



Written by [R. Cort Kirkwood](#) on November 3, 2021

FEC OKs Foreign Donations to Ballot Campaigns, Cites SCOTUS Precedent

If Americans thought the suspicious election of Haiti Joe Biden was a laugh, wait until they hear that foreigners are allowed to donate to campaigns involving ballot initiatives.

As [Axios divulged](#) — appropriately enough on Election Day — the Federal Election Commission has declared that referendum battles are not subject to the same rules as elections involving candidates for public office.

In fact, FEC says, ballot battles aren't elections at all, even though they involve votes. Understandably, the decision has enraged just about everyone. Leftist Democrats and conservative Republicans agree that the agency went off the rails.

Notably, FEC ruled that federal election law does not prohibit such donations.



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NEW: The FEC has ruled foreign donors can finance U.S. referendum campaigns, opening the door to foreign spending on fights over high-profile policy issues, Axios has learned. <https://t.co/8caIipWYyx>

— Axios (@axios) [November 2, 2021](#)

The Ruling

The ruling involves ballot initiative 1-186 in Montana, which would have placed restrictions on [hard-rock mining](#) for such treasures as gold and silver.

The measure “would have required the Montana Department of Environmental Quality to deny permits for any new hard rock mines if the mine’s reclamation plan does not ‘contain measures sufficient to prevent the pollution of water without the need for perpetual treatment,’” [Ballotpedia reported](#).

The measure lost by about 56,000 votes, but not without help of an outfit called Sandfire Resources American, Inc. Sandfire, a Canadian subsidiary of an Australian corporation, donated almost \$300,000 to the anti-1-186 effort.

Supporters of the ballot measure argued to FEC that Sandfire violated the Federal Elections of Act of 1971 by accepting the foreign donations.

The company argued that “ballot initiatives are not ‘elections’ under the Act and that, therefore, the Act’s foreign national prohibition does not apply to their activities,” the [FEC ruling says](#).

FEC Commissioners agreed.



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Followed Precedent

“A major question stemming from the decision is whether foreign nationals are now permitted to spend money to influence the actual mechanisms of the U.S. democratic process,” [Axios reported](#). Even congressional redistricting could be at stake.

True enough.

But the [ruling avers](#) that FEC followed court precedent established under the Federal Elections Act of 1971:

The Act defines “election” to mean “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.” Commission regulations further specify that “[e]lection means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office.” ***The United States Supreme Court has long recognized that the Act “regulates only candidate elections, not referenda or other issue-based ballot measures.” Consistent with the Act and court precedents, the Commission has observed that spending relating only to ballot initiatives is generally outside the purview of the Act because such spending is not “in connection with” elections. [Emphasis added].***

The agency couldn’t act, it said, because the initiative was not tied to the election of a candidate.

FEC’s legal counsel recommended that the agency dismiss the allegations because it lacked “information in the current record suggesting that [opponents of the ballot measure] were inextricably linked with the election of any candidate” and lacked “clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity.”

Congressmen Don’t Agree

That aside, critics rightly observe that the ruling sends a message: Foreign money is welcome in elections that determine public policy.

“The FEC just decided to allow FOREIGN money to start pouring into certain U.S. elections,” GOP Rep. Claudia Tenney of New York wrote:

DC bureaucrats have truly lost their minds. We are a sovereign nation. Foreign money should have ZERO place in our elections. I’m fighting to stop this.

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— Congresswoman Tenney (@RepTenney) [November 2, 2021](#)

Leftist Representative Adam Schiff of California agreed.



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“An election is an election, whether for candidates or ballot measures,” he tweeted:

That the FEC would allow foreign money and interference in our elections is utterly incomprehensible.

It would set a dangerous precedent ripe for abuse.

Americans must decide American elections.

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— Adam Schiff (@RepAdamSchiff) [November 2, 2021](#)

If the FEC ruling stands, Congress must rewrite federal election law to stop foreigners determining the outcome of referenda battles.



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