

**Cutting in on the Campaign: U.S. and Canadian Nationals’
“Incursions” into Their Neighboring Country’s Federal
Elections
Version 1.0**



Marsha Ann Tate, Ph.D.
Tate Research & Training Services
marsha@mtateresearch.com

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Cutting in on the Campaign: U.S. and Canadian Nationals' "Incursions" into Their Neighboring Country's Federal Elections

Over the years, nations throughout the world have developed a variety of legal mechanisms to prevent foreign interference in their domestic elections. However, despite these assorted safeguards, foreign nationals, whether by accident or by design, still occasionally end up in the midst of another country's electoral affairs. Given their multifaceted linkages, Canada and the United States are especially prone to cross-border election interference, as evidenced by several incidents that transpired during recent federal election campaigns in both countries. These incidents are the focus of the present inquiry. The study begins with a review of current Canadian and U.S. statutory and regulatory provisions related to foreign intervention in federal election campaigns. Thereafter, two case studies are presented. The first study focuses upon well-known filmmaker and U.S. national Michael Moore's October 2008 visit to Sault Ste. Marie, Ontario during Canada's federal election campaign. The second case study examines several interventions by Canadian nationals in the 2008 U.S. presidential campaign. Both case studies address the following questions: (a) What was the nature of the incidents? (b) What parties were involved in the incidents? (c) What were the parties' apparent motivations for intervening in the campaigns? and finally, (d) Did Canadian or U.S. government authorities pursue formal charges or impose other sanctions against the parties involved? Drawing upon the evidence gleaned from the case studies, the effectiveness of current Canadian and U.S. policy regimes in regulating the activities detailed in the studies is assessed. Based upon this assessment, several recommended policy modifications are outlined that may help strengthen existing safeguards vis-à-vis extraterritorial electioneering. This in-depth examination of recent electoral incursions provides insights into the extent and character of extraterritorial electioneering in Canada and the United States within a contemporary context.

At a December 1881 banquet held in his honor at a Montreal hotel, Mark Twain informed his Canadian guests: “My sojourn has been to my moral and intellectual profit; I have behaved with propriety and discretion.” Then, the famous U.S. satirist wryly added, “I have meddled nowhere but in the election...I like to keep my hand in, so I voted a good deal here” (Twain quoted in “Mark Twain,” 1881).

Twain’s banquet banter of almost 128 years ago calls attention to a decidedly serious problem still vexing sovereign nations to the present day namely, foreign interference in another country’s domestic political affairs, particularly elections. Although countries across the world have enacted a multitude of legal and other assorted safeguards intended to thwart foreign interference in their domestic elections, outside entities, whether by accident or by design, still occasionally manage to become entangled in another nation’s domestic electoral process.

Campaign incursions, sometimes referred to as *extraterritorial electioneering*, can assume myriad guises. The parties involved may act alone or in concert with a foreign government, corporation, or other entity. The interventions may be covert or overt; legal or illegal. The interventionists’ intentions noble or nefarious; the consequences of their interventions miniscule or momentous.

Owing to their close geographic proximity and multiplicity of other linkages, Canada and the United States are especially susceptible to cross-border electoral interference. This conundrum is illustrated by several incidents that occurred during 2008 federal election campaigns in both countries. These incidents are the focus of the present inquiry.

The paper begins with a review of selected Canadian and U.S. statutory and regulatory provisions related to foreign intervention in federal election campaigns. Thereafter, two case studies are presented. The first study focuses upon well-known filmmaker and U.S. national

Michael Moore's October 2008 visit to Sault Ste. Marie, Ontario during Canada's federal election campaign. The second study examines several cross-border interventions by Canadian nationals during the 2008 U.S. presidential campaign. Both case studies address the following questions: (a) What was the nature of the incidents? (b) What parties were involved in the incidents? (c) What were the parties' apparent motivations for intervening in the campaigns? and finally, (d) Did Canadian or U.S. government authorities pursue formal charges or impose other sanctions against the parties involved?

Drawing upon the evidence gleaned from the case studies, the effectiveness of current Canadian and U.S. policy regimes in regulating the activities detailed in the studies is assessed. Next, based upon the aforementioned assessment, several recommended policy modifications that may help strengthen safeguards vis-à-vis extraterritorial electioneering are outlined.

This in-depth examination of recent electoral incursions across the 49th parallel provides insights into the extent and character of cross-border electioneering in Canada and the United States within a contemporary context.

Canadian and U.S. Statutory and Regulatory Provisions Related to Foreign Intervention in Federal Election Campaigns

Elections play a paramount role in the functioning of democratic societies and thus, are among the most intensely scrutinized and regulated domestic activities within these societies. Accordingly, virtually every facet of the electoral process is subject to an array of statutes and regulations. With this in mind, the following section highlights selected provisions of Canadian and U.S. election laws pertaining to foreign intervention in federal elections.

Canadian Statutes and Regulations

The Canada Elections Act, the chief Canadian federal election law, includes a number of

provisions concerning direct and indirect participation by foreign individuals and groups in the country's federal elections. First and foremost, the Act stipulates that both candidates for federal elected offices *and* their electors must be Canadian citizens¹ (Canada Elections Act 2000, c. 9). In addition, the Act places relatively strict controls upon the financing of political campaigns. For example, only Canadian citizens or permanent residents of Canada are legally permitted to contribute to “registered political parties, trusts established by political parties, the riding associations of parties, and candidates.” The Act explicitly bars Canadian and foreign “corporations, unions, and unincorporated associations; foreign political parties; and foreign governments or their representatives” from making comparable contributions (Elections Canada 2006).

The Act also forbids *indirect contributions*; that is, contributions “that come from the money, property or services of another person or entity (including a company or other organization) if that other person or entity gave it to the individual to make a political contribution.” Canadians and foreign nationals are mutually prohibited from making indirect contributions (Elections Canada 2006a).

Given the pivotal position of the mass media in modern day electoral campaigns, it is not surprising that Part 16 of the Canada Elections Act is devoted exclusively to communications-related aspects of the electoral process. Two of the part's constituent sections—330 and 331 respectively—specifically address foreign intervention.

The first provision, Section 330 (broadcasting outside Canada), states in part:

No person shall, with intent to influence persons to vote or refrain from voting or vote or refrain from voting for a particular candidate at an election, use, aid, abet, counsel or

¹The Canada Elections Act specifically regulates the process of electing “members to the House of Commons” and associated activities (Canada Elections Act 2000, c. 9).

procure the use of a broadcasting station outside Canada, during an election period, for the broadcasting of any matter having reference to an election.

Also under Section 330, “during an election period,” anyone regardless of his/her nationality or citizenship status is legally precluded from using foreign-based radio and television stations to broadcast “election advertising with respect to a [Canadian] election.” In practice, this provision prevents Canadian candidates from using U.S.-based television and radio stations which reach Canadian audiences to supplement their domestic political advertising.

The subsequent section of the Act, Section 331 (non-interference by foreigners), forbids individuals who are not Canadian citizens or permanent residents of Canada “within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*” to “in any way induce electors to vote or refrain from voting for a particular candidate” during an election period.

The Canada Elections Act also restricts the activities of third parties on behalf of a particular candidate or party. The Act defines third parties as persons or groups, “other than a candidate, registered party, or electoral district association of a registered party.” The Act expressly prohibits third parties from using contributions for “political advertising purposes” if the contributions come from any of the following:

- (a) a person who is not a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*;
- (b) a corporation or an association that does not carry on business in Canada;
- (c) a trade union that does not hold bargaining rights for employees in Canada;
- (d) a foreign political party; or
- (e) a foreign government or an agent of one (Canada Elections Act, s. 358).

Oversight of the Canadian Electoral Process

Elections Canada, the federal government agency charged with overseeing Canada’s “federal elections, by-elections, and referendums” performs a diverse array of functions including, among others: (a) “preparing, managing and delivering field operations for electoral

events;” (b) “maintaining a permanent register of electors;” (c) maintaining electoral maps; (d) “interpreting electoral laws and supplying legal advice;” (e) “conducting research and analysis;” (f) “implementing outreach and communication programs;” and (g) “overseeing political financing” (Elections Canada, “Glossary A–I,” n.d.; Elections Canada, “The electoral system of Canada, main activities,” n.d.)

Offences and Penalties

Infractions of the Canada Elections Act carry punishments ranging from fines to imprisonment or a combination of the two. Section 501 of the Act also grants the Court added discretion to levy specified additional penalties under certain circumstances. Furthermore, the Act classifies a select group of offences as either “illegal practices” or “corrupt practices.” In addition to the aforementioned penalties, individuals who commit these offences may also “lose the right to be a candidate in a federal election, to sit as a member in the House of Commons and to hold any office to which the incumbent is appointed by the Crown or by the Governor in Council” for a period of “five years in the case of illegal practices, and for seven years in the case of corrupt practices” (Elections Canada 2008).

Table 1 below outlines the maximum penalties for violations of selected provisions of the Canada Elections Act.

Table 1. Selected Violations of the Canada Elections Act

Activity	Offence	Punishment	Maximum Penalty (in addition to other penalties applicable under the Act)
Foreign broadcasting by a candidate or his/her official agent—subsection 330(2)	Illegal practice 502(b)	502(3)	Five year ban on: <ul style="list-style-type: none"> • Election to or sitting in the House of Commons • Holding “any office in the nomination of the Crown or of the Governor in Council” 502(3)
Foreign broadcasting (willfully)—subsection 330(1) or (2)	495(e)	500(4); 502(1)(b); 502(3)	C\$25,000 fine
Inducement by foreigners (willfully) – section 331	495(3)	500(3)	C\$2,000 fine, six month imprisonment, or both
Use of foreign contributions—section 358	496(e)	500(1)	C\$1,000 fine, three month imprisonment, or both

Source: Elections Canada. Table of Offences, Canada Elections Act. Communications—Offences under Part 16. Last modified July 26, 2007; Elections Canada. Table of Offences, Canada Elections Act. Illegal practices. Last modified July 26, 2007; Elections Canada. Table of Offences, Canada Elections Act. Third Party Election Advertising under Part 17.

U.S. Statutes and Regulations

Like Canada, the United States boasts an extensive array of federal and state election-related laws. While some U.S. laws are comparable to Canada’s, others are markedly different. For example, in the United States, citizenship qualifications for federal offices vary. Candidates for the presidency and vice presidency must be natural born citizens of the United States (U.S. Constitution, Article II, Section 1).² Alternately, candidates for the U.S. Senate and House of Representatives need only to be citizens of the United States for at least nine years and seven years respectively (U.S. Constitution, Article 1, Sections 2–3).

With regard to enfranchisement, the U.S. Constitution does not include a specific

² The full text of the relevant section of Article II of the U.S. Constitution reads as follows: “No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen years a resident within the United States.”

provision barring non-U.S. citizens from voting in national elections nor does it mandate non-citizen suffrage. With the exception of the Constitutional requirement that a voter in the United States be, at a minimum, eighteen years of age, voter eligibility guidelines remain largely within the purview of individual states. As a result, laws governing enfranchisement, especially of resident non-citizens (i.e., “foreign-born individuals who have been granted legal permanent residence in the United States, but have not become citizens”) have varied significantly over time and by state (Brozovich 2002, 403).

With the exception of individual states’ authority over enfranchisement, federal election laws generally predominate over their state counterparts, as Elizabeth Bircher explains in the *Election Law Manual*:

While many federal statutes apply *only* to elections for federal offices...[i]n practice, this distinction may be irrelevant as local, state, and federal elections are frequently held in tandem because the financial and logistical considerations generally preclude states from operating separate federal and state electoral systems (2008, 1-1).

With respect to campaign financing, the Federal Election Campaign Act (FECA) serves as the principal statutory authority over the collection and distribution of campaign funds in federal elections. In addition, sundry sections of Title 11 (Federal Elections) of the Code of Federal Regulations (CFR) governs various financial-related aspects of elections. It should be noted that under current U.S. federal law, campaigns need only identify individuals who contribute more than \$US200 to a campaign. Moreover, U.S. federal reporting rules differ based upon whether a campaign accepts public financing (Kuhnenn 2008).

The Federal Elections Commission (FEC), Election Canada’s U.S. counterpart, is an independent government agency responsible for “enforcing the provisions” of the Federal Election Campaign Act. The FEC also performs a number of other functions, including: (a)

overseeing federal election campaign funding (i.e., funding for U.S. Congressional and Presidential elections); (b) “overseeing the public funding of Presidential elections;” and (c) “disclosing campaign finance information” (Federal Election Commission, “FEC Mission and History,” n.d.) The FEC also shares oversight responsibilities for selected aspects of elections with other federal departments and agencies such as the Federal Communications Commission (FCC), the Department of Justice, and the Internal Revenue Service (IRS). Lastly, the FEC periodically issues advisory opinions wherein it officially replies “to questions regarding the application of Federal campaign finance law to specific factual situations” (U.S. Federal Election Commission, “Advisory opinions,” n.d.)

Miscellaneous provisions of the Federal Election Campaign Act, in tandem with a variety of other statutes and regulations govern the activities of foreign nationals in U.S. federal elections. For example, under section 441e of the Federal Election Campaign Act, foreign nationals are expressly prohibited from “directly or indirectly” making:

- (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;
- (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)) (2 U.S.C. § 434(f)(3)).

Likewise, the Act forbids “a person” (e.g., a candidate) “to solicit, accept, or receive a contribution or donation” as described above “from a foreign national.”³ Under the Act, the term “foreign national” includes the following: (a) “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 Neutrality Act) and who is not lawfully admitted for permanent residence (as defined by section

³ U.S. citizens can contribute up to \$US2,300 per election (primary elections and general elections are considered separate elections) (Kuhnhehn 2008).

1101(a)(20) of Title 8);” (b) a foreign government or political party; or (c) “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having as its principal place of business in a foreign country.⁴”

To insure that campaign contributions from abroad are, in actuality, coming from U.S. citizens or permanent U.S. residents, the FEC directs candidates to view the current U.S. passports of overseas donors to confirm that they are eligible contributors. Nevertheless, as a subsequent case study will illustrate, presidential campaigns are struggling to comply with the FEC’s passport review requirement owing to the burgeoning number of overseas contributions, many submitted via the Internet (Theimer 2008).

Beyond the issue of screening domestic and overseas campaign contributions, looms another equally vexing albeit broader question: To what extent can foreign nationals legally participate in fundraising activities under current U.S. federal statutes and regulations? Presumably, this should be a fairly easy question to answer. However, in reality, U.S. law remains somewhat vague on the subject. Although U.S. law unequivocally bars foreign nationals from making campaign contributions themselves, they are not explicitly prohibited from soliciting contributions (Luo 2008). This issue is further muddled by a 2004 FEC advisory opinion which decreed that Zury Rios Sosa, a Guatemalan citizen and then fiancée of U.S. Representative Jerry Weller (Republican, Illinois) could lawfully “solicit funds from persons who are not foreign nationals” as long as she served as an “uncompensated volunteer” for Representative Weller in lieu of working for him as a paid staff member (Luo 2008).

The legal confusion arises from the fact that the 2004 FEC opinion cites a regulation (11 CFR § 110.20) that seemingly contradicts the opinion itself. According to the regulation:

⁴ 22 U.S.C. § 611(b)

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee (Luo 2008; 11 C.F.R. §110.20(i)).

One increasingly popular fundraising practice known as *bundling* is complicating the already vexing issue of verification and documentation. Bundling requires the services of a third party (the “bundler”) to solicit and gather together (“bundles”) contributions from a number of individual donors. After the bundler assembles the donated funds, he/she forwards them to a designated candidate's campaign. Undoubtedly, the biggest dilemma associated with bundling concerns confirming that the contributions collected came from eligible donors.⁵ This dilemma is further exacerbated by the fact that more and more “bundled” contributions are being made via the Internet (Luo 2008).

As mentioned earlier, despite the panoply of Canadian and U.S. election-related laws currently in force, cross-border electoral incursions remain relatively common occurrences in both countries. The following case studies explore several contemporary cross-border electoral incidents.

Case Study #1: Michael Moore's October 2008 Visit to Sault Ste. Marie, Ontario

Michigan native Michael Moore has garnered an international reputation as an award-winning and, at times, controversial filmmaker. Moore has also prominently featured Canada in a

⁵ In August 2008, Senator John McCain's presidential campaign announced that it would return over US\$50,000 in contributions bundled together by Abu Naba'a, a Jordanian citizen and business partner of Harry Sargeant III, a prominent McCain fundraiser and finance chairman of the Florida Republican Party (Luo 2008). The campaign returned the contributions after unspecified Democratic officials questioned whether a foreign national could legally serve as a bundler. While the McCain campaign asserted that Mr. Naba'a did not violate any laws, it decided to give back the bundled contributions because 'it just didn't sound right to us.'" The FEC ultimately did not take any legal action against Mr. Naba'a or the McCain campaign (Luo 2008).

number of his documentaries, not to mention his 1995 political satire *Canadian Bacon* in which a U.S. President (played by Alan Alda) attempts to bolster public support at home by sparking a war with Canada.

In October 2008, Moore himself became the subject of a real-life cross-border kerfuffle thanks to a visit to Sault Ste. Marie, Ontario. Moore's fall foray to Ontario coincided with Canada's federal parliamentary election campaign. In fact, this was not the first time Mr. Moore had meandered into a Canadian election campaign; over the past decade, he had accomplished the feat twice before. Moore's trio of Canadian electoral "incursions" share a common theme namely, an aversion to Stephen Harper and the Conservative Party of Canada.

Michael Moore's initial documented Canadian electoral-related intervention occurred amid the 2004 federal election. On that occasion, Moore publicly chided Harper and the Conservative Party. Next, on the eve of the 2006 election, Moore published an open statement to Canadian voters on his personal Web site, beseeching them not to vote the Conservatives into power. In the statement, Moore equated the Conservative Party's leader (Harper), with U.S. President George W. Bush:

Oh, Canada—you're not *really* going to elect a Conservative majority on Monday, are you? That's a joke, right?...[A]s you go to the polls on Monday, you do so while a man running the nation to the south of you is hoping you can lend him a hand by picking Stephen Harper because he's a man who shares his world view...[I]f you're going to reduce Canada to a cheap download of Bush & Co., then at least don't surrender so easily. Can't you wait until he threatens to bomb Regina? (Moore 2006).

The purpose of Michael Moore's fall 2008 journey to Sault St. Marie was ostensibly to shoot footage for a new documentary. Accordingly, Moore, along with his film crew, attended the all candidates debate at Sault College. Following the debate, Moore interviewed all of the candidates vying for the seat, with one notable exception—incumbent Cameron Ross—a former

Canadian Forces officer and member of the Conservative Party. When Moore was questioned by local reporters why Mr. Ross refused to be interviewed, Moore first replied that he didn't know, and then added, "Maybe he was hungry. Conservatives get hungrier easier I guess." (Moore quoted in Vere 2008).⁶ The reporters also asked Moore what candidate he would choose if eligible to vote in the riding; he purportedly replied, "You know, all but the Conservatives" (Moore quoted in Vere 2008).

Following the debate, Moore's crew accompanied NDP incumbent Tony Martin as Martin canvassed "less than a dozen" (Moore's estimate) residences in the riding. Moore later wrote that he only joined the group on their final two visits and claimed his participation consisted solely of interviewing "the residents about how they felt about Tony Martin" (Moore 2008).

Reactions to Moore's words and deeds during his visit to Sault Ste. Marie were decidedly mixed. Pete Vere, a journalist, lawyer, and resident of the riding who attended the debate expressed reservations about Moore's professed reason for visiting Sault Ste. Marie. In a blog post published in the Full Comment section of the *National Post's Web site*, Vere was especially perplexed by the fact that Moore opted to devote his attention to the Canadian election when Moore's homeland was in the midst of a historic election campaign of its own:

With the U.S. election in the final month of the campaign, why not participate in the political debate back home? If you believe your own backyard is such a mess, why play political peeping Tom with the neighbours? (Vere 2008).

The majority of the 30 comments posted in response to Vere's blog entry expressed disdain for Moore's Canadian electoral incursion; many also conveyed personal animosity toward Moore himself.⁷ One individual with the online appellation "Lastfullmeasure" protested,

⁶ Moore interviewed five of the riding's six candidates. Conservative candidate Ross explained that he turned down Moore's request because he was celebrating his 20th wedding anniversary with family (Vere 2008).

“Moore should mind his own business.” Another respondent, Richard Purvis, voiced indignation at the notion of a U.S. citizen canvassing door-to-door on behalf of a Canadian candidate: “One thing we don't like is to have an American come up here and go door-to-door with a candidate during an election,” Purvis exclaimed. “Hopefully he had a lot of doors slammed in his face.”

Only a few posters voiced support for Moore. One individual questioned, “Why can't Michael Moore comment on our elections?” In a similar vein, “lone56wolf” challenged fellow posters: “So...what is it about yourselves you're all afraid Michael Moore may expose?” Meanwhile, the final respondent, “Percy Grainger10,” raised the question of the legality of Moore's actions under the Canada Elections Act.

Of course, PercyGrainger10 wasn't the only person questioning the legitimacy of Moore's actions since the Conservative Party posed the same question in a public statement (Patten 2008). In the meantime, other Canadian political parties defended Moore. For example, NDP spokesman Brad Lavinge contended that Moore and his film crew had not violated any Canadian election laws. “Mr. Moore was not handing out literature or persuading people to vote one way or another, and therefore, the claim is fairly bogus,” explained Lavinge (Lavinge quoted in Patten 2008).

The particulars surrounding Michael Moore's visit to Sault Ste. Marie seemed relatively straightforward. Nonetheless, appearances can be deceiving. In a turn of events worthy of an Agatha Christie novel, on Canadian Thanksgiving morning 2008, Moore made a startling revelation in a statement published in the Sault Ste. Marie online newspaper *SooToday.com*.

⁷ Some of the individuals posted multiple comments. Also, there is no way of knowing whether the respondents were Canadians or from other countries. Also, the readers' comments may also be reflective of the *National Post's* traditional tendency to champion Conservative Party principles and policies. Interestingly, a number of posted comments in response to a October 10, 2008 CBC News online article about Moore's visit to Sault Ste. Marie focused upon gun ownership in the U.S. and Canada (“Michael Moore pops up in the Sault,” 2008).

In the statement, Moore declared that Conservative Party candidate Cameron Ross's campaign manager, Ian Shields, originally invited Moore to accompany Ross on his door-to-door canvassing rounds. Moore only agreed to go canvassing with NDP candidate Tony Martin after, in Moore's words, "Ross bolted out a side door" following the all candidates debate (Moore 2008). Moore further accused Ross of outright duplicity: Cameron Ross lured us into Canada to go door-to-door with him—and then filed a complaint that we were going door-to-door and interfering with the Canadian election! (Moore 2008).

Moore also stated that he had filed a complaint with Elections Canada regarding Ross's alleged actions. However, Elections Canada, citing policy restrictions, declined to verify Moore's claim (Patten 2008). Despite the numerous claims and counterclaims surrounding Moore's 2008 Ontario visit, to date, there is no indication that any formal sanctions have been taken against any parties involved in the dispute.

Case Study #2: Participation by Canadian Citizens in the 2008 U.S. Presidential Campaign

While Michael Moore was caught up in Canada's 2008 federal elections, several groups of Canadian nationals were likewise variously involved in the 2008 U.S. presidential campaign. Canadian participation in the 2008 race included such activities as making financial contributions and/or volunteering for a specific campaign. Moreover, the 2008 race also served as the backdrop for a Canada—U.S. diplomatic dust-up which came to be known as NAFTA-gate. The following case study examines each of the abovementioned forms of Canadian involvement in the 2008 U.S. presidential election.

Canadian Contributions to U.S. Presidential Campaigns

Given the escalating costs of electoral campaigns for all levels of office in the United

States, candidates and political parties must necessarily engage in perpetual fundraising.

Although, as note earlier, U.S. law explicitly forbids foreign nationals from making campaign contributions, donations from non-citizens still occasionally end up in the campaign coffers of U.S. politicians.

An August 2008 Associated Press (AP) analysis of 1.27 million contributions to the McCain and Obama campaigns identified 6,948 contributions that appeared to be from individuals abroad “who were not obviously in the U.S. military.” The AP subsequently interviewed 123 overseas donors “about their citizenship and donations.”

Although the AP’s investigation ultimately uncovered only three donations from foreign nationals, it did reveal two significant weaknesses in the fundraising practices of both the McCain and Obama campaigns, specifically: (a) general non-compliance with the Federal Election Commission’s (FEC) U.S. passport verification requirement; and (b) “missing details” in required federal documentation of contributions (Theimer 2008). Based upon its findings, the AP concluded that both the McCain and Obama campaigns tended to “take money first and ask questions later” (Theimer 2008).

With respect to both campaigns’ seeming failure to fully comply with the FEC’s passport verification requirement, the AP noted that only five of the donors interviewed (three for Obama and two for McCain) indicated that they were required to present copies of their current U.S. passports to the respective campaigns. A US\$500 donation to the Obama campaign from Tom Sanderson of Calgary, Alberta, was used to illustrate the apparent deficiencies in the campaigns’ donation screening process. According to the AP, the Obama campaign accepted Mr. Sanderson’s contribution despite the fact that he included a note with his donation forthrightly proclaiming: “I am not an American citizen!” Moreover, the Obama campaign even allegedly

referred to Mr. Sanderson's note in its official finance reports (Theimer 2008).

Sanderson later told the AP that he made the donation via the Obama campaign's Web site. Sanderson also stated that he did not recall checking the box on the site denoting he was a U.S. citizen. Nonetheless, Sanderson claimed that he indicated that he was not a U.S. citizen beside his address. Upon learning from the AP that his contribution was illegal, Sanderson requested a refund from the Obama campaign. "It was an error of me to give the donation," Sanderson told the AP reporter. "It was an error that it was accepted" (Theimer 2008).

In early October 2008, two months following the AP's analysis of overseas campaign contributions, the Republican National Committee (RNC) filed a complaint with the FEC "alleging that Democrat Barack Obama's presidential campaign had received illegal contributions from foreigners and donations" in excess of federal limits. The complainants asked the FEC to conduct an audit of Obama's campaign contributions in order to determine whether it had "violated the law by accepting money from non-citizens and whether individual donors...exceeded contributions to the campaign" (Kuhnhenh 2008; Farnam 2008).

Eventually, both the Obama and McCain campaigns returned a number of donations that were determined to be (or allegedly) from foreign nationals or were deemed otherwise illegal. The Republican and Democratic parties expressed differing opinions about the verification of campaign donors' identities, especially of online donors. Sean Cairncross, chief counsel for the Republican National Committee (RNC), stated that the RNC viewed it "as a wide-scale problem for the Obama campaign" (Farnam 2008). On the other hand, Obama campaign spokesman Bill Burton stressed that while "no organization is completely protected from Internet fraud," his campaign "constantly review[s] our donors for any issues." Moreover, Burton affirmed that the campaign "will continue to review our fund-raising procedures to

ensure that we are taking every available step to root out improper contributions”

(Burton quoted in Farnam 2008).

The differing views concerning donor verification likely reflect the significance of Internet fundraising to the respective campaigns. While online fundraising was a crucial component of the Obama campaign, it played a less significant role in the McCain campaign.

Canadian Volunteers in the Obama Campaign

Barack Obama’s message of “change” not only resonated with U.S. voters, it also inspired a number of young Canadians to the point that they ventured across the border to volunteer for the Obama campaign. As noted earlier, it is not unlawful for non-citizens to volunteer for U.S. political campaigns although the precise number of Canadians and other foreign nationals who participated in the 2008 U.S. presidential campaign is unknown. However, a March 1, 2008 *Globe and Mail* article by journalist and filmmaker Salimah Ebrahim offers some unique glimpses into the actions and motivations of a group of twenty Canadians who participated in the 2008 U.S. presidential campaign.

The Vancouver, British Columbia-based volunteer force comprised largely of college students ventured from western Canada to volunteer their time and talent to the Obama campaign in the run up to the March 4, 2008 Texas Democratic primary. The Canadian volunteers performed a variety of tasks, including: (a) phone and door-to-door canvassing; (b) brochure folding; and (c) providing “visibility on street corners” (Ebrahim 2008). Ebrahim related that the Canadians were “working for a man they believe to be a true agent of change—and possibly—the next president of the United States” (2008).

Ebrahim also disclosed that the Vancouver group had earlier assisted the Obama campaign in the February 9, 2008 caucuses in the state of Washington (Ebrahim 2008).

The volunteers interviewed cited two primary motivations for joining the Obama campaign: (1) inspirational leadership that they felt Canada was devoid of at the moment; and (2) opposition to Iraq War (Ebrahim 2008).

The group's enthusiasm for Barack Obama was evident in their conversations with Ebrahim. For example, one 27-year-old volunteer, Ajay Puri, explained, "I would volunteer for three weeks straight, basic food and a place to crash on a floor, just so he can get in" (Ebrahim 2008). Group members also stated that the Internet, especially online social networking tools such as Facebook, played an instrumental role in uniting and coordinating Obama's Canadian supporters. According to Ebrahim, over 40 pro-Obama Canadian Facebook groups had already been set up, with the largest group exceeding 2000 members (Ebrahim 2008).

"NAFTA-gate"

Taking into consideration all of the documented 2008 Canada–U.S. electoral campaign incursions, one incident stands apart from the others in terms of press coverage, the participants, and most of all, its potential for causing a serious rift in diplomatic relations between Canada and the United States. The incident in question, dubbed NAFTA-gate by the media, in actuality, consisted of a series of events that transpired on both sides of the border between February and March 2008.

Distilling all of the facts surrounding NAFTA-gate is seemingly impossible since sundry particulars of the proceedings are based upon hearsay evidence. Nonetheless, a number of details regarding the episode can be derived from a combination of sources, including: (a) remarks by the individuals involved, (b) Canadian and U.S. media accounts of the incident and its aftermath, and (c) the findings from a formal Canadian government-sponsored investigation into the matter.

The origins of NAFTA-gate can be traced to early 2008, a decisive period for U.S. Democratic presidential candidates Barack Obama and Hillary Clinton who were locked in tumultuous primary battles in Ohio, Pennsylvania, and several other states that were mired in an economic malaise owing, in part, to the ongoing exodus of industrial jobs from the states to foreign countries. Consequently, both Democratic candidates attempted to garner votes in these economically beleaguered industrial states by targeting what many voters (especially union members) regarded as a primary cause of the states' economic woes, namely, the North American Free Trade Agreement (NAFTA). During a televised debate, both Clinton and Obama pledged that if elected president, each candidate would renegotiate NAFTA.

While the Democratic candidates' pledges were clearly aimed at garnering much-needed votes in key primaries, their statements were also worrying Canada and Mexico, NAFTA's two other signatories. Were the Democratic candidates sincere? If elected, did Clinton or Obama actually intend to re-open NAFTA negotiations? If information from an "unidentified source" and a leaked memo were indeed true, neither Ottawa nor Mexico City needed to lose much sleep over the Democratic candidates' NAFTA declarations.

The NAFTA-gate saga began in earnest with the preparation of a memo summarizing a February 8, 2008 meeting between Mr. Obama's economic adviser, Austan Goolsbee, and Canada's Consul-General in Chicago, Georges Rioux. The memo, prepared by Chicago consulate staff member Joseph DeMora, noted that Goolsbee had assured Rioux that Obama's NAFTA renegotiation pledge was merely campaign bravado aimed at U.S. voters ("No NAFTA conspiracy," 2008, AA04).

Several weeks later, on February 26th, CTV News reporters asked Stephen Harper's Chief of Staff, Ian Brodie, about the U.S. candidates' comments regarding NAFTA. Brodie

responded that the Clinton campaign had conveyed reassurances to Ottawa that it would not revisit NAFTA; however, he did not mention the Obama campaign. Thereafter, CTV News reporter Tom Clark queried Canadian Ambassador Michael Wilson about the matter. Wilson purportedly told Clark that the reassurances came from the Obama campaign, not the Clinton campaign as Brodie earlier maintained (“Canadian meddling,” 2008).⁸

On February 27th, CTV News anchor Sandie Rinaldo outlined the salient issues involved in the unfolding skirmish for Canadian viewers:

There were mutterings in the United States today about alleged Canadian meddling in the presidential campaign. Commentators are questioning whether the two democratic candidates have said one thing about NAFTA publicly to Americans and another privately to Canadian officials. And some democrats are convinced the Canadian government leaked the off the record comments in order to help the Republicans (“Canadian meddling,” 2008).

Suffice to say, the story, which soon thereafter also enjoyed wide circulation on YouTube, touched off a veritable political firestorm on both sides of the border. It also raised a number of troubling ethical questions. For example, U.S. observers speculated that if Brodie’s and Wilson’s conflicting references to the Clinton and Obama campaigns were indeed accurate, it followed that “both campaigns [had] called the Canadians.” As a result, both campaigns would be equally culpable of deceiving voters for political gain (Morrison 2008).

Democratic Party operatives responded to the revelations by launching a verbal barrage against Prime Minister Stephen Harper’s Conservative government, accusing the Tories of, in the words of Democratic adviser Bob Shrum, “trying to help the Republicans...and actively interfering in this campaign” (Shrum 2008). In an Associated Press (AP) interview, Austan Goolsbee declared that his statements in the Brodie memo were distorted and offered his

⁸ Wilson admitted to having a “‘private conversation’ with a CTV journalist” prior to the CTV’s airing of the story (“Where’s the conspiracy” 2008, A16).

personal account of the events. The already heated dispute hit an even higher temperature after the AP received excerpts of the disputed memo from an unknown source and subsequently published them. However, the full contents of the memo remained under wraps (“No NAFTA conspiracy,” 2008, AA04).

Meanwhile, in Canada, opposition parties called for the resignations of Brodie, Wilson, and Rioux. In an attempt to quell the growing tumult at home and in the United States, Prime Minister Harper ordered the Clerk of the Privy Council, Kevin Lynch, to launch an internal investigation into the matter. Lynch, however, later handed over the investigation to a private Ottawa-based firm, BMCI Investigations and Security (“No NAFTA conspiracy,” 2008, AA04; Whittington 2008).

NAFTA-gate unquestionably flared tempers and moreover, raised a host of ethical concerns on both sides of the border. But did NAFTA-gate signify something more than political puffery and breeches of diplomatic protocol? Was it perchance a deliberate conspiracy perpetrated by the Tories against the Democratic candidates? Liberals and New Democrats in the Canadian Parliament considered the conspiracy scenario conceivable, and thus called for a rigorous examination of all of the actions surrounding NAFTA-gate, not just a select few.

The Opposition seemingly found relatively little support for their allegations in the Canadian press. For the most part, editorials eschewed the opposition’s conspiratorial allegations and likewise, did not join in their calls for Wilson and Brodie’s resignations. For example, a March 14, 2008 *Globe & Mail* editorial noted, “There is no evidence here of a power-crazed Canadian politico playing puppet master with U.S. politicians...At worst, it was a moderate indiscretion with an innocent domestic purpose” (“Where’s the conspiracy,” 2008, A16). A *Toronto Star* editorial published the following day expressed similar sentiments: “...[A]bsent

compelling evidence of malicious leaking by Canadian officials, which has yet to surface, fears that the Harper government deliberately meddled in U.S. politics seem wildly out of place” (“No NAFTA conspiracy,” 2008, AA04).

The report on the internal investigation, released in May 2008, failed to identify the individual or individuals who initially leaked the February 2008 memo. However, according to the *Toronto Star*, investigators did find that the memo in question was erroneously “left unclassified and sent out to 232 government officials.” In late June 2008, Ian Brodie testified before the House of Commons that he nor anyone else in the Prime Minister’s Office “deliberately tried to help or hinder the presidential campaign of any candidate, Republican or Democrat.” Soon thereafter, Brodie stepped down as Prime Minister Harper’s chief of staff; meanwhile, Ambassador Michael Wilson remained at his post until fall 2009 (MacCharles 2008, AA01; Libit 2009).

To what extent, if at all, NAFTA-gate ultimately influenced Democratic voters in the Ohio primary is subject to debate. While Hilary Clinton did emerge victorious in the primary, she eventually lost the Democratic nomination to Barack Obama. Ultimately, there seemed to be few, if any, winners in NAFTA-gate. Canadian diplomacy, in the words of the *Toronto Star* editorial on the subject, “emerge[d] looking not great” and the veracity of the Clinton and Obama campaigns were called into question. Perhaps, as the *Vancouver Province* suggested, “the public and American voters” were the only beneficiaries of the incidence since they were afforded “a glimpse of... a politician’s real plans” (“No NAFTA conspiracy,” 2008, AA04; “NAFTA-gate no reason,” 2008, A22).

Discussion

Several observations can be drawn from the case studies presented in this paper. First,

a diverse array of individuals “intervened” in the Canadian and U.S. federal election and their motivations for intervening were equally diverse. Second, enforcement of existing laws adequately addressed selected forms of extraterritorial electioneering highlighted in the case studies. However, in some notable instances, current legal regimes seemed largely ineffective. Third, the impact of the Internet and associated new media technologies upon transnational electoral campaigning cannot be understated. Finally and perhaps most importantly, cross-border campaigning raises fundamental questions about sovereignty. The following section will discuss these points in greater detail.

The Cross-border Electioneers and Their Motivations

The above case studies illustrate the difficulties in categorizing cross-border campaign interlopers or their motivations. The cross-border electioneers represent varied socioeconomic backgrounds, ranging from a celebrity filmmaker to college undergrads. Based upon the available evidence, it appears that most, if not all of the foreign participants were persuaded to intervene based upon shared enthusiasm for a particular candidate’s and/or party’s principles rather than attempting to acquire political favors or monetary gain. As Canadian and Obama campaign donor Tom Sanderson explained, “I donated to the Obama campaign because I was so excited and thrilled to hear him speak... I like what he says and I like what he represents, and it’s a world stage today for any political leader (Sanderson quoted in Theimer 2008).

Michael Moore’s motivations for intervening in multiple Canadian election campaigns are less clear. Taken as a whole, Moore’s comments and actions vis-à-vis Canadian elections over the years indicate that Mr. Moore has maintained a longstanding interest in Canada and its domestic political affairs. Moore’s attraction to Canada may possibly stem from shared political beliefs, family ties, growing up in the U.S.–Canada border region, or a combination of factors.

Indeed, it is impossible to know Moore's true motives.

The Central Role of the Internet and Other New Media Technologies in Modern-day Electioneering

Irrespective of any individual or group's rationale for engaging in extraterritorial electioneering, the Internet and allied new media technologies undoubtedly facilitate their cross-border campaign activities. Two inherent qualities of these new technologies namely, their global reach and the ease with which users' can conceal their identities in an online environment may actually encourage even greater foreign intervention in future elections.

These same qualities introduce a host of novel challenges with respect to the regulatory oversight of elections as well, especially with respect to screening and reviewing campaign contributions. Although the issue of fictitious donors and voters certainly precedes the Internet, it has assumed new dimensions in the online world as Brett Kappel, a Democratic campaign finance lawyer explains:

What has changed is the number of false donors, and that has to do with the dramatic change in the scale of Internet fundraising efforts...Both of these campaigns have raised several orders of magnitude more money over the Internet than any previous campaign...The FEC software can't even handle it, their reports are so large" (Kapell quoted in Mosk 2008).

Sovereignty

The incidents highlighted above seemingly pose little genuine threat to the citizenry of Canada and the United States and their respective governments. Nonetheless, the act of interfering in another nation's elections, irrespective of the foreign interloper's motivations, arguably violates the targeted nation's sovereignty or more explicitly, the nation's "undisputed supremacy" over its "inhabitants and independence from unwanted intervention by an outside authority" (Philpott 1995, 357).

Sovereignty, Teachout (2009) asserts, "is presumptively perpetual and inalienable and is

part of the very meaning of statehood.” Moreover, as Barkin and Cronin (1994) point out, sovereignty is universally viewed as the cornerstone of international diplomacy: “Theoretical traditions that agree on little else all seem to concur that the defining feature of the modern international system is the role of the world into sovereign states” (107).

Although outside actors and forces frequently infringe upon the sovereignty of other nations, the *idea* of sovereignty remains firmly rooted in the global psyche. Thus, while numerous arguments for and against violations of sovereignty under certain circumstances have been put forward, extraterritorial electioneering will, by and large, likely continue to be viewed as a potential threat to this venerated concept for the foreseeable future.

Suggested Revisions to Existing Policies Related to Extraterritorial Electioneering

Extraterritorial electioneering raises a multitude of intertwined policy and philosophical issues. As the above-detailed case studies illustrate, there are significant shortcomings in existing legal regimes intended to regulate the phenomenon. In some instances, these weaknesses can be largely rectified through more rigorous and consistent enforcement of existing laws. However, in other instances, extensive revisions to current laws and/or the drafting of new laws will be necessary.

The urgent need for reform is exemplified by the difficulties U.S. presidential campaigns and likewise, their government overseers, face when attempting to verify the identities of online campaign donors. Although campaigns could certainly exercise more diligence in screening incoming contributions, regulators could also considerably alleviate the quandary by devising a more practical and expedient system for campaign’s to verify the citizenship of online donors.

On a related note, rival campaigns in a U.S. presidential election may follow differing sets of financial reporting rules depending upon whether they decide to accept or forego public

financing. Requiring campaigns to operate under a single unified set of reporting rules irrespective of how they are financed not only would make regulatory oversight easier, it would also compel all campaigns to make comparable disclosures regarding contributions.

For its part, the United States Congress has either undertaken or contemplated revising a number of existing election laws, especially with respect to campaign finance. According to the August 4, 2009 Congressional Research Service (CRS) report *Campaign Finance: Potential Legislative and Policy Issues for the 111th Congress*, eight aspects of U.S. campaign finance policy may be, or have already been, addressed by the current Congress: “(1) bundling; (2) electronic filing of Senate campaign reports; (3) the Federal Election Commission (FEC); (4) hybrid political advertising; (5) joint fundraising committees; (6) public financing of presidential campaigns; (7) 527 organizations; and (8) ...restricting campaign activity among certain state election officials” (Garrett 2009). As we have seen, many of the issues cited by the CRS report were raised in the U.S. incidents examined herein.

Unfortunately, any changes to existing federal campaign finance or other election laws will likely be a relatively slow process. For example, the CRS report notes that during the previous Congress, only two out of approximately 50 legislative initiatives related to federal campaign finance policy became law.⁹

Some scholars such as Teachout argue that countries strive to develop “stronger democratic institutions,” namely, “a deeper, societal commitment to education and good, reliable, information” internally rather than concentrating their efforts upon building “barriers” against “foreign intervention.” To achieve this goal, Teachout adds, requires us “to figure

⁹ The two measures which became law in the 110th Congress were: 1) the Honest Leadership and Open Government Act (HLOGA: P.L. 110-81) which “restricted campaign travel abroad private aircraft and required political committees to report additional information to the FEC about certain contributions bundled by lobbyists” and 2) the extension of the FEC’s Administrative Fine Program to 2013 (P.L. 110-433) (

out ways, collectively, to keep ourselves generally educated and aware, so that election-time persuasion efforts have less impact” (2009, 190).

While Teachout’s recommendations are undoubtedly commendable, they may prove more idealistic than practical. Hence, the optimal safeguard against extraterritorial electioneering may entail pursuing a dual education–regulation strategy consisting of: (1) strengthening democratic institutions, and (2) enforcing and/or revising existing legal regimes.

Conclusion

The specter of foreign intervention in another country’s political life will undoubtedly remain a formidable problem for sovereign nations throughout their existence. The same certainly holds true for Canada and the United States. Nevertheless, both countries can minimize the potential problems arising from cross-border electoral interventions by taking several steps. First, regulators need to compel individual campaigns to fully adhere to existing statutes and regulations. Second, government authorities need to continually refine present laws or when necessary, draft new laws to address the Internet other emerging technologies utilization in campaigns. Moreover, government authorities must address emerging issues in a timely fashion.

For their part, campaigns should strive to be more discerning with respect to campaign donations and other campaign-related activities. Finally, potential electoral interventionists on both sides of the border need to educate themselves about their neighbors’ election laws before engaging in any form of cross-border electioneering. More importantly, they should sincerely ponder the following question: How would I feel if a foreign national carried out the actions in my homeland that I am about to carry out in another country?

While the incidents examined in this paper arguably proved of little consequence to the eventual outcomes of the Canadian and U.S. elections, cross-border electoral intervention

cannot be taken lightly since there is always a risk that unfettered foreign incursions *could potentially* pose serious harm to the targeted country and its populace.

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