

District Court Upholds Ban on Foreign National Contributions and Expenditures

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On August 8, 2011, a three-judge panel of the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss the complaint of two foreign citizens, in the United States on temporary visas, alleging that the statutory ban on contributions, donations and expenditures by foreign nationals in connection with U.S. elections violates the First Amendment to the Constitution. In dismissing the complaint in *Bluman v. Federal Election Commission* challenging the constitutionality of 2 U.S.C. § 441e(a), the District Court relied on the "many decisions" in which the "Supreme Court has long held that the government . . . may exclude foreign citizens from activities that are part of democratic self-government in the United States." While upholding the ban as to contributions, donations and expenditures by foreign citizens temporarily residing in the United States, the District Court's opinion left undisturbed the exception created by § 441e(b)(2) under which foreign citizens who are lawful permanent residents of the United States may make contributions, donations, and expenditures in connection with U.S. elections.

Section 441e(a) prohibits "foreign nationals" from making, directly or indirectly: a contribution or donation of money or other thing of value in connection with a federal, state or local election; a contribution or donation to a committee of a political party; or any disbursement for independent expenditures or electioneering communications. In *Bluman*, the District Court noted that it was "evident" that "[p]olitical contributions and express-advocacy expenditures" serve as "part of the overall process of democratic self-government." The District Court stated: "The Supreme Court has long held that the government (federal, state and local) may exclude foreign citizens from activities that are part of democratic self-government in the United States. For

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example, the Supreme Court has ruled that the government may bar aliens from voting, serving as jurors, working as police or probation officers, or teaching at public schools. Under those precedents, the federal ban [under § 441e(a)] . . . readily passes constitutional muster." The District Court noted that its holding means that "foreign corporations are likewise barred from making contributions and expenditures prohibited by" § 441e(a); however, the District Court did not undertake "to analyze the circumstances under which a corporation may be considered a foreign corporation for purposes of First Amendment analysis."

As the District Court stated in *Bluman*, § 441e(a) "does not bar foreign nationals from issue advocacy - that is, speech that does not expressly advocate the election or defeat or defeat of a specific candidate." Nor, as the District Court also noted in *Bluman*, does the ban on political contributions and express-advocacy expenditures imposed by § 441e(a) extend to foreign citizens who are lawful permanent resident in the United States. (See also the definition of "foreign national" at § 441e(b)(2).) The FEC, in published guidance on participation by foreign nationals in U.S. elections, discusses the "green card" exception to the foreign contribution/expenditure ban: "An immigrant may make a contribution if he or she has a 'green card' indicating his or her lawful admittance for permanent residence in the United States." (See the FEC's "Foreign Nationals" brochure at <http://www.fec.gov/pages/brochures/foreign.shtml>.)