



Vote YES on Amendment 124 offered by Rep. Slotkin to Close Loopholes in the Prohibition on Foreign Spending to Influence U.S. elections

March 7, 2019

Dear Representative:

Democracy 21 strongly urges you to vote YES on amendment 124 to be offered by Rep. Elissa Slotkin (D-MI) to H.R. 1 to close major loopholes in the prohibition on spending by foreign interests to influence U.S. elections.

Under existing law, foreign nationals, including foreign governments, foreign citizens and foreign corporations, are prohibited from making contributions, independent expenditures or electioneering communications to influence U.S. elections. 52 U.S.C. § 30121.

However, the evidence from ongoing investigations of the 2016 presidential election demonstrated that Russia and its agents ran ads attacking or promoting candidates that did not have express advocacy – the standard set by the Supreme Court for determining whether communications by outside groups are campaign ads.

Foreign interests should not be allowed to influence U.S. elections by running ads about candidates, regardless of whether the ads contain express advocacy.

Russia and its agents also sought to influence the outcome of the presidential election by running ads that discussed controversial issues in a way that was designed to incite anger and hatred and to inflame divisions in the American electorate without mentioning candidates.

In addition, the current prohibition on electioneering communications – ads that refer to a candidate and are run close in time to an election – applies only to broadcast ads and does not cover ads on the Internet, which is where most of the Russian ads were run.

Amendment 124 to be offered by Rep. Slotkin would close the loopholes through which foreign interests, including the Russian government, spent money in 2016 to influence our elections.

The amendment extends the ban on electioneering communications, which currently applies only to broadcast and cable ads, to also cover “paid internet or paid digital communications.” Most of the Russian spending was for online ads.

The amendment also extends the ban on foreign spending to any ad that “promotes, supports, attacks or opposes” a candidate for election, whether or not the ads contain express advocacy.

This closes a loophole through which Russia ran negative attack ads against candidates during the election that did not expressly advocate the election or defeat of a candidate.

This so-called “PASO” test is already used in campaign finance law and was upheld by the Supreme Court against a challenge that the standard is unconstitutionally vague.

The Supreme Court stated in the *McConnell* case that “any public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating. The record on this score could scarcely be more abundant.”

The Court held in *McConnell* that the words used in the PASO test – promote, attack, support, oppose – are not unconstitutionally vague because they “‘provide explicit standards for those who apply them’ and ‘give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.’”

Finally, the amendment also extends the foreign ban to any paid broadcast or online communication “that discusses a national legislative issue of public importance” in an election year and that is made for the purpose of influencing an election.

Given the scope of the prohibition, it would apply under the amendment only to the central problem that arose in the 2016 election – spending by “a government of a foreign country or a foreign political party or an agent of such a foreign principal.”

The record of the 2016 presidential election shows that Russia and its agents sponsored divisive ads that discussed policy issues in a manner designed to incite anger and hatred in order to influence the election. The amendment prohibits a foreign government from spending money on national issues in this manner for the purpose of influencing an election.

Amendment 124 to be offered by Rep. Slotkin directly responds to the outrageous abuses perpetrated by Russia in the 2016 presidential election by closing loopholes in current law to make these activities illegal for foreign interests to undertake in any future election.

Democracy 21 urges you to vote YES on the Slotkin amendment to H.R. 1.

Sincerely,

/s/ Fred Wertheimer
Fred Wertheimer
President