

September 14, 2016

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
By electronic mail: PublicComment@fec.gov

Re: Proposal to Rescind Advisory Opinion 2006-15 (TransCanada)

Dear Commissioners:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully submits these comments in response to the Proposal to Rescind Advisory Opinion 2006-15 (TransCanada) (Agenda Doc. No. 16-32-A). We welcome this opportunity to provide the Federal Election Commission (“FEC” or “Commission”) comments, and we urge the FEC to take strong action, without which it cannot meet its primary statutory obligation: to protect the integrity of U.S. elections. Just as the Commission has recently worked to modernize its rules in response to the increasing role of digital technology in fundraising and elections generally, it should now modernize its rules to respond to the increased risk of foreign influence posed by changes to the legal and factual landscape.

Many foreign individuals and foreign businesses have an interest in influencing U.S. elections, and the United States has an interest in preventing them from exercising undue influence over its elections. Just last week, a federal jury convicted a Mexican tycoon of illegal spending in the 2012 San Diego mayor’s race, in support of both Republican and Democratic candidates.<sup>1</sup> According to trial testimony, the foreign defendant used straw donors, a shell LLC, and off-the-books payments to a campaign communications vendor to inject over half a million dollars into the election.<sup>2</sup> “The jury’s verdict confirms that a foreign national must not attempt to influence a United States election,” Executive Assistant United States Attorney Blair Perez said.<sup>3</sup>

Although criminal prosecutions like the San Diego case are an important part of preventing foreign influence in U.S. elections, relying on them as the primary defense is entirely insufficient, just as relying on drug trafficking laws is alone an insufficient response to a broader societal drug problem. Indeed, as the three-judge panel of the U.S. District Court for the District of Columbia. went out of its way to warn in *Bluman v. FEC*, “seeking criminal penalties for violations of [the foreign national] provision - which requires that the defendant act ‘willfully’... - will require proof of the defendant’s knowledge of the law ... [but] [t]here are many aliens in this country who no doubt are unaware of the statutory ban on campaign *expenditures*, in particular.”<sup>4</sup>

<sup>1</sup> <http://www.sandiegouniontribune.com/news/2016/sep/09/azano-guilty-illegal-campaign-finance/>

<sup>2</sup> <http://www.kpbs.org/news/2016/sep/09/mexican-tycoon-convicted-illegally-pumping-600k-sa/>

<sup>3</sup> *Id.*

<sup>4</sup> 800 F. Supp. 2d 281 at 292 (D.D.C. 2011) (affirmed by 565 U.S. 1104 (2012)).

Congress made its intent clear in 1974 when it passed amendments to the Federal Election Campaign Act of 1971 limiting foreign nationals' ability to donate to campaigns,<sup>5</sup> and again in 2002 when it passed even stricter limits as part of the Bipartisan Campaign Reform Act.<sup>6</sup> The limits set by Congress have withstood constitutional scrutiny, even after the Supreme Court's decision in *Citizens United*.<sup>7</sup>

However, the measures designed by Congress to protect against foreign influence in U.S. elections are only as strong as their enforcement allows them to be. Congress clearly intended the FEC to be a significant part of that process, writing rules and issuing guidance to those seeking to participate in U.S. elections. As a result, the FEC has the responsibility to ensure that its rules faithfully and effectively enforce the limits set by Congress.

The FEC's rules cannot be effective if they fail to take into account the legal and factual framework in which they operate. The changes in these areas as it relates to foreign influence over U.S. elections cannot be overstated. The amount of money corporations of all kinds spend on U.S. elections has increased dramatically since the Supreme Court decided *Citizens United*,<sup>8</sup> and this fact alone dramatically increases the risk of foreign influence in U.S. elections. Recent developments in corporate law and practice, including the increase in prevalence of multinational corporations<sup>9</sup> and increased frequency of corporate inversions,<sup>10</sup> only heightens the risk.

The FEC has recently, through the process of adopting various carefully considered advisory opinions, modernized its regulatory scheme to account for new developments in technology, including the proliferation of various methods for online fundraising, electronic payments, and the use of SMS technology.<sup>11</sup> The FEC should similarly recognize that legal and factual changes have rendered the current rules preventing foreign influence insufficient to the Commission's statutory mandate, and begin the process of modernizing them.

Sincerely,



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Executive Director  
Citizens for Responsibility and Ethics in Washington

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<sup>5</sup> Pub. L. No. 93-443, § 101(d), 88 Stat. 1263, 1267.

<sup>6</sup> Pub. L. No. 107-155, § 303, 116 Stat. 81, 96.

<sup>7</sup> *Bluman*, 800 F. Supp. 2d at 292.

<sup>8</sup> As Sheila Krumholz of the Center for Responsive Politics noted at the FEC's June Forum, corporate PAC contributions increased by 80% between 2000 and 2014.

<sup>9</sup> As Norman J. Ornstein of the American Enterprise Institute noted at the FEC's June Forum, "we have a vast expansion of foreign ... countries and entities buying American companies ... [a]nd we have a global economy."

<sup>10</sup> <https://www.bloomberg.com/quicktake/tax-inversion>

<sup>11</sup> See, e.g., AO 2012-26 (Cooper for Congress); AO 2012-28 (CTIA); AO 2012-30 (Revolution Messaging); AO 2012-31 (AT&T, Inc.); AO 2012-35 (Global Transaction Services Group); AO 2014-02 (Make Your Laws, Inc.).