

## STOP FOREIGN FUNDS IN ELECTIONS ACT

DECEMBER 14, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STEIL, from the Committee on House Administration, submitted the following

### R E P O R T

[To accompany H.R. 3229]

The Committee on House Administration, to whom was referred the bill (H.R. 3229) to amend the Federal Election Campaign Act of 1971 to apply the prohibition against contributions and donations by foreign nationals in connection with elections to contributions or donations in connection with ballot initiatives and referenda, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 3, strike “REFERENDA” and insert “REFERENDA AND RECALL ELECTIONS”.

Page 2, line 7, strike “referendum” and insert “referendum or recall election”.

#### PURPOSE AND SUMMARY

H.R. 3229, Stop Foreign Funds in Elections Act, introduced by Representative Brian Fitzpatrick (PA-01) and co-sponsored by Representative Jared Golden (ME-02) prohibits foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation to a State or local ballot initiative, referendum, or recall election. Federal law currently does *not* prohibit these specific types of spending by foreign nationals in State or local popular legislative activities. As such, this legislation is needed to rectify this problem.

#### BACKGROUND AND NEED FOR LEGISLATION

##### BACKGROUND

Congress created the Federal Election Commission (“FEC”) in 1974<sup>1</sup> and gave it the authority to enforce all civil violations of federal campaign finance law.<sup>2</sup> The agency is a bipartisan commission of six commissioners who serve single, non-renewable six-year terms, though many commissioners “hold over” until a new commissioner is appointed.<sup>3</sup> No more than three commissioners may be affiliated with the same political party.<sup>4</sup> Commissioners are appointed by the president, traditionally upon the recommendation of Senate leadership, and are subject to confirmation by the United States Senate.<sup>5</sup> For the FEC to act, a majority vote of the commissioners is required.<sup>6</sup>

The FEC is tasked with enforcing the Federal Election Campaign Act (“FECA”). Under FECA, foreign nationals<sup>7</sup> are prohibited from, directly or indirectly, making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election (“foreign national spending prohibition”).<sup>8</sup> Foreign nationals are also prohibited from contributing or donating to political party committees<sup>9</sup> and from making expenditures, including independent expenditures, or disbursements for electioneering communications.<sup>10</sup>

The Supreme Court has consistently held that spending money in connection with political activities, including making donations or expenditures, qualifies as protected speech under the First

<sup>1</sup> Federal Election Campaign Act Amendments of 1974, 52 U.S.C. § 30106 (1974).

<sup>2</sup> *Id.* at §§ 30106(b)(1), 30107(e).

<sup>3</sup> *Id.* at § 30106(a)(2)(A)–(B). Commissioners are allowed to serve holdover terms in the event a replacement is not confirmed before their term expires. One commissioner has been at the FEC since 2002, 15 years longer than the standard term.

<sup>4</sup> *Id.* at § 30106(a)(2)(A).

<sup>5</sup> *Id.* at § 30106(a)(1).

<sup>6</sup> *Id.* at § 30106(c).

<sup>7</sup> Foreign national is defined as “(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term “foreign national” shall not include any individual who is a citizen of the United States; or (2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.” *See* 52 U.S. Code § 30121(b).

<sup>8</sup> *Id.* at § 30121(a)(1)(A).

<sup>9</sup> *Id.* at § 30121(a)(1)(B).

<sup>10</sup> *Id.* at § 30121(a)(1)(C).

Amendment.<sup>11</sup> Although the court has never squarely been presented with the question, it previously affirmed a three-judge court’s decision, authored by then-Judge Kavanaugh, that upheld the prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates.<sup>12</sup>

In October 2018, the FEC was asked to investigate allegations that foreign businesses unlawfully donated to two Montana state political committees in opposition to a Montana ballot initiative. The 2018 general election in Montana featured a ballot initiative (“I-186”), which asked voters whether they wanted to “establish new requirements for a hard rock mine permits based on standards for water quality in land restoration plans.”<sup>13</sup> According to a complaint filed with the FEC, Sandfire, a Canadian subsidiary of Sandfire NL, an Australian company, made donations totaling almost \$300,000 for the purpose of opposing I-186.<sup>14</sup> \$270,000 were donated to an “incidental committee”,<sup>15</sup> MMA, established for the purpose of opposing I-186, and \$17,857 was donated to a state ballot issue committee, Stop I-186.<sup>16</sup> The complaint alleged “that Sandfire NL is the source of the donations made by Sandfire, asserting that ‘[a]ccording to its public filings, Sandfire Resources America has no sources of revenue in the United States, and a cash flow of zero.’”<sup>17</sup>

The FEC was asked to review whether Sandfire and Sandfire NL violated the foreign national spending prohibition by donating to MMA and Stop I-186, as well as whether the committees violated the same provision for accepting foreign donations. The FEC dismissed both allegations.<sup>18</sup>

In dismissing the complaint, the FEC first considered how FECA and Supreme Court precedent define “election” to determine whether these donations fell within the meaning of the statute. Under FECA, an election is defined as “a general, special, primary, or runoff election” as well as “a convention or caucus of a political party which has authority to nominate a Candidate.”<sup>19</sup> FEC regulations specify that an “[e]lection means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office.”<sup>20</sup> In addition, Supreme Court

<sup>11</sup> See *Buckley v. Valeo*, 424 U.S. 1 (1976); *Davis v. FEC* 554 U.S. 724 (2008); *Citizens United v. FEC*, 558 U.S. 310 (2010); *McCutcheon v. FEC*, 572 U.S. 185 (2014); *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022).

<sup>12</sup> See *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff’d, 565 U.S. 1104 (2012). Importantly, the three-judge decision did *not* rely on Congress’ power under the Elections Clause of Article I, Section 4 to justify the foreign national spending prohibition. Cf. Report: The Elections Clause: States’ Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), <https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf>.

<sup>13</sup> Montana I-186, Requirements for Permits and Reclamation Plans of New Hard Rock Mines Initiative (2018), Ballotpedia, (last accessed Dec. 11, 2023), [https://ballotpedia.org/Montana\\_I-186\\_Requirements\\_for\\_Permits\\_and\\_Reclamation\\_Plans\\_of\\_New\\_Hard\\_Rock\\_Mines\\_Initiative\\_\(2018\)](https://ballotpedia.org/Montana_I-186_Requirements_for_Permits_and_Reclamation_Plans_of_New_Hard_Rock_Mines_Initiative_(2018)).

<sup>14</sup> See FEC Factual and Legal Analysis, MUR 7523 (Stop I-186 to Protect Mining and Jobs), (Oct. 4, 2021), available at [https://www.fec.gov/files/legal/murs/7523/7523\\_23.pdf](https://www.fec.gov/files/legal/murs/7523/7523_23.pdf).

<sup>15</sup> Under Montana law, “incidental committee” means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure. See MCA 13-1-101(22)(a).

<sup>16</sup> FEC Factual and Legal Analysis, MUR 7523, *supra* note 14.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 52 U.S.C. § 30101(1).

<sup>20</sup> 11 C.F.R. § 100.2(a).

precedent makes clear that FECA “regulates only candidate elections, not referenda or other issue-based ballot measures.”<sup>21</sup> Consistent with the above, the FEC concluded FECA does *not* prohibit spending relating *only* to ballot initiatives because such spending is “not in connection with” elections.<sup>22</sup>

After finding that the definition of “elections” under FECA does not encompass spending related *only* to ballot initiatives, the FEC considered the facts of Sandfire and Sandfire NL’s donations. First, the FEC found that Sandfire and Sandfire NL appeared to be foreign nationals under the law.<sup>23</sup> Second, the FEC concluded that these entities made donations to pure ballot initiative committees to fund an advertising campaign to oppose I–186, but that no candidates were involved with the campaign.<sup>24</sup> And finally, the complaint did not provide “any information that suggested any candidate was involved in the operation of the ballot measure committees, fundraising for the ballot measure committees, or otherwise linked their candidacy to the passage or failure of the ballot measure.”<sup>25</sup>

Based on these facts and the applicable law, the FEC dismissed the complaint, reasoning that Sandfire and Sandfire NL’s donations constituted spending relating *only* to ballot initiatives, a permissible activity, because it was *not* linked to an office-seeking candidate at the federal, state, or local level.

#### NEED FOR LEGISLATION

Representative Fitzpatrick and Golden’s H.R. 3229, the Stop Foreign Funds in Elections Act, would update FECA to prohibit foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation in support or opposition to a State or local ballot initiative, referendum, or recall election.

The House of Representatives should pass this legislation to prevent a similar situation to what occurred in Montana.

Despite strong political differences among the commissioners, a nearly identical piece of legislation was one of the FEC’s highest-priority bipartisan legislative recommendations in 2022.<sup>26</sup> In addition to the ballot initiative prohibition, the FEC also recommended prohibiting foreign spending in support or opposition to State or local referenda or recall elections. As described above, the FEC has concluded that these two popular legislative activities and voters’ recall of a public official do not constitute “elections” under FECA and that any prohibition on foreign national spending in support or opposition should be express in the statutory text.

The Stop Foreign Funds in Elections Act accepts the entirety of the FEC’s proposal, but also adds a rule of construction that pre-

<sup>21</sup> *McIntyre v. Ohio Elections Com’n*, 514 U.S. 334, 356 (1995) (citing *Buckley v. Valeo*, 424 U.S. 1, 80 (1976)); see also *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) (“Referenda are held on issues, not candidates for public office.”).

<sup>22</sup> FEC Factual and Legal Analysis, MUR 7523, *supra* note 14.

<sup>23</sup> *Id.* The definition of foreign national includes foreign principal, which is defined under 22 U.S.C. § 611(b)(3) and includes “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”

<sup>24</sup> FEC Factual and Legal Analysis, MUR 7523, *supra* note 14.

<sup>25</sup> *Id.*

<sup>26</sup> *Legislative Recommendations of the Federal Election Commission 2022*, FEC (Dec. 15, 2022), available at <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

vents the FEC from treating a State or local election or State or local ballot initiative or referenda as an “election” under FECA, including the imposition of any reporting or registration requirements. However, even though these activities would not constitute “elections”, the FEC would enforce this new prohibition in the same way it currently enforces the existing prohibition on foreign national contributions.

## COMMITTEE ACTION

### INTRODUCTION AND REFERRAL

On May 11, 2023, Representative Brian Fitzpatrick (PA–01) joined by Representative Jared Golden (ME–02), introduced H.R. 3229, Stop Foreign Funds in Elections Act. The bill was referred to the U.S. House of Representatives Committee on House Administration.

### HEARINGS

For the purposes of clause 3(c)(6)(A) of House Rule XIII, in the 118th Congress, the Committee on House Administration held two full committee hearings to develop H.R. 3229.

1. On May 11, 2023, the Committee held a full committee hearing titled, “American Confidence in Elections: Protecting Political Speech.” The hearing took place almost a decade to the day since the Internal Revenue Service scandal involving then Acting Director of Exempt Organizations Lois Lerner apologizing for inappropriately targeting conservative organizations’ applications for tax-exempt status.<sup>27</sup> It focused on the importance of enhancing protections for political speech and donor privacy to protect individuals and groups from retribution, harassment, or intimidation based on their beliefs. Witnesses included: Ms. Harmeet K. Dhillon, Managing Partner, Dhillon Law Group Inc., Ms. Audrey Perry Martin, Partner, The Gober Group, Mr. Justin Riemer, Principal, Riemer Law, LLC, Mr. Bradley A. Smith, Chairman and Founder, Institute for Free Speech, and Mr. Stephen Spaulding, Vice President for Policy & External Affairs, Common Cause.<sup>28</sup>

2. On September 20, 2023, the Committee held a full committee hearing titled, “Oversight of the Federal Elections Commission.” The hearing represented the first traditional oversight hearing of the Federal Election Commission in more than a decade.<sup>40</sup> The committee heard testimony from all six commissioners and the agency’s inspector general. The first panel of witnesses included the Honorable Dara Lindenbaum, Chairwoman, the Honorable Sean Cooksey, Vice Chairman, the Honorable Shana Broussard, Commissioner, the Honorable Allen Dickerson, Commissioner, the Honorable Ellen Weintraub, Commissioner, and the Honorable James Trainor, Commis-

<sup>27</sup>Matt Nese, *It’s Been 10 Years Since the IRS’s Tea Party Scandal. Will Congress Finally Act?*, Reason Foundation (May 10, 2023), <https://reason.com/2023/05/10/its-been-10-years-since-the-irss-tea-party-scandal-will-congress-finally-act/>.

<sup>28</sup>*American Confidence in Elections: Protecting Political Speech: Hearing Before the H. Comm. On Admin.*, 118th Cong. (2023).

sioner. The second panel featured Mr. Christopher Skinner, Inspector General.<sup>29</sup>

#### COMMITTEE CONSIDERATION

On November 30, 2023, the Committee on House Administration met in open session and ordered the bill, H.R. 3229, Stop Foreign Funds in Elections Act, favorably reported, as amended, with a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee’s consideration of H.R. 3229:

1. Vote on an amendment in the nature of a substitute to H.R. 3229 offered by Mr. Steil, adopted by voice vote.
2. Vote on an amendment to H.R. 3229, offered by Mr. Morelle, adopted by voice vote.
3. Vote to report H.R. 3229 favorably, as amended, to the House of Representatives, passed by voice vote.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 8, Clause 3—“To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;”<sup>30</sup>
- Article I, Section 8, Clause 4—“To establish an uniform Rule of Naturalization, . . . throughout the United States;”<sup>31</sup>
- Article IV, Section 4—“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; . . .”<sup>32</sup>
- Article I, Section 8, Clause 18—“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”<sup>33</sup>

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

<sup>29</sup> *Oversight of the Federal Election Commission: Hearing Before the H. Comm. on Admin., 118th Cong. (2023).*

<sup>30</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>31</sup> U.S. Const. art. I, § 8, cl. 4.

<sup>32</sup> U.S. Const. art. IV, § 4.

<sup>33</sup> U.S. CONST. art. I, § 8, cl. 18. In *U.S. v. Singh*, the United States Court of Appeals for the Ninth Circuit held that the foreign national spending prohibition was justified under Congress’ powers to provide for a uniform rule of naturalization, and was necessary and proper to the exercise of its immigration and foreign relations powers. See 924 F. 3d 1030, 1042–1043 (2019). Importantly, the court did *not* rely on the Elections Clause of Article I, Section 4 to justify the prohibition. Cf Report: The Elections Clause: States’ Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), [https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report The %20Elections%20Clause States %20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf](https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report%20The%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf).

## STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 3229.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

## PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 3229 are to prohibit foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation or anything of value to a State or local committee supporting or opposing a ballot initiative, referendum, or recall election.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 3229 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

## ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 3229 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

## FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

## ADVISORY COMMITTEE STATEMENT

H.R. 3229 does not establish or authorize any new advisory committees.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1*

This section provides a short title for H.R. 3229, the Stop Foreign Funds in Elections Act.

##### *Section 2*

Section 2(a) amends the Federal Election Campaign Act of 1971 to prohibit foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation to a State or local ballot initiative, referendum, or recall election.

Section 2(b) adds a rule of construction in line with the new language under section 2(a) that prevents State or local elections or State or local ballot initiative or referenda from being treated like an “election” under the Federal Election Campaign Act.

Section 2(c) provides an effective date when the legislation becomes law. Contributions and donations made by foreign nationals that fall within the meaning of the amended language in section 2(a) are prohibited on or after the date of the law’s enactment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

#### **FEDERAL ELECTION CAMPAIGN ACT OF 1971**

\* \* \* \* \*

#### **TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS**

\* \* \* \* \*

#### CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS

SEC. 319. (a) PROHIBITION.—It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election, *including a State or local ballot initiative or referendum or recall election*;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.



- (b) As used in this section, the term “foreign national” means—
- (1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)), except that the term “foreign national” shall not include any individual who is a citizen of the United States; or
  - (2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act) and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

\* \* \* \* \*

