



June 22, 2022

The Honorable Michael Kebede  
Chair, Portland Charter Commission

The Honorable Shay Stewart-Bouley  
Vice Chair, Portland Charter Commission

Dear Chair Kebede, Vice Chair Stewart-Bouley, and Commissioners,

The Campaign Legal Center (“CLC”) respectfully urges the Commission to support Commissioner Buxton’s Clean Elections Amendment, which would protect Portland elections from foreign influence. We write to supplement our prior letter in support of this Amendment,<sup>1</sup> specifically to address the constitutionality of the proposed foreign interference ban as applied to spending on ballot questions. We have conferred with John Brautigam and Maine Citizens for Clean Elections, who brought the Commission’s consideration of this issue to our attention.

The U.S. Constitution plainly permits laws that prohibit foreign nationals, including foreign governments and corporations with significant foreign influence, from spending money to influence ballot elections. In *Bluman v. FEC*, the U.S. Supreme Court upheld the constitutionality of the federal foreign interference ban, summarily affirming a lower court decision written by then-Judge Kavanaugh.<sup>2</sup> As the court in *Bluman* explained, “[i]t is 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.”<sup>3</sup>

*Bluman* thus differs markedly from cases striking down bans on election spending in other contexts, including *First National Bank of Boston v. Bellotti* and

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<sup>1</sup> AARON MCKEAN AND PATRICK LLEWELLYN, CAMPAIGN LEGAL CENTER, CLC LETTER TO PORTLAND CHARTER COMMISSION IN SUPPORT OF FOREIGN INFLUENCE AMENDMENT (June 8, 2022) <https://campaignlegal.org/document/clc-letter-portland-charter-commission-support-foreign-influence-amendment>.

<sup>2</sup> *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).

<sup>3</sup> *Id.* at 288.

*Citizens United v. FEC*, which determined that the government lacked a sufficiently strong interest in preventing corruption to justify bans on corporate expenditures on ballot questions and candidate elections, respectively.<sup>4</sup> *Bluman* did not rely on an anti-corruption interest and, instead, addressed the more “fundamental” issue of who has a right to be included the “activities of self-government.” Although *Citizens United* left open the question of “whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political process,” the subsequent decision in *Bluman*—affirmed by the Supreme Court—answered that question in the affirmative: The government “has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.”<sup>5</sup>

Although the Federal Election Commission has interpreted the federal statute at issue in *Bluman* to apply only to candidate elections, *Bluman*'s reasoning provides at least as strong of a justification for preventing foreign spending on ballot questions, in which voters are participating in direct democracy to enact their own laws at the ballot box. Moreover, Portland would join a host of other jurisdictions that prohibit foreign nationals from spending to influence ballot measure elections, including California, Colorado, Idaho, Maryland, Nevada, North Dakota, South Dakota, and Washington.<sup>6</sup> Accordingly, the ban on foreign interference in Portland elections being considered by the Commission is consistent with well-established precedent that governments may adopt laws securing the right of Americans to democratic self-government.

Finally, because the Charter Commission's Clean Elections Amendment would direct the City Council to enact an ordinance, the details of the ban, such as identifying the foreign-influenced entities subject to the ban, would be appropriately determined by the Council in the development of that ordinance.

We respectfully urge the Commission to support the ban on foreign influence in Portland elections. We appreciate the opportunity to submit this statement in

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<sup>4</sup> *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978) (“[T]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue.”); *Citizens United v. FEC*, 558 U.S. 310, 357 (2010) (“[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”).

<sup>5</sup> *Bluman* at 288. The Court in *Bluman* also specifically noted that the federal ban, which bars spending by foreign corporations and foreign governments, is entirely consistent with the U.S. Supreme Court's ruling in *Citizens United v. FEC*. *Id.* at 289.

<sup>6</sup> Cal. Gov. Code § 85320(a); Colo. Rev. Stat. § 1-45-107.5; Idaho Code Ann. § 67-6610D; 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.

support of this important measure, and would be happy to speak with you or the full Commission at any time.

Respectfully submitted,

/s/

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/s/

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