



March 12, 2021

The Honorable Louis Luchini
Chair, Committee on Veterans and Legal Affairs
Maine Legislature

The Honorable Chris Caiazzo
Vice Chair, Committee on Veterans and Legal Affairs
Maine Legislature

Re: Statement in Support of L.D. 479

Dear Chair Luchini, Chair Caiazzo, and Members of the Committee,

The Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of L.D. 479, a bill to ban foreign campaign contributions and expenditures in Maine elections. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every citizen's right to participate in the democratic process.

Legislative Document 479 is a comprehensive bill that would address significant gaps in campaign finance law and safeguard the right of Americans to democratic self-governance. Despite a federal ban on foreign interference in our elections that applies at the federal, state and local level, the law has significant loopholes that can be exploited by foreign interests. Following *Citizens United v. FEC*, 558 U.S. 310 (2010), federal law has failed to stop corporations with significant foreign influence from spending in our elections. The Federal Election Commission has also created a loophole that allows foreign money in state and local ballot measure campaigns.¹ Plugging these loopholes will ensure that Maine's system of government continues to be of, by, and for the people.

CLC has carefully reviewed L.D. 479, and we believe it is a well-crafted and constitutional piece of legislation. The bill is consistent with well-established precedent that governments may adopt laws securing the right of Americans to democratic self-

¹ Michelle Conlin and Lucas Lozada, *FEC decision may allow more foreign money in U.S. votes, critics say*, REUTERS (Apr. 24, 2015). The FEC deadlocked on whether to investigate a case of foreign spending in a Los Angeles ballot measure election. Federal Election Commission, First General Counsel's Report, MUR 6678 (MindGeek USA, Inc., et al.), Aug. 15, 2014, 9-10 <http://eqs.fec.gov/eqsdocsMUR/15044372921.pdf>.

government² and will address existing loopholes allowing substantial foreign influence in Maine elections.

As explained below, L.D. 479 establishes a comprehensive law to prohibit foreign interference in Maine elections. In particular, provisions of L.D. 479 would protect Maine's state and local ballot measure campaigns from foreign spending and prohibit foreign corporations from influencing Maine elections. In addition to supporting these important provisions, we also recommend two amendments to the bill. Thus, we respectfully urge the Committee to support L.D. 479.

L.D. 479: A Comprehensive Ban on Foreign Interference in Maine Elections

Foreign interests have exploited gaps in our campaign finance laws, spent money legally and illegally to influence our elections, and avoided disclosure of their spending. Currently, Maine elections are protected only by the insufficient federal ban on foreign interference.³ While inadequate protection and enforcement at the federal level have left our elections vulnerable to foreign interference, states have taken the lead to stop foreign influence in elections. For example, Maine would join California, Colorado, Maryland, Nevada, North Dakota, South Dakota, and Washington in safeguarding ballot measure elections from foreign interference.⁴ Overall, L.D. 479 is a thorough bill to close loopholes in current law and protect Mainers' right to self-government.

Legislative Document 479 accomplishes these goals by implementing four important policy changes that are integral to an effective and comprehensive foreign interference law: 1) prohibiting foreign nationals from making contributions, expenditures, and independent expenditures to influence Maine elections, including ballot measures; 2) providing clear standards for identifying foreign corporations that would be prohibited from spending money in Maine elections; 3) requiring foreign nationals who attempt to influence public policy through advertising to include a disclaimer identifying the foreign national as such in any ads; and 4) implementing due diligence requirements that will improve compliance with the law.

1. Foreign nationals should be prohibited from spending to influence both candidate elections and state and local ballot measures.

Ballot measures are the most direct form of democratic law-making that can take place at the state or local level, and foreign spending has no place in this kind of direct democracy. L.D. 479 prohibits spending by foreign nationals in state and local elections, including in state or local ballot measure campaigns. The bill prohibits foreign nationals from making contributions to party committees and to influence the nomination or election of state and local offices. The bill also prohibits foreign nationals from making expenditures or independent expenditures for electioneering communications and from producing or disseminating communications that promote, support, or oppose a political party or a

² *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011) (three-judge court) (Kavanaugh, J.), *aff'd mem.*, 565 U.S. 1104 (2012).

³ See 52 U.S.C. § 30121.

⁴ Cal. Gov. Code § 85320(a); Colo. Rev. Stat. § 1-45-107.5; Md. Code, Election Law § 13-236.1; Nev. Rev. Stat. § 294A.325; N.D. Cent. Code § 16.1-08.1-03.15; S.D. Codified Laws § 12-27-21; Wash. Rev. Code § 42.17A.417.

person's nomination or election to state or local office. Crucially, L.D. 479 also prohibits foreign nationals from spending to initiate or influence a ballot measure campaign.

In the absence of a federal ban on foreign nationals spending in state and local ballot measure campaigns, spending by foreign nationals, including corporations with significant foreign ownership, can substantially affect elections for issues that hit closest to home. Foreign corporations, in particular, can spend—and have spent—huge sums of money on ballot measure campaigns, effectively drowning out the voices of local voters. Maine is no stranger to foreign spending to influence its state and local ballot measures: Just last year, a Canadian government-owned public utility, HydroQuebec, exploited this loophole in federal law, dwarfing all other spenders for 2020 ballot measures in Maine by pouring more than \$9 million dollars into an effort to defeat a measure aimed at blocking its power line project through the state.⁵ As an example from another state, take the ride-sharing company, Uber: the Saudi Arabia Public Investment Fund is the largest single investor in the company, having made a \$3.5 billion investment (more than 5% of shares) in 2016.⁶ Since that time, Uber has spent millions in local ballot measure campaigns, including more than \$7.6 million to defeat an Austin, Texas, ballot measure to require background checks for Uber drivers.⁷

This ban on foreign nationals spending money on ballot measures fits squarely within the broader exclusion of foreign citizens having a say in the process of self-government. In *Bluman v. FEC*, 565 U.S. 1104 (2012), the Supreme Court summarily affirmed that the “government may exclude foreign citizens from activities intimately related to the process of democratic self-government.”⁸ *Bluman* upheld the federal ban on foreign nationals spending in candidate elections, and the reasoning of the underlying decision provides even stronger justification for preventing foreign nationals from spending in state and local ballot measures, in which voters are participating in direct democracy to enact their own laws at the ballot box.

CLC also recommends making two amendments with respect to these prohibitions. First, the bill appears to inadvertently bar foreign nationals from volunteering for campaigns when it prohibits disseminating or republishing candidate campaign materials. This can be fixed by making clear that foreign nationals are only prohibited from *spending money* on those activities. Second, while L.D. 479 clearly intends to stop foreign nationals from engaging in any spending with respect to ballot measures, the bill currently does not explicitly bar a foreign national from making contributions in connection with ballot measures. CLC recommends amending the bill to explicitly do so, in addition to adopting

⁵ Steve Mistler, *Maine Lawmakers Revive Effort to Bar Foreign Influence in State Referendums*, MAINE PUBLIC RADIO (Jan. 27, 2021) <https://www.mainepublic.org/post/maine-lawmakers-revive-effort-bar-foreign-influence-state-referendums>.

⁶ Brian O’Connell, *A ‘Mistake’: Inside Uber’s relationship with Saudi Arabia*, THE STREET (Nov. 11, 2019) <https://www.thestreet.com/investing/how-much-of-uber-does-saudi-arabia-own-15162803>.

⁷ MICHAEL SOZAN, CENTER FOR AMERICAN PROGRESS, *ENDING FOREIGN-INFLUENCED CORPORATE SPENDING IN US ELECTIONS* (2019), <https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/>.

⁸ *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (three-judge court) (Kavanaugh, J.), *aff’d mem.*, 565 U.S. 1104 (2012).

the existing provisions that prohibit foreign nationals from making expenditures to influence ballot measures.

2. Corporations with significant foreign influence should be barred from spending in elections.

A prohibition on foreign political spending should ensure that corporations with significant foreign influence cannot spend in our elections. L.D. 479 provides a comprehensive ban on spending by foreign nationals that applies not only to individuals and foreign governments, but also to corporations with significant foreign ownership or control. L.D. 479 provides clear standards for identifying which corporations are considered “foreign nationals” and prohibited from spending in Maine elections. Under the bill, a corporation is a foreign national if it meets any of the following requirements: 1) the corporation has a single foreign owner or foreign national that holds at least a 5% ownership stake; 2) the corporation has a group of foreign owners or foreign nationals that holds at least a 20% ownership stake; 3) the corporation is exempt from taxation under Section 501(c)(4) of the Internal Revenue Code and receives 20% or more of its funding from foreign nationals; or 4) the corporation includes foreign nationals in its decision-making regarding political spending.

Foreign interests have a well-established history of attempting to influence U.S. elections, both legally and illegally.⁹ In 2012, when a Mexican developer hoped to land a real estate deal in San Diego, he routed more than half a million dollars in contributions to mayoral candidates through a shell company incorporated in the U.S.¹⁰ In the 2016 presidential election, a foreign-owned corporation known as American Pacific International Capital (APIC) contributed \$1.3 million to a super PAC supporting presidential candidate Jeb Bush.¹¹ This illegal contribution came to light because one of the owners of APIC, a foreign national from China, admitted to a reporter that he directed the contribution.¹² Both of these examples illustrate how corporations with substantial foreign ownership can be used to evade existing protections against foreign influence. Instead of relying on wayward comments to reporters, the law needs to provide clear standards for identifying foreign corporations to prevent foreign interests from using these corporations as conduits to influence U.S. elections.

Importantly, L.D. 479 includes specific standards for identifying these foreign corporations through the 5% single-foreign owner and 20% collective-foreign owner thresholds. The foreign interference bans in Alaska and St. Petersburg, Florida, use these same thresholds for identifying foreign corporations,¹³ and other areas of federal law

⁹ Ken Dilanian, *U.S. intel agencies: Russia and China plotting to interfere in 2020 election*, NBC NEWS (Jan. 29, 2019) <https://www.nbcnews.com/politics/national-security/u-s-intel-agencies-russia-china-plotting-interfere-2020-election-n963896>.

¹⁰ Greg Moran, *Feds say Azano wanted to ‘buy a mayor’*, SAN DIEGO UNION-TRIBUNE (July 27, 2016) <http://www.sandiegouniontribune.com/sdut-feds-say-azano-wanted-to-buy-a-mayor-2016jul27-story.html>.

¹¹ Lee Fang and Jon Schwarz, *Intercept investigation leads to record fines over foreign campaign contributions*, THE INTERCEPT (Mar. 3, 2019) <https://theintercept.com/2019/03/11/intercept-investigation-leads-to-record-fines-over-foreign-campaign-contributions/>.

¹² *Id.*

¹³ Alaska Stat. § 15.13.068(e)(5); St. Petersburg, Florida Municipal Code § 10-51(m).

regarding corporate ownership incorporate similar thresholds.¹⁴ Further, the bill prevents foreign interests from laundering large amounts of money through non-profit organizations to influence Maine elections by similarly identifying foreign 501(c)(4) organizations based on receiving more than 20% of funding from foreign nationals.¹⁵

Foreign influence at or above these levels, through ownership or funding, presents a significant risk that foreign nationals have a sufficiently large stake in a corporation that they can influence political spending decisions or that domestic corporate managers will take into account the interests of their foreign owners when trying to influence elections.¹⁶ A corporation's managers may respond to foreign demands or may, even without overt foreign pressure, make political spending decisions based on the perceived preferences of foreign stakeholders. In either case, spending by such corporations undermines our democratic self-governance and, thus, should be barred from attempting to influence elections.

3. Voters should know when foreign interests are trying to influence state and local policy.

Despite the federal ban on foreign spending in candidate elections, federal law currently does not regulate so-called "issue ads" financed by foreign nationals, even though these ads may influence government policy. L.D. 479 ensures Maine residents will know who is trying to influence state or local policy occurring outside of elections and campaigns. Under the bill, if a foreign national pays for a communication to influence public policy, the communication must include a disclaimer that names the foreign national and identifies the foreign national as a foreign individual, official, government, corporation, or entity. Advertisements that attempt to influence government action or policy could include, among other things, ads that advocate for the environmental approval of a pipeline or passage of a bill to restrict gun ownership. This bill would not prohibit a foreign national from spending money for this kind of genuine issue ad, but when a foreign national runs this kind of ad, Maine residents would know which foreign interest is trying to influence government policy.¹⁷

¹⁴ Under 15 U.S.C. § 78m(d)(1), the Securities and Exchange Commission requires disclosure of ownership in public corporations above 5%. In 47 U.S.C. § 310(b)(3), the Communications Act of 1934 prohibits foreign owners from obtaining more than 20% ownership in broadcasting stations.

¹⁵ See, e.g., Investigations team & Ruth Sherlock, *Exclusive: Pro-Trump campaign group should face inquiry over 'foreign donor', leading election lawyer states*, THE TELEGRAPH (Oct. 25, 2016), <http://www.telegraph.co.uk/news/2016/10/25/exclusive-pro-trump-campaign-group-should-face-inquiry-over-fore/>.

¹⁶ For an in-depth discussion of foreign influence through corporate ownership, see MICHAEL SOZAN, ENDING FOREIGN-INFLUENCED CORPORATE SPENDING IN US ELECTIONS (2019), <https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/>.

¹⁷ The disclosure requirements in L.D. 479 are similar to those under the federal Foreign Agent Registration Act, requiring foreign agents include identifying information on any informational material they distribute. 22 U.S.C. § 611 *et seq.*, <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchapII.pdf>.

4. Requiring broadcasters and internet platforms to exercise due diligence will ensure compliance and protect Maine elections from foreign influence

An effective ban on foreign spending in elections ensures that there is meaningful compliance with the law. L.D. 479 includes due diligence requirements to support enforcement of the ban on foreign spending in Maine elections. Under the bill, television and radio broadcasters and Internet platforms that run political ads are required to develop policies and procedures to prevent the distribution of communications that are prohibited by the bill. If an Internet platform discovers that it has distributed a prohibited communication, the platform must remove the communication and inform the Maine Commission on Governmental Ethics & Election Practices. Implementing these procedures will help ensure compliance and protect Maine elections from foreign interference.

CLC respectfully urges the Committee to support protecting Maine elections from foreign interference and securing the right of Mainers to self-government by taking favorable action on L.D. 479, including with respect to our two proposed amendments. Thank you for the opportunity to submit this statement in support of this important legislation. If you have further questions, please do not hesitate to contact us.

Respectfully submitted,

/s/

Aaron McKean
Legal Counsel

/s/

Patrick Llewellyn
Director, State Campaign Finance

Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005