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The Honorable Jim Olsen
Chair, House Elections and Ethics Committee
Oklahoma State Legislature

The Honorable Max Wolfley
Vice Chair, House Elections and Ethics Committee
Oklahoma State Legislature

Statement of Aaron McKean, Campaign Legal Center

Chair Olsen, Vice Chair Wolfley, and Members of the Committee,

Thank you for inviting me to participate in this important interim study seeking to safeguard Oklahoma's citizen-led ballot initiative process. My name is Aaron McKean and I am Legal Counsel for State and Local Reform at Campaign Legal Center (CLC).

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 American's right to participate in the democratic process.

Preventing foreign interference in our elections is an essential part of protecting our democracy and our right to democratic self-governance. This statement is intended to aid the Committee in evaluating potential reforms to strengthen Oklahoma's campaign finance laws and thereby prevent foreign influence in Oklahoma's elections. In this statement, I first identify two critical gaps in federal and state campaign finance law that foreign interests have exploited as a means to influence our elections while also avoiding disclosure of their spending. Next, I highlight essential policy recommendations that the Committee should consider for future legislation: prohibiting foreign interests from spending to influence ballot initiative campaigns and barring foreign-influenced corporations from spending in Oklahoma elections. Finally, the statement concludes by highlighting ongoing efforts across the country to prevent foreign influence in elections at the federal, state, and local levels.

I. Foreign interests exploit gaps in federal and state laws that allow them to spend enormous amounts in state and local ballot measure elections.

Federal law has long barred foreign nationals—including foreign governments and foreign corporations—from contributing to campaigns and spending to influence federal, state, and local elections.¹ However, this broad prohibition has been construed to apply only to *candidate* elections, leaving state and local ballot measure elections vulnerable to significant foreign spending.² Foreign interests have exploited this gap in the law to pour millions into ballot measure campaigns, effectively drowning out the voices of local voters regarding key legal and policy issues.

For example, in the lead-up to a Montana ballot measure election in 2018, an Australian mining company, through its Canadian subsidiary, contributed nearly \$300,000 to Montana political committees opposing the measure, which was ultimately defeated.³ Following a complaint alleging that the foreign mining company’s contributions violated the federal ban, the Federal Election Commission (FEC) issued a decision in which a majority of Commissioners concluded that federal law generally does not prohibit foreign nationals from spending to influence state or local ballot measures, absent a connection between the ballot measure and a candidate election. In the Montana case, the FEC determined that no candidates for federal, state, or local office were “inextricably linked” to the political committees that received the foreign contributions and, thus, the federal ban did not apply to the Australian mining company’s spending.⁴

This gap in federal law leaves most states, including Oklahoma, vulnerable to foreign influence in their citizen-led ballot measure elections. Maine’s 2020 ballot measure elections provide an egregious example: a Canadian government-owned public utility, HydroQuebec, dwarfed all other spenders for ballot measures in the state by pouring more than \$9 million dollars into an effort to defeat a citizen-led initiative aimed at blocking the company’s power line project.⁵ In Maine’s 2023 elections, two public utilities with substantial foreign influence have so far combined to spend nearly \$15 million to influence Maine ballot measures, swamping other spenders.⁶ Like Maine, nearly two-thirds of the 24

¹ 52 U.S.C. § 30121.

² Aaron McKean, *State and Federal Legislators Should Fix the Foreign Spending Loophole*, CAMPAIGN LEGAL CTR. (Nov. 5, 2021) <https://campaignlegal.org/update/state-and-federal-legislators-should-fix-foreign-spending-loophole>.

³ Tom Kuglin, *Montana ballot initiative at center of controversial FEC decision*, BOZEMAN DAILY CHRONICLE (Nov. 15, 2021) https://www.bozemandailychronicle.com/news/politics/montana-ballot-initiative-at-center-of-controversial-fec-decision/article_c3afd086-9a91-5e29-a92d-e49991e1462c.html.

⁴ FEC, Factual & Legal Analysis at 5-6, MUR 7523 (Stop I-186) (Oct. 24, 2021), *available at* https://www.fec.gov/files/legal/murs/7523/7523_24.pdf.

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 See Maine Ethics Comm’n, Campaign Fin. Pub. Disclosure, *Maine Energy Progress Committee, 2023 Election*, <https://mainecampaignfinance.com/index.html#/exploreCommitteeDetail/406171> (last visited Sept. 9, 2023) and Maine Ethics Comm’n, Campaign Fin. Pub. Disclosure, *Maine Affordable Energy Committee, 2023 Election*, <https://mainecampaignfinance.com/index.html#/exploreCommitteeDetail/405784> (last visited Sept. 9, 2023).

states that allow citizen-initiated ballot measures⁷ currently lack any laws protecting their ballot-measure elections from foreign interference. States that have taken action to stop foreign money from influencing their elections include California, Colorado, Idaho, Florida, Maryland, Nevada, North Dakota, South Dakota, and Washington.⁸

II. Foreign interests exploit corporate schemes to funnel money into elections at the federal, state, and local levels.

Foreign interests have a well-established history of attempting to influence U.S. elections, both legally and illegally.⁹ In the wake of *Citizens United v. FEC*, 558 U.S. 310 (2010)—which opened the door to corporations spending unlimited funds to influence elections—federal and state lawmakers have failed to update campaign finance laws to stop foreign interests from using the corporate form to spend huge sums to influence both candidate and ballot measure elections.

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 United States.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, campaign finance laws need to be updated to prevent foreign interests from using these corporations as conduits to influence U.S. elections.

III. States and municipalities have taken the lead in developing strong policies against foreign interference in elections.

As the specter of foreign interference in elections has grown over the past decade, states and cities have innovated new laws to protect their elections from the kinds of foreign spending described above. Protecting elections from foreign interference ensures that government is responsive to its own people instead of foreign interests, safeguarding the right to democratic self-governance. Two reforms already enacted at the state and local

⁷ NATIONAL CONFERENCE OF STATE LEGISLATURES, *Initiative and Referendum Processes* (Jan. 4, 2022) <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes>.

⁸ Cal. Gov. Code § 85320(a); Colo. Rev. Stat. § 1-45-103.7(5.3); Fla. Stat. § 106.08(12)(b); 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.

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.*

level are essential elements of a strong policy against foreign interference: prohibiting foreign interests from spending in state and local initiative campaigns and ending campaign spending by foreign influenced corporations.

A. Foreign interests should be barred from spending to influence citizen-led initiative campaigns.

As noted above, at least nine states have already taken steps to stop foreign interests from spending money in citizen-led initiative campaigns. Ballot measure campaigns 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.

A ban on foreign interests spending money to influence ballot measure elections fits squarely within the broader exclusion of foreign nationals having a say in the process of American self-government. In *Bluman v. FEC*, 565 U.S. 1104 (2012), the Supreme Court summarily affirmed a decision by a three-judge federal court—authored by then-Judge Kavanaugh—upholding the constitutionality of the federal foreign interference ban.¹³ The decision in *Bluman* specifically concluded that 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,” including by “spending money to influence voters and finance campaigns”¹⁴

While *Bluman* specifically concerned (and upheld) the federal ban on foreign nationals spending in candidate elections, 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 through the initiative process.

B. Corporations with significant foreign influence should be prohibited from spending their corporate funds in elections.

As campaign spending by entities with significant foreign ownership has skyrocketed, jurisdictions across the country have recognized that these entities can be a conduit for foreign influence in elections.¹⁵ In 2017, St. Petersburg, Florida became the first jurisdiction to ban campaign spending by foreign-influenced corporations, which are entities whose foreign ownership exceeds certain thresholds.¹⁶ Just this year, Minnesota

¹³ *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).

¹⁴ *Id.* at 288-89.

¹⁵ See, e.g., Michael Sozan, *Nationwide Momentum Grows To Stop Political Spending by Foreign-Influenced U.S. Corporations*, CTR. FOR AMERICAN PROGRESS (June 27, 2023) <https://www.americanprogress.org/article/nationwide-momentum-grows-to-stop-political-spending-by-foreign-influenced-u-s-corporations/>.

¹⁶ Donald Shaw, *Nonprofit group takes aim at foreign money in politics*, SLUDGE (Apr. 6, 2022) <https://www.readsludge.com/2022/04/06/nonprofit-group-takes-aim-at-foreign-money-in-politics/>. St. Petersburg’s foreign spending ban was preempted by state law in 2021. *Id.*

became the first state to pass a law prohibiting foreign influenced corporations from spending in their elections,¹⁷ and Seattle, Washington passed a similar law in 2020.¹⁸

These laws establish standards to determine whether a corporation is “foreign influenced” and therefore barred from spending to influence elections. Although the precise ownership or funding thresholds may vary depending upon local circumstances, the prohibitions generally apply to corporations that meet one of the following conditions:

1. A foreign owner is involved in the decision-making for the corporation’s political spending.
2. A single foreign owner or a group of foreign owners hold certain percentages of total equity or outstanding voting shares in a corporation.
3. The corporation is a 501(c)(4) nonprofit organization that receives a certain percentage of its donations from foreign sources.
4. The corporation is organized under the laws of or has its principal place of business in a foreign country.

Setting standards for determining a corporation’s foreign influence is in keeping with other laws that guard against foreign interference by establishing corporate ownership thresholds. For example, the U.S. Securities and Exchange Commission requires any person who acquires more than 5% ownership of a publicly traded corporation to disclose that person’s ownership stake.¹⁹ This requirement recognizes that owners acquiring 5% or more in a company have significant influence on management and policy, and it is crucial for shareholders and the public to be aware of owners acquiring this much influence in a company. Another federal law, the Communications Act of 1934, restricts foreign individuals, governments, and corporations from owning more than 20% of the equity in broadcast companies.²⁰ Congress created these restrictions on foreign control to “safeguard the United States from foreign influence” and reduce security threats.²¹

Foreign influence through these mechanisms—ownership, funding, or direct involvement in political spending decisions—presents a significant risk that foreign nationals have a sufficiently large stake in a corporation to influence political spending or that domestic corporate managers will take into account the interests of their foreign owners when trying to influence elections.²² A corporation’s managers may respond to

¹⁷ David Moore, *Minnesota lawmakers pass sweeping bill to increase voting access*, SLUDGE (Apr. 27, 2023) <https://www.readsludge.com/2023/04/27/minnesota-lawmakers-pass-sweeping-bill-to-increase-voting-access/>.

¹⁸ Daniel Beekman, *Seattle City Council bans “foreign influenced” companies from most political spending*, SEATTLE TIMES (Jan. 13, 2020) <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-bans-foreign-influenced-companies-from-most-political-spending/>.

¹⁹ 15 U.S.C. § 78m(d)(1).

²⁰ 47 U.S.C. § 310(b)(3).

²¹ *Moving Phones Partnership v. FCC*, 998 F.2d 1051, 1055-1056 (D.C. Cir. 1993).

²² For an in-depth discussion of foreign influence through corporate ownership, *see generally* MICHAEL SOZAN, CTR. FOR AMERICAN PROGRESS, ENDING FOREIGN-INFLUENCED CORPORATE SPENDING IN US ELECTIONS 21 (2019) <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/11/ForeignSpending-report.pdf>.

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 democratic self-governance and, thus, should be barred from attempting to influence elections.

IV. Conclusion

As foreign interests have increasingly used the corporate form to try to influence both candidate elections and ballot measure campaigns, efforts to address this critical threat to democratic self-governance have continued, and should continue, to ramp up.

Minnesota has already passed its law banning campaign spending by foreign influenced corporations this past spring. In Maine, grassroots groups have placed a measure on the 2023 ballot to bar foreign government-influenced entities from spending in their elections—a direct response to foreign government-owned utilities spending millions in the state’s ballot measure campaigns.²³ And states across the country are considering similar legislation that would protect their elections from foreign influence.²⁴

These examples provide a strong starting point for the Committee to consider as it assesses how best to protect Oklahoma’s citizen-led initiative process from foreign interference. Thank you for inviting me to participate in this important study. I would be happy to provide additional information and answer any questions to assist the Committee.

Respectfully submitted,

/s/

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²³ Nicole Fisher, *Initiative prohibiting foreign election spending will appear on Maine Nov. ballot*, BALLOTPEDIA (July 28, 2023) <https://news.ballotpedia.org/2023/07/28/initiative-prohibiting-foreign-election-spending-will-appear-on-maine-nov-ballot/>.

²⁴ See Michael Sozan, *supra* note 15.