

United States Senate

WASHINGTON, DC 20510-2309

October 5, 2010

The Honorable Matthew S. Petersen
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Chairman Petersen:

I am profoundly concerned by recent reports that foreign corporations are indirectly spending significant sums to influence American elections through third-party groups, including 501(c)(6) trade organizations. I am writing to ask that you investigate these claims, enforce existing laws and regulations prohibiting foreign spending in American elections, and strengthen those very laws through new regulations and policy guidance.

Federal law prohibits foreign nationals, including foreign corporations, from directly or indirectly contributing or making any kind of expenditure in connection with a Federal, State, or local election. *See* 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20 (e)-(f). However, a recent investigation has suggested that foreign corporations, including corporations owned by foreign governments, have made substantial contributions to a 501(c)(6) trade organization that has allegedly commingled these funds with the same funds it has used to finance millions of dollars in expenditures related to the 2010 midterm elections.

Under prior Commission guidance, this commingling is not *per se* illegal. However, a company must be able to demonstrate through a “reasonable accounting method” that its foreign funds were not, in fact, used in connection with election contributions or expenditures. *See* Federal Election Commission, Advisory Opinion 1992-16 (June 26, 1992); Advisory Opinion 1989-20 (October 27, 1989). If such an accounting is impossible, and these foreign funds were in fact used in American elections, these actions would violate federal law as interpreted by decades-old Commission guidance. *Ibid.* I respectfully request that you promptly investigate these claims and further request that you report your findings to my office.

Beyond these specific allegations of indirect foreign influence, I am concerned that the Commission’s interpretation of federal law prohibiting foreign influence has grown outdated. For example, the Commission’s regulations currently prohibit foreign nationals from directly or indirectly participating in a company’s decision-making regarding election spending. *See* 11 C.F.R. § 110.20 (i).

However, a Commission Advisory Opinion from 2000 explicitly allows for spending by a company where its Board of Directors is composed entirely of foreign nationals—so long as that Board creates a special elections committee composed entirely of American citizens. Federal Election Commission, Advisory Opinion 2000-17 at 3 (July 28, 2000).

In fact, under existing statutes and regulations, a company wholly-owned by a foreign government with a Board of Directors composed exclusively of foreign nationals could spend freely in our elections, so long as they were incorporated in the U.S., drew on their American profits, and created a citizens-only election committee.

I request that the Federal Election Commission rescind Advisory Opinion 2000-17 insofar as it permits election spending by companies led by foreign-only Boards of Directors. I further request that the Commission conduct a comprehensive review of its regulations and interpretive guidance to ensure that all measures are being taken to prohibit foreign influence of American elections.

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in blue ink that reads "Al Franken". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Al Franken
United States Senator