE IN ELECTIONS: PROHIBITING FOREIGN
INTERFERENCE”

December 18, 2024

Chairman Steil, Ranking Member Morelle, and Members of the Committee:

My name is Caitlin Sutherland, and I am the founding Executive Director of Americans for Public Trust, a nonprofit, nonpartisan organization dedicated to restoring trust in government by holding politicians and political groups accountable. Since our inception, APT has devoted extensive resources to uncovering and publicizing outside money and influence in politics and policy, including tracing foreign dark money.

I thank you for the invitation and opportunity to again join you to discuss the important topic of foreign interference in U.S. elections.

The majority of Americans agree that foreign nationals should be prohibited from influencing our elections. In fact, that has been federal law for 40 years.¹ But unfortunately, federal law is inadequate when defining what foreign nationals can and cannot do. Essentially, foreign nationals are only prohibited from contributing to a candidate, committee, or Super PAC, or participating in a campaign's decision-making process. This means foreign nationals can largely still influence a whole host of other election-related vehicles with zero repercussions.²

It is currently legal for foreign nationals to pay for "get-out-the-vote" operations, voter registration, issue advocacy, voter education, ballot harvesting, door knocking – like how the UK's Labour Party actively recruited British nationals to knock on doors to support Kamala Harris – and state and local ballot issue campaigns.³ Congress should act to close all these foreign influence loopholes.

The issue of foreign nationals influencing our elections is not a hypothetical one, but a real and ongoing threat, made easier when organizations like ActBlue have failed to put basic protections in place.⁴

As I've testified before, a significant source of foreign cash is flowing into our politics from Swiss billionaire Hansjörg Wyss, who "never felt the need to become an American," and whose goal is to "(re)interpret the American Constitution in the light of progressive politics."⁵ According to the *New York Times*, Mr. Wyss' "political activism is channeled through a daisy chain of opaque organizations that mask the ultimate recipients of his money."⁶

Mr. Wyss uses his two nonprofits – the Wyss Foundation, a 501(c)(3), and the Berger Action Fund (formerly called the Wyss Action Fund), a 501(c)(4) – to fund liberal groups across the nation. He has used these two nonprofit vehicles to pump over half a billion dollars into the U.S. political system.⁷ In his biography, Mr. Wyss' sister also explicitly detailed his ability to "exert an influence on American domestic politics through his foundations."⁸

In fact, the *Associated Press* described Berger Action Fund as "a nondescript name for a group with a rather specific purpose: steering the wealth of Hansjörg Wyss, a Swiss billionaire, into the world of American

¹ 52 U.S.C. § 30121.

² Federal Election Commission, Advisory Opinion 2004-26 (Aug. 20, 2004).

³ Emilio Casalicchio, "Trump Allies Rage at UK Labour Help for Kamala Harris. There's More to Come," *Politico* (Oct. 18, 2024), <https://www.politico.eu/article/donald-trump-allies-rage-uk-labour-campaign-help-kamala-harris-keir-starmer-us-election/>.

⁴ Jack Birle, "House Republicans Seek Details on ActBlue's Donation Fraud Protection Services," *Washington Examiner* (Dec. 10, 2024), <https://www.washingtonexaminer.com/news/house-republicans-ask-actblue-donation-fraud-protection-services>.

⁵ Giorgio V. Müller, "We Have Found A Good Home for Synthes," *Neue Zürcher Zeitung (NZZ)* (June 11, 2011), https://www.nzz.ch/wr_haben_ein_gutes_heim_fuer_synthes_gefunden-ld.389550; Hedi Wyss, *Hansjörg Wyss – My Brother*, eFeF-Verlag Wettingen, Page #50, (2014).

⁶ Kenneth P. Vogel, "Swiss Billionaire Quietly Becomes Influential Force Among Democrats," *The New York Times* (May 3, 2021), <https://www.nytimes.com/2021/05/03/us/politics/hansjorg-wyss-money-democrats.html>.

⁷ Hans Nichols and Stef W. Kight, "Scoop: GOP Plan Targets Foreign Dark Money for 2024," *Axios* (July 10, 2023), <https://www.axios.com/2023/07/10/gop-targets-foreign-dark-money-2024-election>.

⁸ Hedi Wyss, *Hansjörg Wyss – My Brother*, eFeF-Verlag Wettingen, Page #49, (2014).

politics and policy.⁹ Through a detailed accounting of publicly available records, APT has been able to trace that at least a quarter of a billion dollars of this foreign money has been funneled from Berger Action Fund to Sixteen Thirty Fund.¹⁰ Sixteen Thirty Fund is a DC-based 501(c)(4) that is managed by Arabella Advisors.¹¹

Year	Berger Action Fund Grants to Sixteen Thirty Fund
2016	\$10,813,000
2017	\$48,483,333
2018	\$41,071,667
2019	\$34,907,000
2022	\$31,000,00
2021	\$42,450,000
2022	\$35,000,000

Sixteen Thirty Fund, the “indisputable heavyweight of Democratic dark money” according to *The Atlantic*, receives this foreign money and then turns around and bankrolls political battles all across the country.¹² Sixteen Thirty Fund, “a [clearinghouse] for the left” according to *Bloomberg*, backs efforts to elevate the Biden-Harris agenda, funds Supreme Court nomination fights, invests in massive voter turnout operations, and engages in issue advocacy campaigns against vulnerable Republican senators and representatives.¹³

Earlier this year under the trade name “Protect our Care,” Sixteen Thirty Fund launched a \$5 million issue advocacy campaign “boosting nine Democratic congressional incumbents by connecting them to legislation aimed at lowering drug prices.”¹⁴ Because these advertisements are classified as “issue advocacy,” and are not expressly political, they can be paid for by foreign dollars.¹⁵

In 2023, Sixteen Thirty Fund granted money to two 501(c)(4)s – \$3.5 million went to Empire State Voices and almost \$3 million to Unrig our Economy.¹⁶ After filling these groups’ coffers, they ran a series of attack ads targeting numerous Republican members of Congress. Empire State Voices engaged in a “year-long media effort targeting [Representative] D’Esposito,” while also attacking Representatives Molinaro and Williams.¹⁷ All three members lost re-election in November 2024.¹⁸ Again, because these advertising campaigns were “considered issue advocacy rather than electoral advocacy,” the prohibition regarding foreign dollars does not apply.¹⁹ Unrig our Economy, using trade names like Lower Costs California, Nebraska For

⁹ Brian Slodysko, “Group Steers Swiss Billionaire’s Money to Liberal Causes,” *The Associated Press* (Apr. 4, 2023), <https://apnews.com/article/dark-money-democrats-wyss-politics-elections-601d40cd015691905594545418af6396>.

¹⁰ See Berger Action Fund, Form 990 (2016-2022).

¹¹ Arabella Advisors, “Delivering Impact Through Innovative Funding Vehicles,” Arabella Advisors: Ideas & Impact: Greater Good Blog (2024), <https://www.arabellaadvisors.com/blog/delivering-impact-through-innovative-funding-vehicles>.

¹² Emma Green, “The Massive Progressive Dark-Money Group You’ve Never Heard Of,” *The Atlantic* (Nov. 2, 2021),

<https://www.theatlantic.com/politics/archive/2021/11/arabella-advisors-money-democrats/620553>.

¹³ Emily Birnbaum, “Meet the Swiss Billionaire Cast by US Conservatives as the ‘New Soros,’” *Bloomberg* (Jan. 25, 2024),

<https://www.bloomberg.com/news/articles/2024-01-25/meet-the-swiss-billionaire-cast-by-us-conservatives-as-the-new-george-soros>; Scott Bland and Maggie Severns, “Documents Reveal Massive ‘Dark-Money’ Group Boosted Democrats in 2018,” *Politico* (Nov. 19, 2019),

<https://www.politico.com/news/2019/11/19/dark-money-democrats-midterm-071725>; Scott Bland, “Liberal ‘Dark Money’ Behemoth Funneled More than \$400M in 2020,” *Politico* (Nov. 17, 2021), <https://www.politico.com/news/2021/11/17/dark-money-sixteen-thirty-fund-522781>.

¹⁴ Ben Kamisar, “New \$5 Million Ad Campaign Boosts House Democrats on Health Care,” *NBC News* (Mar. 11, 2024),

<https://www.nbcnews.com/politics/2024-election/new-5-million-ad-campaign-boosts-house-democrats-health-care-rcna142739>.

¹⁵ *Supra* note 9.

¹⁶ Sixteen Thirty Fund, Form 990 (2023), <https://www.sixteenthirtyfund.org/wp-content/uploads/2024/11/2023-Sixteen-Thirty-Fund-Form-990-Public-Disclosure-Copy-bnjAVgCYKTxscCpgetwYNS.pdf>.

¹⁷ Rebecca C. Lewis, “New Policy Group Spends Big on D’Esposito Attack Ads,” *City & State New York* (Sept. 20, 2023),

<https://www.cityandstateny.com/politics/2023/09/new-policy-group-spends-big-desposito-attack-ads/390436>.

¹⁸ Alisa Parenti, “New York Democrats Flip Third House Seat in Long Island Race,” *Bloomberg* (Nov. 7, 2024),

<https://www.bnnbloomberg.ca/business/politics/2024/11/07/gops-desposito-ousted-in-ny-house-race-democrats-pick-up-seat>.

¹⁹ *Id.*

Us, and Michigan Families for Fair Care – all in an effort to make it seem like they are local organizations – also spent millions, this time attacking Representatives Calvert, Duarte, Bacon, and James.²⁰

Another important electoral tool that Sixteen Thirty Fund heavily invests in is state ballot issue campaigns. In the absence of laws restricting foreign nationals from contributing to them, Sixteen Thirty Fund has poured \$130 million into ballot issue campaigns in 25 states.²¹ Ballot issues, while an important democratic tool, are also used by political operators to drive voter turnout to influence candidate races, and often push the most extreme version of policies that would otherwise not withstand the legislative process.

During the 2024 election cycle, Sixteen Thirty Fund spent over \$37 million in foreign-backed cash targeting ballot issues in Alaska, Arizona, Florida, Missouri, Montana, Nebraska, Nevada, and Ohio.²² In Florida, over \$14 million in foreign-backed cash was spent on an effort to amend Florida’s constitution to enshrine abortion rights. The measure failed to pass because it did not pass the state’s 60% threshold to amend the state Constitution. In Missouri, Sixteen Thirty Fund spent \$4.5 million on a ballot measure to “guarantee abortion until viability,” and \$3.5 million on a separate amendment to raise the state’s minimum wage. Both measures passed.

One state that recognized and took action against this foreign interference was Ohio. However, the path to banning foreign money in ballot measures was long and complicated. Leaders in Ohio decided to ban foreign nationals from contributing to ballot issue campaigns “a year after cash tied to a Swiss billionaire boosted a successful effort to enshrine abortion rights in the solidly red state’s constitution.”²³ The legislation quickly passed the Ohio Senate, but “against the backdrop of a festering Republican leadership fight,” it stalled in the Ohio House.²⁴ Knowing the importance of banning foreign funding of ballot issues, Governor DeWine called at special session on May 23, 2024 to “pass legislation ensuring Mr. Biden [would appear] on the ballot, as well as legislation that would ‘prohibit campaign spending by foreign nationals.’”²⁵ Also on May 23, 2024, clearly sensing that a ban on foreign funding was imminent, Sixteen Thirty Fund wired \$6 million into an Ohio ballot issue committee organizing a pro-gerrymandering effort.²⁶ Once Ohio’s ban on the foreign funding of state ballot issues was signed into law, Sixteen Thirty Fund did not spend another penny in the state.

While the notion of rejecting foreign interference in state politics should be a bi-partisan one, it is worth noting that every single Democrat in the Ohio General Assembly voted *against* banning foreign funding. In fact, just weeks after the law was signed, Marc Elias and his law firm, Elias Law Group, sued the state and wholeheartedly defended and embraced the position that foreign nationals *should* be allowed to fund ballot issue campaigns.²⁷ Fortunately, the Sixth Circuit Court of Appeals ruled that the law could go into effect.²⁸ In their decision, the court found:

The state of Ohio passed a law restricting the ability of foreign nationals to contribute to state campaigns and make independent expenditures related to state ballot initiatives. Concerns about

²⁰ Eli Okun, “Playbook PM: The Biden Pressure Campaign Hits A New Level,” *Politico* (July 18, 2024),

<https://www.politico.com/newsletters/playbook-pm/2024/07/18/the-biden-pressure-campaign-hits-a-new-level-00132333>.

²¹ Americans for Public Trust, *Foreign Influence in State Ballot Issues: How Sixteen Thirty Fund’s Pipeline of Foreign Cash Impacts State Politics*, Americans for Public Trust (Oct. 18, 2024), <https://americansforpublictrust.org/uncategorized/late-october-2024-update-foreign-backed-spending-in-state-ballot-issue-campaigns>.

²² *Id.*

²³ Julie Carr Smyth, “Fight Over Foreign Money in Politics Stymies Deal to Assure President Joe Biden is on Ohio’s Ballot,” *The Associated Press* (May 8, 2024), <https://apnews.com/article/election-2024-biden-ballot-ohio-0be3376ee6abbad9cb324c725a1c3a2>.

²⁴ *Id.*

²⁵ Chris Cameron, “Ohio Governor Calls Special Legislative Session to Ensure Biden is on Ballot,” *The New York Times* (May 23, 2024), <https://www.nytimes.com/2024/05/23/us/politics/biden-ohio-ballot-special-session.html>.

²⁶ Ohio Secretary of State, *Citizens Not Politicians Semiannual (July) Report* (Filed July 31, 2024).

²⁷ Julie Carr Smyth, “Lawsuit Challenges Ohio Law Banning Foreign Nationals from Donating to Ballot Campaigns,” *The Associated Press* (June 28, 2024), <https://apnews.com/article/foreign-nationals-donation-ban-lawsuit-ohio-8720e7908ec26ed803ea837c42e8b6f>.

²⁸ Samana Sheikh, “Federal Court Backs Law Banning Foreign Contributions to Statewide Ballot Issues,” *Spectrum News 1* (Oct. 11, 2024), <https://spectrumnews1.com/oh/columbus/politics/2024/10/10/ballot-foreign-nationals>.

foreign interference in American politics aren't new. And Ohioans and their representatives have a compelling interest in regulating such influence. We can't interfere with their judgment unless the First Amendment demands it. And here, it doesn't.²⁹

Sixteen Thirty Fund also heavily invests in Super PACs, with their total giving approaching \$90 million over the last four cycles.³⁰ During this year's elections, nearly \$18 million went to Super PACs financing competitive elections, including U.S. House races in Colorado, Iowa, Michigan, Montana, New York, and Wisconsin. Additionally, their millions went to supporting a so-called Independent U.S. Senate candidate in Nebraska, as well as propping up a Libertarian presidential candidate to act as a spoiler to Donald Trump.

GROUP RECEIVING SIXTEEN THIRTY FUND MONEY	TOTAL AMOUNT	TARGETED RACES
Your Community PAC	\$6,730,364	Presidential (Support Kamala Harris); MT Senate (Support Sen. Jon Tester); OH Senate (Oppose Bernie Moreno); IA-3 (Oppose Rep. Zach Nunn); WI-3 (Oppose Rep. Derrick Van Orden); MT-At-Large (Support Monica Tranel)
Future Forward PAC	\$3,000,000	Presidential (Support Kamala Harris/Oppose Donald Trump)
Retire Career Politicians	\$2,000,000	Presidential (Support RFK Jr. and Libertarian Chase Oliver); NE Senate (Support Independent Dan Osborn/Oppose Sen. Deb Fischer)
Civic Truth Action	\$1,900,000	Presidential (Support Libertarian Chase Oliver and Constitution Party Randall Terry)
House Majority PAC	\$1,100,000	Numerous Targets
Mainstream Colorado Fund	\$860,000	CO-8 (Support Rep. Yadira Caraveo/Oppose Timothy Evans)
Rocky Mountain Values PAC	\$611,269	CO-3 (Oppose Ron Hanks and Jeff Hurd); Presidential (Oppose Donald Trump)
Open Democracy PAC	\$550,000	Numerous Targets
Straight Talk Politics PAC	\$450,000	Presidential (Oppose Donald Trump)
Campaign for a Family Friendly Economy	\$325,000	Presidential (Support Kamala Harris); MT Senate (Support Sen. Jon Tester); OH Senate (Oppose Bernie Moreno); MI Senate (Support Elissa Slotkin); NM

²⁹ *OPAWL-Building AAPI Feminist Leadership et al v. Yost et al*, No. 24-3768, 20 (6th Cir. 2024), <https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0229p.06.pdf>

³⁰ Federal Election Commission, "Individual Contributions: Sixteen Thirty Fund" (2018-2024), https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=sixteen+thirty+fund.

		Senate (Oppose Nella Domenici); WI Senate (Support Sen. Tammy Baldwin); MI-10 (Support Carl Marlinga); NY-22 (Support John Mannion)
American Bridge	\$50,000	Presidential (Oppose Donald Trump)
Railroaders for Public Safety	\$50,000	NE Senate (Support Independent Dan Osborn/Oppose Sen. Deb Fischer)
Project Democracy	\$45,000	Presidential (Support Kamala Harris/Oppose Donald Trump)
Moving Montana Forward	\$25,000	MT Senate (Support Sen. Jon Tester)

Outside of funneling foreign money through Sixteen Thirty Fund, Mr. Wyss has bankrolled other notable groups through his Berger Action Fund and Wyss Foundation.³¹

SELECTED GROUPS RECEIVING WYSS MONEY	TOTAL
Fund For A Better Future/Climate Power	\$95,698,000
New Venture Fund	\$80,512,200
League of Conservation Voters Network	\$22,652,100
Center for American Progress	\$10,305,000
Washington Center for Equitable Growth	\$7,955,000
Planned Parenthood Network	\$5,995,200
Indivisible	\$5,455,000
National Redistricting Action Fund	\$5,000,000
DEMOS	\$4,275,000
States Newsroom	\$2,140,000

Indivisible, known for disrupting Congressional townhalls, has received at least \$5.5 million in foreign cash. In November 2024, they “unveiled an action plan for revving up political organizing on the left and resisting former President Trump’s agenda during his second term.”³² Eric Holder’s National Redistricting Action Fund, which works to skew congressional maps in order to favor Democrats, has received at least \$5 million in foreign cash. Climate Power, which ran television ads backing Biden’s Build Back Better agenda, and is now seeking to torpedo the nomination of Governor Doug Burgum for Interior Secretary, has received tens of millions in foreign money.³³ And millions of foreign money has gone to States Newsroom, a political operation masquerading as a newsroom. States Newsroom has set up local-sounding “papers” in every state to publish politicized articles favorable to Democrats under banners like *Wisconsin Examiner*, *Florida Phoenix*, *Georgia Recorder*, *New York Focus*, *NC Newswire*, *Oklahoma Voice*, *Ohio Capital Journal*, and *Virginia Mercury* just to name a few.³⁴

³¹ See Berger Action Fund, Form 990 (2016-2022); Wyss Foundation, Form 990 (2002-2023).

³² Julia Mueller, “Indivisible Unveils Action Plan for Second Term,” *The Hill* (Nov. 18, 2024), <https://thehill.com/homenews/4925866-indivisible-unveils-action-plan-for-second-term>.

³³ Brian Slodysko, “Group Steers Swiss Billionaire’s Money to Liberal Causes,” *The Associated Press* (Apr. 4, 2023), <https://apnews.com/article/dark-money-democrats-wyss-politics-elections-601d40c4d015691905594545418afe396>; Thomas Catenacci, “Foreign-Funded Green Groups Lead Charge Against Trump Interior Nominee Doug Burgum,” *Washington Free Beacon* (Dec. 6, 2024), <https://freebeacon.com/politics/foreign-funded-green-groups-lead-charge-against-trump-interior-nominee-doug-burgum/>.

³⁴ States Newsroom, “The Latest News In Your State: Browse Our Newsrooms By Region” (2024), <https://statesnewsroom.com/newsrooms/>.

Any vehicle that broadly influences the electoral process – from door knocking to ballot issues – should not be paid for by foreign dollars. These are simple, commonsense loopholes to close, and I think we can all agree foreign billionaires, the UK's Labour Party, and CCP officials should stay out of our politics.

I look forward to discussing ways to prevent foreign influence in our elections. Thank you.

Chairman STEIL. Thank you very much, Ms. Sutherland.
Mr. Bowman, you are now recognized for 5 minutes.

STATEMENT OF BRADLEY BOWMAN

Mr. BOWMAN. Chairman Steil, Ranking Member Morelle, and distinguished Members of this Committee, thank you for the opportunity to testify today regarding efforts by foreign adversaries to undermine American democracy and the confidence we have in our elections. I applaud the Committee's focus on this important issue, and I welcome the opportunity to hopefully provide some useful context.

China, Russia, and Iran are waging an information war against the United States that includes a focus on the U.S. electoral process, yet many Americans do not realize we are under attack. This lack of awareness is ideal for Beijing, Moscow, and Tehran. After all, predators like nothing better than hunting slumbering prey.

In June, the Foundation for Defense of Democracies published a major report entitled "Cognitive Combat: China, Russia, and Iran's Information War Against Americans." Much of my testimony is based on research conducted for that report, as well as the analysis of FDD's Center on Cyber and Technology Innovation, including the excellent work of Max Lesser, a senior analyst on emerging threats, who co-authored our written statement for today's hearing.

I define "information warfare" as the messages and means to convey those messages that nation-states use to advance political, economic, and security objectives and to strengthen the Government's foundations of power, reinforce those of allies and partners, and undermine those of adversaries.

By that definition, based on our research, Americans and our elections are already under attack by China, Russia, and Iran. Our authoritarian adversaries seek to divide Americans, pitting us against one another, so that we are as domestically dysfunctional as possible. Our adversaries hope we consume our finite time, energy, and resources fighting one another rather than working together to strengthen our country at home and defend our interests abroad.

They also seek to degrade our democracy's reputation. They want our model of representative democracy to look less appealing compared to their authoritarianism and autocracy.

Our adversaries also seek to deceive Americans into believing, falsely, that we have no important interests or values to defend in places such as Taiwan, Ukraine, and Israel. Authoritarian regimes hope to deprive our partners of American diplomatic, economic, and military support, thereby making those partners more vulnerable to aggression.

Why do our adversaries focus so much on our elections?

Carl von Clausewitz, the 19th-century Prussian military theorist, promulgated the concept of a center of gravity. He defined it as, quote, "the hub of all power and movement, on which everything depends." Clausewitz's center of gravity is sometimes characterized by analysts as the source of power and strength, the point against which all effort should be directed or protected.

The American center of gravity is our Constitution and the rule of law, as well as free, fair, and trusted elections and the peaceful

transfer of power. That is the foundation for who we are as Americans, and it is a major reason why we enjoy such extraordinary freedom and stability. Our adversaries understand that, and that is why they target our elections.

During this election cycle, Russia sought to undermine Vice President Harris's campaign and Iran attacked President-elect Donald Trump's campaign. China, for its part, attacked both candidates, in addition to some congressional candidates who are critical of China. In short, both parties were attacked, and all three adversaries sought to undermine the faith of Americans in our electoral process.

It is difficult to define with precision the effects of these adversary efforts, but initial research by my colleague Max Lesser suggests that America proved remarkably resilient. In many instances, efforts of Federal and State governments, the private sector, and the research community appear to have thwarted Russian, Iranian, and Chinese efforts to shape voters' preferences and undermine Americans' faith in the fairness and integrity of the democratic process. A Reuters-Ipsos poll released several days after the election found that the majority of Americans believe the election was legitimate and accurate.

That is the good news. We should not become complacent. We should expect China, Russia, and Iran to continue to attack our electoral process with increasing ferocity and AI-empowered effectiveness.

What is to be done? In addition to strengthening our electoral defenses at home, the United States should go on the information-warfare offensive against China, Russia, and Iran to begin to shift their cost-benefit analysis as they contemplate future attacks on our democracy.

Such a campaign could systematically expose each regime's corruption, lies, and oppression and help the Chinese, Russian, and Iranian people advocate for their own rights, including more representative governance. Such a campaign would seek to ensure their respective populations know the truth regarding each regime's foreign and domestic policies.

If Beijing, Moscow, and Tehran do not like having to fend off offensive information-warfare operations in their respective countries, perhaps they should stop attacking us.

There are more details in our written statement.

Thank you for the opportunity to testify here today.

[The prepared statement of Mr. Bowman follows:]

PREPARED STATEMENT OF BRADLEY BOWMAN

CONGRESSIONAL TESTIMONY: FOUNDATION FOR DEFENSE OF DEMOCRACIES

Committee on House Administration

American Confidence in Elections:

Prohibiting Foreign Interference

BRADLEY BOWMAN

Senior Director
*Center on Military and Political Power,
Foundation for Defense of Democracies*

MAX LESSER

Senior Analyst on Emerging Threats
*Center on Cyber and Technology Innovation,
Foundation for Defense of Democracies*

Washington, DC
December 18, 2024



Chairman Steil, Ranking Member Morelle, and distinguished members of this committee, thank you for the opportunity to testify today regarding efforts by foreign adversaries to undermine American democracy and the confidence we have in our elections. The committee deserves credit for convening this hearing and calling attention to this incredibly important issue. Before assessing foreign adversary attacks on the 2024 U.S. election, the effectiveness of those attacks, and how the government responded, it is helpful to step back and try to understand the larger context.

The Information War China, Russia, and Iran Are Waging Against Americans

China, Russia, and Iran are waging an information war against the United States that includes a focus on the U.S. electoral process, yet many Americans do not realize we are under attack. Nor do they fully appreciate that developments on the battlefield of ideas and beliefs can have a decisive impact on our democracy and the way of life Americans enjoy. This lack of awareness is ideal for Beijing, Moscow, and Tehran — predators like nothing better than hunting slumbering prey.

Americans may not realize they are already in an information war because adversaries attempt to conceal their activities. To make matters worse, Americans often think of international conflict consciously or subconsciously in the context of kinetic war — soldiers, ships, and aircraft battling one another on land, at sea, or in the air. So, when there is no overt conflict, we can be lulled into a false sense of security.

In June, the Foundation for Defense of Democracies (FDD) published a major report entitled “*Cognitive Combat: China, Russia, and Iran’s Information War Against Americans*.”¹ Much of this testimony is based on research conducted for that report, as well as the research and analysis of FDD’s Center on Cyber and Technology Innovation.²

An enduring obstacle to understanding information warfare is the lack of consensus about what the phrase actually means. Some definitions are too broad to be useful, and some have the opposite problem. In the June report, we defined information warfare as the messages — and means to convey those messages — that nation-states use to advance political, economic, and security objectives and to strengthen the government’s foundations of power, reinforce those of allies and partners, and undermine those of adversaries.³

¹ Ed. Bradley Bowman, “Cognitive Combat,” *Foundation for Defense of Democracies*, June 28, 2024. (<https://www.fdd.org/analysis/2024/06/28/cognitive-combat>). The report includes chapters by our FDD colleagues, including a chapter on China by Craig Singleton, on Russia by Ivana Stradner and John Hardie, and on Iran by Mark Dubowitz and Saeed Ghasseminejad.

² Max Lesser and RADM (Ret.) Mark Montgomery, “How U.S. Adversaries Undermine the Perception of Election Integrity,” *Foundation for Defense of Democracies*, September 26, 2024. (<https://www.fdd.org/analysis/2024/09/26/how-u-s-adversaries-undermine-the-perception-of-election-integrity>); Max Lesser, “Foreign Malign Election Meddling Persists But Struggles to Gain Traction,” *Foundation for Defense of Democracies*, October 29, 2024. (<https://www.fdd.org/analysis/2024/10/29/foreign-malign-election-meddling-persists-but-struggles-to-gain-traction>).

³ A more complete definition of information warfare would not focus exclusively on nation-states alone and would include non-state actors such as Hamas and Hezbollah, but the focus of the report was three nation-states: China, Russia, and Iran.

By that definition, China, Russia, and Iran are already waging an information war against our country. Despite their differences, these adversaries of the United States understand that ideas and beliefs play a decisive role in shaping what individuals and nations support or oppose and, ultimately, in determining which actions are taken or avoided.

Armed with this understanding, Beijing, Moscow, and Tehran are methodically targeting three groups. The first and most important target audience for each adversary regime is its own domestic population. The second target audience is Americans, the U.S. government, and its allies and partners. And the third is populations and governments in other countries where these regimes seek to obtain valuable strategic resources or concessions. We will focus on the first two groups for this testimony.

It might seem odd that the primary information warfare focus of Xi Jinping, Vladimir Putin, and Ali Khamenei is their own people. But when one considers the autocratic, authoritarian, and/or totalitarian natures of these regimes, it makes sense. Xi, Putin, and Khamenei must manipulate the flow of information to their people to maintain a monopoly on power. If a government does not enjoy the consent of the governed, the regime must attempt the Orwellian management of information to their oppressed peoples so that they submit to their subjugated state.

Most relevant to this hearing, China, Russia, and Iran also focus their information warfare campaigns on Americans because they believe the United States possesses a unique potential to challenge the regimes' oppression at home and aggression abroad.⁴ More specifically, the *existence* and *power* of the United States directly challenge the regimes in Beijing, Moscow, and Tehran.

The mere *existence* of the United States (and its democratic allies) conveys to the people of China, Russia, and Iran that there is an appealing alternative to authoritarianism and autocracy.⁵ The regimes and their proxies sometimes respond by suggesting that democracy is inferior or that it cannot work in their respective regions. The former argument is rather predictable for autocrats eager to retain their self-serving grip on power. The latter argument is decisively refuted by the existence of free peoples and democratic governments in Taiwan, Ukraine, and Israel. That explains some of the vitriol we see toward Taipei, Kyiv, and Jerusalem, respectively.

Adversary regimes also realize that American military *power* presents a serious impediment to their regional ambitions. Xi seeks to conquer Taiwan, Putin seeks to subjugate Ukraine, and Khamenei seeks to exterminate the State of Israel. In each case, the United States is a leading obstacle to their aims. That helps explain why each regime is waging information war against the United States.

⁴ Matt Pottinger, "Remarks by Matthew Pottinger at Parliamentary Intelligence-Security Forum in London," August 31, 2023. (<https://www.fdd.org/analysis/2023/08/31/remarks-by-matthew-pottinger-at-parliamentary-intelligence-security-forum-in-london>)

⁵ Stephen Kotkin, a senior fellow at the Hoover Institution, has made this point. An example here: Hoover Institution, "American Character vs. Authoritarian Nature | HISPBC," *YouTube*, September 24, 2024. (<https://youtu.be/korJRqnWhnl?si=4OyXVfG1opvcKGEZ>)

These concerns about the existence and power of the United States have motivated our adversaries to adopt a strategy that features three broad objectives, which can be summarized as *divide, degrade, and deceive*. Understanding these objectives can help us respond more effectively.

Our authoritarian adversaries seek to *divide* Americans, pitting us against one another, so that we are as domestically dysfunctional as possible, encouraging us to mistakenly view as enemies fellow citizens of good faith with whom we simply have a disagreement.⁶ Authoritarian adversaries want our domestic politics to be as partisan, tribalistic, and vitriolic as possible.⁷ They want us at each other's throats so that we are too distracted, divided, and weak to defend ourselves and our interests, hoping we consume our finite time, energy, and resources fighting one another rather than working together to strengthen our country at home and defend our interests abroad.⁸

In addition to attempting to divide Americans, our adversaries also seek to *degrade* our democracy's reputation, both in our eyes and in the eyes of others. If Americans don't respect our democracy, some may be less eager to defend it. Moreover, authoritarian adversaries want our model of representative democracy to look like a less favorable governance alternative compared to authoritarianism and autocracy. An adversary information warfare strategy that frames the United States as a dysfunctional and declining power is designed to serve that objective.

Finally, our adversaries also seek to *deceive* Americans into believing falsely that we have no important interests or values to defend in places such as Taiwan, Ukraine, and Israel.⁹ By seeking to drive a wedge between the United States and those three beleaguered democratic partners, authoritarian regimes hope to deprive our partners of American diplomatic, economic, and military support, thereby making those U.S. partners more vulnerable to aggression.

⁶ David R. Shedd and Ivana Stradner, "The Covert War for American Minds," *Foreign Affairs*, October 29, 2024. (<https://www.foreignaffairs.com/united-states/covert-war-american-minds>)

⁷ The Russian media organization Rybar, also known as Storm-1841 or Volga Flood, created multiple inauthentic Telegram channels and X accounts not in its own name that shared polarizing content in attempts to divide Americans and even encourage acts of violence. U.S. Department of State, Rewards for Justice, "Rybar Employees," accessed December 5, 2024. (<https://rewardsforjustice.net/rewards/rybar>); "Iran Steps Into U.S. Election 2024 With Cyber-Enabled Influence Operations," *Microsoft Threat Analysis Center*, August 9, 2024, page 5. (<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/final/en-us/microsoft-brand/documents/5bc57431-a7a9-49ad-944d-b93b7d35d0fc.pdf>)

⁸ A couple of caveats are important: First, we should not reflexively blame problems and divisions in the United States on our adversaries. Unfortunately, we Americans are quite adept at creating our own problems. But it would be dangerous not to recognize that Beijing, Moscow, and Tehran seek to exacerbate and magnify existing social-political fault lines to help pave the way for their wider ambitions. Second, acknowledging that our adversaries are attempting to divide us is not to suggest, of course, that we shouldn't have serious political and policy disagreements. Disagreements can be healthy and are certainly to be expected in our wonderfully diverse, free, and rambunctious democracy. But we need to engage in those debates in a manner that does not create opportunities for our adversaries and that does not inadvertently facilitate their information war against us.

⁹ Bradley Bowman and RADM (Ret.) Mark Montgomery, "Supporting America's Allies Puts America First," *National Review*, February 23, 2024. (<https://www.nationalreview.com/2024/02/supporting-americas-allies-puts-america-first>)

Our adversaries seek to achieve their objectives at the lowest cost. They would rather not fight the U.S. military and would rather not see Taiwan, Ukraine, and Israel defending themselves with American weapons. Beijing, Moscow, and Tehran hope that by deceiving Americans into believing that the outcomes in Taiwan, Ukraine, and Israel don't matter Americans will decide not to help those three beleaguered democracies defend themselves and the interests we share. In other words, this element of our adversaries' information warfare campaigns represents a methodical effort to remove U.S. military power and American weapons as obstacles to authoritarian aggression by manipulating the beliefs of Americans.

In summary, China pushes messages via a variety of means that seek to undermine Americans' trust in our leaders, our government, and each other. Simultaneously, Beijing is attempting to manipulate U.S. public opinion regarding Hong Kong, Taiwan, Tibet, and Xinjiang.¹⁰ The Chinese Communist Party hopes these measures weaken and divide Americans and remove any U.S. obstacles to Beijing's control and oppression at home and "might makes right" foreign policy abroad. Russia proliferates messages designed to exploit hot-button domestic issues, stoke division among Americans,¹¹ and undermine support for Ukraine.¹² The Islamic Republic of Iran, for its part, not only uses information warfare to oppress the Iranian people, threaten dissidents, magnify anti-American voices, and threaten Israel but also seeks to manipulate American opinions and enfeeble U.S. foreign policy.

So, with this broader context in mind, why do our adversaries focus so much attention on our elections?

Carl von Clausewitz, the 19th-century Prussian military theorist, promulgated the concept of a "center of gravity." He defined it as "the hub of all power and movement, on which everything depends."¹³ Clausewitz's center of gravity is sometimes characterized by analysts as the source of power and strength — the point against which all efforts should be directed.¹⁴

This military concept can also be applied in this context. The American center of gravity is our Constitution and the rule of law — as well as free, fair, and trusted elections and the peaceful transfer of power. That is the foundation for who we are as Americans. That is what we must defend to secure our freedom, stability, and way of life. Our adversaries understand that fact, and that is why they are so eager to undermine our elections and their perceived credibility.

¹⁰ U.S. Office of the Director of National Intelligence, "Annual Threat Assessment of the U.S. Intelligence Community," February 5, 2024. (<https://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf>)

¹¹ Mark Hosenball, "Russia stocking U.S. racial, social differences ahead of election: sources," *Reuters*, March 10, 2020. (<https://www.reuters.com/article/us-usa-election-security/russia-stoking-u-s-racial-social-differences-ahead-of-election-sources-idUSKBN20X2O3>); Bradley Bowman and Shane Praiswater, "Great Power Competition Comes Home to America," *Defense One*, November 3, 2020. (<https://www.defenseone.com/ideas/2020/11/great-power-competition-comes-home-america/169760>).

¹² Julian E. Barnes and David E. Sanger, "Russia Amps Up Online Campaign Against Ukraine Before U.S. Elections," *The New York Times*, March 27, 2024. (<https://www.nytimes.com/2024/03/27/us/politics/russian-ukraine-us-interference.html>)

¹³ Carl von Clausewitz, *On War*, Trans. Peter Paret and Michael Howard (Princeton, New Jersey: Princeton University Press, 1976), page 595.

¹⁴ Antulio Echevarria, "Clausewitz's Center of Gravity," *Naval War College Review*, 2003. (<https://digital-commons.usnwc.edu/mwc-review/vol56/iss1/6>)

A survey of history and international affairs makes clear that the quality of life we enjoy in the United States is not the norm. It is an anomaly, and we should not take it for granted. That means understanding the information war being waged against us and taking steps to defend our democratic and electoral center of gravity are essential.

What Just Happened?

With this context in mind, it is worth assessing adversary attacks on the 2024 election, the effectiveness of those attacks, and how the United States responded.

Russia, Iran, and China aggressively targeted the American democratic process this year. Russia sought to undermine Vice President Kamala Harris's campaign.¹⁵ Iran attacked president-elect Donald Trump's campaign.¹⁶ China, for its part, attacked both major presidential candidates, in addition to certain congressional candidates who are critical of China.¹⁷ In short, both parties and all major presidential candidates were attacked. All three adversaries sought to undermine the faith of Americans in our electoral process.

In other words, anyone who seeks to highlight foreign interference for the purposes of partisan gain is missing the point. It should not matter which party or politician stood to gain or lose from the interference. Not unlike how a family comes together when a single member of the family is hurt, when it comes to foreign adversary interference in our elections, the only question is whether our country and our democratic system were attacked. If the answer is 'yes', then Americans of all political persuasions should act together to better defend our democracy and impose consequences on our adversaries.

So, what steps did U.S. adversaries take to target the 2024 elections?

¹⁵ U.S. Office of the Director of National Intelligence, Press Release, "45 Days Until Election 2024: Election Security Update as of Mid-September 2024," September 23, 2024.

(<https://www.odni.gov/files/FMIC/documents/ODNI-Election-Security-Update-20240923.pdf>)

¹⁶ Dustin Volz, "Iran Is Working to Undercut Trump in Presidential Election, U.S. Spy Agencies Say," *The Wall Street Journal*, July 29, 2024. (<https://www.wsj.com/politics/elections/iran-is-working-to-undercut-trump-in-presidential-election-u-s-spy-agencies-say-7f67fad7>)

¹⁷ Max Lesser, "Foreign Malign Election Meddling Persists But Struggles to Gain Traction," *Foundation for Defense of Democracies*, October 29, 2024. (<https://www.fdd.org/wp-content/uploads/2024/10/fdd-memo-foreign-malign-election-meddling-persists-but-struggles-to-gain-traction.pdf>);

Insikt Group, "Operation Overload Impersonates Media to Influence 2024 U.S. Election," *Recorded Future*, October 23, 2024.

(<https://go.recordedfuture.com/hubfs/reports/ta-ru-2024-1023.pdf>); "Russia, Iran, and China Continue Influence Campaigns in Final Weeks Before Election Day 2024," *Microsoft Threat Analysis Center*, October 23, 2024.

(<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/MTAC-Election-Report-5-on-Russian-Influence.pdf>); "The #Americans: Chinese State-Linked Influence Operation Spamouflage Masquerades as U.S. Voters to Push Divisive Online Narratives Ahead of 2024 Election," *Graphika*, September 2024.

(<https://public-assets.graphika.com/reports/graphika-report-the-americans.pdf>); Steven Lee Myers, "Bots Linked to China Target Republican House and Senate Candidates, Microsoft Says," *The New York Times*, October 23, 2024. (<https://www.nytimes.com/2024/10/23/us/politics/x-bots-china-republicans.html>)

Russia's most significant operations involved a series of hoax videos published in the weeks before the election, several of which went viral.¹⁸ Fortunately, the U.S. government promptly responded in many cases. In one instance, a fake video depicting someone burning ballots in Pennsylvania was debunked by local election officials on the same day the video was posted, and the federal government released an official statement two days later attributing it to Russia.¹⁹ Iran's most significant activity involved a hack-and-leak operation targeting the Trump campaign. While Iran successfully compromised sensitive materials from the Trump campaign, mainstream media outlets did not publish this information.²⁰ Iran also targeted swing states and minority groups through a series of fake websites, but these do not appear to have gained significant traction.²¹

China largely targeted the election through its flagship influence operation known as "Spamouflage," which involves vast networks of fake accounts on social media. Spamouflage's activity typically pushed out low-quality content that, with a few exceptions, garnered little organic engagement on social media.²² A notable trend with Spamouflage this election cycle, however, was that it leveraged antisemitic tropes to criticize both the American political system and specific candidates.²³

¹⁸ "Russia Leverages Cyber proxies and Volga Flood Assets in Expansive Influence Efforts," *Microsoft Threat Analysis Center*, September 17, 2024, page 2. (<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/MTAC-Election-Report-4.pdf>); "Fact Check: Kamala Harris Hit-and-Run Story Stems From Unreliable Website," *Reuters*, September 20, 2024. (<https://www.reuters.com/fact-check/kamala-harris-hit-and-run-story-stems-unreliable-website-2024-09-20/>); "Lead-up to Election Day 2024: Russia, Iran, and China Engaging in Influence Activity in Final Weeks Before Election Day 2024," *Microsoft Threat Analysis Center*, October 23, 2024, pages 4-5. (<https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/MTAC-Election-Report-5-on-Russian-Influence.pdf>); Office of Georgia Secretary of State, "Statement from Secretary Raffensperger," October 31, 2024. (<https://sos.ga.gov/news/statement-secretary-raffensperger>)

¹⁹ "Board of Elections Issues Bipartisan Statement on Fake Ballot Video," *Bucks County, Pennsylvania*, October 24, 2024. (<https://www.buckscounty.gov/CivicAlerts.aspx?AID=1151>); "Fact Check: Video of Pennsylvania Mail-in Ballots Being Destroyed Is Fake," *Reuters*, October 31, 2024. (<https://www.reuters.com/fact-check/video-pennsylvania-mail-in-ballots-being-destroyed-is-fake-2024-10-31/>)

²⁰ Christopher Bing, Raphael Satter, and Gram Slattery, "Exclusive: Accused Iranian Hackers Successfully Peddle Stolen Trump Emails," *Reuters*, October 25, 2024. (<https://www.reuters.com/world/us/accused-iranian-hackers-successfully-peddle-stolen-trump-emails-2024-10-25/>)

²¹ Max Lesser and RADM (Ret.) Mark Montgomery, "How U.S. Adversaries Undermine the Perception of Election Integrity," *Foundation for Defense of Democracies*, September 26, 2024. (<https://www.fdd.org/wp-content/uploads/2024/09/fdd-memo-how-u.s.-adversaries-undermine-the-perception-of-election-integrity.pdf>); Max Lesser, "Foreign Malign Election Meddling Persists But Struggles to Gain Traction," *Foundation for Defense of Democracies*, October 29, 2024. (<https://www.fdd.org/wp-content/uploads/2024/10/fdd-memo-foreign-malign-election-meddling-persists-but-struggles-to-gain-traction.pdf>)

²² Max Lesser, Ari Ben Am, Margot Fulde-Hardy, Saman Nazari, and Paul J. Malcomb, "Much Ado About 'Somethings': China-Linked Influence Operation Endures Despite Takedowns," *Foundation for Defense of Democracies*, March 27, 2024. (<https://www.fdd.org/analysis/2024/03/27/much-ado-about-somethings>); Elise Thomas, "Pro-CCP Spamouflage Campaign Experiments with New Tactics Targeting the U.S.," *Institute for Strategic Dialogue*, April 1, 2024. (https://www.isdglobal.org/digital_dispatches/pro-ccp-spamouflage-campaign-experiments-with-new-tactics-targeting-the-us)

²³ Wenhao Ma, "China-Connected Spamouflage Networks Spread Antisemitic Disinformation," *Voice of America*, October 4, 2024. (<https://www.voanews.com/a/china-connected-spamouflage-networks-spread-antisemitic-disinformation/7811033.html>)

The U.S. government's response proved relatively effective this election cycle. It preemptively warned Americans of adversaries' tactics, techniques, and procedures, took down infrastructure enabling influence operations, name-and-shamed malign influence actors, and sometimes even debunked falsehoods in near real-time.

U.S. government organizations involved in combating foreign malign influence targeting the 2024 U.S. elections included the Office of the Director of National Intelligence's Foreign Malign Influence Center, the FBI's Foreign Influence Task Force, the Cybersecurity and Infrastructure Security Agency (CISA), the Department of Justice (DOJ), the State Department, and the Treasury Department. The involvement of these departments and agencies, as well as coordination between them, yielded significant results.

Highlights included the DOJ taking down Doppelganger domains and indicting American media executives that acted on behalf of Russia,²⁴ the Treasury sanctioning various influence actors from Russia and Iran,²⁵ CISA and the FBI proactively debunking false claims of cyberattacks against voting machines,²⁶ and the ODNI's regular reports giving an overview of the threat landscape.²⁷

The efforts of state and local governments were also critical. The office of the Georgia secretary of state, the Bucks County Board of Elections, and the San Francisco Police Department, for example, all issued statements either directly to the public or to the media debunking videos likely originating from the Russian operation CopyCop.²⁸

²⁴ U.S. Department of Justice, Office of Public Affairs, Press Release, "Justice Department Disrupts Covert Russian Government-Sponsored Foreign Malign Influence Operation Targeting Audiences in the United States and Elsewhere," September 4, 2024. (<https://www.justice.gov/opa/pr/justice-department-disrupts-covert-russian-government-sponsored-foreign-malign-influence>)

²⁵ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Iranian Regime Agents Attempting to Interfere in U.S. Elections," September 27, 2024. (<https://home.treasury.gov/news/press-releases/jy2621>); U.S. Department of the Treasury, Press Release, "Treasury Sanctions Actors Supporting Kremlin-Directed Malign Influence Efforts," March 20, 2024. (<https://home.treasury.gov/news/press-releases/jy2195>); Eu Disinfo Lab, "What is the Doppelganger Operation? List of Resources," accessed December 5, 2024. (<https://www.disinfo.eu/doppelganger-operation>). Note: While the Treasury press release does not specifically call out Doppelganger, researchers have linked Doppelganger to the companies associated with the individuals sanctioned by Treasury.

²⁶ U.S. Federal Bureau of Investigation and U.S. Cybersecurity and Infrastructure Security Agency, "Just So You Know: Ransomware Disruptions During Voting Periods Will Not Impact the Security and Resilience of Vote Casting or Counting," August 15, 2024. (https://www.cisa.gov/sites/default/files/2024-08/Just_So_You_Know_Ransomware_Disruptions_During_Voting_Periods_Will_Not_Impact_the_Security_and_Resilience_of_Vote_Casting_or_Counting_8.15.24_V2_508c_0.pdf)

²⁷ U.S. Office of the Director of National Intelligence, "45 Days Until Election 2024: Election Security Update as of Mid-September 2024," September 23, 2024. (<https://www.odni.gov/files/FMIC/documents/ODNI-Election-Security-Update-20240923.pdf>)

²⁸ Office of Georgia Secretary of State, "Statement from Secretary Raffensperger," October 31, 2024. (<https://sos.ga.gov/news/statement-secretary-raffensperger>); "Board of Elections Issues Bipartisan Statement on Fake Ballot Video," *Bucks County, Pennsylvania*, October 24, 2024. (<https://www.buckscounty.gov/CivicAlerts.aspx?AID=1151>); "Fact Check: Video of Pennsylvania Mail-in Ballots Being Destroyed Is Fake," *Reuters*, October 31, 2024. (<https://www.reuters.com/fact-check/video-pennsylvania-mail-in-ballots-being-destroyed-is-fake-2024-10-31>); "Fact Check: Kamala Harris Hit-and-Run Story Stems From Unreliable Website," *Reuters*, September 20, 2024. (<https://www.reuters.com/fact-check/kamala-harris-hit-and-run-story-stems-unreliable-website-2024-09-20>)

On Election Day, the FBI quickly responded to hoax bomb threats, assuring the public that none of the threats were credible.²⁹ CISA, for its part, released a statement the next day affirming the security and integrity of election infrastructure.³⁰

In summary, Russia, Iran, and China waged aggressive influence operations targeting America's political system. It is difficult to define with precision the effects of these efforts, but it appears that America proved remarkably resilient. In many instances, efforts of federal and state governments, the private sector, and the research community appear to have thwarted Russian, Iranian, and Chinese efforts to shape voters' preferences and undermine Americans' faith in the fairness and integrity of the democratic process. A Reuters/Ipsos poll released several days after the election found that the majority of Americans believed the election was legitimate and accurate.³¹

That's good news, but Americans should not allow themselves to become complacent. Given the ongoing information war against the United States and the interests of adversaries, we can expect China, Russia, and Iran to continue to attack our electoral processes with increasing ferocity and effectiveness.³² Just because adversary efforts in 2024 were not more successful does not mean we should assume that will be the case in future elections.

Time To Go On the Offensive

To deter foreign interference in our elections and protect our American center of gravity requires more than effective defenses. Even the best defenses eventually fail if attacks continue unabated. Our adversaries are not deterred from attacking our elections, and those attacks will only increase in frequency and sophistication if they believe they can continue to wage those attacks on our elections at no cost. We must change the cost-benefit analysis of our adversaries. After all, deterrence is strongest when there is both an effective defense and an effective offense. Therefore, we should continue to build the best possible defenses for our elections and electoral processes while simultaneously going on the information warfare offensive against China, Russia, and Iran. Such a campaign could systematically expose each regime's corruption and

²⁹ U.S. Federal Bureau of Investigation, National Press Office, Press Release, "FBI Statement on Bomb Threats to Polling Locations," November 5, 2024. (<https://www.fbi.gov/news/press-releases/fbi-statement-on-bomb-threats-to-polling-locations>)

³⁰ U.S. Cybersecurity and Infrastructure Security Agency, "Statement from CISA Director Easterly on the Security of the 2024 Elections," November 6, 2024. (<https://www.cisa.gov/news-events/news/statement-cisa-director-easterly-security-2024-elections>)

³¹ "Americans accept the election results even if some are unhappy with the outcome," Ipsos, November 8, 2024. (<https://www.ipsos.com/en-us/americans-accept-election-results-even-if-some-are-unhappy-outcome>)

³² In the lead-up to Election Day, researchers and government officials warned that America's adversaries would use AI to improve their influence operations dramatically. While Russia, Iran, and China all used AI-generated content in their influence operations, this did not appear to transform their operations. As per the ODNI, "Generative AI is helping to improve and accelerate aspects of foreign influence operations but thus far the IC has not seen it revolutionize such operations." *Source*: U.S. Office of the Director of National Intelligence, "45 Days Until Election 2024: Election Security Update as of Mid-September 2024," September 23, 2024. (<https://www.odni.gov/files/FMIC/documents/ODNI-Election-Security-Update-20240923.pdf>)

oppression and help the Chinese, Russian, and Iranian people advocate for their own rights, including more representative governance.³³

Much to the detriment of U.S. interests and the satisfaction of Xi, Putin, and Khamenei, successive U.S. administrations have resisted offensive information warfare efforts inside China, Russia, and Iran for fear of “provoking” them. The result is that the United States has failed to put up a fight, even as all three regimes wage aggressive information war in America. This is the equivalent of a kinetic war in which one combatant is relentlessly firing mortars, rockets, and missiles, and the recipient of the strikes assiduously refuses to respond for fear of provoking an aggressor already launching salvos.

Skeptics of such arguments will no doubt express concern that aggressive U.S. offensive information warfare operations inside China, Russia, and Iran could spark a dangerous escalatory cycle. Curiously, such concerns often seem to emerge only when Americans awake to aggression against them and begin contemplating how to respond.³⁴

Admittedly, such concerns about escalation are not entirely ridiculous. But these concerns must be weighed against the dangers associated with accepting the status quo in which we can expect China, Russia, and Iran to target with increasing ferocity and AI-empowered effectiveness³⁵ the socio-political foundations upon which American stability, liberty, and security stand.

For too long, America has tried a strategy of inaction, at worst, and restraint, at best, when it comes to responding to information warfare aggression by China, Russia, and Iran. The results from this head-in-the-sand strategy are not good, and there is reason to worry the consequences will only get worse without change.

As a result of the ineffective U.S. information warfare defense and an arguably almost non-existent offense, Washington has failed to deter adversary offensive information warfare operations against Americans. That has left China, Russia, and Iran with the impression that they can wage war openly on Americans, our security, our democracy, and our elections with few consequences.

A call for aggressive offensive information warfare operations against China, Russia, and Iran is not a call for Washington to proactively use the U.S. military to conduct regime change. The U.S. experiences in Afghanistan and Iraq serve as a cautionary tale for those contemplating the preemptive use of U.S. military forces to topple any regime, not to mention a nuclear-armed great power adversary.

³³ Mark Dubowitz, “Mapping Protests in Iran,” *Foundation for Defense of Democracies*, May 29, 2024.

(<https://www.fdd.org/analysis/2023/01/27/mapping-the-protests-in-iran-2>)

³⁴ Fareed Zakaria, “On GPS: Does the US need a more confrontational China strategy?” *CNN*, April 28, 2024.

(<https://www.cnn.com/videos/world/2024/04/28/gps-0428-former-trump-aide-on-china-policy.cnn>)

³⁵ Russell Hanson, Adam R. Grissom, and Christopher A. Mouton, “The Future of Indo-Pacific Information Warfare: Challenges and Prospects from the Rise of AI,” *RAND Corporation*, March 14, 2024.

(https://www.rand.org/pubs/research_reports/RR2205-1.html)

An American offensive information warfare campaign in China, Russia, and Iran focused on exposing regime corruption, lies, and oppression³⁶ and ensuring the respective populations know the truth regarding their regime's foreign and domestic policies is different. More importantly, if Beijing, Moscow, and Tehran don't like having to fend off offensive information warfare operations in their respective countries, perhaps that could prompt them to assess whether it is in their interest to continue information warfare operations against the United States.

Some Final Thoughts

China, Russia, and Iran are waging an information war against Americans with the goals of dividing Americans against one another, degrading our democracy, and deceiving us regarding our foreign policy interests. A major component of these adversary efforts is targeting our democracy and the confidence Americans have in our elections.

Our adversaries understand that free, fair, and trusted elections are the center of gravity for our democracy. That is why China, Russia, and Iran sought to undermine Americans' faith in the fairness and integrity of our democratic process this year. Thankfully, federal and state governments, the private sector, and the research community responded effectively in many cases, and our democracy proved resilient. But we should not be overconfident or complacent. We can expect adversary attacks to grow more sophisticated in the future. Additional steps are needed.

That begins with sounding the alarm for Americans so that we can build bipartisan unity and action to strengthen our electoral defenses. But that is not enough. We must also go on the offensive in the information domain to shift the cost-benefit analysis of our adversaries as they contemplate future attacks on our democracy.

Chairman Steil, Ranking Member Morelle, and distinguished members of this committee, thank you for the opportunity to testify on this important topic.

³⁶ "Executions Surge in Iran and Protests Persist," *Foundation for Defense of Democracies*, May 3, 2024. (<https://www.fdd.org/analysis/2024/05/03/executions-surge-in-iran-as-protests-persist>)

Chairman STEIL. Thank you very much, Mr. Bowman.
Mr. Johnson, you are now recognized for 5 minutes.

STATEMENT OF DERF JOHNSON

Mr. JOHNSON. Chairman Steil, Ranking Member Morelle, and Members of the Committee on House Administration, my name is Derf Johnson, deputy director of the Montana Environmental Information Center.

Thank you for the opportunity to offer my experience with foreign interference in U.S. elections today. I share your goal in assuring that Americans hold confidence in our electoral system.

My comments will focus on the interference of an Australian corporation in a Montana ballot initiative.

As a native Montanan, I hold a common sentiment of caring for and valuing the land we call home. Montana is the site of America's first national park and a robust flora and fauna that existed at the time of the Lewis and Clark Expedition. It is the setting of "A River Runs Through It," which aptly summarize many Montanans' sympathies of no clear line between religion and fly fishing.

Since territorial days, Montana has suffered from exploitation and corruption, owing in large part to a mineral wealth and high interest in corporate profiteering. This turn-of-the-century stranglehold is often referred to in Montana as the "Copper Caller," referencing the enormous control of Butte's copper barons and their exertion of political power over our media, our business, and our politics.

Even today, Montana is vulnerable to unwarranted corporate and political influence. Our small population, our cheap media market, and interest from corporations in our natural resources can often lead to our local interests being trampled.

Over the centuries, Montana has also had an unfortunate relationship with hard rock mining, from the Berkeley Pit, the U.S.'s largest Superfund site, to the more recent developments such as Montana Tunnels, a defunct mine just south of my home which is now insufficiently bonded at \$20 million in bankruptcy and responsible for destroying a trout stream.

Pockmarks of defunct mining projects across the State demonstrate these failures and continue to represent an ongoing liability for our residents and sovereign Tribal nations.

Due to our history, many Montanans are rightfully skeptical of mining proposals. Mining must contend with certain safeguards in Montana, including an environmental rights provision written into our constitution. Montana also has a ballot initiative process that we have used in the past for regulating hard rock mining, including a potential ballot initiative to protect the Smith River.

Montana's Smith River flows 59 miles through a towering limestone canyon in central Montana. For that entire stretch, it does not have any public access points. Due to the largely undeveloped landscape, an excellent trout fishery, and a multi-day float opportunity, people from all across the world, about 10,000 folks, apply every year in a lottery in the hopes of being able to float down the river in some of Montana's wildest country.

In 2015, an Australian mining corporation proposed a mine at the headwaters of Montana's Smith River, adjacent to and directly

underneath Sheep Creek—and that is the Smith River’s most important tributary—and we have been fighting this mine ever since.

It is against this backdrop that a group of Montana citizens and organizations worked to pass a citizen-initiated ballot initiative, I-186. It would have required safeguards to prevent unnecessary impacts from mining by stopping what we call “perpetual pollution,” acid mine drainage. Acid mine drainage is an unfortunate common occurrence in Montana, both historically and in the current day, and has served as a death sentence for several of our rivers and streams.

Sandfire took a high level of interest in I-186 due to its implications for the proposed mine, as the company has repeatedly acknowledged that the mine is being proposed in what we call a massive sulfide zone, which is the precursor to acid mine drainage. Sandfire donated \$285,000 of treasury money to campaign against I-186, even though it acknowledged that it did not have any sources of revenue in the United States and a cash-flow of zero.

Supporters of I-186 filed an FEC complaint in October 2018, which was dismissed. Commenting on the dismissal, one of the Commissioners expressed her alarm at her “colleagues’ voting to allow such foreign interference in American political life.”

Following I-186, the Montana legislature tried to react, enacting a ban on foreign-national contributions to candidate elections, but that fell short of contributions to ballot campaigns due to intense lobbying from the mining industry.

The universe of fundraising available for corporate participation in our ballot initiative process is much, much broader than it needs to be, and the interests that those funds serve is often far-flung from the concerns of everyday Montanans. These folks do not need to drink the water or breathe the air in Montana.

Thank you again for the opportunity to appear before the Committee. I am available for any questions you might have.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF DERF JOHNSON



MONTANA ENVIRONMENTAL INFORMATION CENTER

December 18, 2024

The Honorable Bryan Steil
Chair, Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

RE: Testimony of Derf L. Johnson, Montana Environmental Information Center

Dear Chairman Steil, Ranking Member Morelle, and Members of the Committee on House Administration:

Thank you for the opportunity to appear before the Committee on House Administration to offer my experience with foreign interference in U.S. elections and how it can be fully prohibited. I share your goal in assuring that Americans hold confidence in our electoral system, and in particular offer comments below on the interference of an Australian corporation in a Montana ballot initiative campaign that would have protected Montana's water resources.

I am the Deputy Director of the Montana Environmental Information Center (MEIC), a non-profit environmental advocate founded in 1973. MEIC has tens of thousands of members and supporters in Montana and across the United States. MEIC's organizational mission is to protect and restore the land, air, water, and life-sustaining climate of Montana, and advocate, educate, and empower people in service of a clean and healthful environment for present and future generations. Montana has a unique constitutional guarantee of a right to a clean and healthful environment for its people, and the provision is perhaps the most forward-thinking constitutional environmental provision of any state in the union. MEIC works to protect and enforce that fundamental right.

Through my work, I have gained unique insight into the permitting process for natural resource extraction projects in Montana. As a law student at the University of Montana, I focused on environmental and natural resources issues, with a focus on mining. For the past 15 years, I have been employed as both a lobbyist and attorney for MEIC and have focused on the legal and policy issues of mining and energy production in Montana. I represent MEIC and other parties in legal matters before state and federal courts, serve as a registered lobbyist during the Montana Legislature's biennial sessions, and work with both state and federal agencies in implementing policies and regulations on these matters. This experience has helped to inform my opinion on mining and energy development, both in Montana and across the West. In my career,

I have also worked directly on several Montana ballot initiatives that have dealt with environmental and mining issues, as well as broader policy considerations.

As a native Montanan, I share a common sentiment of caring for and valuing the land we call home. Montana is an important place for me personally. It is a place of abundant beauty and recreation that is unlike anywhere else that I have lived or traveled. Over the years, I have explored Montana extensively - to work, hunt, fish, camp, bike, boat, and drive, and have done so in virtually every county in the state. I particularly enjoy visiting the vast acreage of public lands that we have in Montana. These places are some of the least populous in the lower 48 and offer the opportunity for solace and escape from the daily grind of life.

I. Montana's Unique History of Corruption in Our Electoral System

Since its creation as a territory, Montana has had a marked history of exploitation and corruption, owing in large part to its enormous mineral wealth and high interest in corporate profiteering of our natural resources. The excessive and disproportionate influence of extractive industries that dominated Montana's political history is often referred to as the "Copper Collar," referencing the enormous control that Butte's copper barons exerted over Montana's political, media, and business activities. Over one hundred and twenty years ago, a member of the U.S. Senate Committee on Privileges and Elections "expressed horror at the amount of money which had been poured into politics in Montana in elections from 1888 onward." The hearing was regarding the appointment of William A. Clark by the Montana Legislature to serve in the U.S. Senate. The sheer level of corruption led to the U.S. Senate to refuse to seat him, and also was the catalyst for a Montana citizens' initiative that required the direct election of U.S. Senators.

As Montana matured into statehood, we attempted to address this corruption through the passage of the Corrupt Practices Act, which prohibited corporate contributions to candidates and lasted for 100 years until the Citizens United decision. Aspects of the "Copper Collar" stranglehold survived well into the 20th century. Even today, Montana is unfortunately vulnerable to unwarranted corporate and political influence. Our small population and relatively cheap media market - coupled with a high degree of interest from foreign corporations in accessing Montana's natural resources - has frequently allowed for local interests to be trammelled by outside interests.

II. Hardrock Mine History and Permitting in Montana

Montana has an unfortunate relationship with extractive industries and, more specifically, hardrock mining, both historically and in modern times. From the Berkeley Pit in Butte and its downstream impacts on the Clark Fork River basin (constituting the largest Superfund site in the United States) to the more recent developments such as Montana Tunnels, a defunct mine just

south of my home. Montana Tunnels is now insufficiently bonded to the tune of \$20 million, the corporate owner is in bankruptcy, and the defunct mine has destroyed a stream that was excellent habitat for a native Yellowstone cutthroat trout population. Pockmarks of defunct mining projects across the state demonstrate the failed policies of the past and continue to represent an ongoing liability for our residents and sovereign Tribal Nations.

Due to our history, many Montanans are rightfully skeptical of mining proposals, and while the state will likely continue to promote resource extraction into the foreseeable future, such practices must contend with several safeguards meant to assure that our lands and waters are protected. Most notably, in 1972, Montanans adopted a new constitution that contains explicit environmental rights and protections that are meant to address the corporate abuses of the past. In Art. II, Sect. 3 – outlining the inalienable rights of our citizens – we have a clearly defined “right to a clean and healthful environment” This provision has been further refined through subsequent case law as a fundamental right, requiring a strict scrutiny analysis for any circumstance encumbering the right. It also has been found to be both anticipatory and preventative, with the Montana Supreme Court stating:

The delegates did not intend to merely prohibit that degree of environmental degradation which can be conclusively linked to ill health or physical endangerment. Our constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked.

Concurrently, Montana’s constitution contains companion provisions requiring that the “state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations,” that the “legislature shall provide for the administration and enforcement of this duty,” and that the “legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.” More specific to mining and extraction, the Constitution contains a requirement that “All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.”

Due in part to the abuses of the past and government systems that may be prone to capture from special interests, Montana also created a ballot initiative process under our constitution. Under the initiative process, citizens and organizations may place initiatives on a ballot after collection of the signatures of at least 5% of registered voters in at least one-third of Montana’s legislative districts as well as at least 5% of the total registered voters.

Montanans have used our initiative process for a myriad of different policy proposals, including the regulation of hardrock mining. In 1998, Montana voters passed I-137, an initiative that placed a ban on cyanide heap leach mining, effectively becoming the first state in the nation to outlaw the destructive practice. In large part, the initiative was successful due to Montanans’ interest in protecting the Blackfoot River from an ill-conceived open-pit gold mining project at

its headwaters. In 2004, an industry-sponsored initiative to overturn the cyanide heap leach ban failed handily, and the law remains intact to this day.

III. Montana's Smith River

While Montana boasts a little over a million residents, close to 12 million visitors flock to Montana every year to experience our great state, and our landscapes are world-renowned for good reason. It is the home of the first National Park in the United States, the headwaters to much of the river system in the lower 48, and the home to robust flora and fauna that existed at the time of the Lewis and Clark expedition. It is the setting for Normal Maclean's novel *A River Runs Through It and Other Stories*, which aptly summarized many Montanans' sympathies of "no clear line between religion and fly fishing." Our landscape is in many ways our identity, and instilled within our constitutional preamble: "We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution."

Montana's environment and landscape also means real money for our state's citizens and our economy. According to a November 2024 report from the U.S. Bureau of Economic Analysis, in 2023 the outdoor industry sector contributed \$3.4 billion to Montana's GDP and grew 7.2%. Nationwide, it now ranks third in the nation for contributions to state GDPs, accounts for close to 6% of statewide employment, and makes up 4.4% of the state's total compensation. In short, Montana's outdoor recreation industry is a critical growth industry that is an essential part of our present and future, especially water-based recreation.

The Smith River flows in central Montana. Its headwaters begin in Meagher County near White Sulphur Springs and the Castle Mountains, before flowing north where it is bound on its banks by the Little Belt and Big Belt Mountains before meeting the mighty Missouri near Great Falls. From Camp Baker to Eden Bridge, the Smith flows for 59 miles through a towering limestone canyon without any public access points. Due to a largely undeveloped landscape, an excellent trout fishery, and a multi-day opportunity to float the river, this section has been designated as a Montana State Park and is Montana's only permitted recreational river. Over 10,000 people from across the United States enter an annual lottery for the opportunity to win a coveted float permit which, if successful, will allow them to spend up to five days in some of the wildest country in Montana with their closest friends and family.

Recreation on the Smith River also generates significant economic activity for central Montana during the summer months. In addition to private recreation and associated spending, a portion of the launch permits are owned by river guides, and people from around the world hire their services for a once-in-a-lifetime trip down the Smith. Every day during the permit season – rain or shine – the Camp Baker launch facility is buzzing with activity as people scramble to get on the river. A 2015 analysis by Southwick and Associates evaluated the economic impacts of Smith River fishing recreation, pegging annual anglers' spending to close to \$8 million with a

ripple effect of over \$11 million, supported over \$3 million in salaries and 70 jobs, and contributed close to \$1 million in state and local tax revenues. This economic activity is very likely to have grown in the nine years since the report's release.

In 2015, an Australian mining corporation known as Sandfire Resources applied for a mining permit to the Montana Department of Environment Quality (DEQ). The company proposed to build an underground mine directly under and adjacent to Sheep Creek, the critical tributary in the Smith River basin for clean water, spawning habitat, and summer flows. Since that time, Sandfire has further consolidated its shares of the project and has labeled the mine the "Black Butte Copper Project," but most Montanans refer to it as the "Smith River Mine."

Since that time, the proposal has met with stiff resistance from Montanans of all walks of life who are concerned about repeating the mistakes of the past and risking the Smith River for yet another failed mining experiment. Sandfire Resources, however, continues to pursue its mine and edges closer every day to beginning its project and risking perpetual pollution of one of Montana's environmental gems.

IV. A Ballot Initiative to Protect Montana's Water, and an Australian Corporation Helping to Bankroll its Opposition

It is against this backdrop – a history of environmental exploitation, corrupting influence in our political processes, and strong constitutional protections – that a group of Montana citizens and organizations worked to pass a citizen-initiated ballot initiative (I-186) in 2018. The initiative would have placed additional safeguards to prevent unnecessary impacts from mining activities on Montana's people and her environment through what is known as perpetual pollution. I-186 was voted on during the 2018 general Montana election and would have prohibited the state's Department of Environmental Quality (DEQ) from permitting a newly proposed hardrock mine unless the reclamation plan provided to the DEQ clear and convincing evidence that the mine would not have required perpetual treatment of water polluted by acid mine drainage or other contaminants. More than 45,000 signatures from Montanans were submitted to the Montana Secretary of State, and the initiative was subsequently approved for the ballot.

The initiative primarily targeted mines that were likely to result in acid mine drainage, a chemical process that results from mining of sulfur-bearing minerals. If sulfur-bearing minerals are exposed to air, water, and bacteria during mining, it often creates a chemical reaction that produces sulfuric acid, which dissolves other constituents and heavy metals in the rocks and creates toxic runoff from mine sites. Acid mine drainage is an unfortunate, common occurrence in Montana both historically and presently, and has served as a death sentence for several of Montana's rivers and streams. Because acid mine drainage cannot be halted once it begins and will last into perpetuity, water treatment and management of these sites must also occur in perpetuity. Perpetual water treatment and management raises questions about the ongoing

environmental and fiscal obligations of Montana's future generations in managing the failed mining activities of the past, and whether permitting such mines complies with Montana's affirmative, strong constitutional environmental protections.

The citizen-led ballot initiative was submitted not just as a reflection of Montana's love for rivers and Constitutional obligations to assure their protection, but also more specifically to address concerns related to the Smith River Mine and its potential, high-risk impacts to the cherished waterway. The subsequent election fight over the ballot initiative was hard-fought, in large part due to the large access to funds that the mining industry typically enjoys relative to public interest advocates. Both the support and opposition of I-186 created ballot committees: Yes for Responsible Mining was created in support of I-186, and Stop I-186 to Protect Miners and Jobs was created to oppose the initiative.

Predictably, Australian corporation Sandfire Resources took a high level of interest in I-186 due to its implications for the proposed mine at the headwaters of Montana's Smith River. The company has repeatedly acknowledged that the mine is located within a "massive sulfide zone," the precursor and necessary ingredient for acid mine drainage. Due to its perceived interests, Sandfire Resources donated – and the opposition committee accepted – approximately \$285,000 to campaign against I-186. Sandfire Resources did not contest that it was an *Australian* company with a *Canadian* subsidiary (Sandfire Resources America, which at the time did not have any sources of revenue in the United States and "a cash flow of zero") but had an interest in developing the Smith River mine.

The contributions were subject to a high level of interest and scrutiny and were ultimately the subject of a complaint filed with the Federal Election Commission ("FEC") in October of 2018. Three years later, in 2021, the FEC dismissed the complaint. Commenting on the dismissal of this and another similar matter, a Democratic commissioner expressed her alarm at her "colleagues' voting to allow such foreign interference in American political life." I-186 was voted down at the ballot box.

Following the failed passage of I-186, the Republican-controlled Montana Legislature enacted a ban in 2019 on foreign national contributions to candidate elections. Unfortunately, this ban fell short of prohibiting foreign national contributions to ballot campaigns – due to intense lobbying from the mining industry, the bill was amended to focus only on candidates. Today, the status quo remains that unlimited amounts of money can be contributed from locations across the world by foreign nationals to state and local ballot initiatives in Montana. This permissive arrangement of foreign money has undoubtedly caused a chilling effect on, and perversion of, our ballot initiative process. The universe of funding available for corporate participation in our ballot initiative process is now much broader, and the interests those funds serve is often far flung from the concerns of everyday Montanans.

Thank you again for the opportunity to appear before the Committee. As this Committee considers the issues of foreign interference in our election system, I hope that it incorporates and weighs the experiences I've offered from the great State of Montana. I wish the Committee well

as it seeks to address the important issues that surround foreign interference in our election system, especially as it relates to state and local ballot initiatives.

Sincerely,



Derf L. Johnson
Deputy Director
Montana Environmental Information Center

Chairman STEIL. Thank you very much, Mr. Johnson.

I will begin our questions today. I will ask about 5 minutes of question, and then we will alternate between the parties. I now recognize myself for 5 minutes for the purpose of asking our witnesses questions.

Let me get this straight, because I think this is really important to the American people. Do all of you agree that there is foreign influence in U.S. elections? You agree, yes?

Ms. SUTHERLAND. Yes.

Mr. JOHNSON. Yes.

Mr. BOWMAN. Yes.

Mr. O'NEILL. Yes.

Chairman STEIL. The record will reflect all four agree that there are.

And, Mr. Bowman, you recognize that, in particular, there are certain countries that are uniquely interested in interfering in U.S. elections—in particular, Russia, Iran, and North Korea. Is that accurate?

Mr. BOWMAN. That is accurate, Mr. Chairman.

Chairman STEIL. Also China.

Mr. BOWMAN. Yes. Yes.

Chairman STEIL. If we think about this, we should be looking at, what are the ways that foreign interference could take place in the United States? One is through breaking current U.S. law. The other is through legal loopholes that exist under current law.

First, on the illegal side, this Committee was working to make sure there was only U.S. citizens voting in U.S. elections. Under current law, that is required, but we were putting forward the SAVE Act to make sure that we are ensuring that is the case.

As we look to online giving, we have seen significant vulnerabilities in online giving platforms and, in particular, ActBlue.

Mr. O'Neill, would you agree that we should be working to close online vulnerabilities in an online giving platform, such as requiring a CVV number, banning the use of prepaid foreign gift cards? Are those logical steps that should be taken?

Mr. O'NEILL. Yes.

Chairman STEIL. Then, I think what really is surprising to the American people—because when I talk to people about this, they do not recognize that we have massive legal loopholes. And, Ms. Sutherland, you laid that out very clearly, as to how this can take place. Mr. Johnson recognized how it is impacting him in the State of Montana.

Let us dive into this loophole. To confirm here, under current U.S. law, a foreign national can transfer money into a 501(c) orga-

nization in the United States. That 501(c) organization can then transfer 40 percent of that money into another 501(c) that can operate as a super-PAC or directly engage in U.S. elections. Is that accurate?

Ms. SUTHERLAND. Yes.

Chairman STEIL. You think that that loophole should be closed?

Ms. SUTHERLAND. Absolutely.

Chairman STEIL. I 100 percent agree.

Then we also look at another loophole that exists which allows foreign nationals to transfer funds directly into ballot initiatives.

I think this is missed by a lot of people, because what we saw in the last election is very important ballot initiatives in States like Ohio, we saw an important ballot initiative in States like Florida, and we saw foreign funds coming into those elections.

Is that accurate?

Ms. SUTHERLAND. Yes.

Chairman STEIL. How much went into the State of Ohio for the ballot initiative from foreign sources, in your estimates?

Ms. SUTHERLAND. We have been able to trace into Ohio millions coming from foreign-backed cash into Ohio. Ohio recognized the threat of that, and that is why they stepped up and they actually voted this year to ban foreign funding of other State ballot initiatives.

Chairman STEIL. To ban it going forward, but not to ban it historically.

This money came into the State of Ohio, under your research. Is that accurate?

Ms. SUTHERLAND. Yes, that is accurate.

Chairman STEIL. Did this money come into the State of Florida?

Ms. SUTHERLAND. Yes.

Chairman STEIL. Is there any reason that Congress should not ban foreign money from coming into ballot initiatives in States across the country?

Ms. SUTHERLAND. Absolutely no reason not to ban it.

Chairman STEIL. Does anyone have an argument that we should not ban foreign funds from coming into ballot initiatives? Any of our witnesses?

The record will reflect all of them agree that we should work to ban this.

We have legislation to ban this at the Federal level, and we continue to get caught up in the gobbledygook. When you look at the impact that these foreign funds are having directly in U.S. elections, I think most Americans would be shocked.

Because we know, on the books, a foreign national is not allowed to directly contribute into a U.S. candidate. Is that accurate, Ms. Sutherland?

Ms. SUTHERLAND. That is correct.

Chairman STEIL. All they have to do is simply use the workaround and implement their funds and channel it through a loophole that allows those funds to come in and directly impact U.S. elections, correct?

Ms. SUTHERLAND. Correct.

Chairman STEIL. As we look at the impact that this has in our elections, how much money have you identified just one foreign individual spending in the past handful of years?

Ms. SUTHERLAND. Yes, so Hansjörg Wyss, who is a Swiss billionaire and not a U.S. citizen, has contributed around a quarter of a billion dollars into the Sixteen Thirty Fund. Then the Sixteen Thirty Fund turns around and spends it on a whole host of activities.

Chairman STEIL. I think when the American people realize that this vulnerability exists in our U.S. elections system—and, as Mr. Bowman pointed out, not only may there be rich billionaires across the globe but there could be state actors that could engage in this. We could completely envision this same technique being utilized by a Chinese national, a North Korean national, a Russian national who has a direct interest in U.S. policy.

We go back and we look at the array of groups that were interested in killing the Keystone XL Pipeline, and we have seen Russian action as it relates to energy production across the globe.

Is that accurate, Ms. Sutherland?

Ms. SUTHERLAND. Yes.

Chairman STEIL. Now—we could look at a whole host of reasons.

I think it is imperative of this Committee as we move forward to not only continue to work on the enforcement of our current law—which is including making sure that there are proper security procedures in place in ActBlue, that online giving platforms are blocking foreign funds from coming in.

I think one of the real missed pieces of this is the proven millions of dollars that are coming in from foreign nationals directly impacting U.S. campaigns. We have an opportunity to close it. We have legislation to close it, and I think it is imperative that we actually pass this and it becomes law, as the State of Ohio did.

I will now yield back.

I will recognize the Ranking Member, Mr. Morelle, for 5 minutes.

Mr. MORELLE. Thank you, Mr. Chair.

I do note, again, that it was the Republican members of the FEC who created the ballot-initiative loophole. They are now recommending we fix it. I agree. I think it was wrong when they made that decision in 2015, and I think it remains wrong today. Indeed, you will get our support as we work through this in the months ahead.

I do want to—as I mentioned in my opening remarks, we all agree, again, foreign interests should have no say over the administration or outcome of American elections, that American elections—the decisions we make about our Government, how we organize our society, are the sole province of American citizens.

The newfound attention that we are paying to foreign funding of ballot initiatives is late to the game, as I mentioned.

What I just want to do is ask you, Mr. Johnson—because this does have a real-life impact, as you can see from photos taken from Montana. You know this far better than I do.

If I could ask you—you know, obviously, I have enormous admiration and respect for not only your State but the land, which so many people hike, camp, hunt, fish, work. Can you tell us a little bit more about the risks that foreign corporations like Sandfire pose to the health of the people and the land of Montana?

Mr. JOHNSON. Representative, as I mentioned both in my written and my oral testimony, Montana is not just a place where Montanans themselves can sort of enjoy the land and the place but we have 12 million visitors a year from all across the world. The land is basically an essential piece of our economy as well. Millions of dollars in GDP are generated every year in Montana from visitors.

And, as I mentioned, we have had a lot of issues with hard rock mining. This “perpetual pollution” issue is not going away. The Federal Government has spent hundreds of millions of dollars to try and figure out how to address acid mine drainage, without being able to figure out how to accomplish that. It is still an issue in Montana and has caused a lot of pollution. That is why Montanans took it upon ourselves to try and address this issue.

The photo that you see there is the Zortman-Landusky mine. That particular mine is a poster child for bad mining practices, something that we would have hoped to help address and to never permit again in Montana, this acid mine drainage problem, where we have spent approximately \$80 million in taxpayer funds and \$2 million every year, annually, in treating that water, which is flowing directly into the Fort Belknap Indian Community, impacting their teepee grounds and fouling what would otherwise be a good source of water quality for drinking water.

Mr. MORELLE. I-186 would have had a profound impact on this?

Mr. JOHNSON. That is correct. For the way that it was written, it would have prevented any new mining permits from being permitted if there was evidence that there would be acid mine drainage, or require an associated management of that acid mine drainage.

Because once acid mine drainage starts, it does not stop. There are, you know, mines from the Roman Empire that are still spilling out acid mine drainage at this point. You have to basically lock it up, button it up, and treat it forever. These are ongoing liabilities for thousands of years. I-186 would have prevented those from occurring again in Montana.

Mr. MORELLE. I think you said in your testimony, and I just want to make sure I understood, that the company, Sandfire, which was contributing nearly \$300,000 to stop the ballot initiative, they did not have any interests in Montana at the time but were looking to get permits in the State? Is that—to continue this practice?

Mr. JOHNSON. That is correct. They did not have any interest in North America, and my understanding is that they still do not.

Mr. MORELLE. Gotcha. Thank you for that testimony.

Just one quick question. Mr. Bowman, I appreciate your testimony very much. I was surprised, I guess—I expected to see North Korea in the list. Do they not participate in these activities as well? Or it just was not the focus of the report?

Mr. BOWMAN. Thank you, Ranking Member, for the question.

North Korea does engage in some of these activities, but the research of my colleagues at FDD that focus on this really highlight that Russia, China, Iran are the ones that engage in it the most and are the most effective.

Mr. MORELLE. Then, it is not an exclusive list; it is just the ones you identified—

Mr. BOWMAN. Not at all. We just focused on the three foreign adversaries we found most problematic.

Mr. MORELLE. Yes, no, I very much appreciate that. Thank you.

Before I yield back, I would like to ask unanimous consent for the following items to be added to the record: a Business Insider article titled “This Montana Man Spends His Day Shooting at Birds that Land on a Toxic Lake to Save Them from Burning Inside Out”; the Montana Supreme Court decision *Western Tradition Partnership, Inc., versus the Attorney General of Montana*, which includes an extensive discussion of Montana’s history with well-financed corruption in the mining industry; a March 18, 2015, vote certification in MUR 6678, in which three Republican FEC Commissioners created the foreign-money ballot-initiative loophole; the FEC enforcement complaint in MUR 7523 filed by Yes for Responsible Mining; and Commissioner Ellen Weintraub’s statement of reasons lamenting the FEC’s dismissal of the complaint in MUR 7523, without objection.

Chairman STEIL. Without objection, so ordered.

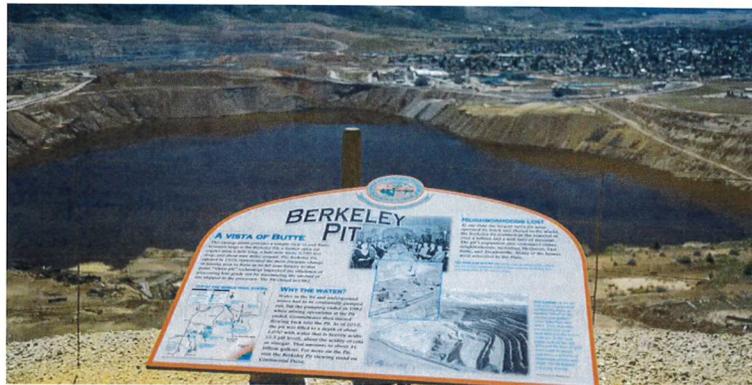
[The information referred to follows:]

This Montana man spends his days shooting at birds that land on a toxic lake to save them from burning inside out

[Sarah Al-Arshani](#) and [Daniel T. Allen](#) Apr 8, 2023, 11:07 AM EDT

Mark Mariano Daniel T. Allen/Insider

The Berkeley pit started off as an open pit mine about 65 years ago before the water pumps were shut off in 1982.



The Berkeley Pit is one of the largest superfund sites in the US. William Campbell/Corbis via Getty Images

Shutting off the pumps meant that groundwater began to seep in and created sulfuric acid that [leached metals out of the rock](#).

The lake has become so acidic that if a bird lands there for more than a few hours it could be cooked from the inside out, Insider reported. So, some locals have gotten creative in helping protect the migrant birds that fly through there.

Advertisement

The lake — located in Butte, Montana— is 7,000 feet long, 5,600 feet wide, and 1,780 feet deep.



The depth of The Berkeley Pit is taller than the statue of Liberty and Empire State Building, according to the EPA.
Berkeley Pit

The Berkeley Pit is considered one of the largest superfund sites in the US.

It is a toxic lake [a little over a mile long, and 1,780 feet deep](#), according to the [EPA](#), and filled with heavy metals and toxic water from old underground copper mine shafts in Butte, Montana.

To protect the birds, Mark Mariano uses an

expensive arsenal of high-tech tools to keep the birds off the toxic lake.



A sharpshooter posted near the site. Daniel T. Allen/Insider

Mariano told Insider that he gave himself the title of "Waterfowl Protection Specialist."

"We invented that title, but it fits," he told Insider.

He uses aerial drones, a drone boar, and a handheld laser to help keep the birds off the water. Each tool works best for a different species of bird.

One of his favorite tools is a \$5,000 Swarovski scope, which can spot the birds before they even get wet.

"If we can get, keep 'em from landing. That's always the best," Mariano explained.

During the peak season, someone like Mariano will go up to the area at least

once an hour to ensure birds are safe.

Several species of birds including Snow geese, Avocets, and Grebes, migrate through Butte during the spring and fall.



Birds over The Berkeley Pit. Daniel T. Allen/Insider

"I mean, I dream, sleep, eat and poop, ducks" Mariano told Insider.

In 2016, an estimated 60,000 Snow Geese landed on the pit [with about 3,000 of them dying, according to the US Fish and Wildlife Service.](#)

Insider reported that scientists discovered that around 50 species of birds make their way through Butte every year.

Before resorting to shooting, people will use unnatural sounds to repel the birds from the area.



Wailers, which Mariano says annoys the birds. Daniel T. Allen/Insider

Mariano uses four wailers, which play a random series of alarms that can annoy the birds.

"You can hear these things on a, you know, nice warm summer night all across Butte," Mariano said.

Another method to save the birds is propane cannons.



Mariano also uses propane cannons, which have a timer. Daniel T. Allen/Insider

The cannons are set up on a timer and go off all day.

"They mimic gunfire, which a lot of the birds are scared of for obvious reasons," Mariano said.

The last resort is fireworks.



Mariano and his co-worker unload fireworks. Daniel T. Allen/Insider

Mariano said they've only had to resort to the fireworks twice, but overall he's proud of the work he does to keep these birds safe.

"I wake up without an alarm every morning and I'm happy to go literally rescue birds. And most days you walk home with your head held high, that you saw those birds get up and take off towards Helena to the North or to the South in the fall," Mariano told Insider.

See more about the story below:

FILED

December 30 2011

E. J. Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

DA 11-0081

IN THE SUPREME COURT OF THE STATE OF MONTANA

2011 MT 328

WESTERN TRADITION PARTNERSHIP, INC.,
a corporation registered in the State of Montana,
and CHAMPION PAINTING, INC., a Montana
corporation, MONTANA SHOOTING SPORTS
ASSOCIATION, INC., a Montana corporation,

Plaintiffs, Appellees and
Cross-Appellants,

v.

ATTORNEY GENERAL of the State of Montana,
and COMMISSIONER OF THE COMMISSION
FOR POLITICAL PRACTICES,

Defendants and Appellants.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. BDV 10-238
Honorable Jeffrey M. Sherlock, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Steve Bullock (argued), Montana Attorney General; Anthony Johnstone,
Solicitor, James P. Molloy, Assistant Attorney General, Helena, Montana

For Appellees:

Margot E. Barg (argued); Wittich Law Firm, P.C., Bozeman, Montana

For Amici Curiae:

Amy Pochling Eddy; Bottomly, Eddy & Sandler, Kalispell, Montana
(for former Montana Supreme Court Justices William E. Hunt, Sr., W.
William Leaphart, James M. Regnier, Terry N. Trieweiler and John
Warner)

Lawrence A. Anderson, Attorney at Law, Great Falls, Montana
(for MTLA, Montana Conservation Voters, Montanans for Corporate
Accountability, and Montana League of Rural Voters)

Elizabeth L. Griffing, Attorney at Law; Erin Kraft, Clinic Student,
University of Montana, Missoula, Montana
(for ACLU of Montana Foundation)

Jonathan Motl; Morrison Motl & Sherwood, Helena, Montana
Jeffrey D. Clements, Clements Law Office, LLC, Concord, Massachusetts
(for Free Speech for People; American Sustainable Business Council;
Novak and Novack, Inc., d/b/a Mike's Thriftway; Home Resource, Inc.,
and The American Independent Business Alliance)

Mark Mackin, Attorney at Law, Helena, Montana
(for Montana Public Interest Research Group and Peoples Power League)

Karl J. Englund, Karl J. Englund, P.C., Missoula, Montana;
Karl J. Sandstrom, Perkins Coie LLP, Washington, D.C.
Michael T. Liburdi, James A. Ahlers, Jerica L. Peters, Perkins Coie LLP,
Phoenix, Arizona
(for Domini Social Investments LLC; Trillium Asset Management
Corporation; Newground Social Investment; Interfaith Center On
Corporate Responsibility; Harrington Investments, Inc.; The Sustainability
Group of Loring, Wolcott & Coolidge; Calvert Asset Management
Company, Inc.; The Christopher Reynolds Foundation, Inc.; and Walden
Asset Management, a Division of Boston Trust & Investment
Management Company)

Lee Bruner, Attorney at Law, Butte, Montana
Allen Dickerson, Attorney at Law, Alexandria, Virginia
(for Center for Competitive Politics)

Argued and Submitted: September 21, 2011

Decided: December 30, 2011

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 The Attorney General of Montana and the Commissioner of Political Practices appeal from the District Court's Order on Cross-Motions for Summary Judgment filed October 18, 2010. We reverse.

PROCEDURAL AND FACTUAL BACKGROUND

¶2 Western Tradition Partnership (WTP), Champion Painting and Montana Shooting Sports Foundation (MSSF) sued the Montana Attorney General and the Commissioner of Political Practices seeking a declaration that § 13-35-227(1), MCA, violated their freedom of speech protected by the United States and Montana Constitutions by prohibiting political expenditures by corporations on behalf of or opposing candidates for public office. The parties filed cross-motions for summary judgment along with briefs and supporting materials. The District Court declared the statute unconstitutional, granted summary judgment for the plaintiffs and denied summary judgment to the State defendants. The District Court enjoined enforcement of the statute and denied the motion of Champion and MSSF for an award of attorney fees. The State appeals the order of summary judgment in favor of the plaintiffs, and Champion and MSSF cross-appeal from the denial of their request for attorney fees.

STANDARDS OF REVIEW

¶3 This Court reviews a district court's decision on summary judgment using the same standards as the district court under M. R. Civ. P. 56. Where there are cross-motions for summary judgment and the district court is not called upon to resolve factual

issues, but only to draw conclusions of law, we review to determine whether those conclusions are correct. *Bud-Kal v. City of Kalispell*, 2009 MT 93, ¶ 15, 350 Mont. 25, 204 P.3d 738. Accordingly, a moving party is entitled to summary judgment when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Town & Country Foods v. City of Bozeman*, 2009 MT 72, ¶ 12, 349 Mont. 453, 203 P.3d 1283. Statutes enjoy a presumption of constitutionality, and a decision on the constitutionality of a statute is subject to plenary review. *City of Billings v. Albert*, 2009 MT 63, ¶ 11, 349 Mont. 400, 203 P.3d 828.

DISCUSSION

¶4 Section 13-35-227, MCA, was originally enacted as an initiative by the Montana voters in 1912. It provides:

(1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.

(2) A person, candidate or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee or member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

Section 13-37-128, MCA, provides the sanction for a violation of § 13-35-227, MCA, and allows the Commissioner of Political Practices to recover a civil penalty up to \$500 or triple the amount of the unlawful expenditure. A corporation may establish a separate segregated fund called a political committee or PAC to make political expenditures “if

the fund consists of only voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation. Section 13-35-227(3), MCA. Montana law requires that all political communications must include the name and address of the person or entity that paid for the communication. Section 13-35-225, MCA.

¶5 Champion Painting, Inc., is incorporated under the laws of Montana. It is a single proprietor painting and drywall business with no employees or members, and its sole shareholder is Kenneth Champion. It is the only business corporation in this action. Mr. Champion is personally active in county and state politics, supporting and opposing candidates through blogs, letters to the editor, and speeches. Champion states that he wants to speak on political issues as a spokesman for his corporation and wants to spend corporation funds to independently support or oppose candidates. He believes that doing so would be prohibited by § 13-35-227(1), MCA.

¶6 MSSA is a voluntary association of persons who support and promote firearm safety, shooting sports, education, shooting facilities and Second Amendment rights. It was incorporated in 1990 to provide liability shelter for its officers and directors. It has no employees or shareholders and its funding comes primarily from member dues and donations from other organizations. MSSA is led by its founder Gary Marbut, who is active in Montana politics on behalf of the Association. He and the MSSA have operated a political committee under Montana law for over ten years and publicize its grading and endorsements of political candidates in state and national elections. Marbut believes that the MSSA “has a political presence in Montana, and a political reputation that carries

some weight with the Montana public by virtue of our long history of activism in Montana.” Nonetheless Marbut wants to use MSSA member dues to support or oppose candidates and believes that § 13-35-227(1), MCA, prohibits MSSA from doing so.

¶7 Western Tradition Partnership is an entity incorporated in Colorado in 2008 and registered to do business in Montana. WTP reveals no more than that about itself in this case. Evidence presented by the State in District Court and not refuted by WTP is that its purpose is to act as a conduit of funds for persons and entities including corporations who want to spend money anonymously to influence Montana elections. WTP seeks to make unlimited expenditures in Montana elections from these anonymous funding sources. WTP’s operation is premised on the fact, or at least the assumption, that its independent expenditures have a determinative influence on the outcome of elections in Montana.

¶8 Upon the plaintiffs’ motion for summary judgment, the District Court considered whether § 13-35-227(1), MCA, violates the First Amendment to the United States Constitution to the extent that it restricts WTP, MSSA or Champion from making independent corporate expenditures on behalf of candidates.¹ The District Court applied *Citizens United v. F.E.C.*, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) and determined that § 13-35-227(1), MCA, impacts the corporations’ political speech protected by the United States Constitution. The District Court then considered whether the State had demonstrated a compelling interest for the restriction on speech, and whether the restriction is narrowly tailored to achieve that interest. While it answered both questions

¹ Under Montana law corporations are allowed to make independent expenditures on ballot issues. *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (9th Cir. 2000).

in the negative, the District Court did not conduct a detailed analysis of the compelling interest question. Instead, it concluded that “*Citizens United* is unequivocal: the government may not prohibit independent and indirect corporate expenditures on political speech.” (Quoting *Minn. Chamber of Comm. v. Gaertner*, 710 F. Supp. 2d 868 (D. Minn. 2010)). The District Court specifically did not address whether § 13-35-227, MCA, violated the Montana Constitution, and further noted that the decision had “no effect on direct corporate contributions to candidates or to any existing or future disclosure laws that might be enacted.” Those aspects of Montana law are therefore not at issue in this case.

¶9 We take note that Western Tradition appears to be engaged in a multi-front attack on both contribution restrictions and the transparency that accompanies campaign disclosure requirements. In addition to this case, it is currently engaged in separate litigation in the same District Court involving the Montana laws on campaign spending disclosures. *Western Tradition Partnership v. Gallik*, Cause BDV 2010-1120 (Mont. 1st Jud. Dist. Ct.).² In another action filed in United States District Court in September, 2011, WTP, under its new name of American Tradition Partnership, and with others, challenges the constitutionality of most of the limits and disclosure requirements contained in § 13-37-216, MCA. *Lair, et al., v. Gallik, et al.*, United States District Court

² In a decision in October, 2010, the Montana Commissioner of Political Practices found that WTP had created a sham organization through which to channel campaign funds, and that its arguments to the contrary were deceptive. The Commissioner further concluded that WTP’s failure to register as a political committee and to disclose the true source and disposition of the funds it raised “frustrates the purpose of Montana’s Campaign Finance and Practices Act [and] raises the specter of corruption of the electoral process. . . .”

for the District of Montana, Billings Division. Ironically, perhaps, WTP argued in the District Court and in its oral presentation to this Court on appeal that their compliance with these same disclosure laws that it now seeks to invalidate should remedy any concerns regarding the potential corrupting influence of its unlimited corporate expenditures.

¶10 The District Court erroneously construed and applied the *Citizens United* case. That case considered the constitutionality of Federal statutes and regulations that prohibited corporations from “electioneering” (making a communication that refers to a clearly identified candidate for Federal office) within 30 days of a primary election or 60 days of a general election.

¶11 *Citizens United* was a case decided upon its facts, and involved “unique and complex” rules that affected 71 distinct entities and included separate rules for 33 different types of speech in Federal elections. Since 1975, the Federal Election Commission adopted 568 pages of regulations, 1,278 pages of explanatory materials, and 1,771 advisory opinions to implement and enforce the Federal law. The FEC adopted a two-part, 11-factor test in response to the holding in a single Supreme Court decision. If parties want to avoid litigation and possible penalties they must either refrain from political speech or seek an advisory opinion. All of this, the Supreme Court found, allows the FEC to “select what political speech is safe for public consumption by applying ambiguous tests.” *Citizens United*, 130 S. Ct. at 895-96. The Court determined that the law was “an outright ban, backed by criminal sanctions.” *Citizens United*, 130 S. Ct. at 897.

¶12 A premise of *Citizens United* was that First Amendment protections extend to corporations. *Citizens United*, 130 S. Ct. at 899. The Court additionally determined that the option for a corporation to spend through a separate PAC was not a sufficient alternative because of the burdensome, extensive, and expensive Federal regulations that applied. The Federal law allowed corporations to form a separate segregated fund (sometimes called a political action committee or PAC) as long as the funds were limited to donations from stockholders or, in the case of unions, its members. The Court found the regulations governing the organization of PACs to be “onerous” restrictions that might not allow a corporation to establish a PAC in time to make its views known in a current campaign. *Citizens United*, 130 S. Ct. at 898. Therefore, because the Federal laws and regulations severely restricted speech, their constitutionality could be maintained only upon a showing that they further a compelling governmental interest and are narrowly tailored to achieve that interest. *Citizens United*, 130 S. Ct. at 898.

¶13 The Court found that the Government did not claim that corporate expenditures had actually corrupted the political process and concluded that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” *Citizens United*, 130 S. Ct. at 909. However, if elected officials do succumb to improper influences from independent expenditures, “then surely there is cause for concern.” *Citizens United*, 130 S. Ct. at 911.

¶14 The Court determined that the government had not provided a compelling interest to justify the speech restrictions at issue. The Court considered and rejected arguments that preventing the distorting effect of large expenditures; preventing corruption or the

appearance of corruption; or protection of dissenting shareholders were sufficient interests to support the Federal restrictions. Therefore, finding no compelling interest for the Federal restrictions on corporate political speech through independent expenditures, the Court found an impermissible contravention of the First Amendment. *Citizens United*, 130 S. Ct. at 911.

¶15 While *Citizens United* was decided under its facts or lack of facts,³ it applied the long-standing rule that restrictions upon speech are not per se unlawful, but rather may be upheld if the government demonstrates a sufficiently strong interest. *Citizens United*, 130 S. Ct. at 898; *Federal Election Comm. v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251-52, 107 S. Ct. 616, 624 (1986); *Bluman v. Federal Election Commission*, 2011 U.S. Dist. LEXIS 86971 (D. D.C. 2011) (upholding Federal ban against campaign contributions by foreign citizens). The Supreme Court in *Citizens United* applied the highest level of scrutiny to the restrictions at issue there, requiring the government to demonstrate a compelling interest, although the level of evidence needed to satisfy heightened scrutiny will vary with the “novelty and plausibility of the justification raised.” *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 391, 120 S. Ct. 897, 906 (2000). Therefore, the factual record before a court is critical to determining the validity of a governmental provision restricting speech. The Dissents assert that *Citizens United* holds unequivocally that no sufficient government interest justifies limits on political speech. We disagree. The Supreme Court held that laws that burden political speech are subject

³ The Court noted, for example, the “scant evidence” of the effects of independent expenditures. *Citizens United*, 130 S. Ct. at 910.

to strict scrutiny, which requires the government to prove that the law furthers a compelling state interest and is narrowly tailored to that interest. The Court, citing *Wisconsin Right to Life v. FEC*, 551 U.S. 449, 464, 127 S. Ct. 2652, 2663-64 (2007), clearly endorsed an analysis of restrictions on speech, placing the burden upon the government to establish a compelling interest. *Citizens United*, 130 S. Ct. at 898. Here the government met that burden.

¶16 In this case both sides moved the District Court for summary judgment. The WTP parties conducted no discovery in the case and presented two brief affidavits, one from the MSSF and one from Mr. Champion in support of summary judgment. The State presented a more extensive record consisting of the deposition transcripts of both Mr. Champion and Mr. Marbut of the MSSF, along with seven affidavits and attached exhibits. The plaintiffs did not contest any of this evidence. Nonetheless, the District Court failed to give adequate consideration to the record in determining whether the State had demonstrated a compelling interest for the restrictions imposed by § 13-35-227(1), MCA. We do so now because, unlike *Citizens United*, this case concerns Montana law, Montana elections and it arises from Montana history.

¶17 First, the depositions of Marbut (on behalf of MSSF) and Champion demonstrate that both have been very active politically in Montana on a range of issues that concern them. Neither could demonstrate any material way in which Montana law hindered or censored their political activity or speech. Mr. Marbut, on behalf of MSSF, has been an active fixture in Montana politics and in the legislative process for many years. He stated that he believed that while Montana law allowed MSSF to obtain and spend donations

from other organizations on political activities, it did not allow MSSF to use dues paid by its members for the same purposes. No such distinction appears in Montana law, and the affidavit of the Commissioner of Political Practices affirms his construction of Montana law that it places no such restriction on MSSF. MSSF, therefore, failed to demonstrate that its speech was impaired by the statute.

¶18 Similarly, Mr. Champion described his many political activities both on a local and state level. He affirmed that he regularly speaks, blogs, and meets with others, and has run for public office. His complaint was that he believed that Montana law prohibits him from telling his audiences and readers that his company, Champion Painting, also supports his views. Mr. Champion believes that a candidate endorsement by “Champion Painting, Inc.” would be more persuasive than his personal endorsement, and that if his business spends money on political events he will enjoy “tax benefits.” However, in Champion’s case he is the sole shareholder and derives his livelihood from the money he pays himself from the corporation. While the statute forbids the expenditure of Champion Painting’s corporate funds to support or oppose candidates, the burden upon Kenneth Champion, as a sole shareholder, to establish a political committee to advocate for his corporation’s interests and expend funds that he will decide to contribute, are particularly minimal. We conclude, under these facts, Champion’s political speech was similarly not materially impacted by the statute.

¶19 WTP, as noted, has been terse in its explanations of its organization, funding, activities, and intent. It claims to be a foreign corporation but it is not a business corporation. Its purpose, according to un-rebutted evidence submitted to the District

Court by the State, is to solicit and anonymously spend the funds of other corporations, individuals and entities to influence the outcome of Montana elections. In a promotional presentation directed to potential donors, WTP represented:

There's no limit to how much you can give. As you know, Montana has very strict limits on contributions to candidates, but there is no limit to how much you can give to this program. You can give whatever you're comfortable with and make as big of an impact as you wish.

Finally, we're not required to report the name or the amount of any contribution that we receive. So, if you decide to support this program, no politician, no bureaucrat, and no radical environmentalist will ever know you helped make this program possible. *The only thing we plan on reporting is our success to contributors like you who can see the benefits of a program like this. You can just sit back on election night and see what a difference you've made.*

Western Tradition Partnership, *2010 Election Year Program Executive Briefing*.
(Emphasis added.)

¶20 Organizations like WTP that act as conduits for anonymous spending by others represent a threat to the "political marketplace." *Mass. Citizens for Life, Inc.*, 479 U.S. at 264, 107 S. Ct. at 631. Echoing that theme, the State presented evidence that WTP has operated in disregard for and without complying with Montana law, unlike MSSF and Champion. Because WTP has not disclosed its operation, it is difficult to determine how it might be impacted by § 13-35-227(1), MCA, but given the evidence presented below we will assume there is a direct impact.

¶21 Second, a material factual distinction between the present case and *Citizens United* is the extent of the regulatory burden imposed by the challenged law. As noted above, the Court in *Citizens United* emphasized the length, complexity and ambiguity of the

Federal restrictions, including the power of the FEC to determine what speech is “safe for public consumption,” and the difficulty of establishing a PAC as an alternative to direct corporate spending. In contrast, under Montana law a political committee can be formed and maintained by filing simple and straight-forward forms or reports. (*See e.g.* §§ 13-37-201 and -210; 13-35-402, MCA.) Mr. Marbut in his deposition described that MSSF has established its own political committees and used them to actively participate in the Montana political process over a period of years. The evidence submitted by the State in the District Court similarly demonstrates that corporations, through their political committees organized under Montana law, are and have been a substantial presence and active participants in Montana politics. The many lobbyists and political committees who participate in each session of the Montana Legislature bear witness. Under the undisputed facts here, the political committee is an easily implemented and effective alternative to direct corporate spending for engaging in political speech. This alternative is available to any corporation in Montana, and to MSSF and Champion, as well as WTP should they choose to comply with existing Montana law. In the case of MSSF the evidence shows that it has in fact effectively used the political committee form for years and there is no showing that it could not continue to do so.

¶22 Third, the Montana law at issue in this case cannot be understood outside the context of the time and place it was enacted, during the early twentieth century. (Montana became a state in 1889.) Those tumultuous years were marked by rough contests for political and economic domination primarily in the mining center of Butte, between mining and industrial enterprises controlled by foreign trusts or corporations.

These disputes had profound long-term impacts on the entire State, including issues regarding the judiciary, the location of the state capitol, the procedure for election of U.S. Senators, and the ownership and control of virtually all media outlets in the State.

¶23 Examples of well-financed corruption abound. In the fight over mineral rights between entrepreneur F. Augustus Heinze and the Anaconda Company, then controlled by Standard Oil, Heinze managed to control the two State judges in Butte, who routinely decided cases in his favor. K. Ross Toole, *Montana, An Uncommon Land*, 196-99 (Univ. of Okla. Press 1959) the Butte judges denied being bribed, but one of them admitted that Anaconda representatives had offered him \$250,000 cash to sign an affidavit that Heinze had bribed him. Toole, *Montana, An Uncommon Land*, 204.

¶24 In response to the legal conflicts with Heinze, in 1903 Anaconda/Standard closed down all its industrial and mining operations (but not the many newspapers it controlled), throwing 4/5 of the labor force of Montana out of work. Toole, *Montana, An Uncommon Land*, 206. Its price for sending its employees back to work was that the Governor call a special session of the Legislature to enact a measure that would allow Anaconda to avoid having to litigate in front of the Butte judges. The Governor and Legislature capitulated and the statute survives. See e.g. *Patrick v. State*, 2011 MT 169, ¶¶ 17-23, 361 Mont. 204, 257 P.3d 365.

¶25 W. A. Clark, who had amassed a fortune from the industrial operations in Butte, set his sights on the United States Senate. In 1899, in the wake of a large number of suddenly affluent members, the Montana Legislature elected Clark to the U. S. Senate. Clark admitted to spending \$272,000 in the effort and the estimated expense was over

\$400,000. Complaints of Clark's bribery of the Montana Legislature led to an investigation by the U. S. Senate in 1900. The Senate investigating committee concluded that Clark had won his seat through bribery and unseated him. The Senate committee "expressed horror at the amount of money which had been poured into politics in Montana elections . . . and expressed its concern with respect to the general aura of corruption in Montana." Toole, *Montana, An Uncommon Land*, 186-94.

¶26 In a demonstration of extraordinary boldness, Clark returned to Montana, caused the Governor to leave the state on a ruse and, with assistance of the supportive Lt. Governor, won appointment to the very U. S. Senate seat that had just been denied him. Toole, *Montana, An Uncommon Land*, 192-93. When the Senate threatened to investigate and unseat Clark a second time, he resigned. Clark eventually won his Senate seat after spending enough on political campaigns to seat a Montana Legislature favorable to his candidacy.

¶27 After the Anaconda Company cleared itself of opposition from Heinze and others, it controlled 90% of the press in the state and a majority of the legislature. C. B. Glasscock, *The War of the Copper Kings*, 290 (Grosset & Dunlap, N.Y. 1935). By 1915 the company, after having acquired all of Clark's holdings as well as many others, "clearly dominated the Montana economy and political order . . . [and] local folks now found themselves locked in the grip of a corporation controlled from Wall Street and insensitive to their concerns." Michael Malone and Richard Roeder, *Montana, a History of Two Centuries*, 176 (Univ. of Wash. Press, Seattle 1976). Even at that time it was evident that industrial corporations controlled the state "thus converting the state

government into a political instrument for the furthering and accomplishment of legislation and the execution of laws favorable to the absentee stockholders of the large corporations and inimical to the economic interests of the wage earning and farming classes who constitute by far the larger percentage of the population in Montana.” Helen Fisk Sanders, *History of Montana*, Vol. 1, 429-30 (Lewis Pub. Co. 1913).

¶28 In 1900 Clark himself testified in the United States Senate that “[m]any people have become so indifferent to voting” in Montana as a result of the “large sums of money that have been expended in the state. . . .” Toole, *Montana, An Uncommon Land*, 184-85. This naked corporate manipulation of the very government (Governor and Legislature) of the State ultimately resulted in populist reforms that are still part of Montana law. In 1906 the people voted to amend the state Constitution to allow for voter initiatives. Not long thereafter, in 1906 this new initiative power was used to enact reforms including primary elections to choose political candidates; the direct election of United States Senators; and the Corrupt Practices Act, part of which survives as § 13-35-227, MCA, at issue in this case.

¶29 The State of Montana was still contending with corporate domination even in the mid-20th century. For example, the Anaconda Company maintained controlling ownership of all but one of Montana’s major newspapers until 1959. Writing in 1959, historian K. Ross Toole so noted and described the state:

Today the influence of the Anaconda Company in the state legislature is unspectacular but very great. It has been a long time since the company showed the mailed fist. But no informed person denies its influence or the fact that the basic use to which it is put is to maintain the status quo—to

keep taxes down, not to rock the boat. Few of the company personnel either in Butte or in New York remember F. Augustus Heinze, or even for that matter, [U. S. Senator] Joseph M. Dixon, but it would be foolish for anyone to deny that the pervasive influence of the Anaconda Company in Montana politics is part and parcel of the Montana heritage.

Toole, *Montana, An Uncommon Land*, 244. A study of Montana in the early 1970s concluded that corporate influence of the Anaconda Company had been “replaced by a corporate power structure, with interlocked directorates, the same law firms and common business interests” among the Anaconda Company, Montana Power Company, Burlington Northern Railway and the First Bank System. Malone and Roeder, *Montana, a History of Two Centuries*, 290. History professor Dr. Harry Fritz, in his affidavit presented in the District Court, affirmed that the “dangers of corporate influence remain in Montana” because the resources upon which its economy depends in turn depend upon distant markets. He affirmed: “What was true a century ago is as true today: distant corporate interests mean that corporate dominated campaigns will only work ‘in the essential interest of outsiders with local interests a very secondary consideration.’” While specific corporate interests come and go in Montana, they are always present. Montana’s mineral wealth, for example, has historically been exported from the State, and that is still true today. *Commonwealth Edison Co. v. State of Montana*, 189 Mont. 191, 196, 615 P.2d 847, 850 (1980), *aff’d*, 453 U.S. 609, 101 S. Ct. 2946. The corporate power that can be exerted with unlimited political spending is still a vital interest to the people of Montana.

¶30 Furthermore, in the evidence presented below the State demonstrated aptly how even small expenditures of money can impact Montana elections. The State submitted affidavits from two respected and experienced politicians and public servants. Bob Brown, a Republican, served in the Montana House of Representative, in the Montana Senate, as the Montana Secretary of State and as an unsuccessful candidate for Governor. He retired in 2010 as a Senior Fellow at the Center for the Rocky Mountain West and the Mansfield Center, at the University of Montana. Mike Cooney, a Democrat, served in the Montana House of Representatives, in the Montana Senate, as the Montana Secretary of State, and also as an unsuccessful candidate for Governor. Both affirmed that Montana, with its small population, enjoys political campaigns marked by person-to-person contact and a low cost of advertising compared to other states. They affirmed that allowing unlimited independent expenditures of corporate money into the Montana political process would drastically change campaigning by shifting the emphasis to raising funds.

¶31 Cooney, for example, ran his first state legislative campaign for \$750 as a “grassroots” effort that he believed could have been derailed by an opposing expenditure of even a couple of thousand dollars. Brown affirmed that Montana politics are more susceptible to corruption than Federal campaigns, and that infusions of large amounts of corporate independent expenditure on just media coverage “could accomplish the same type of corruption of Montana politics as that which led to the enactment of” § 13-35-227, MCA. Cooney recounted his experience from his most recent campaign when he found that voters were concerned that they “didn’t really count” in the political process unless they can make a material financial contribution, and that special interests therefore

hold sway. This is much the same sentiment described by W. A. Clark to the United States Senate committee over a century ago, quoted above.

¶32 The State also presented the affidavit of Edwin Bender of the National Institute on Money in State Politics. He confirmed that under Montana law corporations can now make unlimited contributions (in amount) for independent expenditures from their corporate PACs to support or oppose candidates, directly to ballot measure committees, and to support or oppose ballot measures, and can make unlimited expenditures on lobbyists. Corporations can make contributions with the same limits as all donors from their PACs to candidates and to party committees. Bender also affirmed the low cost of political races in Montana, in comparison to other states,⁴ with all legislative and statewide candidates for office raising a total of around \$7 million in 2008. In that year the average candidate for the Montana House raised \$7,475 and the average candidate for the Montana Senate raised \$13,299. This makes it possible for direct political spending by corporations to significantly affect the outcome of elections.

¶33 Bender also affirmed that studies of election spending in the United States show that the percentage of campaign contributions from individual voters drops sharply from 48% in states with restrictions on corporate spending to 23% in states without. Evidence presented in the District Court showed that in recent years in Montana, corporate independent spending on ballot issues has far exceeded spending from other sources. He provided an extensive 2010 joint study by the Hofstra University School of Law, the

⁴ Montana is the fourth largest state in size, covering over 145,000 square miles, and has a population less than one million people.

Brandeis Center at the NYU School of Law and the National Institute on Money in State Politics that concluded that polling shows that 3 of 4 Americans believe that campaign contributions affect judicial decisions in states where judges are elected. *The New Politics of Judicial Elections 2000-2009*, Charles Hall ed., Justice at Stake Campaign, 2010.

¶34 Laws that impact speech in some way must be evaluated by using the proper level of scrutiny. This is determined by the type of speech that the law affects and the type of burden that the law imposes. *Davis v. Fed. Election Comm.*, 554 U.S. 724, 737, 128 S. Ct. 2759, 2770 (2008). Laws that place severe burdens on fully protected speech are subject to strict scrutiny, *Arizona Free Enterprise Club v. Bennett*, ___ U.S. ___, 131 S. Ct. 2806, 2816-17 (2011), while laws that place only a minimal burden or that apply to speech that is not fully protected receive intermediate scrutiny. *Davis*, 554 U.S. at 737, 128 S. Ct. at 2771.

¶35 Montana law has long incorporated a requirement of a compelling state interest in evaluating cases involving claims that governmental action infringes upon constitutional rights. The Montana Constitution, Art. 2 § 10, expressly incorporates the standard for evaluating issues affecting the right of individual privacy. *Montana Hum. Rights Div. v. City of Billings*, 199 Mont. 434, 439-40, 649 P.2d 1283, 1286 (1982); *St. James Comm. Hosp. v. District Court*, 2003 MT 261, ¶ 4, 317 Mont. 419, 77 P.3d 534. Under Montana law the government must demonstrate a compelling interest when it intrudes on a fundamental right, and determination of a compelling interest is a question of law. *State v. Pastos*, 269 Mont. 43, 47, 887 P.2d 199, 202 (1994).

¶36 Based upon the background of § 13-35-227(1), MCA, the State of Montana, or more accurately its voters, clearly had a compelling interest to enact the challenged statute in 1912. At that time the State of Montana and its government were operating under a mere shell of legal authority, and the real social and political power was wielded by powerful corporate managers to further their own business interests. The voters had more than enough of the corrupt practices and heavy-handed influence asserted by the special interests controlling Montana's political institutions. Bribery of public officials and unlimited campaign spending by the mining interests were commonplace and well known to the public. Referring to W. A. Clark, but describing the general state of affairs in Montana, Mark Twain wrote in 1907 that Clark "is said to have bought legislatures and judges as other men buy food and raiment. By his example he has so excused and so sweetened corruption that in Montana it no longer has an offensive smell." Mark Twain, *Mark Twain in Eruption*, 72 (Harper & Bros. 1940).

¶37 The question then, is when in the last 99 years did Montana lose the power or interest sufficient to support the statute, if it ever did. If the statute has worked to preserve a degree of political and social autonomy is the State required to throw away its protections because the shadowy backers of WTP seek to promote their interests? Does a state have to repeal or invalidate its murder prohibition if the homicide rate declines? We think not. Issues of corporate influence, sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs make Montana especially vulnerable to continued efforts of corporate control to the detriment of democracy and the republican form of government. Clearly

Montana has unique and compelling interests to protect through preservation of this statute.

¶38 While Montana has a clear interest in preserving the integrity of its electoral process, it also has an interest in encouraging the full participation of the Montana electorate. The unrefuted evidence submitted by the State in the District Court through the affidavit of Edwin Bender demonstrates that individual voter contributions are diminished from 48% of the total raised by candidates in states where a corporate spending ban has been in place to 23% of the total raised by candidates in states that permit unlimited corporate spending. The point is illustrative of Montana, a state where citizens generally support candidates with modest campaign donations. In the case of ballot issues, where corporations may make unlimited donations, the characteristics of donors are markedly different from those who give to candidates. In 2004, for example, 97 institutional donors gave 95% of the total money raised in ballot initiative campaigns, while 760 individual donors accounted for the remaining 5%. Similarly, in 2008, 34 institutional donors gave 95% of the total money donated to ballot campaigns. Moreover, unlimited corporate money would irrevocably change the dynamic of local Montana political office races, which have historically been characterized by the low-dollar, broad-based campaigns run by Montana candidates. At present, the individual contribution limit for Montana House, Senate and District Court races is \$160, and for Supreme Court elections it is \$310. Section 13-37-216, MCA, as adjusted as provided in (4). With the infusion of unlimited corporate money in support of or opposition to a targeted candidate, the average citizen candidate would be unable to compete against the corporate-

sponsored candidate, and Montana citizens, who for over 100 years have made their modest election contributions meaningfully count would be effectively shut out of the process.

¶39 Montana also has a compelling interest in protecting and preserving its system of elected judges. In this State, the people elect the Justices of the Supreme Court, the Judges of the District Courts, and most lower court judges as well. Mont. Const. art. VII, § 8; § 3-2-101, MCA; and § 3-5-201, MCA. Judicial elections are nonpartisan. Section 13-14-111, MCA. When only an incumbent is running for a judicial seat, the voters can approve or reject the candidate. Mont. Const. art. VII, § 8 (e).

¶40 The people of the State of Montana have a continuing and compelling interest in, and a constitutional right to, an independent, fair and impartial judiciary. The State has a concomitant interest in preserving the appearance of judicial propriety and independence so as to maintain the public's trust and confidence. In the present case, the free speech rights of the corporations are no more important than the due process rights of litigants in Montana courts to a fair and independent judiciary, and both are constitutionally protected. The Bill of Rights does not assign priorities as among the rights it guarantees. *Neb. Press Assoc. v. Stuart*, 427 U.S. 539, 561, 96 S. Ct. 2791, 2803 (1976).

¶41 Clearly the impact of unlimited corporate donations creates a dominating impact on the political process and inevitably minimizes the impact of individual citizens. As to candidates for political office, § 13-35-227(1), MCA, is designed to further the compelling interest of the people of Montana in strong voter participation in the process.

While corporations have first amendment rights in political speech, they do not have the vote.

¶42 The importance of and compelling interest in an independent judiciary is reflected as a matter of policy in Montana’s Code of Judicial Conduct.

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society.

Mont. Code of Judicial Conduct, *Preamble*. Montana expects its judges to act to promote “public confidence in the independence, integrity, and impartiality of the judiciary” and to “avoid impropriety and the appearance of impropriety.” Mont. Code of Judicial Conduct, Rule 1.2. Because it is the duty of a judge to make decisions based upon the facts and law of every case, a judge must “to the greatest extent possible, be free and appear to be free from political influence and political pressure.” Mont. Code of Judicial Conduct, Rule 4.2, *Comment* [1]. “Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.” Mont. Code of Judicial Conduct, Rule 4.2, *Comment* [3].

¶43 The United States Supreme Court has affirmed the importance of judicial integrity and in maintaining public respect for the judiciary.

“Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen’s respect for judgments depends in turn upon the issuing court’s absolute probity. *Judicial integrity is, in consequence, a state interest of the highest order.*” [Emphasis added.]

Caperton v. A. T. Massey Coal Co., Inc., 558 U.S. 868, ___, 129 S. Ct. 2252, 2266-67 (2009) (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 122 S. Ct. 2528 (2002)). The Court also recognizes the importance of state codes of judicial conduct, which “serve to maintain the integrity of the judiciary and the rule of law.” *Caperton*, 558 U.S. at ___, 129 S. Ct. at 2266. States have a “compelling interest” in preventing judges from activities that “would undermine actual impartiality, as well as its appearance.” *Bauer v. Shepard*, 620 F.3d 704, 711 (7th Cir. 2010) (upholding limits on judges acting in posts of political leadership and delivering political speeches). “The state certainly has a compelling state interest in the public’s trust and confidence in the integrity of our judicial system.” *Simes v. Ark. Judicial Discipline and Disability Comm.*, 247 S.W.3d 876, 882 (Ark. 2007).

¶44 Montana judicial elections would be particularly vulnerable to large levels of independent spending, both in terms of fairness and in terms of the public perception of impartiality. Litigants appearing before a judge elected after a large expenditure of corporate funds could legitimately question whether their due process rights were adversely impacted. In the 2008 contested election for Chief Justice of the Montana Supreme Court, evidence presented by the State in the District Court indicated that the total expenditure for media advertising was about \$60,000. It is clear that an entity like Massey Coal, willing to spend even hundreds of thousands of dollars, much less millions, on a Montana judicial election could effectively drown out all other voices. The historic

Heinze-Anaconda conflict noted above illustrates the obvious negative and corrupting effects of a “bought” judiciary.

¶45 Sandra Day O’Connor recently wrote in her introduction to *The New Politics of Judicial Elections* that the “crisis of confidence in the impartiality of the judiciary is real and growing.” The Executive Summary in that same report noted a study of the nation’s ten most costly judicial elections shows the extraordinary spending power of “super spender groups,” which are mostly corporate funded. Montana is not immune from such influence and has a compelling interest in precluding corporate expenditures on judicial elections based upon its interest in insuring judicial impartiality and integrity, its interest in preserving public confidence in the judiciary and its interest in protecting the due process rights of litigants.⁵

¶46 As discussed above, the statute has no or minimal impact on MSSF and Champion. Because of this minimal impact, the State is not required to demonstrate a compelling interest to support § 13-35-227(1), MCA. It is required only to demonstrate the less exacting sufficiently important interest. For the same reasons discussed above with regard to the compelling state interest, the statute is clearly supported by important governmental interests. Therefore, as to MSSF and Champion, it passes constitutional muster as well.

⁵ The State has additionally argued that it has a compelling interest in protecting the rights of dissenting shareholders who disagree with the political stance of corporate spending. We do not reach that issue because it has not been presented in the factual framework of this case.

¶47 Finally, § 13-35-227(1), MCA, is narrowly tailored to meet its objectives. The statute only minimally affects entities like MSSF and Champion. Even if it applies directly to WTP, WTP can still speak through its own political committee/PAC as hundreds of organizations in Montana do on an ongoing basis. Unlike the Federal law PACs considered in *Citizens United*, under Montana law political committees are easy to establish and easy to use to make independent expenditures for political speech. As the Bender affidavit submitted by the State in District Court confirms, corporate PACs can make unlimited independent expenditures on behalf of candidates. The difference then is that under Montana law the PAC has to comply with Montana's disclosure and reporting laws. And as noted earlier, corporations are allowed to contribute to ballot issues in Montana, which is a significant distinction because ballot issues often have a direct impact on corporate business activities within Montana but present less danger of corruptive influences that have concerned Montana voters since 1912. The statute only addresses contributions regarding candidates for state political office.

CONCLUSION

¶48 *Citizens United* does not compel a conclusion that Montana's law prohibiting independent political expenditures by a corporation related to a candidate is unconstitutional. Rather, applying the principles enunciated in *Citizens United*, it is clear that Montana has a compelling interest to impose the challenged rationally-tailored statutory restrictions. We reverse the District Court and enter summary judgment in favor of the Montana Attorney General and the Commissioner of Political Practices and

against WTP, MSSF and Champion. Consequently, the cross-appeal on the issue of attorney fees is moot.

/S/ MIKE McGRATH

We concur:

/S/ BRIAN MORRIS
/S/ PATRICIA COTTER
/S/ MICHAEL E WHEAT
/S/ JIM RICE

Justice Beth Baker, dissenting.

¶49 I agree with Justice Nelson that we are constrained by *Citizens United* to declare § 13-35-227(1), MCA, unconstitutional to the extent it prohibits independent corporate expenditures for political speech. In my view, the State of Montana made no more compelling a case than that painstakingly presented in the 90-page dissenting opinion of Justice Stevens and emphatically rejected by the majority in *Citizens United*. Though I believe *Citizens United* requires us to affirm the District Court, we must in any event anticipate the consequences should the Court's holding today be reversed. Rather than inventing distinctions in what I fear will be a vain attempt to rescue Montana's Corrupt Practices Act, I would construe the statute in a manner to preserve what remains of its constitutionality and to further the legislature's underlying intent to prevent corruption.

¶50 *Citizens United* holds unequivocally that "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." 130 S. Ct.

at 913. Just as unequivocally, however, it allows the government to impose disclaimer and disclosure requirements on political speech because, while such requirements “may burden the ability to speak, . . . they ‘impose no ceiling on campaign-related activities,’ . . . and ‘do not prevent anyone from speaking[.]’” 130 S. Ct. at 914 (citations omitted). Plaintiffs’ counsel acknowledged during oral argument that disclosure requirements are the means by which to address the State’s compelling interest in preserving the integrity of the election process. And the Amicus Curiae Brief from the Center for Competitive Politics described disclosure mandates as among the “constitutional tools” available to states in the wake of *Citizens United*. In light of *Citizens United*’s clear directive that the State cannot prohibit corporate expenditures, our review and construction of the challenged statute should focus on preserving disclosure requirements as applied to such expenditures in order to protect the overriding interest in preventing corruption.

¶51 This Court attempts to construe statutes in a manner that avoids unconstitutional interpretation. *Oberson v. USDA*, 2007 MT 293, ¶ 14, 339 Mont. 519, 171 P.3d 715. If a law contains both constitutional and unconstitutional provisions, the Court first will examine the legislation to determine if there is a severability clause. *PPL Mont., LLC v. State*, 2010 MT 64, ¶ 131, 355 Mont. 402, 229 P.3d 421 (citing *Finke v. State*, 2003 MT 48, ¶ 25, 314 Mont. 314, 65 P.3d 576). In the absence of such a clause, the Court considers “whether the integrity of [the law] relies upon the unconstitutional provision or whether the inclusion of [the] provisions acted as inducement to its enactment.” *Finke*, ¶ 26. If the unconstitutional provisions are stricken, the law must be complete in itself and still capable of execution in accord with legislative intent. *Finke*, ¶ 26. Though “the

presumption is against the mutilation of a statute,” *Sheehy v. Pub. Emp. Retirement Div.*, 262 Mont. 129, 142, 864 P.2d 762, 770 (1993), if the offending provisions may be removed without frustrating the purpose or disrupting the integrity of the law, the Court will strike only those provisions of the statute that are unconstitutional. *Mont. Auto. Ass’n v. Greely*, 193 Mont. 378, 380-81, 632 P.2d 300, 302 (1981).

¶52 Plaintiffs seek a ruling invalidating subsection (1) of § 13-35-227, MCA. That subsection prohibits a corporation from making “a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.” Subsection (2) of the statute, not challenged here, prohibits a person, candidate, or political committee from accepting or receiving a corporate contribution. Subsection (3) of the same statute allows “the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.”

¶53 Section 13-35-227(3), MCA, when read in the context of Montana’s overall campaign finance scheme, expresses the legislature’s intent to provide citizens and shareholders with information about sources of funds used in support of candidates and ballot issues. Under *Citizens United*, the State clearly may not require corporate independent expenditures to come from a fund consisting only of “voluntary contributions” as the language of § 13-35-227(3), MCA, now provides. Subsection (1) of the statute still could be preserved by allowing corporate expenditures under that subsection to be made from a “separate segregated fund” as prescribed by subsection (3),

without applying the now-invalid requirement that “the funds consist[] only of voluntary contributions.”

¶54 I would therefore hold that the Commissioner constitutionally may extend Montana’s disclosure and reporting laws to independent expenditures by corporate entities made on behalf of candidates or political committees, just as the Commissioner has done for corporate expenditures on ballot issue campaigns. Without such a holding, and given that the Montana Legislature will not meet in general session prior to the next election, Montana voters may be left in the dark if § 13-35-227(1), MCA, is invalidated by the nation’s highest court.

¶55 Applying § 13-35-227(3), MCA, in a constitutionally-permitted fashion to expenditures from a corporate treasury will further the government’s interest in disclosure requirements and will not disrupt the statute’s integrity. As noted by the Majority, only part of the original Corrupt Practices Act survives in § 13-35-227, MCA. Opinion, ¶ 28. The statute has been amended numerous times in its 100-year history. Subsection (3) was added in 1979. 1979 Mont. Laws ch. 404, 1011. The statute’s most recent modification was in 2003, after federal courts invalidated the law’s prohibition against corporate contributions and expenditures in ballot issue campaigns. *Mont. Chamber of Com. v. Argenbright*, 28 F. Supp. 2d 593, 600-01 (D. Mont. 1998), *aff’d*, 226 F.3d 1049, 1052 (9th Cir. 2000). Although neither the original Act nor most of its amendments have included a severability clause, applying the statute in the fashion I suggest is consistent with the *Finke* analysis.

¶56 Through the years, while legislative history is scant, the legislature's palpable intent was to prevent corruption in Montana elections. Opinion, ¶¶ 22-28. Prohibition of corporate contributions has been one means to achieve that goal; disclosure has been another. State Senator Miles Romney, sponsor of the 1975 amendment that first introduced the ban on corporate spending in ballot issue campaigns, commented in part that "everyone should know who is giving how much" and statements of contributions would facilitate that knowledge. Mont. H. Jud. Comm., *Hearing on SB 97*, at 5 (Mar. 7, 1975). Through its various iterations, inducement for the legislation has been the legislature's desire to prevent corruption in elections. Absent constitutional authority for an outright ban on corporate spending, prohibiting application of the "voluntary contributions" clause to expenditures made under subsection (1) will further, not frustrate, the accountability that fosters prevention of corruption.

¶57 Construing the statute to preserve its requirement for a separate segregated fund from which corporate expenditures are made will facilitate disclosure under requirements promulgated by the Montana Commissioner of Political Practices. The Affidavit of Dennis Unsworth, submitted by the State before the District Court, described the disclosure process in place at the present time for corporate spending on ballot issue measures. Unsworth stated that independent expenditures from a corporate treasury to support or oppose a ballot measure must be reported on the Commissioner of Political Practices' Form C-4. The C-4 form is for "incidental political committees," which are defined in the Commissioner's rules as "a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may

incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.” Admin. R. M. 44.10.327(2)(c). The only other types of political committees are “principal campaign committees” and “independent committees,” both of which are committees specifically organized to support or oppose various candidates or issues. An independent committee includes a Political Action Committee. Admin. R. M. 44.10.327(2)(b)(i). Thus, the Commissioner’s rules treat corporate treasury expenditures as expenditures by “incidental committees” because the entities do not exist for the specific purpose of supporting or opposing candidates, ballot issues, or both.

¶58 The integrity and purpose of the law can be salvaged by permitting the Commissioner to apply “incidental committee” status to a separate fund in a corporation’s treasury from which election-related expenditures are made. This would ensure that corporate contributions are on the same footing, and are given the same public daylight, as contributions from individuals, political action committees, and political parties. *See generally*, § 13-37-225, MCA; Admin. R. M. 44.10.321 – 44.10.333.

¶59 The value of disclosure in preventing corruption cannot be understated. “[B]y revealing information about the contributors to and participants in public discourse and debate, disclosure laws help ensure that voters have the facts they need to evaluate the various messages competing for their attention.” *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010). “[P]rompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.” *Citizens United*, 130

S. Ct. at 916. The Ninth Circuit has recognized the importance of Montana's interest in disclosure in the context of ballot issue campaigns. *Canyon Ferry Rd. Baptist Church of East Helena v. Unsworth*, 556 F.3d 1021, 1032 (2009) (citing cases and noting disclosure requirements "may prevent 'the wolf from masquerading in sheep's clothing.'"). Regardless of the ultimate fate of Montana's ban on corporate political expenditures, state disclosure requirements should be applied to all expenditures by corporate entities "in connection with a candidate or a political committee that supports or opposes a candidate or a political party." Section 13-35-227(1), MCA.

¶60 In conclusion, I believe it is our unflagging obligation, in keeping with the courts' duty to safeguard the rule of law, to honor the decisions of our nation's highest Court. "Americans today accept the [United States Supreme] Court's role as guardian of the law. They understand the value to the nation of following Court decisions, . . . even when they disagree with a Court decision and even when they may be right and the decisions may be wrong." Stephen Breyer, *Making Our Democracy Work: A Judge's View* 214 (Alfred A. Knopf 2010). *Citizens United* makes clear that a state's outright ban on corporate political expenditures violates the First Amendment. Since §. 13-35-227(1), MCA, imposes just such a ban, I respectfully dissent from the Court's decision to uphold the statute in its entirety. I would instead uphold only those provisions necessary to ensure independent corporate expenditures properly are reported and full disclosure is made to inform citizens and shareholders of the corporation's election-related spending.

/S/ BETH BAKER

Justice James C. Nelson, dissenting.

¶61 I respectfully dissent from the Court's decision.

I. INTRODUCTION

¶62 The Supreme Court¹ could not have been more clear in *Citizens United v. Federal Election Commission*, ___ U.S. ___, 130 S. Ct. 876 (2010): corporations have broad rights under the First Amendment to the United States Constitution to engage in political speech, and corporations cannot be prohibited from using general treasury funds for this purpose based on antidistortion, anticorruption, or shareholder-protection interests. The language of the *Citizens United* majority opinion is remarkably sweeping and leaves virtually no conceivable basis for muzzling or otherwise restricting corporate political speech in the form of independent expenditures.²

¶63 As a result, the critical question presented in the case now before us is simply this: Has the State of Montana identified a compelling state interest, not already rejected by the Supreme Court, that would justify the outright ban on corporate expenditures for political speech effected by § 13-35-227(1), MCA? Having considered the matter, I believe the Montana Attorney General has identified some very compelling reasons for limiting corporate expenditures in Montana's political process. The problem, however, is that regardless of how persuasive I may think the Attorney General's justifications are, the Supreme Court has already rebuffed each and every one of them. Accordingly, as much as I would like to rule in favor of the State, I cannot in good faith do so.

¹ I refer to the United States Supreme Court as "the Supreme Court." References to the Montana Supreme Court include "the Court," "this Court," "we," and "our."

² As the Court notes, direct contributions are not at issue here. Opinion, ¶ 8.

¶64 The Court, on the other hand, views the matter differently. The Court concludes that Montana may bar corporations from using general treasury funds for political speech—*Citizens United* notwithstanding—because “Montana has unique and compelling interests to protect.” Opinion, ¶ 37. What “unique” interests render Montana exempt from *Citizens United*? One searches the Court’s Opinion in vain to find any. The Court states that Montana has “a clear interest in preserving the integrity of its electoral process” and “an interest in encouraging the full participation of the Montana electorate.” Opinion, ¶ 38. Yet, Montana is hardly unique in this regard. Every state in the Union is interested in preserving the integrity of its electoral process and in encouraging the full participation of its electorate. The Court asserts that Montana has interests in “protecting and preserving its system of elected judges,” “preserving the appearance of judicial propriety and independence so as to maintain the public’s trust and confidence,” and “protecting the due process rights of litigants.” Opinion, ¶¶ 39, 40, 45. But surely every state with an elected judiciary has these same interests. The Court also cites “the compelling interest of the people of Montana in strong voter participation in the process.” Opinion, ¶ 41. Again, however, the people of Montana are certainly not the only people in the United States with a compelling interest in strong voter participation.

¶65 The fact is that none of the interests identified by the Court are unique to Montana. What the Court is really saying is that Montana has a unique history and unique qualities which make Montana uniquely susceptible to the corrupting influence of unlimited corporate expenditures. Indeed, the Court points to Montana’s history involving the Copper Kings—their bribery of public officials, their manipulation of state government,

and their control over local judges in the late 1800s and early 1900s. Opinion, ¶¶ 22-28. Based on this history, the Court concludes that Montana voters “had a compelling interest to enact the challenged statute in 1912.” Opinion, ¶ 36. Furthermore, the Court concludes that the dangers of corporate influence and domination still exist in Montana. Opinion, ¶¶ 29-31. In fact, the Court asserts that Montana is “especially vulnerable to continued efforts of corporate control to the detriment of democracy and the republican form of government.” Opinion, ¶ 37. According to the Court, this is owing to Montana’s sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs. Opinion, ¶ 37. Given these characteristics, the Court opines that unlimited corporate money would “irrevocably change the dynamic of local Montana political office races, which have historically been characterized by the low-dollar, broad-based campaigns run by Montana candidates.” Opinion, ¶ 38. Moreover, the infusion of unlimited corporate money in support of or opposition to a targeted candidate would “minimize[] the impact of individual citizens” in the political process and leave the average citizen “effectively shut out of the process.” Opinion, ¶¶ 38, 41. Accordingly, the Court holds that Montana may flat-out prohibit direct political spending by corporations.

¶66 Respectfully, I cannot agree that this “Montana is unique” rationale is consistent with *Citizens United*. And I seriously doubt this rationale is going to prevail in the Supreme Court when this case is appealed, as it almost certainly will be. For one thing, a fair reading of the *Citizens United* majority opinion, coupled with a fair reading of the separate concurring and dissenting opinions, leads inescapably to the conclusion that

every one of the Attorney General's arguments—and this Court's rationales adopting those arguments—was argued, considered, and then flatly rejected by the Supreme Court. Moreover, even accepting the propositions that Montana experienced an egregious period of corporate domination and political corruption at the turn of the 20th century, that Montana citizens understandably became fed up with the heavy-handed influence and corrupt practices of special interests at the time, and that Montana to this day remains especially vulnerable to continued efforts of corporate control, what the Court and the Attorney General have failed to recognize is this fundamental point: a ban on corporate speech is not a constitutionally permissible remedy for these problems. This should be abundantly clear from the following passage in *Citizens United*:

If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by [the legislative branch] to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that *more speech, not less*, is the governing rule. *An outright ban on corporate political speech during the critical preelection period is not a permissible remedy.*

130 S. Ct. at 911 (emphases added).

¶67 The federal law struck down in *Citizens United* (2 U.S.C. § 441b, as amended by § 203 of the Bipartisan Campaign Reform Act of 2002) prohibited corporations from expressly advocating the election or defeat of candidates and from broadcasting electioneering communications within 30 days of a primary election and 60 days of a general election. *Citizens United*, 130 S. Ct. at 887, 897. The Montana law at issue here is even more categorical, prohibiting corporations from *ever* using general treasury funds

for political advocacy. Section 13-35-227(1), MCA (“A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.”). If the federal law is facially unconstitutional, as the Supreme Court held, then I cannot envision any possibility that the Montana law will survive the predictable appeal of this Court’s decision.

¶68 Unquestionably, Montana has its own unique history. No doubt Montana also has compelling interests in preserving the integrity of its electoral process and in encouraging the full participation of its electorate. And Montana may indeed be more vulnerable than other states to corporate domination of the political process. But the notion argued by the Attorney General and adopted by the Court—that these characteristics entitle Montana to a special “no peeing” zone in the First Amendment swimming pool—is simply untenable under *Citizens United*.

¶69 Admittedly, I have never had to write a more frustrating dissent. I agree, at least in principle, with much of the Court’s discussion and with the arguments of the Attorney General. More to the point, I thoroughly disagree with the Supreme Court’s decision in *Citizens United*. I agree, rather, with the eloquent and, in my view, better-reasoned dissent of Justice Stevens. As a result, I find myself in the distasteful position of having to defend the applicability of a controlling precedent with which I profoundly disagree.³

¶70 That said, this case is ultimately not about my agreement or disagreement with the Attorney General or our satisfaction or dissatisfaction with the *Citizens United* decision.

³ The task is all the more distasteful in light of Western Tradition Partnership’s questionable tactics and blatant hypocrisy. See Opinion, ¶¶ 7, 9, 19; Br. of Appellants 10-11, 22-23 (Apr. 15, 2011).

Whether we agree with the Supreme Court's interpretation of the First Amendment is irrelevant. In accordance with our federal system of government, our obligations here are to acknowledge that the Supreme Court's interpretation of the United States Constitution is, for better or for worse, binding on this Court and on the officers of this state, and to apply the law faithful to the Supreme Court's ruling.

¶71 Granted, there are some in the legislative and executive branches of government who would call—and, in fact, have called—for Montana to thumb its nose at the federal government, to disregard federal law, and to boldly ignore the Supremacy Clause (U.S. Const., art. VI, cl. 2). See e.g. Mike Dennison, *Bills Test State's Power to Nullify Fed Laws*, Helena Independent Record (Feb. 13, 2011). Regardless of those views, however, all elected officials in Montana—legislative, executive, and judicial—are sworn to “support, protect and defend the constitution of the United States.” Mont. Const. art. III, § 3. Obviously, this means in accordance with the Supreme Court's interpretations of the United States Constitution. Thus, when the highest court in the country has spoken clearly on a matter of federal constitutional law, as it did in *Citizens United*, the highest court in Montana—this Court—is not at liberty to disregard or parse that decision in order to uphold a state law that, while politically popular, is clearly at odds with the Supreme Court's decision. This is the rule of law and is part and parcel of every judge's and justice's oath of office to “support, protect and defend the constitution of the United States.” In my view, this Court's decision today fails to do so.

¶72 The Supreme Court has emphatically rejected the notion that corporate political speech may be restricted based on interests in protecting against political and campaign

corruption, safeguarding the ability of individual citizens to compete and participate in the political process, and preserving judicial integrity and impartiality. It makes no sense whatsoever that a state may rely on these very same interests—despite their rejection by the Supreme Court—as grounds for muzzling corporate speech simply because the state’s history, demographics, economics, and elections are in some way “unique.” It also makes no sense that, on one hand, the First Amendment protects corporate expenditures for political speech at the federal level and, apparently, throughout the rest of the country⁴ but that, on the other hand, this First Amendment protection magically evaporates at Montana’s borders because of a law adopted 100 years ago to address a very fact-specific situation. See Larry Howell, *Once Upon a Time in the West: Citizens United, Caperton, and the War of the Copper Kings*, at 6-16 (under the heading “The Montana Situation”) (available at <http://mtr.org>). Indeed, if the Supreme Court countenances this Court’s approach of restricting corporate political speech rights based on population density, the existence of “mineral wealth,” a history of “low-dollar, broad-based campaigns,” and past experience with “heavy-handed influence” asserted by corporations, then there shortly will be nothing left of *Citizens United* at the state level. Due to its unpopularity, the Supreme Court’s decision will be “state-lawed” into oblivion. While this would be a

⁴ See Robert Barnes, *Citizens United Decision Reverberates in Courts across Country*, Washington Post (May 22, 2011) (“The [Supreme Court’s] January 2010 decision freeing corporations and unions to spend whatever they like for and against candidates wiped out laws in 24 states banning such spending. Only Montana still wages a lonely court battle to maintain the ban.”); Natl. Conf. of State Legislatures, *Citizens United and the States*, <http://www.ncsl.org/default.aspx?tabid=19607> (updated Jan. 4, 2011) (noting that “[i]n 17 of the 24 states with laws affected by the *Citizens United* decision, legislation has been introduced to amend the law,” and listing the bills).

good thing in the view of many, my point here is that the Supreme Court clearly did not intend, with the broad, sweeping, and unqualified language it used, to allow the holding of *Citizens United* to be circumvented through “uniqueness” stratagems.

¶73 Therefore, and with all due respect to my colleagues, I believe this Court is simply wrong in its refusal to affirm the District Court. Like it or not, *Citizens United* is the law of the land as regards corporate political speech. There is no “Montana exception.” The proof of the Court’s error is found in a comparison of the rationales provided in the Court’s Opinion with the statements by the Supreme Court rejecting those rationales. I begin with an analysis of the *Citizens United* decision.

II. *CITIZENS UNITED*

¶74 A significant portion of the *Citizens United* decision is devoted to the threshold question whether the Supreme Court should even be deciding the constitutional matters that it ultimately does decide. Indeed, the five Justices in the majority—Justice Kennedy joined by Chief Justice Roberts, Justice Scalia, Justice Thomas, and Justice Alito—consumed numerous pages attempting to explain why they were (1) addressing a claim that *Citizens United* had expressly dismissed in the district court (its facial challenge to the law’s constitutionality), (2) deciding the case on grounds that arguably were broader than necessary to resolve *Citizens United*’s claim, and (3) overruling prior precedents notwithstanding the doctrine of *stare decisis*. See *Citizens United*, 130 S. Ct. at 888-96, 911-13 (majority opinion); 130 S. Ct. at 917-25 (Roberts, C.J., & Alito, J., concurring). With regard to these issues, the dissent—Justice Stevens joined by Justice Ginsburg, Justice Breyer, and Justice Sotomayor—accused the majority of simply being “unhappy

with the limited nature of the case before us,” of having “disdain” for the prior precedents, and thus of “chang[ing] the case to give themselves an opportunity to change the law.”⁵ *Citizens United*, 130 S. Ct. at 932, 938. The dissent also criticized the majority’s determination to invalidate the statute on facial grounds, not only because this approach is “‘contrary to the fundamental principle of judicial restraint’ ” and has the secondary effect of “implicitly striking down a great many state laws as well,” but also because the record before the Supreme Court was “nonexistent.” *Citizens United*, 130 S. Ct. at 932-33. Whereas Congress had crafted the Bipartisan Campaign Reform Act of 2002 (BCRA) “in response to a virtual mountain of research on the corruption that previous legislation had failed to avert,” the majority “now negates Congress’ efforts without a shred of evidence on how § 203 or its state-law counterparts have been affecting any entity other than Citizens United.” *Citizens United*, 130 S. Ct. at 933. The dissent argued that “it is the height of recklessness to dismiss Congress’ years of bipartisan deliberation and its reasoned judgment on this basis, without first confirming that the statute in question was intended to be, or will function as, a restraint on electoral competition.” *Citizens United*, 130 S. Ct. at 969. Finally, the dissent argued that the case could have been decided on various narrower grounds, *Citizens United*, 130 S. Ct. at 936-38, and that the majority had failed to give proper deference to the doctrine of stare decisis, 130 S. Ct. at 938-42. On this latter point, the dissent observed that

⁵ Unfortunately, remaking cases is not a phenomenon exclusive to the Supreme Court. See e.g. *Western Sec. Bank and Glacier Bancorp, Inc. v. Eide Bailly LLP*, 2010 MT 291, ¶¶ 71-82, 359 Mont. 34, 249 P.3d 35 (Nelson, J., concurring in part and dissenting in part); *PacifiCorp v. State*, 2011 MT 93, ¶¶ 65-67, 360 Mont. 259, 253 P.3d 847 (Rice & Nelson, JJ., concurring).

[s]tare decisis protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion. Today’s decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in [*Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 110 S. Ct. 1391 (1990)], for more than a century. The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and debating BCRA. The total record it compiled was *100,000 pages* long. Pulling out the rug beneath Congress after affirming the constitutionality of § 203 six years ago shows great disrespect for a coequal branch.

Citizens United, 130 S. Ct. at 940 (emphasis in original, footnotes omitted).⁶

¶75 While I believe the *Citizens United* dissent makes a persuasive argument that the majority need not and should not have rendered such a broad constitutional holding, the fact remains that the majority did so, striking down the federal law as facially invalid. Thus, my focus hereafter is on what the majority specifically held regarding corporate independent expenditures on political speech. I approach this in step-by-step fashion.

A. The First Amendment Applies to Political Speech by Corporations

¶76 The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” This protection extends to corporations and to the context of political speech. *Citizens United*, 130 S. Ct. at 899, 900. Political speech does not lose

⁶ In addition to the foregoing criticisms by the dissent, I note that the *Citizens United* majority’s approach has also been criticized for flouting the very rhetoric that conservatives have espoused for decades against so-called “judicial activism.” See e.g. Erwin Chemerinsky, Op., *Conservatives Embrace Judicial Activism in Campaign Finance Ruling*, L.A. Times (Jan. 22, 2010); see also Reza Dibadj, *Citizens United as Corporate Law Narrative*, 16 Nexus 39, 40-48 (2010-2011) (noting “technical concerns” and “constitutional problems” with the majority’s approach); J. Harvie Wilkinson III, *Of Guns, Abortions, and the Unraveling Rule of Law*, 95 Va. L. Rev. 253 (2009) (criticizing the same five-Justice majority for not adhering to a conservative judicial methodology in *Dist. of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008)).

First Amendment protection simply because its source is a corporation. *Citizens United*, 130 S. Ct. at 900. The identity of the speaker is not decisive in determining whether speech is protected; corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster. *Citizens United*, 130 S. Ct. at 900. The Supreme Court “has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons.’” *Citizens United*, 130 S. Ct. at 900.

B. Section 441b Burdens Corporate Political Speech

¶77 The law at issue (2 U.S.C. § 441b, as amended by § 203 of the BCRA) prohibits corporations and unions from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of candidates. It also prohibits the broadcast of electioneering communications within 30 days of a primary election and 60 days of a general election. *Citizens United*, 130 S. Ct. at 887, 897. This prohibition on corporate independent expenditures is a ban on speech. *Citizens United*, 130 S. Ct. at 898. It is true that corporations and unions may establish a “separate segregated fund” (known as a political action committee or PAC) for purposes of express advocacy or electioneering communications. The moneys received by the PAC are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union. *Citizens United*, 130 S. Ct. at 887-88. Nevertheless, § 441b “is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak.” *Citizens United*, 130 S. Ct. at 897. This is because “[a] PAC is a separate

association from the corporation. So the PAC exemption from § 441b's expenditure ban does not allow corporations to speak." *Citizens United*, 130 S. Ct. at 897 (citation omitted). Furthermore, "[e]ven if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with § 441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations." *Citizens United*, 130 S. Ct. at 897.

C. Standard of Review: Strict Scrutiny

¶78 "While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter," the following standard "provides a sufficient framework for protecting the relevant First Amendment interests in this case." *Citizens United*, 130 S. Ct. at 898. Laws that burden political speech are subject to strict scrutiny, which requires the government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *Citizens United*, 130 S. Ct. at 898.

D. The Governmental-Function Interest

¶79 The First Amendment prohibits restrictions that distinguish among different speakers, allowing speech by some but not others. *Citizens United*, 130 S. Ct. at 898. Hence, the government "may commit a constitutional wrong when by law it identifies certain preferred speakers." *Citizens United*, 130 S. Ct. at 899. The Supreme Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on "the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech"—e.g., the function of public school education, the penological objectives of

the corrections system, and the capacity of the government to discharge its military responsibilities. *Citizens United*, 130 S. Ct. at 899. This interest is not applicable here because the corporate independent expenditures at issue would not interfere with governmental functions. Quite the contrary, “it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes.” *Citizens United*, 130 S. Ct. at 899.

E. The Antidistortion Interest

¶80 The Supreme Court in *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 110 S. Ct. 1391 (1990), found a compelling governmental interest in preventing “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.” *Citizens United*, 130 S. Ct. at 903 (quoting *Austin*, 494 U.S. at 660, 110 S. Ct. at 1397). The concerns in this regard are that corporations can “use resources amassed in the economic marketplace to obtain an unfair advantage in the political marketplace,” and that corporate wealth can “dominat[e] . . . the political process” and “unfairly influence elections” when it is deployed in the form of independent expenditures. *Austin*, 494 U.S. at 659, 660, 110 S. Ct. at 1397, 1398 (internal quotation marks omitted).

¶81 The problem with this “antidistortion rationale,” however, is that it is inconsistent with the First Amendment. *Citizens United*, 130 S. Ct. at 904-08. For one thing, “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”

Citizens United, 130 S. Ct. at 904 (alteration omitted) (quoting *Buckley v. Valeo*, 424 U.S. 1, 48-49, 96 S. Ct. 612, 649 (1976) (per curiam)).

Buckley rejected the premise that the Government has an interest “in equalizing the relative ability of individuals and groups to influence the outcome of elections.” *Buckley* was specific in stating that “the skyrocketing cost of political campaigns” could not sustain the governmental prohibition. The First Amendment’s protections do not depend on the speaker’s “financial ability to engage in public discussion.”

Citizens United, 130 S. Ct. at 904 (citations omitted).

¶82 Additionally, the antidistortion rationale interferes with the “open marketplace” of ideas protected by the First Amendment by permitting the government to ban the political speech of millions of associations of citizens. *Citizens United*, 130 S. Ct. at 906-07. Most of these are small corporations without large amounts of wealth—a fact which belies the argument that the statute at issue is justified on the ground that it prevents the “distorting effects of immense aggregations of wealth.” *Citizens United*, 130 S. Ct. at 907. In any event, political speech is indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. *Citizens United*, 130 S. Ct. at 904. “Corporations, like individuals, do not have monolithic views. On certain topics corporations may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials.” *Citizens United*, 130 S. Ct. at 912. By suppressing the speech of manifold corporations, both for-profit and nonprofit, the government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. *Citizens United*,

130 S. Ct. at 907. In so doing, the government muffles the voices that best represent the most significant segments of the economy and deprives the electorate of information, knowledge, and opinion vital to its function. *Citizens United*, 130 S. Ct. at 907. When the government seeks to use its power “to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.” *Citizens United*, 130 S. Ct. at 908.

F. The Anticorruption Interest

¶83 The Government argues that corporate political speech may be banned in order to prevent corruption or its appearance. The *Buckley* Court found this interest sufficiently important to allow limits on *contributions*. *Citizens United*, 130 S. Ct. at 908 (citing *Buckley*, 424 U.S. at 25, 96 S. Ct. at 638). But when the *Buckley* Court examined a ban on *independent expenditures*, it found “that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [the ban].” *Buckley*, 424 U.S. at 45, 96 S. Ct. at 647. For the reasons which follow, that holding is reaffirmed here. *Citizens United*, 130 S. Ct. at 908-11.

¶84 “The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.” *Citizens United*, 130 S. Ct. at 910 (quoting *Fed. Election Commn. v. Natl. Conservative Political Action Comm.*, 470 U.S. 480, 497, 105 S. Ct. 1459, 1468 (1985)). “[C]ontribution limits, . . . unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption.” *Citizens United*, 130 S. Ct. at 909. Not only can large direct contributions be given to secure a political *quid pro quo*, the

scope of such pernicious practices can never be reliably ascertained. *Citizens United*, 130 S. Ct. at 908 (citing *Buckley*, 424 U.S. at 26-27, 96 S. Ct. at 638). Thus, limits on direct contributions are permissible to ensure against the reality or appearance of *quid pro quo* corruption. *Citizens United*, 130 S. Ct. at 908.

¶85 Independent expenditures, in contrast, have a substantially diminished potential for abuse. *Citizens United*, 130 S. Ct. at 908. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. *Citizens United*, 130 S. Ct. at 910. “The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.” *Citizens United*, 130 S. Ct. at 908 (quoting *Buckley*, 424 U.S. at 47, 96 S. Ct. at 648). Limits on independent expenditures, therefore, “have a chilling effect extending well beyond the Government’s interest in preventing *quid pro quo* corruption.” *Citizens United*, 130 S. Ct. at 908.

¶86 “When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.” *Citizens United*, 130 S. Ct. at 909. Two years later, the Supreme Court purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. *See First Natl. Bank of Boston v. Bellotti*, 435 U.S. 765, 788 n. 26, 98 S. Ct. 1407, 1422 n. 26 (1978). However, “we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” *Citizens United*, 130 S. Ct. at 909.

¶87 The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt. *Citizens United*, 130 S. Ct. at 910.

“Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness.”

Citizens United, 130 S. Ct. at 910 (ellipsis in original) (quoting *McConnell v. Fed. Election Commn.*, 540 U.S. 93, 297, 124 S. Ct. 619, 748 (2003) (Kennedy, J., Rehnquist, C.J., & Scalia, J., dissenting)). The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. As noted, an independent expenditure is, by definition, political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse to take part in democratic governance because of additional political speech made by a corporation or any other speaker. *Citizens United*, 130 S. Ct. at 910.

¶88 In sum, the hallmark of corruption is the financial *quid pro quo*: dollars for political favors. *Citizens United*, 130 S. Ct. at 910. The government has a sufficiently important interest in preventing *quid pro quo* corruption or the appearance of it. *Citizens United*, 130 S. Ct. at 909. Indeed, a *quid pro quo* arrangement would be covered by bribery laws. *Citizens United*, 130 S. Ct. at 908. Independent expenditures, however,

“do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption.” *Citizens United*, 130 S. Ct. at 910 (citation omitted). Therefore, “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” *Citizens United*, 130 S. Ct. at 909. Of course, if elected officials succumb to improper influences from independent expenditures, surrender their best judgment, and put expediency before principle, then surely there is cause for concern; but in attempting to dispel either the appearance or the reality of these influences, “[a]n outright ban on corporate political speech . . . is not a permissible remedy.” *Citizens United*, 130 S. Ct. at 911.

G. The Shareholder-Protection Interest

¶89 The Government argues that corporate independent expenditures can be limited in the interest of protecting dissenting shareholders from being compelled to fund corporate political speech with which they do not agree. The First Amendment, however, does not allow the government to restrict corporate speech based on a shareholder’s disagreement with the political views of the corporation. *Citizens United*, 130 S. Ct. at 911. There is, furthermore, little evidence of abuse that cannot be corrected by shareholders through the procedures of corporate democracy. *Citizens United*, 130 S. Ct. at 911.

H. Foreign Influence

¶90 “We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.” *Citizens United*, 130 S. Ct. at 911.

I. Conclusion

¶91 Based on the foregoing, the Supreme Court overruled its decision in *Austin*. “We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker’s corporate identity. *No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.*” *Citizens United*, 130 S. Ct. at 913 (emphasis added). Accordingly, the Supreme Court held that BCRA § 203’s restriction on electioneering communications and 2 U.S.C. § 441b’s prohibition on the use of corporate treasury funds for express advocacy were both invalid. *Citizens United*, 130 S. Ct. at 913. The Supreme Court (with only Justice Thomas dissenting) then went on to uphold BCRA’s disclaimer and disclosure provisions against an as-applied constitutional challenge. *Citizens United*, 130 S. Ct. at 913-16.

III. THE PLAINTIFFS’ CLAIMS

¶92 Before examining this Court’s rationales upholding § 13-35-227(1), MCA,⁷ it is necessary to dispel some misconceptions regarding the plaintiffs’ claims.

¶93 First, the Court asserts that neither Gary Marbut, the founder of Montana Shooting Sports Association (MSSA), nor Kenneth Champion, the sole shareholder of Champion Painting, Inc., has demonstrated “any material way” in which Montana law has hindered or censored their political activity or speech. Opinion, ¶ 17. Of course, Marbut and Champion are not parties to this lawsuit, and their speech rights are not at issue here. Hence, whether Marbut and Champion, *as individuals*, have been hindered or censored in

⁷ I occasionally refer to § 13-35-227, MCA, hereafter as “Section 227” or “§ 227.”

their political activity or speech is totally irrelevant. The question is whether the speech rights of MSSA and Champion Painting, *as incorporated entities*, have been infringed.

¶94 Second, the Court asserts that MSSA has failed to demonstrate that its speech has been impaired by § 227 because Montana law places no restriction on MSSA to spend its members' dues on political advocacy. Opinion, ¶ 17. As support for this, the Court cites the affidavit of former Commissioner of Political Practices Dennis Unsworth. What Unsworth specifically says, however, is this: "[MSSA] has been and continues to be free to spend its member dues and donations from its treasury regardless of its corporate status, as long as it complies with the filing requirements described above *and meets the criteria for a voluntary association.*" (Emphasis added.) The affidavit of Mary Baker, program supervisor in the Office of the Commissioner of Political Practices, likewise states that "there is nothing in Montana's campaign finance laws that would prohibit [MSSA] from registering itself as a committee and making independent expenditures from its corporate treasury, *if it meets our office's criteria for a voluntary association.*"⁸

(Emphasis added.) According to Unsworth's affidavit, those criteria are as follows:

A voluntary association that incorporates can spend its members' dues and donations on campaign contributions and independent expenditures from its treasury, if it: (1) is formed for the express purpose

⁸ An exemption for "voluntary associations" is not codified in the statute. Rather, it is the Commissioner's "policy" to except such associations from § 227(1). Prior to 2003, a narrow category of nonprofit corporations was statutorily permitted to make contributions to or expenditures in connection with ballot issues, notwithstanding the general prohibition on corporate contributions and expenditures. *See* § 13-35-227(1), (4), MCA (2001). But in light of *Mont. Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (9th Cir. 2000), which held that corporations cannot be prohibited from making direct corporate expenditures in ballot initiative campaigns, the 2003 Legislature amended the statute accordingly. *See* Laws of Montana, 2003, ch. 59.

of promoting political ideas, and could not engage in business activities; (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; (3) is not established by a business corporation, and does not accept contributions from business corporations.

¶95 Contrary to the Court’s implication, there has been no determination in this case that MSSA in fact meets the criteria of a “voluntary association.” And one of the exhibits attached to Unsworth’s affidavit indicates that MSSA does *not* satisfy the criteria. The exhibit is an “advisory opinion” issued by former Commissioner Linda Vaughey on September 25, 2003, in which she addresses whether the nonprofit corporation People for Responsible Government (PRG) may engage in political activities in connection with candidates for public office. Vaughey starts with the premise that § 227 “appears on its face to prohibit all corporations, including nonprofit corporations, from making contributions or expenditures in connection with candidates, other than through separate, segregated funds.” Vaughey then observes that, based on *Fed. Election Commn. v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 263-64, 107 S. Ct. 616, 631 (1986), there is an exception for nonprofit corporations which meet the three criteria listed above. Vaughey finally determines that PRG does *not* meet the third criterion because

[n]othing in the Articles of Incorporation, the Bylaws, or the other information you have provided confirms that PRG was not established by a business corporation or a labor organization. Moreover, *you have not provided any information establishing that PRG does not directly or indirectly accept donations or contributions of anything of value from business corporations or labor organizations.* [Emphasis added.]

Likewise here, there is no evidence in the record—not in Marbut’s affidavit, in MSSA’s Articles of Incorporation (attached to Marbut’s affidavit), in Unsworth’s affidavit, in Baker’s affidavit, or in any other document—establishing that MSSA “does not directly

or indirectly accept donations or contributions of anything of value from business corporations or labor organizations.” Hence, MSSA does *not* qualify as a “voluntary association” under the Commissioner’s definition, and MSSA is *not* allowed to use its general treasury funds to make independent expenditures in connection with candidate elections. MSSA states in the First Amended Complaint that it wishes to “use its corporate funds to directly support or oppose candidates.” In light of the foregoing discussion, § 227(1) bars MSSA from doing so. The Court is flat wrong, therefore, in stating that “the statute has no or minimal impact” on MSSA. Opinion, ¶ 46.

¶96 Third, the Court likewise misstates the impact on Champion Painting. For one thing, the Court again seems to be improperly focused on *Champion’s* speech rights, which are not at issue, rather than *Champion Painting’s* speech rights, which are at issue. Opinion, ¶ 18. The Court also suggests that the only reason Champion Painting is participating in this lawsuit is so that its shareholder (Champion) can be allowed to make “candidate endorsement[s]” using the company name. Opinion, ¶ 18. Finally, the Court asserts that because Champion, as sole shareholder, can simply establish a PAC to advocate for Champion Painting’s interests and expend funds that he will decide to contribute, Opinion, ¶ 18, “the statute has no or minimal impact on . . . Champion,” Opinion, ¶ 46. The Court is wrong on all counts.

¶97 According to the First Amended Complaint,

Champion Painting intends to spend corporate funds to educate the citizens of Montana and Bozeman about political candidates and ballot issues that will either positively or negatively impact Montana’s small businesses, and Champion Painting intends to publicly support or oppose candidates and issues relating to Montana’s small businesses. The corporate funds will be

spent to purchase TV spots and radio advertisements, and to create and distribute brochures and fliers

Champion's affidavit is to the same effect: "In addition to being politically active as an individual, I would like for Champion Painting to be politically active. . . . Since Champion Painting is a small business, its voice will be more effective than my voice when supporting or opposing candidates who may have an impact on small businesses." It is apparent, then, that Champion Painting's claim is about the corporation's ability to speak, not its shareholder's ability to speak. And as the Court concedes, § 227(1) forbids the expenditure of Champion Painting's corporate funds to support or oppose candidates. Opinion, ¶ 18. Nothing in § 227 exempts corporations held by a sole shareholder. As for the Court's theory that Champion Painting could speak through a PAC, Opinion, ¶ 18, the Supreme Court rejected this approach as discussed above and noted again below.

IV. COMPARISON

¶98 I now turn to a comparison of the rationales provided in the Court's Opinion with the statements by the Supreme Court rejecting those rationales. Again, the specific issue is the constitutionality of § 227(1)'s prohibition on corporate *expenditures* in connection with a candidate or a political committee that supports or opposes a candidate or a political party. The disclosure laws, the prohibition on direct corporate contributions, and the Corrupt Practices Act as a whole have not been challenged. Opinion, ¶¶ 2, 8.

A. The Political Committee Alternative

¶99 Section 227(1) states that "[a] corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or

opposes a candidate or a political party.” Section 227(3), however, provides that “[t]his section does not prohibit the establishment or administration of a separate, segregated fund [known as a political committee or PAC] to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.” *See* Opinion, ¶ 4.

¶100 The Court asserts that, in Montana, political committees are “easy to establish,” “easy to use,” and an “effective alternative to direct corporate spending for engaging in political speech.” Opinion, ¶¶ 21, 47. The Supreme Court, however, stated: “A PAC is a separate association from the corporation. So the PAC exemption from [the law’s] expenditure ban does not allow corporations to speak.” *Citizens United*, 130 S. Ct. at 897 (citation omitted). Moreover, “[e]ven if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems.” *Citizens United*, 130 S. Ct. at 897 (emphasis added).

¶101 The Court ignores the Supreme Court’s holding that a PAC is “separate” from the corporation and, thus, is not a valid alternative to direct corporate expenditures. Indeed, the Court asserts that the Supreme Court rejected PACs “because of the burdensome, extensive, and expensive Federal regulations that applied.” Opinion, ¶ 12. This is false. Granted, the Supreme Court briefly noted that “PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations.” *Citizens United*, 130 S. Ct. at 897. Yet, even if federal PACs were as “easily implemented” as the Court says Montana’s PACs are, Opinion, ¶ 21, the fundamental problem with PACs still remains:

“A PAC is a separate association from the corporation. So the PAC exemption from [the law’s] expenditure ban does not allow corporations to speak.” *Citizens United*, 130 S. Ct. at 897 (citation omitted). Bottom line: “[Section 227(1)] is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation [as permitted under § 227(3)] can still speak.” *Citizens United*, 130 S. Ct. at 897. The Court’s contrary holding is plainly wrong.

B. Anticorruption and Restraining Corporate Influence

¶102 The Court cites various examples of “well-financed corruption” perpetrated by F. Augustus Heinze, the Anaconda Company, and W.A. Clark. Opinion, ¶¶ 23-28. Notably, some of these examples involved blatant bribery and *quid pro quo* corruption (i.e., dollars for political favors), but it is not clear that any of them involved independent expenditures (i.e., political speech presented to the electorate that is not coordinated with a candidate) in exchange for political favors. In any event, the Court then proceeds to paint a dismal picture of the corporate “domination” and “influence” that has persisted in Montana. Opinion, ¶ 29. From this discussion, the Court concludes as follows. First, voters had a “compelling interest” to enact the challenged statute in 1912 because “the real social and political power [in Montana] was wielded by powerful corporate managers to further their own business interests,” and the voters were fed up with the “corrupt practices” and “heavy-handed influence” asserted by the special interests controlling Montana’s political institutions. Opinion, ¶ 36. Second, the statute “has worked to preserve a degree of political and social autonomy” from “shadowy” corporate figures who seek to promote their own interests. Opinion, ¶ 37. And finally, there is still a

sufficient interest to support the statute because “[i]ssues of corporate influence, sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs make Montana especially vulnerable to continued efforts of corporate control.” Opinion, ¶ 37.

¶103 It is patently unconstitutional, however, for the government to silence a speaker on the ground that the speaker might otherwise exert an undesired amount of “influence” or “control” in government and politics. Under such a rationale, any disfavored class of speakers could be censored if thought to be too “influential.” The Supreme Court unequivocally repudiated the notion that corporate political speech can be restricted “as a means to prevent corporations from obtaining an unfair advantage in the political marketplace by using resources amassed in the economic marketplace.” *Citizens United*, 130 S. Ct. at 904 (internal quotation marks omitted). *Austin*’s holding was founded on the same concern expressed by the Court here: that “[c]orporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures.” *Austin*, 494 U.S. at 660, 110 S. Ct. at 1398. The Supreme Court in *Citizens United*, however, held that “*Austin* is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures.” 130 S. Ct. at 913. The Supreme Court “rejected the premise that the Government has an interest in equalizing the relative ability of individuals and groups to influence the outcome of elections.” *Citizens United*, 130 S. Ct. at 904 (internal quotation marks omitted).

¶104 “Favoritism and influence are not . . . avoidable in representative politics,” and “[r]eliance on a generic favoritism or influence theory . . . is at odds with standard First

Amendment analyses because it is unbounded and susceptible to no limiting principle.” *Citizens United*, 130 S. Ct. at 910 (ellipses in original, internal quotation marks omitted). More to the point, the First Amendment prohibits “restrictions distinguishing among different speakers, allowing speech by some but not others.” *Citizens United*, 130 S. Ct. at 898. “ ‘In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue.’ ” *Citizens United*, 130 S. Ct. at 902 (quoting *Bellotti*, 435 U.S. at 784-85, 98 S. Ct. at 1420). The government may not bar corporations from contributing to the “open marketplace” of ideas. *Citizens United*, 130 S. Ct. at 906. “When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.” *Citizens United*, 130 S. Ct. at 908.

¶105 The Court tries to distinguish *Citizens United* as “decided upon its facts” and involving only federal laws and federal elections, while this case “concerns Montana law, Montana elections and . . . Montana history.” Opinion, ¶¶ 11, 16. Yet, *Bellotti* involved a state law, and the Supreme Court in *Citizens United* expressly noted that

[*Bellotti*] rested on the principle that the Government lacks the power to ban corporations from speaking. *Bellotti* did not address the constitutionality of the State’s ban on corporate independent expenditures to support candidates. In our view, however, that restriction would have been unconstitutional under *Bellotti*’s central principle: *that the First Amendment does not allow political speech restrictions based on a speaker’s corporate identity.*

Citizens United, 130 S. Ct. at 903 (emphasis added, paragraph break omitted).

¶106 Like its “influence” rationale, the Court’s “corruption” rationale is also untenable. Regardless of the history of “bribery,” “control,” and “naked corporate manipulation” recounted by the Court, Opinion, ¶¶ 23, 25, 28, plaintiffs here do not challenge the statutory prohibition on corporate *contributions*. Rather, they challenge the prohibition on corporate *expenditures*. And the Supreme Court stated very clearly “that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” *Citizens United*, 130 S. Ct. at 909. “When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.” *Citizens United*, 130 S. Ct. at 909. “The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.” *Citizens United*, 130 S. Ct. at 910 (internal quotation marks omitted). “[I]ndependent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption.” *Citizens United*, 130 S. Ct. at 910 (citation omitted).

¶107 As for the Court’s fear that invalidation of § 227(1)’s prohibition on independent expenditures by corporations will return Montana to its pre-1912 days of corruption and corporate domination, the Supreme Court answered this concern as follows:

If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by [the legislature] to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our

tradition that *more speech, not less*, is the governing rule. *An outright ban on corporate political speech . . . is not a permissible remedy.*

Citizens United, 130 S. Ct. at 911 (emphases added).

C. Citizen Protection

¶108 The Court observes that allowing unlimited independent expenditures of corporate money into the Montana political process would “drastically change campaigning by shifting the emphasis to raising funds.” Opinion, ¶ 30. Direct political spending by corporations could also “significantly affect the outcome of elections.” Opinion, ¶ 32. The Court explains that Montana has a small population and enjoys political campaigns marked by person-to-person contact and a low cost of advertising compared to other states. Opinion, ¶ 30. Thus, the infusion of unlimited corporate money in support of or opposition to a targeted candidate would leave the average citizen candidate “unable to compete against the corporate-sponsored candidate.” Opinion, ¶ 38.

¶109 Furthermore, Montana voters feel they do not really “count” in the political process unless they can make a material financial contribution; and they are concerned, therefore, that special interests hold sway. Opinion, ¶ 31. The percentage of campaign contributions from individual voters is much less in states that do not have restrictions on corporate spending. Opinion, ¶ 33. At present, the individual contribution limit for Montana House, Senate, and District Court races is \$160 and for Supreme Court elections is \$310. Opinion, ¶ 38. Thus, with the infusion of unlimited corporate money in support of or opposition to a targeted candidate, “Montana citizens, who for over 100 years have made their modest election contributions meaningfully count[,] would be effectively shut

out of the process.” Opinion, ¶ 38. “Clearly the impact of unlimited corporate donations creates a dominating impact on the political process and inevitably minimizes the impact of individual citizens.” Opinion, ¶ 41. The State “has an interest in encouraging the full participation of the Montana electorate.” Opinion, ¶ 38; *accord* Opinion, ¶ 41.

¶110 While I understand the Court’s desire to protect the ability of citizen candidates to compete, and the ability of citizens to meaningfully participate and be heard in the political process, this rationale has been rejected. “ ‘[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.’ ” *Citizens United*, 130 S. Ct. at 904 (brackets in original) (quoting *Buckley*, 424 U.S. at 48-49, 96 S. Ct. at 649). The Court’s reasoning is essentially a repackaged version of the antidistortion rationale, which the Supreme Court answered as follows:

Austin sought to defend the antidistortion rationale as a means to prevent corporations from obtaining “an unfair advantage in the political marketplace” by using “resources amassed in the economic marketplace.” But *Buckley* rejected the premise that the Government has an interest “in equalizing the relative ability of individuals and groups to influence the outcome of elections.” *Buckley* was specific in stating that the skyrocketing cost of political campaigns could not sustain the governmental prohibition. The First Amendment’s protections do not depend on the speaker’s financial ability to engage in public discussion.

Citizens United, 130 S. Ct. at 904 (citations and some internal quotation marks omitted).

“The rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity.” *Citizens United*, 130 S. Ct. at 905. The Court’s citizen-protection theory is invalid under *Citizens United*.

D. Elected Judges

¶111 The Court next discusses Montana’s interests in “protecting and preserving its system of elected judges,” providing “an independent, fair and impartial judiciary,” and “preserving the appearance of judicial propriety and independence.” Opinion, ¶¶ 39-40. The Court fears that “Montana judicial elections would be particularly vulnerable to large levels of independent spending, both in terms of fairness and in terms of the public perception of impartiality.” Opinion, ¶ 44. The Court cites Sandra Day O’Connor’s recent observation that the “ ‘crisis of confidence in the impartiality of the judiciary is real and growing.’ ”⁹ Opinion, ¶ 45. Noting that Montana is not immune from the influence of corporate-funded “super spender groups,” the Court concludes that Montana “has a compelling interest in precluding corporate expenditures on judicial elections based upon its interest in insuring judicial impartiality and integrity, its interest in preserving public confidence in the judiciary and its interest in protecting the due process rights of litigants.” Opinion, ¶ 45.

¶112 While I share some of the Court’s concerns,¹⁰ I do not believe the Supreme Court will allow a state to single out corporations as a group and prohibit them from speaking in judicial elections. First of all, as noted already, the First Amendment prohibits “restrictions distinguishing among different speakers, allowing speech by some but not

⁹ It is somewhat ironic that the Court would cite Justice O’Connor in the context of discussing Montana’s “interest in protecting and preserving its system of elected judges,” given that she has been openly critical of this form of selecting judges. See *Republican Party of Minn. v. White*, 536 U.S. 765, 788-92, 122 S. Ct. 2528, 2542-44 (2002) (O’Connor, J., concurring).

¹⁰ See James C. Nelson, *Keeping Faith with the Vision: Interpreting a Constitution for This and Future Generations*, 71 *Mont. L. Rev.* 299, 311 (2010).

others.” *Citizens United*, 130 S. Ct. at 898. More to the point, “the First Amendment does not allow political speech restrictions based on a speaker’s corporate identity.” *Citizens United*, 130 S. Ct. at 903.

¶113 Secondly, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252 (2009), which the Court cites at ¶ 43, is of no assistance. *Caperton* held that a judge was required to recuse himself “when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” 129 S. Ct. at 2263-64. As the Supreme Court later explained in *Citizens United*, “[t]he remedy of recusal was based on a litigant’s due process right to a fair trial before an unbiased judge. *Caperton*’s holding was limited to the rule that the judge must be recused, not that the litigant’s political speech could be banned.” 130 S. Ct. at 910 (citation omitted). In other words, recusal is the remedy for the concern with “protecting the due process rights of litigants” (Opinion, ¶ 45), not banning corporate speech.

¶114 Third, Justice Stevens raised this exact issue in his dissent, pointing out that

[t]he majority of the States select their judges through popular elections. At a time when concerns about the conduct of judicial elections have reached a fever pitch, the Court today unleashes the floodgates of corporate and union general treasury spending in these races. Perhaps “*Caperton* motions” will catch some of the worst abuses. This will be small comfort to those States that, after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.

Citizens United, 130 S. Ct. at 968 (citations omitted). In response, the majority certainly could have left open the possibility that judicial elections implicate unique interests

justifying restrictions on corporate expenditures in that particular context. The majority did not do so, however.¹¹ The majority, rather, remained firm and categorical: the First Amendment does not allow political speech restrictions based on a speaker's corporate identity, and speech restrictions aimed at reducing the relative ability of corporations to influence the outcome of elections are invalid. *Citizens United*, 130 S. Ct. at 903, 904.

¶115 Lastly, the Supreme Court's decision in *White*, 536 U.S. 765, 122 S. Ct. 2528, strongly indicates that the interests cited by the Court here are insufficient for prohibiting corporate speech in judicial elections. The Supreme Court—Justice Scalia joined by Chief Justice Rehnquist, Justice O'Connor, Justice Kennedy, and Justice Thomas—held that the Minnesota Supreme Court's canon of judicial conduct (the “announce clause”) prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violated the First Amendment. *White*, 536 U.S. at 788, 122 S. Ct. at 2542. The interests asserted in support of the announce clause were the same interests asserted by the Court in the present case:

preserving the impartiality of the state judiciary and preserving the appearance of the impartiality of the state judiciary. Respondents reassert these two interests before us, arguing that the first is compelling because it protects the due process rights of litigants, and that the second is compelling because it preserves public confidence in the judiciary.

White, 536 U.S. at 775, 122 S. Ct. at 2535 (citation omitted). In analyzing these interests, the *White* Court considered different possible meanings of the term “impartiality.” One meaning is the “lack of bias for or against either *party* to the proceeding,” which

¹¹ Notably, the Supreme Court eight years earlier rejected as “not a true picture of the American system” the notion that an elected judiciary is completely separate from the enterprise of “representative government.” *White*, 536 U.S. at 784, 122 S. Ct. at 2539.

“guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party.” *White*, 536 U.S. at 775-76, 122 S. Ct. at 2535 (emphasis in original). Without stating expressly whether this was a compelling state interest, the Supreme Court held that the announce clause’s restriction on speech for or against particular *issues* did not serve the interest in assuring equal application of the law to particular *parties*. *White*, 536 U.S. at 776, 122 S. Ct. at 2535. Another meaning of impartiality is the “lack of preconception in favor of or against a particular *legal view*.” *White*, 536 U.S. at 777, 122 S. Ct. at 2536 (emphasis in original). The Supreme Court disagreed, however, with the proposition that “[a] judge’s lack of predisposition regarding the relevant legal issues in a case” is a compelling state interest. *White*, 536 U.S. at 777-78, 122 S. Ct. at 2536. Likewise, the Supreme Court concluded that a third possible meaning—“openmindedness”—was an implausible basis for the announce clause. *White*, 536 U.S. at 778-81, 122 S. Ct. at 2536-38.

¶116 Of relevance to the present discussion, the Supreme Court observed in *White* that “the notion that the special context of electioneering justifies an abridgment of the right to speak out on disputed issues sets our First Amendment jurisprudence on its head. Debate on the qualifications of candidates is at the core of our electoral process and of the First Amendment freedoms, not at the edges.” 536 U.S. at 781, 122 S. Ct. at 2538 (alteration, emphasis, and internal quotation marks omitted). Concerning the relationship between judicial elections and the First Amendment, the Supreme Court stated:

There is an obvious tension between the article of Minnesota’s popularly approved Constitution which provides that judges shall be elected, and the Minnesota Supreme Court’s announce clause which places

most subjects of interest to the voters off limits. . . . The disparity is perhaps unsurprising, since the ABA, which originated the announce clause, has long been an opponent of judicial elections. That opposition may be well taken (it certainly had the support of the Founders of the Federal Government), but the First Amendment does not permit it to achieve its goal by leaving the principle of elections in place while preventing candidates from discussing what the elections are about. *The greater power to dispense with elections altogether does not include the lesser power to conduct elections under conditions of state-imposed voter ignorance. If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process . . . the First Amendment rights that attach to their roles.*

White, 536 U.S. at 787-88, 122 S. Ct. at 2541 (second ellipsis in original, brackets, citations, and internal quotation marks omitted).

¶117 Justice O'Connor made a similar point in her concurrence:

Minnesota has chosen to select its judges through contested popular elections In doing so the State has voluntarily taken on the risks to judicial bias described above. As a result, the State's claim that it needs to significantly restrict judges' speech in order to protect judicial impartiality is particularly troubling. If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges.

White, 536 U.S. at 792, 122 S. Ct. at 2544 (O'Connor, J., concurring).

¶118 Perhaps most telling are the remarks of Justice Kennedy—who, as noted, authored the majority opinion in *Citizens United*. Justice Kennedy agreed that “[j]udicial integrity is . . . a state interest of the highest order.” *White*, 536 U.S. at 793, 122 S. Ct. at 2544 (Kennedy, J., concurring). He also acknowledged that a state may choose to have an elected judiciary, may strive to define those characteristics that exemplify judicial excellence, may enshrine its definitions in a code of judicial conduct, may adopt recusal

standards more rigorous than due process requires, and may censure judges who violate these standards. *White*, 536 U.S. at 794, 122 S. Ct. at 2545.

What [a state] may not do, however, is censor what the people hear as they undertake to decide for themselves which candidate is most likely to be an exemplary judicial officer. Deciding the relevance of candidate speech is the right of the voters, not the State. The law in question here contradicts the principle that unabridged speech is the foundation of political freedom.

The State of Minnesota no doubt was concerned, as many citizens and thoughtful commentators are concerned, that judicial campaigns in an age of frenetic fundraising and mass media may foster disrespect for the legal system. Indeed, from the beginning there have been those who believed that the rough-and-tumble of politics would bring our governmental institutions into ill repute. And some have sought to cure this tendency with governmental restrictions on political speech. See Sedition Act of 1798, ch. 74, 1 Stat. 596. Cooler heads have always recognized, however, that these measures abridge the freedom of speech—not because the state interest is insufficiently compelling, but simply because content-based restrictions on political speech are expressly and positively forbidden by the First Amendment. *The State cannot opt for an elected judiciary and then assert that its democracy, in order to work as desired, compels the abridgment of speech.*

White, 536 U.S. at 794-95, 122 S. Ct. at 2545 (emphases added, internal quotation marks and some citations omitted).

¶119 The principle espoused by Justice Kennedy in *White*—that a state may not “censor what the people hear as they undertake to decide for themselves which candidate is most likely to be an exemplary judicial officer”—is consistent with the theme of the *Citizens United* opinion: “[I]t is our law and our tradition that more speech, not less, is the governing rule,” 130 S. Ct. at 911, and “[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations,” 130 S. Ct. at 913. A fair reading of the broad holding in *Citizens United*, together with a fair reading of the First Amendment principles articulated in *White*, leads inevitably to the conclusion that

corporate independent expenditures can no more be prohibited in judicial elections than they can be in legislative and executive elections.

E. Summary

¶120 In sum, what has happened here is essentially this: The Supreme Court in *Citizens United* (and in *White*) rejected several asserted governmental interests; and this Court has now come along, retrieved those interests from the garbage can, dusted them off, slapped a “Made in Montana” sticker on them, and held them up as grounds for sustaining a patently unconstitutional state statute. The erroneous premise underlying the Court’s entire approach here is its belief that the Supreme Court rejected the asserted governmental interests only as applied to federal elections. Opinion, ¶¶ 11, 16. Nowhere in its decision did the Supreme Court state that there was something unique about federal elections that precluded the PAC-as-an-alternative theory, the antidistortion rationale, or the anticorruption interest as justifications for restricting independent expenditures by corporations. The Supreme Court simply rejected all of these arguments outright, in broad and unqualified language. Not only that, the Supreme Court expressly noted that “*Bellotti* did not address the constitutionality of the State’s ban on corporate independent expenditures to support candidates. *In our view, however, that restriction would have been unconstitutional under Bellotti’s central principle: that the First Amendment does not allow political speech restrictions based on a speaker’s corporate identity.*” *Citizens United*, 130 S. Ct. at 903 (emphasis added) (citing *Bellotti*, 435 U.S. at 784-85, 98 S. Ct. at 1420). This Court is extremely misguided, therefore, in attempting to resurrect the rejected governmental interests under a “Montana is unique” theory.

V. CONCLUSION

¶121 As demonstrated, the Supreme Court's decision in *Citizens United* is clear with regard to the First Amendment's protection of corporate political speech. Section 13-35-227(1), MCA, impermissibly restricts such speech by prohibiting corporations from making "an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." The statute is, therefore, facially unconstitutional under *Citizens United*.

¶122 That said, and as noted above, I agree, at least in principle, with the arguments and concerns expressed by the Attorney General and the amici curiae supporting the State. I am deeply frustrated, as are many Americans, with the reach of *Citizens United*. The First Amendment has now been elevated to a vaunted and isolated position so as to endow corporations with extravagant rights of political speech and, with those rights, the exaggerated power to influence voters and elections.

¶123 Professor Howell suggests that "[t]he disconnect between [*Citizens United's* and *Caperton's*] statements about corruption" provides Montana an opportunity to preserve its Corrupt Practices Act as applied to judicial elections. See Larry Howell, *Once Upon a Time in the West: Citizens United, Caperton, and the War of the Copper Kings*, at 26 (available at <http://mtlr.org>). For my own part, I doubt that approach will be successful. In its zeal to grant corporations unlimited rights of political speech, the Supreme Court summarily dismissed its decision in *Caperton* with the statement that *Caperton* "is not to the contrary" because its holding "was limited to the rule that the judge must be recused, not that the litigant's political speech could be banned." *Citizens United*, 130 S. Ct. at

910 (emphasis added). This statement, along with the observations of the dissent in *Citizens United* and the statements by the majority and concurring opinions in *White*, lead me to conclude that *Citizens United* will eventually be applied to state judicial elections,¹² leaving recusals as the sole remedy where corporate expenditures have corrupted or biased the judge or judges at issue.¹³

¶124 Once *Citizens United* is imposed on elected state judiciaries, I am concerned—as were Justices Stevens, Ginsburg, Breyer, and Sotomayor; as are my former colleagues (see Amicus Brief of Former Montana Supreme Court Justices William Hunt, William Leaphart, James Regnier, Terry Trieweler and John Warner (Apr. 27, 2011)); and as is the Court in today’s Opinion—that judicial elections will become little better than the corporate bidding wars that elections for partisan offices have already become. I have suggested, therefore, that Montana’s voters may—and probably should—amend the Montana Constitution to implement a merit system for selecting judges. See James C. Nelson, *Introduction*, 72 Mont. L. Rev. 1, 5-6 (2011); cf. W. William Leaphart, *First Right of Recusal*, 72 Mont. L. Rev. 287 (2011) (suggesting that Montana adopt an enforceable mechanism for removing Montana justices when potential bias exists).

¹² As reflected in the discussion of *White* (¶¶ 116-118, *supra*), and as I have previously noted (Nelson, 71 Mont. L. Rev. at 310), the system of electing judges and justices presently finds little support or esteem from the appointed federal judiciary.

¹³ Perhaps, ironically, it will come to pass that the best way to insure that a judge or justice does *not* sit on a case involving a particular corporation is for the corporation to run a vigorous and expensive campaign supporting the judge’s election.

¶125 While, as a member of this Court, I am bound to follow *Citizens United*, I do not have to agree with the Supreme Court's decision.¹⁴ And, to be absolutely clear, I do not agree with it. For starters, the notion that corporations are disadvantaged in the political realm is unbelievable. Indeed, it has astounded most Americans. The truth is that corporations wield inordinate power in Congress and in state legislatures. It is hard to tell where government ends and corporate America begins; the transition is seamless and overlapping. In my view, *Citizens United* has turned the First Amendment's "open marketplace" of ideas into an auction house for Friedmanian¹⁵ corporatists. Freedom of speech is now synonymous with freedom to spend. Speech equals money; money equals democracy. This decidedly was not the view of the constitutional founders, who favored the preeminence of individual interests over those of big business. *Citizens United*, 130 S. Ct. at 949-50 (dissenting opinion).

¶126 Second, I disagree with the premise that unlimited corporate political speech is essential to "enlightened self-government" and aids the electorate in making "informed choices." *Citizens United*, 130 S. Ct. at 898, 907. I agree that "[r]hetoric ought not obscure reality." *Citizens United*, 130 S. Ct. at 907. But I cannot agree that the *Citizens*

¹⁴ Cf. J. Harvie Wilkinson III, *Of Guns, Abortions, and the Unraveling Rule of Law*, 95 Va. L. Rev. 253, 255-56 (2009) ("It is the solemn duty of judges on the inferior federal courts to follow, both in letter and in spirit, rules and decisions with which we may not agree. Our oath demands it, and our respect for the Supreme Court as an institution and for the able and dedicated individuals who serve on it requires no less. But esteem can likewise be manifest in the respectful expression of difference—that too is the essence of the judicial craft.").

¹⁵ Milton Friedman: the guru, popularizer, and propagandist for unrestrained free-market economics. See Naomi Klein, *Shock Doctrine: The Rise of Disaster Capitalism* (Henry Holt & Co. 2007).

United majority's views reflect "reality." For one thing, voters generally do not have the desire, much less the time, sophistication, or ability, to sift through hours upon hours of attack ads, political mumbo jumbo, and sound bites in order to winnow truth (of which there often seems to be very little) from fiction and half-truths (of which there unfortunately seems to be an endless supply).¹⁶ The Supreme Court believes the solution for false or misleading speech is more speech. Yet, an endless barrage of accusations and counteraccusations providing more fodder than fact only serves to overwhelm, confuse, and disenchant voters.

¶127 Furthermore, it defies reality to suggest that millions of dollars in slick television and Internet ads—put out by entities whose purpose and expertise, in the first place, is to persuade people to buy what's being sold—carry the same weight as the fliers of citizen candidates and the letters to the editor of *John and Mary Public*. It is utter nonsense to think that ordinary citizens or candidates can spend enough to place their experience, wisdom, and views before the voters and keep pace with the virtually unlimited spending capability of corporations to place corporate views before the electorate. In spending ability, bigger really is better; and with campaign advertising and attack ads, quantity counts. In the end, candidates and the public will become mere bystanders in elections.

¹⁶ For example, the *Los Angeles Times* recently reported that Crossroads GPS, the conservative group co-founded by Karl Rove, released an ad slamming Montana Senator Jon Tester for supporting an Environmental Protection Agency regulation on farm dust. However, one Montana cable show pulled the ad "because the network determined that it was false; the regulation was actually never proposed, and the vote cited in the ad was a procedural measure." Tom Hamburger & Melanie Mason, *Chamber of Commerce Getting Early Start with Attack Ads*, *L.A. Times* (Nov. 16, 2011).

¶128 Third, with respect to the interests of shareholders in not being compelled to fund corporate political speech with which they disagree, I do not believe that participation in “corporate democracy” actually accounts for anything—unless, of course, the objecting shareholder is an insider or owns a controlling percentage of the outstanding stock. I cannot agree that “corporate democracy” will cause big business and multinational corporations to exercise responsibly their new unlimited power to speak and spend. It won’t, because money, influence, and access are at stake. Any notion to the contrary is simply the triumph of hope over experience.

¶129 Fourth, I absolutely do not agree that corporate money in the form of “independent expenditures” expressly advocating the election or defeat of candidates cannot give rise to corruption or the appearance of corruption. Of course it can. Even the most cursory review of decades of partisan campaigns and elections, whether state or federal, demonstrates this. *Citizens United* held that the only sufficiently important governmental interest in preventing corruption or the appearance of corruption is one that is limited to *quid pro quo* corruption. This is simply smoke and mirrors. *See Citizens United*, 130 S. Ct. at 961 (dissenting opinion). In the real world of politics, the “*quid pro quo*” of both direct contributions to candidates and independent expenditures on their behalf is *loyalty*. And, in practical effect, experience teaches that money corrupts, and enough of it corrupts absolutely. *See e.g. Caperton*, 556 U.S. 868, 129 S. Ct. 2252.

¶130 Fifth, therefore, I cannot agree with the holding that the prevention of corruption in the form of independent expenditures is not a compelling state interest. There is no plausible reason why a state would *not* want to protect the integrity of its election process

against corruption and undue influence; to do otherwise would render the fundamental right to vote a meaningless exercise. To my knowledge, the First Amendment has never been interpreted to be absolute and gloriously isolated from other fundamental rights and values protected by the Constitution. Yet, *Citizens United* distorts the right to speech beyond recognition. Indeed, I am shocked that the Supreme Court did not balance the right to speech with the government's compelling interest in preserving the fundamental right to vote in elections.

¶131 At the same time, though, I am not persuaded that Montana's experience with corruption is as "unique" as the Attorney General and this Court posit. Each state has its own corruption horror stories and has battled political and election corruption at one time or another. Even a casual examination of the daily newspaper or the evening news proves that battling political corruption is ongoing; like painting the Golden Gate Bridge, when you reach one end, you start over at the other. It should be noted that Montana's Corrupt Practices Act was adopted in 1912 at a time when the country's focus was on preventing political corruption, not on protecting corporate influence. Due to intervening changes in the composition and philosophy of the Supreme Court, that focus has now flip-flopped. See Zephyr Teachout, *The Historical Roots of Citizens United v. FEC: How Anarchists and Academics Accidentally Created Corporate Speech Rights*, 5 Harv. L. & Policy Rev. 163 (2011). Montana's Corrupt Practices Act has become an historical—and unconstitutional—artifact, and it will have to be legislatively revised to accommodate a changed time and a changed Supreme Court. A number of our sister

states have modified their laws in the wake of *Citizens United* (see ¶ 72 n. 4, *supra*), and I expect that Montana's 2013 Legislature will, or should, be tasked with doing the same.

¶132 Lastly, I am compelled to say something about corporate "personhood." While I recognize that this doctrine is firmly entrenched in the law, see *Bellotti*, 435 U.S. at 780 n. 15, 98 S. Ct. at 1418 n. 15; *but see* 435 U.S. at 822, 98 S. Ct. at 1439-40 (Rehnquist, J., dissenting), I find the entire concept offensive. Corporations are artificial creatures of law. As such, they should enjoy only those powers—not constitutional rights, but legislatively-conferred powers—that are concomitant with their legitimate function, that being limited-liability investment vehicles for business. Corporations are not persons. Human beings are persons, and it is an affront to the inviolable dignity of our species that courts have created a legal fiction which forces people—human beings—to share fundamental, natural rights with soulless creations of government. Worse still, while corporations and human beings share many of the same rights under the law, they clearly are not bound equally to the same codes of good conduct, decency, and morality, and they are not held equally accountable for their sins. Indeed, it is truly ironic that the death penalty and hell are reserved only to natural persons.

¶133 Having said all this, I must return to the central point of this Dissent. Regardless of my disagreement with the views of the *Citizens United* majority, the fact remains that the Supreme Court has spoken. It has interpreted the protections of the First Amendment vis-à-vis corporate political speech. Agree with its decision or not, Montana's judiciary and elected officers are bound to accept and enforce the Supreme Court's ruling—in the same way that this Court demands obedience to its rulings, like them or not.

¶134 For these reasons, I dissent from the Court’s analysis in the instant case. I disagree with the Court’s decision to parse *Citizens United* in a fashion so as to “send a message” to, or be the next “test case” before, the Supreme Court. In my view, this approach is disingenuous. Montana is in the same First Amendment swimming pool as every other state, and the Supreme Court has dictated that its waters are expansive and deep when it comes to corporate political speech. *Citizens United* is the law of the land, and this Court is duty-bound to follow it. When this case is appealed to the Supreme Court, as I expect it will be, a summary reversal on the merits (*see* U.S. Sup. Ct. R. 16) would not surprise me in the least.

¶135 In my opinion, District Court Judge Sherlock’s well-reasoned and courageous—though politically unpopular—decision should be affirmed. I cannot agree with this Court’s determination not to do so. Therefore, I respectfully and regretfully dissent.

/S/ JAMES C. NELSON

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2015 MAR 18 AM 11:47

In the Matter of)
)
 Mindgeek S.A.R.L. f.k.a. Manwin)
 Licensing International S.A.R.L.;)
 Mindgeek USA Incorporated f.k.a.) MUR 6678
 Manwin USA, Inc.; Fabian Thylmann;)
 Andrew Link; Froytal Services Limited;)
 No on Government Waste/No on)
 Measure B - Major Funding by Manwin)
 USA)

CELA

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary of the Federal Election Commission
 executive session, do hereby certify that on March 17, 2015, the Commission took the following
 actions in the above-captioned matter:

1. Failed by a vote of 3-3 to:
 - a. Dismiss the allegation that Mindgeek S.A.R.L. f.k.a. Manwin Licensing International S.A.R.L., Mindgeek USA Incorporated f.k.a. Manwin USA Inc., Fabian Thylmann, Andrew Link, Froytal Services Limited, and No on Government Waste/No on Measure B – Major Funding by Manwin USA violated 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e).
 - b. Approve the appropriate letters and authorize the Office of General Counsel to make any technical and conforming edits.
 - c. Close the file.

Commissioners Goodman, Hunter, and Petersen voted affirmatively for the motion.

Commissioners Ravel, Walther, and Weintraub dissented.

Federal Election Commission
Certification for MUR 6678
March 17, 2015

Page 2

2. Decided by a vote of 6-0 to:

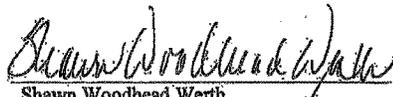
a. Close the file.

b. Send the appropriate letters.

Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

March 18, 2015
Date


Shawn Woodhead Werth
Secretary and Clerk of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

YES FOR RESPONSIBLE MINING
P.O. Box 174
Harrison, MT 59735
(406) 599-1022
v.

MUR # 7523

2018 OCT 22 PM 12:26
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GENERAL COUNSEL

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STOP I-186 TO PROTECT MINERS AND JOBS
P.O. Box 1585 | Helena, Montana 59624

MONTANA MINING ASSOCIATION
Montana Mining Association
P.O. Box 1026
Whitehall, Montana 59759
(406) 287-3012

Complaint

1. This complaint is filed pursuant to 52 U.S.C. §30109(a)(1) and is based on information and belief that Sandfire Resources, the Montana Mining Association, and the political committee known as Stop I-186 to Protect Miners and Jobs are using foreign contributions to promote the interests of an Australian corporation and its Canadian subsidiary by influencing a Montana ballot initiative, in violation of the Federal Election Campaign Act, 52 U.S.C. §§ 30101 et seq.
2. Specifically, based on reports filed with the Montana Commissioner of Political Practices, the complainants have reason to believe that Sandfire Resources, an Australian

corporation that is a "foreign national" as defined in 52 U.S.C. § 30121(b)(1), has made significant contributions to the Montana Mining Association and the Committee to Stop I-186 to protect Miners and Jobs, for the purpose of funding an advertising and media campaign to oppose I-186, a Montana ballot measure that will appear before the voters in the November 2018 election. These payments are in violation of 52 U.S.C. § 30121(a)(1).

3. In addition, the complainants have reason to believe the Montana Mining Association and Stop I-186 to protect Miners and Jobs knowingly accepted these contributions from a foreign national, in violation of 52 U.S.C. § 30121(a)(2).

Facts

4. In November, Montana voters will vote on I-186, a ballot initiative that will increase the state's ability to deny permits for hardrock mines that require perpetual treatment to avoid polluting the state's waters. I-186 does not impact existing mining operations, or amendments to those mining operations. Only new mines permitted after November 6, 2018 will fall under the new law.

5. Sandfire Resources NL is an Australian mining and exploration company that is registered in West Perth, Australia, which is its principal place of business. The company is listed on the Australian Securities Exchange.

6. Sandfire Resources America, Inc. is a subsidiary of Sandfire Resources NL. It is incorporated under the laws of British Columbia, Canada, and is headquartered in Vancouver, Canada.

7. Sandfire Resources NL, through its Canadian subsidiary Sandfire Resources America, holds a 78.1% interest in the Black Butte Copper Project, whose purpose is to develop a high-grade copper deposit located in central Montana near the Smith River, one of the state's most

popular destinations for outdoor recreation. The Black Butte Copper Project does not yet have a hardrock mining permit from the state of Montana, and is not expected to have one prior to November 6, 2018.

8. The Black Butte deposit is a high-sulfide ore body, making it likely that any mining operation at the site would require perpetual treatment to avoid polluting waters in the surrounding area. Therefore, the Black Butte Copper Project would be directly affected by I-186.

9. On April 1, and June 1, 2018, Sandfire America made contributions totaling \$270,000 to the Montana Mining Association, for the express purpose of supporting the campaign in opposition to I-186.

10. The Montana Mining Association passed Sandfire America's contributions, bundled with others totaling \$1,929,711 through to "Stop I-186 to Protect Miners and Jobs," a political committee that was formed in May 2018 for the purpose of opposing I-186.

11. On April 4, 2018 Sandfire Resources America made a direct contribution of \$17,857 to Stop I-186 to Protect Miners and Jobs.

12. According to its public filings, Sandfire Resources America has no sources of revenue in the United States, and a cash flow of zero. The source of the contributions intended to influence the voters' decision on I-186 in the November 2018 election is the Australian parent company, Sandfire Resources NL.

**First Cause of Action – Illegal Contributions by Foreign Nationals
in Connection With a State Election**

13. Federal law prohibits a foreign national from directly or indirectly making a contribution in connection with a federal, state, or local election. 52 U.S.C. § 30121(a)(1).

14. "Foreign national" is defined to include "a . . . corporation . . . organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. §30121(b)(1); 22 U.S.C. § 611(b)(3).

15. Sandfire Resources NL and its subsidiary Sandfire Resources America are "foreign nationals" as defined by FECA.

16. By contributing more than \$285,000 to the campaign against I-186 in connection with the November 2018 Montana election, Sandfire Resources NL and Sandfire Resources America acted in direct violation of 52 U.S.C. § 30121(a)(1), which prohibits the use of foreign money to influence elections in the United States, and is a crucial safeguard protecting the integrity of American democracy.

**Second Cause of Action -- Illegal Acceptance of
Contributions From a Foreign National**

17. Federal law makes it illegal for any person to solicit, accept, or receive a contribution or donation from a foreign national in connection with a federal, state, or local election. 52 U.S.C. § 30121(a)(1).

18. The Montana Mining Association and Stop I-186 to Protect Miners and Jobs are both registered with the Commissioner of Political Practices as ballot issue committees in opposition to I-186.

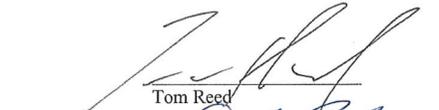
19. By knowingly accepting contributions from foreign nationals Sandfire Resources NL and Sandfire Resources America, the Montana Mining Association and Stop I-186 to Protect Miners and Jobs acted in direct violation of 52 U.S.C. § 30121(a)(1), which prohibits the use of foreign money to influence elections in the United States, and is a crucial safeguard protecting the integrity of American democracy.

Request for Relief

20. Based on the foregoing, the Commission should find reason to believe that Sandfire Resources NL, Sandfire America, the Montana Mining Association, and Stop I-186 to Protect Miners and Jobs have violated the Federal Election Campaign Act, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). In addition, the Commission should impose appropriate sanctions for any and all violations, should enjoin the respondents from all future violations, and should impose such additional remedies as necessary to ensure compliance with the law.

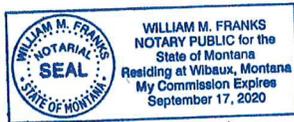
We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge.

October 15, 2018


Tom Reed

David Brooks

Co-chairs, Yes for Responsible Mining



Dtd: 10-15-2018
William M Franks

STATE OF MT County of MISSOULA.
Sworn & Signed before me on 10/16/2018 by
David Brooks


KRISTA JOHNSTON





FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Stop I-186 to Protect Mining and Jobs)	MUR 7523
Sandfire Resources America, Inc.)	
Sandfire Resources, NL)	
Montana Mining Association)	

STATEMENT OF REASONS OF
COMMISSIONER ELLEN L. WEINTRAUB

A cornerstone principle of federal campaign-finance law is that foreign nationals are barred from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.¹ This principle has been called “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.”²

Since *Buckley v. Valeo*,³ the constitutionality of campaign-finance laws directed at the activities of American citizens has depended on how well they serve the government’s interest in limiting “the actuality and appearance of corruption.”⁴ But restrictions on foreign-national involvement in American politics serve a different governmental interest: “preventing foreign influence over the U.S. political process.”⁵

In the Bipartisan Campaign Reform Act of 2002 (“BCRA”),⁶ Congress amended the Federal Election Campaign Act of 1971, as amended (the “Act”)⁷ to change its ban on contributions or donations from foreign nationals “in connection with an election to any political office,” to any such spending “in connection with a Federal, State, or local election.” The

¹ 52 U.S.C. § 30121(A).
² *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.), *aff’d*, 565 U.S. 1104 (2012).
³ 424 U.S. 1 (1976).
⁴ *Id.* at 26.
⁵ *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).
⁶ Pub. L. No. 107-155, 116 Stat. 81 (2002).
⁷ 52 U.S.C. § 30101, *et. seq.*

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question that had remained unsettled was whether by this statutory change Congress had expanded the provision to include spending on state and local ballot measures.

I have long held that Congress did do so. “From the voter’s perspective,” I wrote in 2015, “this is a distinction without a difference. When Americans go to the polls to vote on Election Day (or mark our mail-in ballots), the choices we make – whether as to candidates or referenda – 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 direct democracy (adopting a law via ballot measure), these are choices in which only Americans [should] have a say.”⁸

This matter, which involved foreign spending against an environmental measure in Montana, provides an excellent case in point. The Complaint alleged that Sandfire Resources NL, an Australian company, through its Canadian subsidiary (Sandfire Resources America, Inc., which then had “no sources of revenue in the United States, and a cash flow of zero,”⁹ but had an interest in a potential mining project), donated \$287,857 to the Montana Mining Association (“MMA”) and Stop I-186 to Protect Mining and Jobs (“Stop I-186”). The purpose of these donations, according to the Complaint, was to oppose “a Montana ballot initiative that the Complaint states would ‘increase [Montana’s] ability to deny permits for hardrock mines . . . to avoid polluting the state’s waters.’”¹⁰ As noted by the Office of General Counsel, “Respondents do not dispute the facts alleged in the Complaint.”¹¹

So a company based halfway around the world made a sizable donation, interjecting itself in hopes of future profits, into a political debate in Montana over mining and the quality of Montana’s waters. Balancing the economic and environmental concerns reflected in the ballot measure and uniquely affecting the State’s residents is precisely the type of exercise of democratic self-government that should be protected from foreign influence. Nor did Sandfire have any First Amendment right to participate in this process: the Supreme Court has plainly held that “foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution.”¹²

In this matter, I concurred with the analysis of the Commission’s Office of General Counsel that the best read of the state of the law was that “the only Commission-approved interpretation of the meaning of the Act’s post-BCRA foreign national prohibition’s use of

⁸ Ellen L. Weintraub, Statement of Reasons at 3, MUR 6678 (*MindGeek USA, Inc., et al.*) (Apr. 23, 2015).

⁹ Complaint, paragraph 12.

¹⁰ First General Counsel’s Report, MUR 7523 (*Stop I-186 to Protect Mining and Jobs, et al.*) (“FGCR”) at 1-2, quoting Compl. at 2.

¹¹ *Id.*

¹² *Agency for International Development v. Alliance for Open Society International, Inc.*, — U.S. —, 140 S. Ct. 2082 (2020).

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“election” with respect to non-candidate elections” specifically explained “that its application is not limited to ‘elections for political office.’”¹³

As of today, though, the Commission has reversed course, deciding that under the Act, the term “election” does not encompass state and local ballot issues. For the first time, the Commission has voted to allow political donations by foreign nationals to a domestic ballot initiative committee.

Under the circumstances presented by this matter – where the ballot initiative at issue did not have anything to do with a candidate election, and no other evidence suggested that the initiative effort was inextricably linked to a candidate election – my colleagues voted against investigating the allegations presented by the complaint.

This decision, however, should not be read as open season on foreign spending in connection with ballot measures. There have been, and will be again, ballot measures that are inextricably linked to candidate elections.¹⁴ Moreover, this decision does not preclude other paths by which a ballot initiative could fall within the scope of the Act’s wide ban on foreign-national spending in connection with a federal, state, or local election. Consider a ballot initiative that directly affects the election process. While a ballot initiative may not *per se* fit within the Act’s definition of “election,” when the *topic* of an initiative is federal, state, or local elections – for example, provisions regarding redistricting, recall elections, voter registration, vote-by-mail eligibility, election systems, early voting, drop boxes, etc. – then spending relating to such an initiative appears to remain very much in connection with an election, and foreign nationals would therefore be banned from such spending.¹⁵

But ballot initiatives cover plenty of other types of topics. And spending on ballot-initiative campaigns that have nothing on their face to do with candidate elections can still have the *intent* of affecting candidate elections. That intent could cause that spending to be ‘in connection with’ those elections, but that link would likely be quite difficult to prove. It was not

¹³ FGCR at 7, *citing* Advisory Op. 2003-37 (Americans for a Better Country) at 20 (superseded on other grounds by Political Committee Status & Definition of Contribution, 69 Fed. Reg. 68056, 68063 (Nov. 23, 2004)) (“The Act, as amended by BCRA, prohibits foreign nationals from, among other things, directly or indirectly making a contribution or donation of money or other thing of value, or to expressly or impliedly promise to make a contribution or donation, in connection with a Federal, State, or local election (*this prohibition is not limited to elections for political office*”) (emphasis added).

¹⁴ See Advisory Op. 1989-32 at 3-6 (McCarthy) (“AO 1989-32”) (detailing ways in which a candidate and a ballot initiative committee seeking to accept foreign national funds were “inextricably linked,” including through overlapping staff between candidate and ballot initiative committee, linking the name of the candidate and committee in public communications, the candidate soliciting for the committee, and appearance of candidate and initiative on same ballot, concluding that because of these links the activities of the ballot initiative committee were campaign-related and thus the foreign national prohibition applied to the ballot initiative committee).

¹⁵ See “2020 ballot measures,” Ballotpedia.org (“Eighteen measures were on the ballot in 14 states concerning election policy, including campaign finance, election dates, election systems, redistricting, suffrage, and term limits”), found at https://ballotpedia.org/2020_ballot_measures.

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likely a surprise to conservative organizers in the early 2000s that the ballot initiatives they sponsored opposing marriage equality also boosted turnout for Republican state and federal candidates on Election Day,¹⁶ but proving that that was their intent might have been challenging.

And that is why Congress and the states should act quickly and decisively to protect *all* ballot initiatives from foreign influence. Ballot initiatives can reach deeply into the laws of a state or locality and direct government action. They are vulnerable to manipulation, as they seek to balance integral to that process – that ordinary legislative process offers less protection from foreign influence than at

Question VC
material

Weintraub

October 29, 2021

¹⁶ See, e.g., James Dao, “Same-Sex Marriage Issue Key to Some G.O.P. Races,” N.Y. Times (Nov. 4, 2004) (“Proposed state constitutional amendments banning same-sex marriage increased the turnout of socially conservative voters in many of the 11 states where the measures appeared on the ballot on Tuesday, political analysts say, providing crucial assistance to Republican candidates including President Bush in Ohio and Senator Jim Bunning in Kentucky.”)

Mr. MORELLE. I yield back the balance of my time. Thank you, Mr. Chairman.

Chairman STEIL. The gentleman yields back.

Mr. Griffith is recognized for 5 minutes.

Mr. GRIFFITH. Thank you very much, Mr. Chairman, and thank you so much for calling this important hearing.

A couple of comments in response to my friend and colleague, the Ranking Member, in his opening. If WinRed is doing something to make it easier for foreign actors to donate by having massive numbers of small donations sent in, more than happy to look into that; as well as ActBlue. Have no problem with that.

Further, I would point out that, while you mentioned Elon Musk, who is a U.S. citizen, you did not mention George Soros, who also is a U.S. citizen, but both of those have given money, and each side gets one. Sometimes you all get more than we do. You know, when it is U.S. money, that is not the focus of this hearing.

Ms. Sutherland, I was interested in your comments about the U.K. Labour Party recruiting and trying to send folks—or sending folks over here to work in the Harris campaign. Because it is interesting; in today's online version of The London Times, there is an article about how they are worried that we are going to return the favor and send money over to the Reform Party, and so now they are looking at tightening up their laws related to foreign activities in the U.K. I do not have personal knowledge, but that is according to my reading of this morning's London Times online edition.

Speaking of your work, Ms. Sutherland, I would like to ask unanimous consent for Ms. Sutherland's report, Americans for Public Trust, "Foreign Influence in State Ballot Issues: How Sixteen Thirty Fund's Pipeline of Foreign Cash Impacts State Politics," April 2024, be entered into the record.

Chairman STEIL. Without objection.

[The report referred to follows:]

AMERICANS FOR
**PUBLIC
TRUST**

**Foreign Influence
in State Ballot Issues**

How Sixteen Thirty Fund's Pipeline
of Foreign Cash Impacts State Politics

April 2024

Foreword from the Author

On a bustling street in Washington, D.C., an innocuous-sounding group called the Sixteen Thirty Fund quietly operates the most influential liberal dark money powerhouse in the nation. Named after the year – 1630 – in which the Winthrop Fleet journeyed from England to America, the group has poured more than \$1 billion dollars into liberal groups and causes since its inception in 2009.¹

A handful of top donors to Sixteen Thirty Fund have been identified: tech billionaire Pierre Omidyar, liberal megadonor George Soros, and their sister 501(c)(3) New Venture Fund. But none are more notorious than one of their most significant backers: Swiss billionaire Hansjörg Wyss.²

Mr. Wyss is a foreign national who once told a Swiss newspaper that he “never felt the need to become an American.” He claimed he found the process “too complicated,” and instead, preferred to call himself “a spiritual dual citizen.”³

Despite Mr. Wyss’ disinterest in becoming an American citizen, he has leveraged his considerable wealth to influence American politics. While many liberal groups have been the beneficiaries of Mr. Wyss’ foreign cash, none have received more than Sixteen Thirty Fund. Through Berger Action Fund, the 501(c)(4) he controls, Mr. Wyss has funneled **\$243 million** into Sixteen Thirty Fund.⁴

According to a biography written by his own sister, Mr. Wyss’ personal goal is to “(re)interpret the American Constitution in the light of progressive politics.”⁵

To that end, Sixteen Thirty Fund uses its war chest – which includes Mr. Wyss’ hundreds of millions of dollars – to support massive get-out-the-vote drives, issue advocacy campaigns bolstering President Biden’s agenda, liberal pet projects from abortion to immigration, and attack ads against Republican lawmakers. The group has also dumped tens of millions of dollars into state ballot issues.⁶

This report will analyze the ways the Sixteen Thirty Fund weaponizes ballot issue campaigns to support liberal political causes and candidates. The findings reveal an urgent need to close this foreign influence loophole to ensure only American citizens are influencing American politics.



Caitlin Sutherland
APT Executive Director

Key Findings

After a thorough examination of over a decade's worth of tax returns filed by Sixteen Thirty Fund and state campaign finance disclosures, Americans for Public Trust has identified nearly \$100 million (\$97,593,151.38) in funding for ballot issues by Sixteen Thirty Fund across 25 states over the last 10 years.⁷

No part of the United States has been spared from Sixteen Thirty Fund's foreign money. Ballot initiatives in Michigan, Ohio, Colorado, Nebraska, Missouri, and Nevada have received the highest concentration of funding – ranging from \$6 million to almost \$34 million. Deep red states, like Arkansas, North Dakota, and South Dakota have also had their ballot issues bankrolled by Sixteen Thirty Fund. The group has used this foreign-backed cash to influence state policy on abortion rights, minimum wage, paid leave, drug policy, and voting rights.



What is a Ballot Issue?

A ballot issue is a form of direct democracy that allows citizens to enact laws by placing legislative or constitutional proposals directly on the ballot as an alternative to the ordinary legislative process. While the issues in ballot campaigns are presented as nonpartisan and nonpolitical – and the campaigns themselves are perhaps the most direct way the voices of every individual voter can be heard – they can be strategically crafted and deployed to specifically target a given political party's voter base.

In addition to being used to implement state policy changes, ballot issue campaigns are also used as a tactic to drive voter turnout in order to impact concurrent, contested political elections. For instance, a ballot initiative designed to appeal to liberal-leaning voters could also turn out support for a liberal officeholder who faces a competitive reelection in the same cycle.

How Can Foreigners Fund Ballot Campaigns?

Federal law prohibits foreign nationals from spending in connection with federal, state, and local candidate elections, but there is no federal prohibition against foreign nationals funding ballot issue campaigns. While some state laws restricting foreign funding of ballot initiatives exist, these laws are not widespread and more can be done to strengthen their effectiveness. Foreign influence loopholes open the door to state policies being influenced by foreign interests. Both federal and state law has long reflected the view that U.S. elections and policy should not be impacted by foreign interests and foreign funding. The fact that Sixteen Thirty Fund counts a foreign national as a top donor, while concurrently pumping almost \$100 million into ballot issues across the nation, is a pressing problem that demands attention. For more information on Hansjörg Wyss and the foreign influence loophole he is exploiting visit CloseTheWyssLoophole.org.



Top States Flooded With Sixteen Thirty Fund's Foreign Dark Money



Michigan

Almost \$34 million has poured into Michigan from Sixteen Thirty Fund since 2017. This foreign-backed money has been spread across nearly 10 ballot campaigns intended to place onerous burdens on small businesses, rewrite the state's election laws, and enshrine the right to an abortion in the state's constitution.⁸



Ohio

One of Sixteen Thirty Fund's first forays into the Buckeye State came when it quietly funded a weak on crime ballot initiative in 2018, that among other things, would have lessened the penalties for fentanyl possession, and shortened some prison sentences. In 2023, Sixteen Thirty Fund's ballot campaign spending in the state skyrocketed, with over \$14 million targeted in just eight months.⁹



Colorado

Colorado was one of the first states where Sixteen Thirty Fund started financing ballot issues - funding ballot campaigns on a range of issues from opposing tax cuts to allowing abortion in the second trimester. Sixteen Thirty Fund is not only monetarily invested in Colorado, but personally as well. The group's founder, Eric Kessler, is an alum of the University of Colorado, and Hansjörg Wyss' first job in the United States was with the Colorado Highway Department.¹⁰



Nebraska

Sixteen Thirty Fund has provided nearly all the financial backing for three separate ballot issues in Nebraska - two of which successfully passed in 2020 and 2022, and one of which is currently in the signature gathering phase as of March 2024. The latest effort underway to mandate paid sick leave, which at one point was 95% financed by Sixteen Thirty Fund, could drive small, rural businesses into bankruptcy by increasing their overhead costs.¹¹



Missouri

Much like its neighboring state Nebraska, Missouri has experienced a similar pattern of financial infiltration from the foreign-funded Sixteen Thirty Fund. In 2018, the same year Senator Roy Blunt faced a tough reelection, Sixteen Thirty Fund was the number one donor to a ballot campaign to raise the state's minimum wage. With a 2024 campaign underway to raise minimum wage again, and multiple statewide races on the ballot, history is set to repeat itself. Within weeks of opening up a campaign account for this ballot issue, Sixteen Thirty Fund wrote a 6-figure contribution.¹²



Nevada

In 2018 - again a year with competitive statewide elections - Sixteen Thirty Fund was the number one donor to a ballot issue that implemented automatic voter registration (AVR) in Nevada. AVR risks bloating voter rolls with inaccurate and duplicative voter registrations, and can even lead to ineligible voters, including noncitizens, being registered.¹³

Conclusion

Foreign nationals are prohibited from donating to U.S. political candidates, committees, and Super PACs, but there is no federal law prohibiting foreign nationals from donating to ballot committees. Some state laws exist to try to prevent this type of foreign influence, but in a majority of states, foreign nationals like Hansjörg Wyss are allowed to write blank checks to fund ballot issues that could prioritize their interests over those of the residents of the state. If state and federal laws permit a Swiss billionaire to fund ballot initiative campaigns, there is nothing stopping U.S. adversaries from Communist China, Russia, or North Korea from doing the same.¹⁴

American policy debates should be for American citizens. Stopping foreign nationals - whether they be a reclusive Swiss billionaire or a communist dictator - from funding U.S. policy fights is a simple step that state and federal lawmakers can take. This will also ensure policy battles favor domestic, not foreign, interests. In his 1796 Farewell Address, George Washington cautioned that "foreign influence is one of the most baneful foes of republican government." Over 200 years later, that sentiment remains true.¹⁵

Methodology

Hansjörg Wyss' history of giving to the Sixteen Thirty Fund, and Sixteen Thirty Fund's funding of ballot initiatives across the country, have been identified through a comprehensive analysis of the following sources:

1. Tax returns of Mr. Wyss' nonprofit organization, the Berger Action Fund (EIN:20-8948868, Years 2007 to 2022).
2. Tax returns of Sixteen Thirty Fund (EIN: 26-4486735, Years 2009 to 2022).
3. Media articles, including reporting by the *Associated Press*, *NBC News*, *Politico*, *The New York Times*, *Vox*, and more.
4. Paper and electronic records of state campaign finance filings.
5. Primary source documentation, including the biographical work, *Hansjörg Wyss: My Brother*, written by Swiss author Hedi Wyss, Mr. Wyss' sister.

Endnotes

- 1 Sixteen Thirty Fund, Form 990, 2009-2022.
- 2 Scott Bland, "Liberal 'Dark Money' Behemoth Funneled More Than \$400M in 2020," *Politico*, 11/17/21, Brian Slodysko, "Group Steers Swiss Billionaire's Money to Liberal Causes," *The Associated Press*, 4/4/23, and New Venture Fund, Form 990, 2022.
- 3 Giorgio V. Müller, "We Have Found A Good Home for Synthes," *Neue Zürcher Zeitung (NZZ)*, 6/11/11.
- 4 Brian Slodysko, "Group Steers Swiss Billionaire's Money to Liberal Causes," *The Associated Press*, 4/4/23 and Caitlin Oprysko, "Wyss' Nonprofit Showered Liberal Groups with More than \$63M," *Politico Influence*, 2/16/24.
- 5 Hedi Wyss, *Hansjörg Wyss - My Brother*, Page #50, eFeF-Verlag Wettlingen, 2014.
- 6 Scott Bland, "Left-Leaning Nonprofit Poured \$196 Million of Secret Money into Political World in 2022," *NBC News*, 11/15/23, Scott Bland, "Liberal Nonprofit Spent \$174M in 2021 as Big Money Kept Flowing After Trump," *Politico*, 11/11/22, and Scott Bland, "Liberal 'Dark Money' Behemoth Funneled More Than \$400M in 2020," *Politico*, 11/17/21.
- 7 See "Methodology" section of this report.
- 8 Alice Miranda Ollstein, "Michigan Votes to Put Abortion Rights into State Constitution," *Politico*, 11/9/22, Scott Bland, "Left-Leaning Nonprofit Poured \$196 Million of Secret Money into Political World in 2022," *NBC News*, 11/15/23, and Matthew Miller, "Michigan Supreme Court Will Rule on Tactic that Weakened Minimum Wage, Sick Leave Initiatives," *MJMag*, 6/21/23, Updated 12/6/23.
- 9 Laura Hancock, "Ohio Voters Defeat Issue 1 on Drug Crimes," *Cleveland.com*, 11/6/18, Updated 11/7/18, Ohio Secretary of State, "Campaign Finance Disclosure: 1630 Fund," Ohio SOS, 8/18/23 and Ohio Secretary of State, "Campaign Finance Disclosure: Sixteen Thirty Fund," Ohio SOS, 3/29/23-10/24/23.
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- 11 Erin Bamer, "Nebraska Petition Drive for Paid Sick Leave Has \$1.7 Million in Funding," *Omaha World-Herald*, 10/4/23, Updated 11/11/23, Greg Jaffe, "A Boom of Ballot Initiatives is Reshaping this State's Democracy," *The Washington Post*, 11/15/23, Updated 11/21/23, and Martha Stoddard, "Nebraska's Paid Sick Leave Petition Drive Raises More Than \$500,000," *Omaha World-Herald*, 9/3/23, Updated 12/3/24.
- 12 Kurt Erickson, "Campaign to Raise Minimum Wage in Missouri Lands Big Contributions," *St. Louis Post-Dispatch*, 10/19/23.
- 13 Nevada Secretary of State, "Campaign Finance Disclosure: Sixteen Thirty Fund," *NVSOS.gov*, 7/13/18-10/12/18, Search Term: "Sixteen Thirty Fund."
- 14 Lachlan Markay, "Scoop: FEC Lets Foreigners Finance U.S. Ballot Fights," *Axiom*, 11/1/21.
- 15 National Archives, "Founders Online: Farewell Address, 19 September 1796," *Archives.gov*, Speech Given 9/19/1796.

Mr. GRIFFITH. All right.

That being said, Mr. O'Neill, the Virginia attorney general, Jason Miyares, is looking into ActBlue and whether online fundraising entities are following Federal law and preventing foreign actors and other prohibited donations from entering the U.S. elections process.

Miyares is also looking into whether U.S. citizens' identities are being fraudulently used to make donations in their name without their approval to various candidates. This touches on something else that Mr. Morelle was talking about, if somebody really knows that their money is being given in their name.

Miyares's team informed my office that, while the attorney general is receiving a number of tips about potential fraudulent donations, the only way they have to identify or to verify that people listed as donors are actually the donors whose name appears on the donation is to send a staffer to the home of the person in question and knock on the door to verify their identity. There has got to be a better system, a better way of verifying that the donations are legitimate.

I ask you, in your experience with asset forfeiture, are there easier ways to verify identities than spending the man-hours to knock on the door of every name you are investigating?

And, of course, asset forfeiture does not have quite as strict of rules as when you are trying to set up a potential criminal case and, thus, have to apply—you have to apply criminal evidence standards.

You got an easier way we can do that?

Mr. O'NEILL. I wish I could say that there was a straightforward way to verify digital identities currently.

What I will say is, the system for identifying individuals is really quite broken. Since at least 1999, every single one of ours, if we are old enough—name, DOB, Social, address, previous address, mother's maiden name, bank account information, email address, email password—has been available online for sale for probably less than 2 cents apiece.

That makes it very easy for bad actors to steal other people's identities. Because when you look at what cyber criminals are doing, which is taking advantage of the elderly, the incarcerated, and children to take over identities, it makes it fertile ground in order to—

Mr. GRIFFITH. Certainly, people would want to do that in elections too.

I hate to cut you off—

Mr. O'NEILL. Sure.

Mr. GRIFFITH [continuing]. but I am trying to get another question in before my time runs out.

Mr. Bowman, Spamouflage is one of China's, apparently, propaganda operations, and they have taken a special interest in Senator and current Secretary of State nominee Marco Rubio.

Clemson University's Media Forensics Hub reported that, on the morning of his most recent election, X exploded with around 20,000 messages, spanning 6,500 different accounts, with strange messages about Mr. Rubio. Further, they found anti-Rubio articles

posted on places such as Medium and Reddit. All these posts were traced back to China and Spamouflage, their network of accounts.

This is concerning and a clear example of foreign interference in our elections. How do we maintain free speech while also ensuring that foreign adversaries are not spreading propaganda on our public forums with the intent to either sway elections or, as you previously testified, to divide Americans?

Mr. BOWMAN. Thank you, Congressman, for the question.

As my colleagues highlighted in a research memo published this morning at FDD.org—

Mr. GRIFFITH. I have not read that one yet.

Mr. BOWMAN [continuing]. Spamouflage—yes, yes. No, I know you are busy, but, yes, just flagging it for you, you and your staff—Spamouflage is a big deal. It involves a vast network of fake accounts on social media.

They typically have pushed out low-quality content that, with a few exceptions, garnered little—I am happy to report—little organic engagement on social media. A notable trend with Spamouflage this election cycle was that it leveraged antisemitic tropes to criticize both the American political system and specific candidates.

To your broader question, eyeing the clock here, I think it is important to distinguish between foreign adversaries trying to influence our democracy and undermine our democracy in an opaque manner and what American citizens are doing in—I know you understand that, sir, but I just think it is a very important distinction that we should highlight.

Mr. GRIFFITH. I appreciate that. I appreciate that.

Mr. Chairman, I am going to yield back. I apologize. I find this to be a very interesting hearing. I appreciate the witnesses. I still have about 300 pages to go in the CR, and they are now saying they might vote this afternoon, so I have got to go back to read that.

Chairman STEIL. It is a busy day.

Mr. GRIFFITH. I yield back and apologize for leaving.

Chairman STEIL. Busy day. Appreciate your time here.

The gentleman yields back.

Mrs. Torres is recognized for 5 minutes.

Mrs. TORRES. Thank you, Chairman.

I think that all of us in this room agree that more needs to be done to ensure that our elections are free of foreign interference. I am just sad that this is our last hearing of the year, talking about such an important topic that has impacted—I am not sure about all the Members here, but it certainly has had a personal impact on me, including members of MS-13 being sent to my home while having a swim—or hosting a swim party for toddlers—toddlers—as a way to intimidate a Member of Congress. We should never tolerate that, no matter what side of the aisle that you sit on.

Mr. O'Neill, in your testimony, you said that, as technology advances, there must be spaces for sharing security information with our foreign counterparts. I absolutely agree with you.

The U.S. is facing an information war. We cannot continue to allow countries—and we mentioned in China, very loosely Russia, very loosely Iran. We forget about countries in Latin America. We

must not forget that Latin America is also very involved in our elections.

Congress must ensure the safety of our country by securing the global information environment to uphold the integrity of information. That is why I introduced the International Artificial Intelligence Research Partnership Act. This bill would build partnerships between cities in the U.S. and our allies across the world to ensure that the next generation of AI tools enhance security and protect freedom.

I am greatly concerned that the incoming administration does not prioritize efforts to protect our core freedoms and may work to weaken the Federal agencies combating foreign influence. On page 155 of “Project 2025,” Republicans want to exterminate the very organizations protecting us from foreign interference, like the Cybersecurity and Infrastructure Security Agency, which assists election officials with election security threats.

Mr. O’Neill, based on your experience with the U.S. Secret Service, do you believe that foreign governments are targeting our elections and our democracy through information integrity warfare?

What could be the impact if Republicans continue on this process of defunding or completely eradicating Government entities that help us combat malign influence?

Mr. O’NEILL. When I was with the U.S. Secret Service, we investigated several cases. One, in particular, was a Russian individual that was leveraging fake identities to create infrastructure in the United States, specifically servers, in order to launch misinformation campaigns through social media platforms. We leveraged the wire fraud statutes, bank fraud statutes, identity theft statutes in order to charge him.

That was—he was part of Project Latva, or something like that, from 2018 to 2020. We saw many other cases that were similar to that.

One of the challenges that I fear is that the United States is still, as a country and as small, midsize businesses and large businesses, unprepared to handle cyber attacks.

Mrs. TORRES. In 2002, Congress strengthened a ban on foreign interference, specifically to prevent foreign actors from influencing the outcomes of our elections. I am troubled by the lack of meaningful enforcement of this provision by Federal law by the FEC. This past year, the FEC acted on less than half of the cases involving potentially illegal foreign interference.

This inaction appears to be driven by partisanship. Almost every matter the FEC has not pursued is associated with a former President. This is where we need to be Americans-first, not party—not relegate our duties to our parties.

I want to include for the record here, Mr. Chairman—I request unanimous consent to submit the statement on behalf of the Citizens for Responsibility and Ethics in Washington.

Mr. Chairman?

Chairman STEIL. Without objection.
[The statement referred to follows:]

**Testimony Submitted for the Record
Committee on House Administration
Hearing: “American Confidence in Elections: Prohibiting Foreign Interference”**

By Debra Perlin, Policy Director, Citizens for Responsibility and Ethics in Washington

December 18, 2024

Chairman Steil, Ranking Member Morelle, and members of the Committee, thank you for the opportunity to submit testimony regarding the importance of protecting American elections from foreign interference.

My organization, Citizens for Responsibility and Ethics in Washington (CREW), is a nonpartisan nonprofit organization dedicated to fighting corruption and preserving ethical democracy. Among our other work, CREW has been a leader in protecting the integrity of our democracy, including our elections, by identifying and combatting threats of foreign interference in the political process. I write today to call attention to President-elect Donald Trump’s myriad foreign conflicts of interest, and to demonstrate how those conflicts threaten the integrity of American elections.

For the past several years, CREW has documented the shocking extent of President Trump’s entanglements with foreign governments, often through his businesses. Earlier this year, after a review of an incomplete set of President Trump’s financial documents, the Democratic staff of the House Committee on Oversight and Accountability found that President Trump “accepted more than \$7.8 million in payments from foreign states and their leaders” during his first term in the White House.¹ A recent CREW analysis uncovered yet more financial ties, finding that President Trump likely benefited from at least \$13.6 million in payments from 25 foreign nations during his first term.² Of that \$13.6 million, the more than \$5.7 million that President Trump received from the Chinese government stands out given the assessment by intelligence officials, academics, and tech companies that the Chinese government attempted to interfere in the 2024 presidential election by inflaming tensions and stoking divisions among American voters.³ President Trump’s income from Saudi Arabia—which CREW estimates to have been at least \$885,422 during his first

¹ Dem. Staff of H.R. Comm. on Oversight and Accountability, 118th Cong., *White House for Sale: How Princes, Prime Ministers, and Premiers Paid Off President Trump 9* (2024), <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2024-01-04.COA%20DEMS%20-%20Mazars%20Report.pdf>.

² Robert Maguire and Rebecca Jacobs, *Trump likely benefited from \$13.6 million in payments from foreign governments during his presidency*, CREW (Sep. 17, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/trump-likely-benefited-from-13-6-million-in-payments-from-foreign-governments-during-his-presidency>.

³ Sheera Frenkel, Tiffany Hsu, and Steven Lee Myers, *How Russia, China and Iran Are Interfering in the Presidential Election*, N.Y. Times (Oct. 29, 2024), <https://www.nytimes.com/2024/10/29/technology/election-interference-russia-china-iran.html>.

term—also raises significant national security concerns given that country’s documented attempts to build up influence operations in the United States as the Kingdom works to rehabilitate its image following the brutal assassination of U.S. resident and journalist Jamal Khashoggi.⁴

President Trump received those funds from foreign nations through his private business interests. As of September 21, 2020, 145 foreign officials from 75 governments visited Trump-owned properties during his first term, including more Turkish officials than representatives of any other country.⁵ One of these visits—by staff of Saudi Crown Prince Mohammed bin Salman—reportedly drove a spike in quarterly profits at the Trump hotel in Manhattan in 2018.⁶ Additionally, foreign governments hosted 13 events at Trump-owned hotels and resorts during President Trump’s first term, bringing 67 foreign officials (and 20 Trump administration officials) to those properties.⁷ Among those 13 events was the Philippine Embassy’s 2018 Independence Day celebration, held at the Trump hotel in Washington D.C., a venue choice which the Philippine Ambassador the United States said was “a statement that we have a good relationship with this president.”⁸ The former president also benefited indirectly from foreign governments during his first term: Trump businesses were granted 67 foreign trademarks during that time period, including 46 trademarks from China.⁹

As President Trump prepares to return to the White House, his financial entanglements with foreign governments remain an ongoing concern. In addition to future visits to and events at Trump properties by foreign governments and officials, and new foreign trademark applications—including a recent application for a trademark in Mexico¹⁰—new

⁴ Adam Lowenstein, *The American PR firm helping Saudi Arabia clean up its image*, *The Guardian* (Dec. 22, 2022), <https://www.theguardian.com/world/2022/dec/22/edelman-saudi-arabia-pr-image>.

⁵ CREW, *President Trump’s 3,400 conflicts of interest* (Sept. 24, 2020), <https://www.citizensforethics.org/reports-investigations/crew-reports/president-trumps-3400-conflicts-of-interest>.

⁶ David A. Fahrenthold and Jonathan O’Connell, *At President Trump’s hotel in New York, revenue went up this spring — thanks to a visit from big-spending Saudis*, *Wash. Post* (Aug. 3, 2018), https://www.washingtonpost.com/politics/at-president-trumps-hotel-in-new-york-revenue-went-up-this-spring--thanks-to-a-visit-from-big-spending-saudis/2018/08/03/58755392-9112-11e8-bcd5-9d911c784c38_story.html.

⁷ CREW, *President Trump’s 3,400 conflicts of interest* (Sept. 24, 2020), <https://www.citizensforethics.org/reports-investigations/crew-reports/president-trumps-3400-conflicts-of-interest>.

⁸ Anita Kumar, *Trump can’t stop bragging to foreign leaders about his resorts*, *Politico* (Oct. 20, 2019), <https://www.politico.com/news/2019/10/20/trump-resorts-emoluments-foreign-leaders-050540>.

⁹ CREW, *President Trump’s 3,400 conflicts of interest* (Sep. 24, 2020), <https://www.citizensforethics.org/reports-investigations/crew-reports/president-trumps-3400-conflicts-of-interest>.

¹⁰ Jordan Libowitz and Rebecca Jacobs, *Trump applied for Mexico trademark on Trump Tower*, *CREW* (Dec. 13, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-applied-for-mexico-trademark-on-trump-tower>.

potential sources of payments from foreign states to Trump-owned businesses continue to emerge. The Saudi-funded LIV Golf league may continue to host events at Trump-owned properties; LIV Golf has held six events at Trump properties since 2021.¹¹ Though it is unknown exactly how much Trump resorts receive directly from LIV Golf for hosting an event, a single 2022 LIV Golf tournament generated nearly \$800,000 in revenue for the Trump-owned golf club which hosted the event.¹² Elsewhere, a large Trump-branded property in Oman with significant ties to the Omani government is currently under construction and has already generated millions in revenue for Trump businesses.¹³ And in New York, five foreign governments are set to pay nearly \$2 million in monthly fees for units in Trump World Tower throughout the course of President Trump's second term.¹⁴

President Trump's growing collection of foreign conflicts of interest—including with countries who have documented influence campaigns in the United States and have tried to influence the outcome of our elections—severely weakens and degrades our democracy. Multiple national security experts have warned about the risks associated with President Trump's business relationships with foreign nations.¹⁵ These relationships cast doubt on whether President Trump's foreign policy decision making—particularly with respect to nations like China and Saudi Arabia, whose governments have funneled significant funds to Trump-owned businesses—is driven primarily by the public's interest, or President Trump's own private interest. The possibility that President Trump may advance a foreign policy that is in his own personal interest, and the interest of adversarial foreign nations, but adverse to the best interests of the United States, undermines the democratic link between the American people and the president who is supposed to represent them. And if foreign nations know they can influence American foreign policy to their benefit by patronizing the president's businesses, it incentivizes them to influence American elections in an effort to keep that president and his allies in power. If the presidency is for sale, then so too is the integrity of American elections.

¹¹ CREW, *The intensifying threat of Donald Trump's emoluments* (Aug. 28, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-intensifying-threat-of-donald-trumps-emoluments>.

¹² Leo Kamin, *Here's How Much Trump Received For Hosting Saudi-Backed Golf Tournament*, *Forbes* (July 9, 2024), <https://www.forbes.com/sites/leokamin/2024/07/09/heres-how-much-trump-received-for-hosting-saudi-backed-golf-tournament>.

¹³ CREW, *The intensifying threat of Donald Trump's emoluments* (Aug. 28, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-intensifying-threat-of-donald-trumps-emoluments>.

¹⁴ CREW, *The intensifying threat of Donald Trump's emoluments* (Aug. 28, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-intensifying-threat-of-donald-trumps-emoluments>.

¹⁵ Susan Hennessey, *Ethics Rules Are National Security Rules*, *Lawfare* (Jan. 10, 2017), <https://www.lawfaremedia.org/article/ethics-rules-are-national-security-rules>; Richard Painter, *Good Governance Paper No. 15: Enforcing the Emoluments Clauses*, *Just Security* (Oct. 30, 2020), <https://www.justsecurity.org/73148/good-governance-paper-no-15-enforcing-the-emoluments-clauses>.

This threat to American democracy and election integrity is precisely why the framers of our Constitution created the Foreign Emoluments Clause. The Foreign Emoluments Clause prevents the president from receiving, among other things, profits, gains or advantages from foreign governments, without the consent of Congress.¹⁶ The framers recognized, correctly, that a president's loyalty could be compromised by his personal financial interest. By failing to divest from his business interests during his first term President Trump violated the Foreign Emoluments Clause.¹⁷ Should he refuse to divest again, he will continue to be in violation.

American elections are sacred. One of the primary ways we can protect them is to make sure that the president is putting American interests, and the integrity of American elections, before his own private financial interest. Through President Trump's significant financial entanglements with foreign governments who have actively tried to influence American elections and American public opinion, the sacred nature of our elections, and our democracy, is under threat. We thank the Committee for holding this important hearing and look forward to working jointly to make our democracy stronger.

¹⁶ U.S. Const. art. I, § 9, cl. 8.

¹⁷ CREW, *The intensifying threat of Donald Trump's emoluments* (Aug. 28, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-intensifying-threat-of-donald-trumps-emoluments>.

Mrs. TORRES. Thank you.

And, last, my question to you is: Do you agree that the FEC should be investigating credible allegations of foreign interference in our elections?

Ms. Sutherland?

Ms. SUTHERLAND. Yes.

Mrs. TORRES. Thank you.

Mr. Bowman?

Mr. BOWMAN. Not my area of focus, but that makes sense, Congresswoman. Thank you.

Mrs. TORRES. Of course, this is a common sense that we all agree on. When the agency is tasked with protecting our campaign finance system—is broken—creating loopholes, and failing to investigate credible allegations, we not just fail ourselves, we fail our electorate.

With that, I yield back.

Chairman STEIL. The gentlelady yields back.

Mrs. Bice is now recognized for 5 minutes.

Mrs. BICE. Thank you, Mr. Chairman and Ranking Member, and thank the witnesses for being here this morning.

First, let me start out by saying, the Ranking Member mentioned issues with large donations coming from individuals that may or may not be able to afford that. The reality is that, oftentimes, these folks are setting up a reoccurring donation and do not realize it, because they may not be familiar with that, but they also have the option to ask for a refund, and oftentimes they do. If you look at many of our FEC reports, those individuals are getting their dollars back.

I want to first start out by addressing Mr. Johnson's opening statement. You talked about this very serious issue that you have in Montana with mining, but the reality is that is a State issue, and the State legislature—me having been a former State senator—they should be addressing that. I do not think that that is something that necessarily Congress needs to engage itself in if it is a State prerogative.

I also want to, you know, recognize that fair and transparent elections are crucial, and that is on every—in every avenue. I am glad to see that my friend from Ohio, Rep. Carey's legislation was signed into law, that congressional election observers will be protected by Federal statute, and I also want to thank the staff who volunteered their time this last election to be part of that process.

I want to start with Ms. Sutherland. You talked a little bit in your opening statement about Hansjörg Wyss. Can you describe a little bit more about the 501(c)(4) organizations that he participates in?

And, particularly, you caught my attention because you mentioned Oklahoma Voice and their engagement with that. I wonder if there are other ballot initiatives that they may be engaging in in the State of Oklahoma, but I would love to know a little bit more about the organizations.

Ms. SUTHERLAND. Absolutely. Hansjörg Wyss, as I said, is a reclusive Swiss billionaire, so reclusive he is probably very bothered that we are having this hearing and exposing his pattern of giving because it is difficult and complicated to track. Most of his foreign

money comes through a group called the Berger Action Fund, which the Associated Press described as a nondescript name for a group with a rather specific purpose: Steering the wealth of a foreign billionaire into the world of politics and policy. And, yes, we have seen his foreign money, you know, pop up in many things, including giving to States Newsroom through the Wyss Foundation which operates the Oklahoma Voice in your State.

Also, his foreign money has been traced to all these ballot initiatives. Through the Sixteen Thirty Fund, we have seen over a \$130 million in 25 States over the last several election cycles.

Mrs. BICE. Can you talk about what specifically some of those ballot initiatives are?

Ms. SUTHERLAND. Yes. Just this year, in 2024, we were able to trace 37 million in foreign-backed funds coming into eight competitive ballot issues, focusing on issues like abortion, minimum wage, and election policy, like what happened in Ohio.

Mrs. BICE. Perfect.

Mr. Bowman, if I can pivot to you. What are the most concerning tactics that our foreign adversaries are using to influence U.S. elections?

Mr. BOWMAN. Thank you, Congresswoman, for the question.

Russia's most significant operations in this election cycle involved a series of hoax videos published in the weeks before the election, several of which went viral. Fortunately, I would say, the U.S. Government promptly responded in many cases, as some of my colleagues noted. In one instance, a fake video depicting someone burning ballots in Pennsylvania was debunked by local election officials on the same day the video was posted, and the Federal Government released an official statement 2 days later attributing to Russia.

Iran's most significant activity involved, as was mentioned, the hack-and-leak operation targeting the Trump campaign. While Iran successfully compromised sensitive materials from the Trump campaign, mainstream media outlets did not publish this information. Iran also targeted swing States and minority groups through a series of fake websites, but those do not appear to have gained significant traction, for the most part.

Finally, China, as we mentioned already earlier, focused on its flagship influence operations with Spamouflage.

If I may, the main point here, I think, is that we are all under attack, right? We should remember that, right? If I may, they want us to make this a partisan fight because then we will be divided and distracted and weak. We are all under attack. It is like when your family's attacked, right? All that matters is your family's attacked. The family comes together. You work together to solve it.

This is absolutely, in my view, a national security issue, and we make it a—it would be a mistake to make it a partisan one.

Mrs. BICE. Perfect segue into a quick last question, and that is to Mr. O'Neill. What do you think legislatively we could be doing to actually make sure that our elections are more secure moving forward?

Mr. O'NEILL. I think, primarily, it is bringing more of the tech—the new fintech and payment systems into the AML regime in

order to have more KYC so we can understand how money flows and so, therefore, we can take enforcement action.

Mrs. BICE. Great. Thank you.

With that, I yield.

Chairman STEIL. Congresswoman Bice yields back.

Congressman Carey from Ohio is recognized for 5 minutes.

Mr. CAREY. I want to thank the Chairman and I want to thank the Ranking Member for this important—for this important hearing, and also thank all the witnesses for being here.

Ms. Sutherland, I want to touch briefly on a couple things because we are going to talk mining, but if you could just talk to me a little bit about, on the same day that Governor DeWine called for a special election in Ohio earlier this year, and the Sixteen Thirty Fund, literally that day, wired \$6 million to the proponents of Issue One. Can you just talk a little bit about that?

Ms. SUTHERLAND. Yes. As you said, on the same day that Governor DeWine called that special session to tackle two things—getting then-President Biden on the ballot in Ohio and, two, banning foreign money—Sixteen Thirty Fund, clearly sensing that this, you know, ban on foreign money was going to pass, sent \$6 million into an Ohio ballot issue committee, seemingly front-loading the cash before it became illegal in Ohio.

Mr. CAREY. That is right. Is it true that after the Ohio Legislature passed a ban on the foreign national contributions to the ballot issues in Ohio, that there was an attorney—I believe Marc Elias—who sued Ohio to block the law so that foreign nationals could still contribute to the ballot issue?

Ms. SUTHERLAND. That is absolutely correct. Marc Elias, he has been very busy this election year denying the results in the Pennsylvania Senate race, as well as defending that foreign money should be allowed to come into Ohio. Just weeks after the Ohio Legislature passed that ban, he turned around and sued the State of Ohio, arguing that foreign nationals should be able to contribute to ballot issues. Fortunately, the Sixth Circuit recently upheld that decision and said that the law can go into effect.

Mr. CAREY. I want to thank you.

All right. Mr. Johnson, we are going to go to you. Does your organization take any foreign money, whether directly or indirectly?

Mr. JOHNSON. Representative, I do not believe so. I checked in with our business manager, and for the past—

Mr. CAREY. You do not know whether you take it directly or indirectly? You do not know?

Mr. JOHNSON. We do not receive any foreign money.

Mr. CAREY. Let me ask you this. Are you aware of the Surface Mining Control Act that was passed in 1977?

Mr. JOHNSON. I am.

Mr. CAREY. Tell me the laws as it relates to bonding in the State of Montana.

Mr. JOHNSON. The laws in Montana require bonding for coal mining, which is different from what I am here to talk about today, which is hardrock mining.

Mr. CAREY. You are saying the acid mine drainage from the tunnel—the tunnel in your testimony, the tunnel mine was not from coal mining?

Mr. JOHNSON. No, that was not, and the—so we do not typically have, in my experience in Montana, acid mine drainage associated with coal mining as you might in the East Coast. This is more of a hardrock mining issue.

Mr. CAREY. I would really like to know whether you can actually—and if you could get back with our teams on this—whether you indirectly or directly take foreign money at all. Because I do not know whether you are aware of this, but on December 3d, China announced that they were going to ban several very important hardrock minerals and critical materials that are necessary for manufacturing in this country, and there is nobody that wants to make sure that we do not explore our natural resources more than the country of China or any other foreign entity.

If you could get back to my team, just to make sure that we do not have, you know, any issues with that, because we do have a very good bonding system in this country as it relates to mining.

And, you know, my dear friend, Mr. Morelle, was showing those pictures. I would like to take you to some of these mines across the country that I have been in in many, many cases. They are bonded, they are clean, they are reclaimed. That is what we need to be doing. We need to be exploring our natural resources. I just wanted to point that out.

I am going to go real quickly, though—because I have got very limited time. Mr. Bowman, we had a tough weekend in sports. You know, Navy beat us, right?

Mr. BOWMAN. That is right. That is right.

Mr. CAREY. We are seeing foreign adversaries single-handedly trying to influence our election outcomes. To what extent are foreign adversaries coordinating with each other to influence these U.S. elections?

Mr. BOWMAN. Thank you for the question. I will try to be quick.

I think one of the most significant—as someone who focuses, frankly, on foreign defense policy, I think one of the most significant geostrategic developments we are confronting right now is the growing axis of aggressors, where we have China, Russia, Iran, and North Korea working together in ways we have not seen before. I do not think we have encountered anything quite like this in modern American history, and I think this has ramifications for our defense budget and our foreign policies here at home.

What we have been describing about what China and Russia have been doing, they are going to be sharing those tactics, techniques, and procedures with Iran and North Korea, and they are all going to be more effective together in the future. I think we need to see that collaboration for what it is, and that is going to make these challenges more daunting in the future.

Mr. CAREY. I want to thank you again.

I want to thank all the witnesses.

Mr. Chairman, I yield back.

Chairman STEIL. The gentleman yields back.

Before we recognize Mr. D'Esposito, I would like to just recognize Mr. D'Esposito's hard work on this Committee. You are spectacular. You brought in a background from a time as a New York police officer and detective in a particular period of time when we had work to do with U.S. Capitol Police, with crime in D.C., and this

hearing on foreign interference and election law. You have been a spectacular Member of this Committee, and your time here will not be unnoticed in the fu—as we look at the history of this Committee. Just want to thank you for all your hard work on this Committee and your time in Congress.

Now I will recognize Mr. D'Esposito for 5 minutes.

Mr. D'ESPOSITO. Thank you very much, Mr. Chairman. It has been an absolute honor to serve on this Committee with all of you, and I hope my time on this dais is not over.

Before I continue, I would like to submit for the record a letter from People United For Privacy in support of H.R. 8399, which is the Donor Privacy Protections in Foreign Influence Act, which is a piece of legislation by Chairman Steil.

Chairman STEIL. Without objection.

[The letter referred to follows:]

PEOPLE UNITED for PRIVACY

December 18, 2024

hcd reports HC 8399

The Honorable Bryan Steil
Chair, U.S. House Committee on House
Administration
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Joseph D. Morelle
Ranking Member, U.S. House Committee on
House Administration
1216 Longworth House Office Building
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✓ AJ

RE: Importance of Nonprofit Donor Privacy Protections in "Foreign Influence" Legislation

Chairman Steil, Ranking Member Morelle, and Members of the House Committee on House Administration:

On behalf of People United for Privacy (PUFP),¹ I submit the following comments for the hearing record related to the December 18, 2024 hearing in the U.S. House Committee on House Administration on "American Confidence in Elections: Prohibiting Foreign Interference." These comments build on a prior Statement for the Record from PUFP regarding a May 16, 2024 hearing on "American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference."²

Americans are rightly opposed to foreign influence in elections because it undermines the integrity of the democratic process, threatens national sovereignty, and erodes public trust in the fairness and legitimacy of our electoral systems. U.S. elections and political campaigns must be run for and by the American people, not foreign interests or federal bureaucrats.

As legislation is considered to ensure that foreigners cannot influence U.S. elections through donations to American nonprofits, we must also ensure that these laws do not become weapons for a future administration or federal agencies, such as the IRS, to invade the privacy of American donors and chill constitutionally-protected speech.

I. In an era of weaponized government, Congress must balance legitimate concerns about foreign electoral inference with American constitutional guarantees for free speech and privacy in association.

Donald Trump's election victory was a repudiation of the rampant weaponization of government against opponents of the outgoing administration. Congress must now proactively ensure that think tanks, advocacy nonprofits, trade associations, nonprofit journalism, and grassroots advocates that exposed governmental abuses are free to continue to inform the public on pressing issues without fear of harassment from radical activists and entrenched interests. To that end, legislation that imposes donor reporting or prohibitions on the political and issue-based engagement of nonprofits that receive foreign donations must be carefully considered and narrowly tailored to avoid unintended consequences and the trampling of vital speech and privacy rights.

¹ People United for Privacy's vision is an America where all people can freely and privately support ideas and nonprofits they believe in, so that all sides of a debate will be heard, individuals won't face retribution for supporting important causes, and all organizations maintain the ability to advance their missions because the privacy of their supporters is protected.

² See Matt Nese, "Support for Robust Privacy Protections for Nonprofits and their Supporters and Caution About Harmful Policy Impacts of Foreign Donor Reporting Schemes," People United for Privacy. Available at: https://unitedforprivacy.com/wp-content/uploads/2024/05/Letter_US-House-Administration-Committee_Foreign-Interference-Hearing.pdf (May 16, 2024).

Fears of foreign meddling in America's political discourse are not new, especially in recent political history. Indeed, prominent Democrats have seized on anxiety about foreign influence as a pretense for pursuing broader and unrelated political goals. Then-President Barack Obama infamously protested in his 2010 State of the Union Address that the Supreme Court's *Citizens United* decision would "open the floodgates" for unfettered foreign interference in American elections,³ prompting Justice Samuel Alito to mouth the words "not true" in response to the sensational claim. More recently, Congressional Democrats sought to justify privacy invasions in the odious "For the People Act"⁴ and "DISCLOSE Act"⁵ to counter alleged Russian interference supporting Donald Trump in the 2016 presidential election.

What most separates America from our adversaries is the First Amendment and our cultural and legal respect for free speech and the privacy guarantees speech requires to thrive. Empowering government agencies with new authority to collect information about nonprofit donors creates new opportunities to abuse that power at acute risk to the speech and privacy rights of American donors to American nonprofits. Compliance with foreign donor reporting mandates necessarily authorizes government officials to demand information on nonprofit donor lists for verification purposes. These expanded nonprofit reporting requirements will increase the likelihood that overzealous or biased bureaucrats will find new justifications for fishing expeditions that expose the identities of Americans and the causes they support to public scrutiny.

II. Because of the privacy, speech, compliance, and enforcement concerns inherent in legislation responding to worries about foreign election interference in the nonprofit sector, such measures must abide by four bright-line rules to safeguard First Amendment freedoms.

It is incumbent on Members of Congress to proceed cautiously before engaging in this deeply sensitive area, where pitfalls and unintended consequences lurk around every policy consideration. We believe the following guidelines will minimize the harms such legislation is likely to invite:

- **Bills targeting foreign donors to nonprofits must avoid generalized donor reporting.** While donors to candidates and political committees are publicly disclosed, Americans possess robust First Amendment rights to keep their beliefs and affiliations private if they so choose. A sweeping disclosure mandate would violate the privacy rights of American donors to American nonprofits in direct violation of established Supreme Court precedent,⁶ which has repeatedly emphasized the importance of limiting laws that mandate donor disclosure because of the chilling effect this policy has on freedom of speech.
- **The existence of a foreign donor should not result in a nonprofit being prohibited from engaging in protected speech.** Banning American nonprofits from engaging in political or issue advocacy simply because an organization receives a single donation from a foreign

³ Bradley A. Smith, "Celebrate the *Citizens United* Decade," *The Wall Street Journal*. Available at: <https://www.wsj.com/articles/celebrate-the-citizens-united-decade-11579553962> (Jan. 20, 2020).

⁴ Eric Wang, "Analysis of H.R. 1 (Part One): 'For the People Act' Is Replete with Provisions for the Politicians," Institute for Free Speech. Available at: https://www.ifs.org/wp-content/uploads/2021/02/2021-02-22_IFS-Analysis_HR-1_DISCLOSE-Honest-Ads-And-Stand-By-Every-Ad.pdf (Feb. 22, 2021).

⁵ Matt Nese, "Opposition to the DISCLOSE Act and its Destructive Impact on Nonprofit Advocacy and Citizen Privacy," People United for Privacy. Available at: https://unitedforprivacy.com/wp-content/uploads/2022/07/2022-07-25_PUFP-Letter-US-Senate-Rules-Committee_DISCLOSE-Act-Hearing.pdf (July 25, 2022).

⁶ See, e.g., *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021). For additional precedent, see FN 7 in Bradley A. Smith, "Americans for Prosperity Foundation v. Bonta: Questions and Answers," Institute for Free Speech. Available at: https://www.ifs.org/wp-content/uploads/2021/08/2021-08-30_Explainer-Smith_Americans-For-Prosperity-Foundation-v-Bonta-QA.pdf (Aug. 30, 2021).

individual or entity would do far more to prevent Americans from exercising their core First Amendment rights than to prevent foreign interference. Doing so also advances the extreme theory that any engagement in the political process should force a nonprofit to face the same level of regulation and disclosure as a political committee. This same theory underlies many of the most significant threats to donor privacy proposed in Congress of late, including the notorious “DISCLOSE Act.”⁷ Nonprofits cannot be forced to sacrifice their right to engage in First Amendment-protected activity as a condition of accepting an otherwise legal donation.

- **Compliance with foreign donor regulations cannot be so extensive or inflexible as to be impossible.** Nonprofits routinely receive donations without the ability or resources to verify the citizenship status of the donor. In many cases, attaining confirmation of citizenship status may be impossible, especially for grassroots organizations, and requiring Americans to provide such documentation may discourage their giving. Additionally, such restrictions cannot effectively criminalize the receipt of anonymous donations. Anonymous giving is not only a time-honored tradition in American philanthropy but a protected constitutional right.
- **Bills must include safeguards that lessen the likelihood of a weaponized enforcement process.** This necessarily involves special protections that allow nonprofits accused of violations to defend themselves from frivolous complaints lodged by their ideological opponents. The burden of proof must be on the actor lodging the complaint, not the accused, and cost-shifting penalties for frivolous complaints should be included in any such legislation.

Faithfulness to these guidelines will limit potential damage to the nonprofit sector and the privacy rights of Americans who support worthy causes.

III. H.R. 8399, the “Preventing Foreign Interference in American Elections Act,” generally embodies the aforementioned guidelines, limiting the risk to nonprofit privacy and advocacy rights and minimizing the associated weaponization and enforcement concerns.

No measure that imposes additional disclosure mandates on the nonprofit sector can entirely avoid problematic provisions for donor privacy rights and nonprofit advocacy freedoms. However, H.R. 8399 generally follows the aforementioned guidelines and represents a more narrowly tailored alternative to competing legislative proposals that have advanced in the 118th Congress.⁸ To its credit, H.R. 8399 demonstrates a serious concern for both protecting Americans’ hard-earned donor privacy rights and preventing potential nonprofit speakers from falling victim to either weaponized enforcement or frivolous and costly allegations from unscrupulous ideological opponents.

First, H.R. 8399 includes the Speech Privacy Act, which codifies the U.S. Supreme Court’s *Americans for Prosperity Foundation v. Bonta* decision⁹ – reaffirming legal protections for nonprofit donor privacy – by prohibiting federal agencies from arbitrarily collecting or releasing Americans’ nonprofit membership or donation records. The Speech Privacy Act excuses agencies that are

⁷ See note 5, *supra*. See also, Alex Baiocco, “House Republicans Vote to Grant IRS New Power to Police Political Speech,” People United for Privacy. Available at: <https://unitedforprivacy.com/house-republicans-vote-to-grant-irs-new-power-to-police-political-speech/> (Oct. 2, 2024).

⁸ See Matt Nese, “Support for Nonprofit Donor Privacy Protections and Concerns with Harmful Privacy, Speech, Compliance, and Enforcement Impacts of Proposed Bills Targeting Alleged Foreign Electoral Interference,” People United for Privacy. Available at: <https://unitedforprivacy.com/wp-content/uploads/2024/05/Letter-US-House-Ways-And-Means-Committee-Foreign-Influence-Legislation-Mark-Up.pdf> (May 15, 2024).

⁹ Luke Wachob, “Surveying the Landscape on Donor Privacy Two Years After *AFPF v. Bonta*,” People United for Privacy. Available at: <https://unitedforprivacy.com/surveying-the-landscape-on-donor-privacy-two-years-after-afpf-v-bonta/> (June 28, 2023).

required by law to collect this information in certain circumstances, like the Federal Election Commission, and stipulates penalties for government officials that illegally expose this sensitive data.

For nonprofits, privacy is especially important for organizations that challenge the practices and policies of the very government officials that seek the identities of their members and supporters. The Speech Privacy Act is a proven policy that responds to and resolves these concerns. Indeed, state equivalents of the Speech Privacy Act have become law in 20 states to date, frequently with bipartisan – and sometimes unanimous – support.¹⁰

Despite more than six decades of rulings from the Supreme Court upholding the privacy rights of donors to nonprofit causes, efforts to violate personal privacy rights continue unabated in Congress, at regulatory agencies, and in states across the country.¹¹ The lesson is clear: Precedent alone is not enough to safeguard Americans' personal privacy. Proactive protections are needed.

Second, H.R. 8399 avoids further empowering the IRS with any new authorities or imposing new donor disclosure requirements. Instead, its provisions are enforced by the Federal Election Commission, an agency that requires bipartisan consensus amongst its members before approving any investigation or initiating any agency action.

Unlike the FEC, the IRS has neither the expertise nor the appropriate structure to regulate political activity while balancing such decisions with the fundamental First Amendment and donor privacy concerns at stake. The agency's shortcomings in this area have been on full display – and the subject of widespread condemnation – over the last decade, from the still unresolved Tea Party targeting scandal in the early 2010s,¹² to the agency's ham-fisted response in issuing an ill-considered and ill-fated proposed rulemaking on political activity,¹³ to leaks by the agency of conservative organizations' private donor information.¹⁴

¹⁰ PUFFP Staff, "20 States Pass Bipartisan Privacy Law to Protect Americans From Doxing and Harassment," People United for Privacy. Available at: <https://unitedforprivacy.com/20-states-pass-bipartisan-privacy-law-to-protect-americans-from-doxing-and-harassment/> (May 29, 2024).

¹¹ In Congress, *see, e.g.*, Alex Baiocco, "Congress Seeks 'Common Ground' in Attacking Nonprofits. Let's Hope They Don't Find It." People United for Privacy. Available at: <https://unitedforprivacy.com/congress-seeks-common-ground-in-attacking-nonprofits-lets-hope-they-dont-find-it/> (Dec. 19, 2023) and Luke Wachob, "Senator Whitehouse Promotes Anti-Privacy AMICUS Act in Subcommittee Hearing." People United for Privacy. Available at: <https://unitedforprivacy.com/senator-whitehouse-promotes-anti-privacy-amicus-act-in-subcommittee-hearing/> (June 13, 2023). In federal agencies, *see, e.g.*, Brian Hawkins, "A Quiet Battle Over Amicus Briefs Could Chill Nonprofit Advocacy." People United for Privacy. Available at: <https://unitedforprivacy.com/a-quiet-battle-over-amicus-briefs-could-chill-nonprofit-advocacy/> (Dec. 12, 2024) and Luke Wachob, "FCC's Dangerous AI Proposal Reflects Imperial Bureaucracy Mindset." People United for Privacy. Available at: <https://unitedforprivacy.com/fccs-dangerous-ai-proposal-reflects-imperial-bureaucracy-mindset/> (Sept. 18, 2024). At the state level, *see, e.g.*, Alex Baiocco, "Unlikely Allies Thwart Privacy Threat in Oregon." People United for Privacy. Available at: <https://unitedforprivacy.com/unlikely-allies-thwart-privacy-threat-in-oregon/> (April 24, 2024); Alex Baiocco, "Bipartisan Opposition Sinks Multi-Year Crusade to Violate Mainers' Privacy." People United for Privacy. Available at: <https://unitedforprivacy.com/bipartisan-opposition-sinks-multi-year-crusade-to-violate-mainers-privacy/> (March 4, 2024); and Alex Baiocco, "Oklahoma Lawmaker Asks Ethics Commission to Dax Nonprofit Donors." People United for Privacy. Available at: <https://unitedforprivacy.com/oklahoma-lawmaker-asks-ethics-commission-to-dax-nonprofit-donors/> (Feb. 14, 2024).

¹² Matt Nese, "It's Been 10 Years Since the IRS's Tea Party Scandal. Will Congress Finally Act?" *Reason*. Available at: <https://reason.com/2023/05/10/its-been-10-years-since-the-irss-tea-party-scandal-will-congress-finally-act/> (May 10, 2023).

¹³ IRS, Notice of Proposed Rulemaking on Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (Nov. 29, 2013). Available at: <https://www.govinfo.gov/content/pkg/FR-2013-11-29/pdf/2013-28492.pdf>. *See also*, Matt Nese and Kelsey Drapkin, "Overwhelmingly Opposed: An Analysis of Public and 955 Organization, Expert, and Public Official Comments on the IRS's 501(c)(4) Rulemaking." Institute for Free Speech. Available at: https://www.ifs.org/wp-content/uploads/2014/07/2014-07-08_Issue-Review_Nese-And-Drapkin_Overwhelmingly-Opposed.pdf (July 21, 2014).

¹⁴ *See, e.g.*, "IRS agrees to \$50,000 settlement in leaking of conservative group's donor records," *Fox News*. Available at: <https://www.foxnews.com/politics/irs-agrees-to-50000-settlement-in-leaking-of-conservative-groups-donor-records> (June 24, 2014) and Paul Abowd, "IRS 'outs' handful of donors to Republican group," The Center for Public Integrity. Available at: <https://publicintegrity.org/politics/irs-outs-handful-of-donors-to-republican-group/> (April 4, 2013).

Third, the legislation includes two provisions that enable defendants in the investigation stage of a complaint to safeguard the privacy of their donors and repel frivolous investigations. As partisan animations frequently underly disclosure campaigns, is it a stretch to envision enforcement of such laws occurring on an uneven basis, heavily dependent on the whims of the party in power? To take just one example, are pro-life advocates likely to be treated fairly by a liberal administration empowered to assess the veracity of nonprofit filings about an organization's sources of foreign support? To ask the question is to answer it.

Abuse by government regulators is hardly the only concern in the enforcement context. Proposals requiring reporting about foreign donors to nonprofits risk empowering an organization's ideological opponents with a powerful weapon if a third-party complaint process is authorized. Regardless of whether a complaint has merit, it will paralyze the targeted nonprofit, drowning the organization in legal costs, diverting resources from its mission, and sullyng the group's reputation while the complaint process unfolds. In this scenario, the process is the punishment. H.R. 8399 includes thoughtful provisions that minimize these concerns.

* * *

In today's divisive political climate, Americans are concerned about their private giving choices being publicized and weaponized by those who disagree with their views. Accordingly, individuals may legitimately fear any number of negative consequences from disclosure, including harassment, adverse government action from rogue officials or federal bureaucrats, and reprisals by an employer, neighbor, or community member. Or they may simply prefer not to have their affiliations revealed publicly for reasons rooted in religious practice, modesty, or a desire to avoid unwanted solicitations. Americans deserve to trust that when they choose to support valuable nonprofit causes, they will not lose their jobs or have protestors demonstrate at their homes or businesses.

Legislation that polices serious allegations of foreign influence must respect important bright lines to avoid the worst consequences of such policies, especially in the privacy, speech, compliance, and enforcement contexts. We encourage all Members of Congress to proceed cautiously with respect to any proposed foreign influence legislation, closely following the aforementioned guidelines and always remaining vigilant and protective of constitutional protections for associational privacy and nonprofit advocacy.

Sincerely,



Matt Nese
Vice President
People United for Privacy

Mr. D'ESPOSITO. Thank you.

Mr. Bowman, in your opening statement, I think that you said some things that are critically important. I think that very often we have these hearings and they are talked about on Capitol Hill and in our offices, but this is a hearing that I hope the American people are listening to at home, in their living rooms, around their kitchen table because it is that critically important.

You mentioned in your opening statement the idea that this country is already under attack. You mentioned countries like China, Russia, Iran, North Korea. I mean, these are our biggest adversaries. These are our greatest threat to our homeland. There is no question that we are under attack. There is no question that we are already at war.

I think that a lot of the things that we talked about this morning are very important, but I think what I want to focus on is how this affects the people back home. Because very often people say, well, it is not happening in my backyard, it is not happening in my county. My vote is the one that counts. And, you know, we have heard—when President Trump has said that we are under attack, when President Trump has said that there is foreign influence in our elections, we have been told very often by the other side of the aisle that that is not really the case.

Can you talk to us about specific evidence and tactics? I know that there was a hoax that was mentioned, but I am sure you have many more. I want us to deliver to our neighbors back home exactly how their vote is threatened by these adversaries like China, Russia, and Iran.

Mr. BOWMAN. Thank you, Congressman, for the question. And, you know, this will start vague, but I will try to be more specific.

I think we need to fully appreciate that our adversaries understand the battle for other beliefs and ideas, right, because they—China, Russia, and Iran in particular and also North Korea, they have a problem with us, I would say, because of our existence and our power. By “existence,” I mean our representative democracy presents a threat to autocrats who want to retain their self-serving grip on power, and it conveys to the Russian, Chinese, and Iranian people that there is a more appealing governance model.

Just by being ourselves, our—small D—democratic selves, we threaten their autocratic grip on power. Our power, the fact that we have the most capable military in the history of the world, presents a problem for aggressors like China, Russia, and Iran who want to conquer our partners. If they can deceive Americans into saying that we have no principles and interest in standing with Taiwan, Ukraine, or Israel, they can sideline our American power.

They want to decide who represents us in Washington. They want to decide what our policies. I say they should butt out and that Americans should decide, and the first step to having them butt out is realizing that they are trying to manipulate what Americans think and determine who represents us in Washington and what our policies be, and that is wrong, and we need to wake up to it.

Mr. D'ESPOSITO. Based on evidence and the investigations that you have done, is there one party that has been more influenced by foreign adversaries in our elections than the other?

Mr. BOWMAN. You know, I am not prepared to answer that. I want to emphasize that both parties have been attacked. And, honestly, I do not think we are going to come up with durable solutions that will last, that will be effective if it is not a bipartisan approach. I really think we should not make this a partisan issue.

Mr. D'ESPOSITO. Mr. O'Neill, thank you for your service. You mentioned in your opening statement the need for collaboration amongst public and the private sector. And, obviously, as members of law enforcement, we know that that collaboration works within law enforcement entities as well.

Does the FBI work alongside the FEC in investigating foreign entities or adversaries that influence United States elections?

Mr. O'NEILL. Honestly, I do not know because that was not an area of focus for the Secret Service. We were focused specifically on financial crimes.

Mr. D'ESPOSITO. OK. All right. With that, I only have about 30 seconds. Can you just briefly talk about how we see the illicit and illegal money moved through these online platforms?

Mr. O'NEILL. Money mules, as Mr. Bowman talked about, are the center of gravity that enable cybercrime and money laundering to flourish. Whether it is a witting or unwitting money mule, they are primarily how the bad actors are moving money throughout. Whether it is financial crimes or whether it is any sort of illicit malign activity, it starts with money mules, and also understanding the weaknesses in our current AML regime and focusing on platforms that do not meaningfully do any know-your-customer activities.

Mr. D'ESPOSITO. Thank you very much.

Thank you all for being here.

Mr. Chairman, once again, it has been an absolute honor. I yield back.

Chairman STEIL. It is an honor to have you here. The gentleman yields back.

Ms. Lee is recognized for 5 minutes.

Ms. LEE. Thank you, Mr. Chairman, for holding this important hearing and to our witnesses for appearing before us today.

As chair of the House Administration Subcommittee on Elections, promoting American confidence in the integrity and security of our elections is a key priority, and identifying the ways in which foreign actors may be influencing and involved in our election system is of paramount importance to the American people. Thank you for being here.

I also am so pleased to say that the House unanimously passed the SHIELD Act earlier this week, which I was proud to support, which includes commonsense measures to strengthen donor verification standards. I commend our Chairman, Congressman Steil, on his leadership on this critical legislation.

I would like to go back, Ms. Sutherland, to you to begin. The testimony that you have given today about your organization and the report that tracks the Sixteen Thirty Fund is so important in helping understand the ways in which these loopholes exist and allow foreign governments to influence our elections, including voter turnout.

As you know, in my home State of Florida, this past election cycle, we had two very contentious ballot initiatives that were considered. Did you see any instances of this type of foreign interference occurring in Florida's elections this cycle?

Ms. SUTHERLAND. Thank you for that question.

Yes, we actually did see it on the issue related to codifying abortion rights in Florida's State Constitution. Again, we were able to trace that over \$14 million in foreign-backed funds came into Florida to influence your State's constitution.

The fact that a foreign national can give directly or indirectly to influence a ballot issue is a loophole that needs to be closed, and I commend everyone's efforts here to close it.

Ms. LEE. Are there any particular steps that you would recommend that State legislatures or Congress take to close those loopholes?

Ms. SUTHERLAND. Yes. Implementing a ban like Ohio did—it can also be done on the Federal level—to reject the issue that foreign nationals can give to ballot issue campaigns.

I would also like to point out that it was not the FEC that created the loophole. The FEC interprets law. Ballot issues are inherently not elections, so therefore the prohibition on foreign nationals influencing elections does not apply. It is not that Republican commissioners created this loophole. It is that they interpret the law. And, currently, there is no law on the Federal level and in most States that say foreign nationals cannot give to ballot issue campaigns.

It is a simple commonsense measure to implement, and I really look forward to tackling this issue again next Congress.

Ms. LEE. Thank you.

Mr. O'Neill, I would like to go back to your testimony. Thank you for sharing with us some of the tactics that foreign actors may use to commit financial fraud and cybercrime.

From your experience in Federal service, I am interested in what actions you think that agencies might take to identify and disrupt this type of illicit financial activity, in particular, how we might leverage new technologies, including artificial intelligence, to make forward progress.

Mr. O'NEILL. Law enforcement can leverage current SARs and CTRs that are submitted from financial institutions. It would be ideal if more payment processors and other fintech companies were also required to submit suspicious activity reports because those do help law enforcement.

There are millions of SARs that are filed every single year, so leveraging artificial intelligence to mine for those specific suspicious activity reports or a heightened surveillance report—whatever is provided—would be of value.

Also, the ability to leverage 314(a), which enables law enforcement to query financial institutions around the world, is very slow. Sometimes it takes up to 28 days and it involves manual batch processing. If there is a way to speed up that process because, as we know, money is moving at a much faster pace than it did when the 314(a) and 314(b) were created 20-some years ago. That is another area where new technology exists that did not several years ago, and we have not been able to keep up with the technology.

Ms. LEE. And, Mr. Bowman, you just gave some testimony that related to efforts from China, Russia, Iran to disrupt and exploit vulnerabilities that we may have. I am particularly concerned about threats from cyber actors in this way. We know China very recently committed a very serious hack of some of our infrastructure and telecommunications providers.

I am interested in your perspective on whether this is simply an intelligence gathering operation. Do you perceive a risk to our elections infrastructure? Then what do you recommend that we be looking at in order to enhance and strengthen our cyber elections infrastructure?

Mr. BOWMAN. Thank you. Not only do I believe our adversaries are currently waging an information war against us—and we have presented some evidence here today—they are also waging an ongoing, daily, hour-by-hour cyber war against us. That has many, many facets to it. There is an election component to it. I explained why our elections are a center of gravity.

Certainly, they are using cyber warfare to attack it as we sit here today, and they are also doing the same thing in the military domain and in the civilian infrastructure that supports the United States military's power projection capability.

We are the most capable cyber country in the world and we are also one of the most vulnerable, and I think time is well spent trying to shore up our cyber defenses. Just like in this context, until we start to go more on the offensive and start to shift the cost-benefit calculation of our adversaries, these attacks will continue until we start to impose some consequences on them. Sooner or later, all defenses, no matter how strong, fail. That is why we need to go more on the offensive.

Ms. LEE. Thank you.

Mr. Chairman, I yield back.

Chairman STEIL. Representative Lee yields back.

I will now recognize the Ranking Member for closing comments.

Mr. MORELLE. Thank you, Mr. Chair.

Again, thank you to the witnesses for being here, particularly during the holiday season. I wish them all a Merry Christmas to everyone. Happy Hanukkah. Whatever your faith, tradition is, I hope everyone enjoys a wonderful holiday season and gets a chance to relax a little bit.

I want to join in thanking my colleague, Mr. D'Esposito, for his service here, and certainly wish him only the very best as he moves on. Thank you for your contributions.

I also want to—I am not sure they say—you know, there is always debate about whether a tree in the forest falls and no one is there to hear it, whether it makes a sound. With Mr. Kilmer not here—well, there he goes.

Like I said, he will hear me say what an amazing Member Derek Kilmer has been not only for this Committee but for the Congress. I rarely have found as I have come across my travels someone who is so genuine, so committed to this whole enterprise of American democracy and particularly loves the Congress as much as Derek Kilmer does, an institution that he has worked very hard to modernize and to make as good as it can be, as good as the American

people deserves. I am delighted to thank him for his extraordinary service.

He is going to up me now, as he should, by hopefully getting a chance to say a few words on his own, but I am grateful that you are here. I am grateful that you have served this institution with dedication and fidelity, and I am grateful to call you a friend.

I want to thank you, Mr. Chairman, as well as all the Members, for their great cooperation, and the staff who does an outstanding job—both sides of the aisle—and who continue to serve this—I think this institution and the country with distinction. Thanks for everything.

To the staff, to all the Members, Merry Christmas. Happy Hanukkah. Happy New Year, everyone. God bless.

I yield.

Chairman STEIL. The gentleman yields back.

I would echo the Chairman's remarks in particular as it relates to Mr. Kilmer who just joined us.

Spectacular work as co-chair of the Modernization Committee, which then continued on as the Modernization Subcommittee of the Committee on House Administration. Your leadership, along with Mrs. Bice, went a long way. We got some real work done this year, and we appreciate your leadership. You will be missed, but your work will live on as a legacy here.

I would be happy to recognize Mr. Kilmer for 5 minutes to comment or question the witnesses as you see fit.

Mr. KILMER. Thank you. Thanks. I will give a rebuttal. Thank you, Mr. Chair.

I actually just want to acknowledge and thank you, Mr. Chair, for—the last recommendation of the Modernization Committee was a recognition that the work of improving this institution should not happen every 20 or 30 years but should happen as a matter of course going forward. The creation of the Modernization Subcommittee was in keeping with that. My hope is, regardless of which party holds the gavels, that that Subcommittee continues, because the work of institutional improvement needs to continue.

When I was asked to lead that Committee, someone gave me a graduation speech that John Gardner had delivered at Cornell University in 1968. He had been Lyndon Johnson's Secretary of Health, Education, and Welfare. He talked about the importance of institutional stewardship. When he gave the speech, he talked about two perils that face institutions.

He said institutions suffer from uncritical lovers who deny an institution the sort of life-giving eye toward improvement that is necessary for organizations to get better. Second, he said institutions suffer from uncritical—from unloving critics, people who treat institutions like the piñata at the party and have an eye toward demolition rather than toward improvement and construction. We see that in this institution quite a bit.

I think the thing that—and what John Gardner suggested is if we really care about institutions, then we have to be loving critics of them. That we have to view our institutions through the lens of loving criticism. That has been the work undertaken by the Modernization Committee, and it has been the work undertaken by the Modernization Subcommittee, and it has been the work of a whole

boatload of stakeholders who care about this institution and want to see it get better for the American people.

My gratitude to Chairwoman Bice and to you, Mr. Chairman, and to Ranking Member Morelle, is that you are loving critics of the institution, and that matters. My hope and my plea to you is that the work of the Subcommittee is allowed to continue with that eye toward loving criticism and institutional improvement. It has been an honor to get to serve with you.

Thank you, and I yield back.

Chairman STEIL. The gentleman yields back. It has been an honor to serve with you as well. We appreciate your work. I think there is a need to continue to work to modernize this Committee well.

Sometimes we have good, strong policy disagreements on important topics. I think we have also shown an ability to work together on really key policies, and today's hearing I think is a true example of that. We identified a number of areas and legislation that is essential for the country to make sure, in this case, that we are ensuring U.S. elections are for U.S. citizens and not allowing foreign interference in our elections.

Appreciate your work, Mr. Kilmer, your work, Ranking Member Morelle. The work of this Committee will continue but in the new Congress.

I thank all the Members.

And, in particular, as it relates to this hearing, as we come back, I thank all of our witnesses for sharing their expertise today.

There may be additional questions from some Members of this Committee, and we would ask you to respond to those questions in writing.

Without objection, each Member may have 5 legislative days to insert additional material into the record or to revise and extend their remarks.

If there is no further business, I thank the Members for their participation. Without objection, the Committee stands adjourned.

[Whereupon, at 11:34 a.m., the Committee was adjourned.]

