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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Seattle Ethics and Elections Commission
Seattle Municipal Tower
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via e-mail only to Wayne Barnett, Executive Director
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Commissioners:

I write to you today to urge you to support the provisions of the proposed ordinance that aim to help protect Seattle's municipal elections from foreign influence. As I am sure you are well aware, elections at all levels in the United States are under sustained direct attack from our foreign adversaries. Leading cities such as Seattle are wise to protect their elections from such intrusions and to set an example for others to follow.

The proliferation of dark-money groups in the wake of the *Citizens United* decision has made it impossible to know the sources of all the funds flooding into our political system. We need much more complete transparency for all political spending. The foreign-influence provisions of this proposal are extremely welcome steps toward that goal.

The provisions would protect Seattle's elections by creating a disclosure mechanism that would require corporate political spenders to verify and certify that they are not "foreign-influenced corporations." It then bars corporate political spenders that *are* defined as "foreign-influenced corporations" from spending in Seattle's elections.

This is consistent with an approach I laid out in an op-ed for *The New York Times* three years ago, "Taking On Citizens United" (March 30, 2016), http://nyti.ms/230BOgq (attached), that described a new way to read the *Citizens United* decision together with the foreign-national political spending ban (52 U.S.C. §30121).

In a nutshell, the op-ed pointed out that since the *Citizens United* majority protected the First Amendment rights of corporations as "associations of citizens," and held that a corporation's right to participate in elections flows from the collected rights of its individual shareholders to participate, it follows that the *limits* on the rights of a corporation's shareholders must also flow to the corporation. And one of the most important campaign-finance limits we have is that foreign nationals are absolutely barred from spending directly or indirectly in U.S. elections at

any political level. It defies logic to allow groups of foreign nationals, or foreign nationals in combination with American citizens, to fund political spending through corporations. You cannot have a right collectively that you do not have individually.

Accordingly, the proposed ordinance seeks to ensure that only those corporations owned and influenced by people who have the right to participate in our elections are doing so.

The proposed ordinance's disclosure provisions are on strong legal footing. They are fully in keeping with *Citizens United's* prescription for greater transparency in political spending; as the Supreme Court wrote, "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Also on solid ground is the provision barring foreign-influenced corporations from making or contributing toward independent expenditures in Seattle's elections. First Amendment concerns are not implicated by the ban on foreign political spending. The ban is not animated by the usual campaign-finance concerns about preventing corruption; it instead raises more fundamental questions about who gets to fully participate in the American political community, with the attendant rights and privileges. Foreign nationals – and corporations with foreign-national ownership – do not.

In *Bluman v. FEC,* a 2011 decision affirmed by the Supreme Court, a special three-judge D.C. district court (in a decision written by then-Judge Brett Kavanaugh), held that "the United States 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." Judge Kavanaugh noted that the "government may bar foreign citizens (at least those who are not lawful permanent residents of the United States) from participating in the campaign process that seeks to influence how voters will cast their ballots in the elections."

Foreign ownership of U.S. corporate assets is not an abstract concern. As Harvard corporate law professor John Coates said at the FEC, "about $12 trillion in assets owned by U.S. companies are controlled by foreign owners." Prof. Coates went on to note the "astonishing increase" in foreign ownership of U.S. corporate stock. "Back to 1982, about 5 percent of all U.S. corporate stock was held or controlled by foreigners," he said. "Now, it's now up to 25. Twenty-five."

The notion that ownership can indicate control is not a novel idea in the law. Other areas of law specify various ownership levels that may be deemed a controlling interest. For example, federal securities law considers the purchase of a 5% share of a corporation to be significant and worthy of disclosure. This proposed ordinance, while pathbreaking, draws on well-established principles of law.

This proposed ordinance is the sort of reform that may *only* succeed at the local and state levels at the moment, as ideological opposition to campaign-finance law enforcement has effectively paralyzed both Congress and my agency, the Federal Election Commission. Fortunately, local and state governments across the country are stepping into the breach and leading the way with

innovative responses to campaign-finance issues. Perhaps the most exciting and innovative reform to emerge in the past few years is Seattle's Democracy Vouchers program.

I applaud Seattle's effort to build upon its leadership in campaign-finance reform with the foreign-influence provisions of this proposed ordinance. By adopting these carefully crafted corporate requirements, Seattle will set an example that can be followed by others at the local, state, and federal levels. I urge the members of the Seattle Ethics and Elections Commission to give these provisions a positive report and work for their passage. They will do a great service for not just the city, but also the country.

If you have any questions about how well the terms of this proposed ordinance mesh with federal campaign-finance law (or any other questions), please feel free get in touch with me before your August 13 meeting. I am available at commissionerweintraub@fec.gov and (202) 694-1035.

Sincerely,

Ellen L. Weintraub

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Chair, Federal Election Commission