WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025

ON THE FOLLOWING MEASURE:
S.B. NO. 1032, S.D. 1, RELATING TO CAMPAIGN FINANCE.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 20, 2025 **TIME:** 10:01 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Candace Park, Deputy Attorney General, at candace.j.park@hawaii.gov or (808) 586-0618)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill (1) prohibits foreign nationals, foreign corporations, and foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election purposes; (2) requires every business entity that makes a campaign contribution or expenditure to certify, under penalty of perjury, its status as a foreign corporation or a foreign-influenced business entity; and (3) requires top contributors to certify, under penalty of perjury, whether any of the funds contributed were derived from a foreign corporation or a foreign-influenced business entity.

Pursuant to the Hawaii Penal Code, section 710-1060, Hawaii Revised Statutes (HRS), "[a] person commits the offense of perjury if in any official proceeding the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true." The terms "official proceeding," "oath required or authorized by law," and "oath," are defined in section 710-1000 of the Hawaii Penal Code. A false certification of either of the two certifications required by this bill would not meet the elements of the offense of perjury as described in section 710-1060 of the Hawaii Penal Code.

Section 3 of the bill proposes to amend section 11-356, HRS, by adding a new subsection (d) on page 7, line 17, to page 8, line 14. It would require business entities to file a statement of certification with the Campaign Spending Commission. We believe the filing of a false certification under this requirement would meet the elements of section 710-1063 of the Hawaii Penal Code, the offense of unsworn falsification to authorities. Replacing the phrase "penalty of perjury" with "penalty of law" at page 8, lines 2-3, would cover this offense.

Section 4 of this bill proposes to amend section 11-393, HRS, on page 12, lines 6-19, to add a new subsection (d) that requires noncandidate committees to obtain certifications from top contributors. As we indicated in paragraph two of this testimony, a false certification under this requirement would not meet the elements of the offense of perjury. Additionally, we do not believe a false statement under this requirement would meet the offense of unsworn falsification to authorities, as described in section 710-1063 of the Hawaii Penal Code. Rather, we believe that with some modification, a false certification under this requirement could meet the offense of false swearing under section 710-1062 of the Hawaii Penal Code.

Pursuant to the Hawaii Penal Code, section 710-1062, HRS, "[a] person commits the offense of false swearing if the person makes, under oath required or authorized by law, a false statement which the person does not believe to be true." Section 710-1000 of the Hawaii Penal Code defines "oath required or authorized by law" as "an oath the use of which is specifically provided for by statute or appropriate regulatory provision." Section 710-1000 defines "oath" as "an affirmation and every other mode authorized by law of attesting to the truth of that which is stated, and, for the purposes of this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or

(b) The statement recites that it was made under oath or affirmation, the declarant was aware of such recitation at the time the declarant made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or

utterance with the signed jurat of an officer authorized to administer oaths appended thereto."

We recommend amending the first sentence of the proposed section 11-393(d), on page 12, lines 6-11, to read:

"A noncandidate committee shall obtain a statement of certification signed under oath as defined in, and on a form as described in, section 710-1000, from each top contributor required to be listed in an advertisement pursuant to this section avowing under penalty of [~~perjury~~] law that, after due inquiry, none of the funds contributed by the top contributor were derived from a foreign corporation or foreign-influenced business entity."

Thank you for the opportunity to provide these comments.

KRISTIN E. IZUMI-NITAO
EXECUTIVE DIRECTOR

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WWW.HAWAII.GOV/CAMPAIGN

STATE OF HAWAI'I
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 19, 2025

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Anthony Baldomero, Associate Director A.B.
Campaign Spending Commission

SUBJECT: **Testimony on S.B. No. 1032, S.D. 1, Relating to Campaign Finance.**

Thursday, February 20, 2025
10:01 a.m., Conference Room 16 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports the intent of this bill and offers the following comments.

This bill amends Hawaii Revised Statutes ("HRS") §11-302 by adding the definitions of "business entity," "foreign-influenced business entity," and "foreign investor." The bill amends HRS §11-356 by (1) prohibiting a foreign-influenced business entity, in addition to a foreign national and foreign corporation, from making contributions and expenditures, (2) prohibiting a foreign national, foreign corporation, and foreign-influenced business entity, from making independent expenditures and electioneering communications, (3) prohibiting a foreign national, foreign corporation, and foreign-influenced business entity from making a contribution or donation to a person that is earmarked for campaign spending purpose, and (4) requiring a business entity that makes a contribution or expenditure to file a certification with the Commission that the business entity was not a foreign corporation or foreign-influenced business entity on the date the contribution or expenditure was made. Finally, the bill amends HRS §11-393 by requiring a super PAC to obtain a certification from each of its top contributors required to by listed in the super PAC's advertisement disclaimer that none of the funds contributed by the top contributors were derived from a foreign corporation or foreign-influenced business entity.

The Commission notes that a foreign-influenced business entity includes, but is not limited to, the circumstance where a single foreign investor owns one per cent of the business entity or where two or more foreign investors own five per cent of the business entity. That

seems too small amount of ownership to influence the decisions of the business entity. However, in testimony supporting this bill before the Senate Committee on Transportation and Culture and the Arts (TCA Comm."), Free Speech for People ("FSP") provided its opinion that these amounts of ownership were not too small and may actually be too high. FSP Test. at 6-11. In FSP's estimates, "the thresholds in this bill would apply to 98% of the companies listed on the S&P 500 index." Id. at 15. That is, under this bill, those companies would no longer be able to make contributions or expenditures in state and local elections.[1]

The Commission offers two amendments. The first, add a new subsection (f) after line 3 on page 9 to read, "A contribution made by a foreign national, foreign corporation, or foreign-influenced business entity shall escheat to the Hawaii election campaign fund." The second, on line 10 of page 12, add "a foreign national," after "derived from," and on line 11, add a comma after "corporation."

The Commission requests this Committee to make the effective date of this bill January 1, 2028. That will give the Commission time to make the necessary changes to its forms and its electronic filing system, as well to prepare and disseminate educational materials to inform committees and business entities about the new requirements.

[1] FSP informed the Senate TCA Comm. that a similar Minnesota law banning foreign-influenced corporate political spending is being challenged in federal district court in that state. FSP Test. at 14.

SB-1032-SD-1
Submitted on: 2/19/2025 7:20:35 AM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Beppie Shapiro	Testifying for League of Women Voters of Hawaii	Support	Written Testimony Only

Comments:

The League of Women Voters of Hawaii supports SB1032
The League of Women Voters stands for public financing of elections, but absent that, believes that the methods of financing political campaigns should ensure transparency and the public's right to know who is using money to influence elections. HB1032 requires disclosure of foreign ownership in businesses that contribute or expend funds in a state election. Therefore, the League supports HB1032

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LATE

January 27, 2025

The Honorable Chris Lee
Chairman, Senate Transportation and Culture and the Arts Committee
Hawai'i State Capitol
415 South Beretania St.
Honolulu, HI 96813

Re: SB 1032 Prohibition Against Foreign Nationals and Foreign Corporations Making Campaign Finance Contributions and Expenditures

Dear Chairman Lee:

On behalf of the Global Business Alliance (GBA), I am writing to express our opposition to SB 1032. The proposed changes in the law would prevent American citizens from participating in the political process through campaign donations, which threatens their rights to free speech and associations.

GBA proudly represents nearly 200 American companies with a global heritage. The 350 international companies in Hawai'i employ 38,100 workers. Growth in employment at these firms rose by 13 percent over the past ten years, while the state's overall private-sector employment only increased by four percent[1]. Nationally, these international companies pay American workers an average compensation of $89,000 annually in wages and benefits, which is seven percent higher than the economy-wide average. Global investment helps strengthen Hawai'i's economic resiliency. See how international companies support the state.

Current law prohibits U.S. subsidiaries of foreign companies from contributing to state campaigns but specifically allows such contributions if spending decisions are made only by United States citizens (Page 4 deleted Lines 13-21). The removal of this language unnecessarily harms the ability of legal American citizens to participate in the campaign and election process.

[1] All figures are based on the Bureau of Economic Analysis (BEA), Survey of Current Business, Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2022 released November 2024.

Current federal law does not allow a foreign national to make any contribution in an election cycle, unless that person has become a naturalized citizen of the United States.

SB 1032 would adversely affect Hawai'ians' ability to participate in the election and campaign process. GBA urges the committee to reconsider the elimination of certain language in the state statute to ensure the rights of Hawai'i citizens are upheld. Please contact me at kjohnson@globalbusiness.org or 202-770-5141 with any questions.

Thank you for your consideration,

Kelsey Johnson
Vice President, State Affairs
Global Business Alliance

cc: Members of the Senate Committee on Transportation andCulture and the Arts

GLOBAL BUSINESS ALLIANCE

Investing in America

Foreign Direct Investment Strengthens

HAWAII'S ECONOMY

HIGH-QUALITY JOBS

38,100 workers in Hawaii are employed as a result of international investment.

MANUFACTURING

2,800 workers in Hawaii - **7 percent** of all FDI jobs in the state - are in the **manufacturing sector**.

GLOBALLY CONNECTED

Among all international employers, those from **Japan**, **France** and the **United Kingdom** support the largest number of jobs in Hawaii.

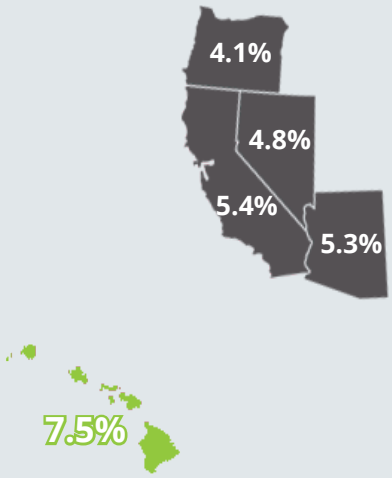
MANY EMPLOYERS

350 international employers have operations in Hawaii.

INTERNATIONAL INVESTMENT CONTRIBUTES TO HAWAII'S ECONOMY

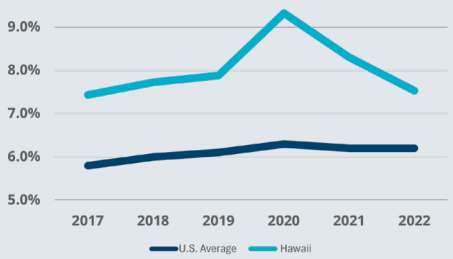
Hawaii vs. Its Neighbors

FDI Jobs as a % of Total Employment



Hawaii vs. USA

FDI Jobs as a % of Total Employment



Hawaii beats the national average in its percentage of jobs supported by international investment.

From 2012 to 2022, Hawaii's FDI employment...

13%

while the state's overall private-sector employment

4%

DISCOVER THE FULL LIST OF GBA MEMBERS

Nearly 200 international companies comprise GBA's membership, representing a slice of the U.S. economy that provides 8.4 million high-quality jobs that pay an average of seven percent higher compensation than the economy-wide average. Our members are some of the largest international employers in the country. Browse through our membership list using the QR code.

Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, *Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2022*, released November 2024, and the Global Business Alliance's *Economic Bedrock Report*, released Fall 2018.

LATE

SB-1032-SD-1
Submitted on: 2/19/2025 11:25:37 AM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Camron Hurt	Testifying for Common Cause Hawaii	Support	Written Testimony Only

Comments:

Honorable Committee members,
My name is Camron Hurt, I am the Program Director for Common Cause Hawai'i. I am writing today to express my organization and memberships support for this Bill. The idea behind America's democracy is one voice one vote, however we have seen this morph into one dollar one vote. Democracy is an action not just a form of government. It is a sacred action that citizens of this nation participate in to continue to ensure that better future for their posterity. It is important that influence over our democracy not give in to financial influences. Where we can, in a post Citizen's United World, we must ensure the future of our democracy by practical safeguards. This legislation seeks to do that. It is important that those interested in infiltrating our democracy are not allowed to do so through finical means. By passing this voice we are effectively saying no to foreign financial influence in our elections and democratic process. This is a bipartisan stance that we can all support and uplift as a victory for good government action in our states. As always thank you for your time. It is truly an honor for you to consider my words.
Yours in service,
Camron Hurt

UNITE HERE!
Cade Watanabe, Financial Secretary-Treasurer Gemma G. Weinstein, President Eric W. Gill, Senior Vice-President

February 19, 2025

Senate Judiciary Committee
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice Chair

Testimony in Strong Support of SB1032 SD1

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii.

SB1032 SD1 would help to keep our democracy in the hands of the people by making significant strides to remove the influence of foreign corporations and foreign nationals. Governance of our society should be determined by the members of that society, not by real estate speculators, short term investors, or other structures or people who seek to exploit Hawai'i's resources, 'āina and people for profit yet have little or no commitment to the long-term sustainability of Hawai'i or the betterment of our communities.

Our support for this bill is not meant to cast aspersions on immigrants, visitors, owners of properties in Hawai'i, or anyone else. There are countless people all over the world who πcare about the future of Hawai'i and are willing to make a long-term commitment to the betterment of the communities here. We welcome them getting involved by working within our communities to build thoughtful plans for the future, organize change, and share their skills, experience and knowledge.

Elections are increasingly influenced by the amount of money used by or for the benefit of certain candidates. This has resulted in candidates getting elected who are beholden to certain interests – the interests of large donors. Large corporations have far more money to spend on elections than individuals, local groups or local businesses; resulting in a government under increasing pressure to legislate in the interests of corporations even when it goes against the best interests of working people in our communities.

SB1032 reflects public sentiment. Policies that aim to remove unfair financial influence over our democratic process would be supported by a vast majority of the American people[1].

We applaud any effort to protect our system of self-governance from outside corporate influence. We applaud policymakers who work with complex constitutional legal frameworks to fight foreign influence of our political system.

We are in support of SB1032 SD1. We urge you to protect our political system from unwanted, harmful outside influence by working to pass SB1032 SD1.

Thank you for this opportunity to testify.

[1] https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/

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INTERNATIONAL LONGSHORE & WAREHOUSE UNION
LOCAL OFFICE • 451 ATKINSON DRIVE • HONOLULU, HAWAII 96814 • PHONE 949-4161
HAWAII DIVISION: 100 West Lanikaula Street, Hilo, Hawaii 96720 • OAHU DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814
MAUI COUNTY DIVISION: 896 Lower Main Street, Wailuku, Hawaii 96793 • KAUAI DIVISION: 4154 Hardy Street, Lihue, Hawaii 96766
HAWAII LONGSHORE DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814
LOCAL 142

February 19, 2025

The Thirty-Third Legislature
Regular Session of 2025

THE SENATE
Committee on Judiciary
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice Chair
State Capitol, Conference Room 016 & Videoconference
Thursday, February 20, 2025; 10:01 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON SB1032
RELATING TO CAMPAIGN FINANCE

The International Longshore and Warehouse Union (ILWU) Local 142 **STRONGLY SUPPORTS SB1032**, which strengthens Hawai'i's protections against foreign influence in elections. The ILWU is a union that was founded on principles of democratic participation and we represent thousands of working class families across Hawai'i. We believe democracy in our state works best when political decisions are made by and for the people of Hawai'i.

We must be aware not to allow foreign-controlled entities the power to advance agendas that do not align with the interests of Hawai'i and its people. While existing laws prohibit foreign nationals and corporations from contributing to campaigns, loopholes enable domestic corporations with significant foreign ownership to influence our elections. SB1032 enhances transparency by ensuring voters know when corporate political spending comes from entities with foreign control.

Strengthening public trust in our democratic processes is more important than ever. SB1032 is a step in the right direction, reaffirming that elections should be decided by those who live and work in Hawai'i. As a union committed to defending workers' rights and economic justice, ILWU Local 142 urges the committee to pass SB 1032 and reinforce the integrity of our elections.

Christian West
President, ILWU Local 142

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The Thirty-Third Legislature
Regular Session of 2025

THE SENATE
Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Hawaii State Capitol
Conference Room 016 & Videoconference
Thursday, February 20, 2025 10:01 a.m.

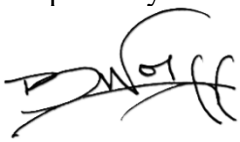
STATEMENT OF THE ILWU INTERNATIONAL – HAWAII ON SB1032 RELATING TO CAMPAIGN FINANCE

The International Longshore and Warehouse Union (ILWU) Hawaii, stands in STRONG SUPPORT of SB1032, a crucial measure to help safeguard our elections from foreign influence.

Our union was built on the bedrock of democratic participation, and we believe that political power in Hawai‘i should reside with its people. We must remain vigilant against foreign-controlled entities that seek to advance agendas misaligned with the interests of Hawai‘i and its residents. While current laws prohibit direct foreign contributions to campaigns, technicalities allow corporations with substantial foreign ownership to wield excessive influence. SB1032 increases transparency in political spending, ensuring voters know when corporations with foreign connections are involved.

At a time when trust in our democratic processes is paramount, SB1032 represents a vital step forward. It reinforces the fundamental principle that election outcomes should be by the people, for the people. ILWU International Hawaii, urges the committee to pass SB1032 and bolster the integrity of our elections.

Respectfully submitted,



Brandon W. K. Wolff
Vice President – Hawaii
ILWU International

FREE SPEECH FOR PEOPLE .ORG

LATE

February 20, 2025

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
Hawai'i State Senate

RE: **SB1032, SD1, Relating to campaign finance**

Dear Chair Rhoads and Vice Chair Gabbard,

On behalf of Free Speech For People, we write in strong support of passing SB1032, SD1, legislation to ban corporate political spending by foreign-influenced business entities in Hawai'i. Across the country, cities and states have considered and passed measures to preserve democratic self-governance and to protect elections from unlawful foreign influence. Minnesota (May 2023), San Jose, California (January 2024), and Seattle, Washington (January 2020) have all enacted a ban on corporate spending by foreign-influenced business entities, and similar legislation has been introduced in the U.S. Congress, as well as in California, Massachusetts, New York, and Washington State.

As a national nonpartisan nonprofit 501(c)(3) organization, Free Speech For people has helped to develop and advocate for model legislation in consultation with the Center for American Progress and with noted legal experts, including Prof. Laurence Tribe of Harvard Law School, one of the foremost constitutional law scholars in the country; Prof. John Coates of Harvard Law School, a corporate governance expert and former General Counsel of the U.S. Securities and Exchange Commission; Commissioner Ellen Weintraub of the Federal Election Commission, an expert on campaign finance law; Prof. Brian Quinn of Boston College Law School, an expert in corporate law and policy; and Professor Adam Winkler of the University of California Law School, an expert on corporations and the Constitution. They have each supported similar legislation in other states, and, for your convenience, we have attached some of their prior testimony submitted to other state legislatures considering similar bills.

48 North Pleasant Street, Suite 304, Amherst, MA 01002 O 413.253.2700 E contact@freespeechforpeople.org www.freespeechforpeople.org

By providing you this memorandum, we hope you will consider taking similar steps to protect Hawai‘i’s elections. In Section I of the memorandum, we set forth the general and legal background for the proposed bill; Section II explains the foreign ownership thresholds; and Section III answers frequently-asked questions that have emerged as we have developed this legislation.

The current bill pending before you is consistent with our model legislation. Please feel free to let us know if you have any questions or would like to discuss this legislation further.

Sincerely,

John Bonifaz, President
Free Speech For People

I. General and legal background

Under well-established federal law, recently upheld by the U.S. Supreme Court, it is illegal for a foreign government, business, or individual to spend any amount of money at all to influence federal, state, or local elections.[1] This existing provision does not turn on whether the foreign national comes from a country that is friend or foe, nor the amount of money involved. Rather, as then-Judge (now Justice) Brett Kavanaugh wrote in the seminal decision upholding this law:

> It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.[2]

Federal law, however, leaves a gap that has been opened even further since the U.S. Supreme Court's 2010 *Citizens United* decision invalidated laws that banned corporate political spending.[3] While the existing federal statute prohibits a *foreign-registered corporation* from spending money on federal, state, or local elections, federal law does not address the issue of political spending by *U.S. corporations that are partially owned by foreign investors.* That is the topic here.

The *Citizens United* decision three times described the corporations to which its decision applied as "associations of citizens."[4] On the topic of corporations partly owned by foreign investors, the Supreme Court simply noted "[w]e need not reach the

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[1] 52 U.S.C. § 30121.

[2] Bluman v. Federal Election Comm'n, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd,* 132 S. Ct. 1087 (2012); *see also* United States v. Singh, 979 F.3d 697, 710-11 (9th Cir. 2020), cert. denied sub nom. Matsura v. United States, No. 20-1167, 2021 WL 2044557 (May 24, 2021).

[3] Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010).

[4] Citizens United, 558 U.S. at 349, 354, 356. Many scholars have criticized the Court's understanding of the corporate entity as an association. *See, e.g.,* Jonathan Macey & Leo E. Strine, Jr., Citizens United *as Bad Corporate Law*, 2019 Wis. L. Rev. 451 (2019). However misguided, this account reflects the reasoning that the Court has adopted in extending constitutional rights to corporations.

question" because the law before it applied to *all* corporations.[5] As a result, federal law currently does not prevent a corporation that is partly owned by foreign investors from making contributions to super PACs, independent expenditures, expenditures on ballot measure campaigns, or even (in states where it is otherwise legal) contributing directly to candidates.

Since 2010, neither Congress nor the beleaguered Federal Election Commission have done anything. However, as Professor Laurence Tribe of Harvard Law School and Federal Election Commissioner Ellen Weintraub have written, a state does not need to wait for federal action to protect its state and local elections from foreign influence. The goal of this bill is to plug the loophole allowing corporations partly or wholly owned by foreign interests to influence elections.

This threat is real. For example, Uber has shown an increasing appetite for political spending in a variety of contexts. In California, the company spent some $58 million on Proposition 22, which successfully overturned worker protections for Uber drivers.[6] The company spent millions on a similar ballot measure in Massachusetts to strip workers of basic employment protections.[7] Although Uber started in California, the Saudi government made an enormous (and critical) early investment, and even now owns several percent of the company's stock, long after the company has gone public.[8] Fellow Proposition 22 major spenders, such as DoorDash and Lyft, are also substantially owned by foreign investors from countries including the United Kingdom, Japan, Malaysia, China, and elsewhere, and they all continue to make significant expenditures to influence U.S. elections.

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[5] *Id.* at 362.

[6] Ryan Menezes et al., "Billions have been spent on California's ballot measure battles. But this year is unlike any other," L.A. Times, Nov. 13, 2020, https://lat.ms/3gRct8d; Glenn Blain, "Uber spent more than $1.2M on efforts to influence lawmakers in first half of 2017," N.Y. Daily News, Aug. 13, 2017, http://bit.ly/39HJLRf; Karen Weise, "This is How Uber Takes Over a City," Bloomberg, June 23, 2015, http://bloom.bg/1Ln2MaN.

[7] 2023 Contributions, Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2023&endDate=12/31/2023&filerCpfId=0.

[8] Eric Newcomer, "The Inside Story of How Uber Got Into Business with the Saudi Arabian Government," Nov. 3, 2018, https://bloom.bg/2SWWDgv. As of this writing, the Public Investment Fund of Saudi Arabia owns 3.5% of Uber stock. *See* Uber, https://www.cnbc.com/quotes/UBER?tab=ownership (last visited Feb. 9, 2024).

Similarly, in October 2016, Airbnb responded to the New York Legislature's growing interest in regulating the homestay industry by arming a super PAC with $10 million to influence New York's legislative races.[9] Airbnb received crucial early funding from, and was at that time partly owned by, Moscow-based (and Kremlin-linked) DST Global.[10] Investment by foreign sovereign wealth funds, like Saudi Arabia's, is expected to increase exponentially as oil-rich Middle Eastern states seek to diversify their investment portfolios.[11]

In the New York Times, Federal Election Commissioner Ellen Weintraub explained the problem, and pointed to a solution: "Throughout *Citizens United*, the court described corporations as 'associations of citizens," she wrote. "States can require entities accepting political contributions from corporations in state and local races to make sure that those corporations are indeed associations of American citizens—and enforce the ban on foreign political spending against those that are not."[12]

As Weintraub noted, even partial foreign ownership of corporations calls into question whether *Citizens United*, which three times described corporations as "associations of citizens" and which expressly reserved questions related to foreign shareholders,[13] would apply. Indeed, after deciding *Citizens United*, the Supreme Court in *Bluman v. Federal Election Commission* specifically upheld the federal ban

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[9] Kenneth Lovett, *Airbnb to spend $10M on Super PAC to fund pre-Election day ads*, N.Y. Daily News, Oct. 11, 2016, http://nydn.us/2EF5Lgi.

[10] *See* Jon Swaine & Luke Harding, *Russia funded Facebook and Twitter investments through Kushner investor*, The Guardian, Nov. 5, 2017, https://bit.ly/3ppmIF5; Dan Primack, *Yuri Milner adds $1.7 billion to his VC war chest,* FORTUNE, Aug. 3, 2015, https://bit.ly/3jnhNkb (DST Global is Moscow based); Scott Austin, *Airbnb: From Y Combinator to $112M Funding in Three Years*, The Wall Street Journal, July 25, 2011, https://on.wsj.com/2STNYvj. Reportedly, $40 million of the $112 million that Airbnb raised in its 2011 funding round came from DST Global. *See* Alexia Tsotsis, *Airbnb Bags $112 Million In Series B From Andreessen, DST And General Catalyst*, TechCrunch, July 24, 2011, http://tcrn.ch/2EF6IF2.

[11] According to one report, Saudi Arabia's Public Investment Fund is expected to deploy $170 billion in investments over the next few years. Sarah Algethami, *What's Next for Saudi Arabia's Sovereign Wealth Fund*, Bloomberg BusinessWeek, Oct. 21, 2018, https://bloom.bg/2sQNJGF.

[12] Ellen Weintraub, *Taking on Citizens United*, N.Y. Times, Mar. 30, 2016, http://nyti.ms/1SwK4gK.

[13] Citizens United, 558 U.S. at 349, 354, 356, 362.

on foreign nationals spending their *own* money in U.S. elections.[14] In light of the Court's post-*Citizens United* decision in *Bluman*, a restriction on political spending by corporations with foreign ownership at levels potentially capable of influencing corporate governance can be upheld based on *Bluman* and as an exception to *Citizens United*.[15]

II. Foreign influence and ownership thresholds

How much foreign investment renders a corporation's political spending problematic for protection of democratic self-government? Arguably, *any* foreign ownership in companies that spend money to influence our elections is a threat to democratic self-government. In the most accepted understanding, corporate shareholders are "the firm's residual claimants."[16] As explained by the California Court of Appeal, "it is the shareholders who own a corporation, which is managed by

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[14] Bluman v. Federal Election Comm'n, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd,* 132 S. Ct. 1087 (2012). In 2019, the U.S. Court of Appeals for the Ninth Circuit upheld federal statute's foreign national political spending ban as applied to local elections. *Singh*, 924 F.3d at 1042.

[15] A similar analysis would also apply to *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), which addressed limits on corporations spending in ballot question elections.

[16] Henry Hansmann & Reiner Kraakman, *The End of History for Corporate Law*, 89 Geo. L.J. 439, 449 (2001); *see also* Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 Nw. U.L. Rev. 547, 565 (2003) ("[M]ost theories of the firm agree, shareholders own the residual claim on the corporation's assets and earnings."); Frank H. Easterbrook & Daniel R. Fischel, THE ECONOMIC STRUCTURE OF CORPORATE LAW 36-39 (1991) (arguing that shareholders are entitled to whatever assets remain after the company has met its obligations, and thus are the ultimate "residual claimant[s]" on a company's assets). While different theories are sometimes offered in academic literature, this is the standard economic model of shareholders of a firm, and it has been widely adopted in judicial decisions. *See, e.g.,* RTP LLC v. ORIX Real Est. Cap., Inc., 827 F.3d 689, 692 (7th Cir. 2016) ("Stockholders and owners of other equity interests have residual claims in a business; they get whatever is left after everyone else is paid."); In re Franchise Servs. of N. Am., Inc., 891 F.3d 198, 208 n.7 (5th Cir. 2018), as revised (June 14, 2018) ("Shareholders are the residual claimants of the estate," and are entitled to whatever remains after satisfying creditors); In re Cent. Ill. Energy Coop., 561 B.R. 699, 708 (Bankr. C.D. Ill. 2016) (noting that directors have fiduciary duty to shareholders rather than creditors precisely because "shareholders hav[e] the residual claim to the corporation's equity value"); Ito v. Investors Equity Life Holding Co., 135 Haw. 49, 80 (2015) (after "all other creditors have been satisfied," shareholders lay claim to a company's "shares and the residual estate").

the directors. In an economic sense, when a corporation is solvent, it is the shareholders who are the residual claimants of the corporation's assets . . . ."[17]

In practice, shareholders rarely have the opportunity to actually assert these residual claims. Yet there is a sense in which investors and corporate managers alike understand that the corporation's assets "belong to" the shareholders.

That means that corporate political spending is drawn from shareholders' money. As Justice Stevens noted in the *Citizens United* decision, "When corporations use general treasury funds to praise or attack a particular candidate for office, it is the shareholders, as the residual claimants, who are effectively footing the bill."[18] This point has often been raised from the perspective of shareholders who may not *want* corporate managers spending "their" money on various political causes.[19] But here, we confront the mirror issue: corporate managers may spend money to influence U.S. elections out of funds that partly "belong to" foreign investors.

On this understanding, *any* amount of foreign investment in a corporation means that management's political expenditures come from a pool of partly foreign money. Seen that way, a corporation spending money in U.S. elections no longer qualifies as an "association of citizens" if *any* of the money in its coffers "belongs to" foreign investors—in other words, when it has any foreign shareholders at all.[20] Indeed, polling indicates that 73% of Americans—including majorities of both Democrats and Republicans—would support banning corporate political spending by corporations with *any* foreign ownership.[21]

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[17] Berg & Berg Enter., LLC v. Boyle, 100 Cal. Rptr. 3d 875, 892, 178 Cal. App. 4th 1020, 1039 (Cal. App. 2009); *accord* In re Bear Stearns Litig., 23 Misc. 3d 447, 474, 2008 WL 5220514 (N.Y. Sup. 2008) (shareholders are the "residual beneficiaries of any increase in the company's value" when it is solvent) (cleaned up).

[18] Citizens United v. Federal Election Comm'n, 558 U.S. 310, 475 (2010) (Stevens, J., dissenting).

[19] *See, e.g.,* Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 Harv. L. Rev. 83, 85 (2010).

[20] By analogy, in the class-action context, some courts hold that a class cannot be certified if even a single member cannot bring the claim. *See* Denney v. Deutsche Bank AG, 443 F.3d 253, 264 (2d Cir. 2006) ("no class may be certified that contains members lacking Article III standing").

[21] Ctr. for Am. Progress Action Fund, *NEW POLL: Bipartisan Support for Banning Corporate Spending in Elections by Foreign-Influenced U.S. Companies*, https://bit.ly/3CrcWFV.

But we need not reach that far. At ownership thresholds well above zero, an investor may exert *influence*—explicit or implicit—over corporate decision-making. Even if a company was founded in the United States and keeps its main offices here, companies are responsive to their shareholders, and significant foreign ownership affects corporate decision-making. As the former CEO of U.S.-based ExxonMobil Corp. stated, "I'm not a U.S. company and I don't make decisions based on what's good for the U.S."[22] There is no evidence that political spending is magically exempt from this general rule.

To someone not deeply versed in corporate governance, it may seem that the right threshold for the point at which a foreign investor (or any investor) can exert influence is just over 50%. That is, after all, the threshold for winning a race between two candidates, or controlling a two-party legislature. But corporations are not legislatures. A better analogy might be a chamber with many millions of uncoordinated potential voters, most of whom rarely vote and who may be, for one reason or another, effectively *prevented* from voting. In that type of environment, a disciplined owner (or ownership bloc) of 1% can be tremendously influential.

As explained in more detail in written testimony submitted by Professor John Coates of Harvard Law School in support of similar legislation elsewhere, and in a recent report by the Center for American Progress,[23] the thresholds in this bill—1% of stock owned by a single foreign investor, or 5% owned by multiple foreign investors—reflect levels of ownership that are widely agreed (including by entities such as the Business Roundtable) to be high enough to influence corporate governance. Corporate governance law gives substantial formal power to minority shareholders at these levels, and this spills out into even greater unofficial influence. For this reason, since the passage of Seattle's 2020 law, best-in-class bills—including that passed in Minnesota in 2023, in San Jose in 2024, and pending in states such as New York, California, and Massachusetts, and in the U.S. Congress—generally follow the Seattle model.

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[22] Michael Sozan, Ctr. for Am. Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), at 19, https://ampr.gs/2QIiNQT.

[23] *See* Michael Sozan, Ctr. for American Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), https://ampr.gs/2QIiNQT.

Federal securities law provides powerful tools of corporate influence to investors at these levels. Seattle's 1% threshold was grounded in a rule of the U.S. Securities and Exchange Commission regarding eligibility of shareholders to submit proposals for a shareholder vote—a threshold that the SEC ultimately concluded was, if anything, *too high*.[24] For a large multinational corporation, an investor that owns 1% of shares might well be the largest single stockholder; it would generally land among the top ten. Conversely, as the SEC has acknowledged, many of the investors *most active* in influencing corporate governance own well below 1% of equity.[25]

Of course, this does not mean that *every* investor who owns 1% of shares will *always* influence corporate governance, but rather that the business community generally recognizes that this level of ownership presents that opportunity, and—for a foreign investor in the context of corporate political spending—that risk.

In other cases, no single foreign investor holds 1% or more of corporate equity, but multiple foreign investors own a substantial aggregate stake. To pick one example, at the moment of this writing (it may change later, of course, due to market trades), Amazon does not have any 1% foreign investors, but at least 8.1% of its equity (and possibly much more) is owned by foreign investors.[26] While presumably foreign

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[24] Until November 4, 2020, owning one percent of a company's shares allows an owner to submit shareholder proposals, which creates substantial leverage. *See Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*, 85 Fed. Reg. 70,240, 70,241 (Nov. 4, 2020). The SEC proposed to eliminate this threshold, and rely solely on absolute-dollar ownership thresholds that correspond to far *less* than 1% of stock value, because it is fairly uncommon for even a major, active institutional investor to own 1% of the stock of a publicly-traded company. *See* SEC, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, 84 Fed. Reg. 66,458 (Dec. 4, 2019) (proposed rule). In other words, recent advances in corporate governance law suggest that the 1% threshold may, if anything, be *higher* than appropriate to capture investor influence. That said, we believe that 1% remains defensible.

[25] *See id.* at 66,646 & n.58 (noting that "[t]he vast majority of investors that submit shareholder proposals do not meet a 1 percent ownership threshold," including major institutional investors such as California and New York public employee pension funds).

[26] *See Amazon.com*, CNBC, https://cnb.cx/2JShvAt (visited Dec. 28, 2022) (ownership tab). As of the date of writing, at least one foreign investor (Norges Bank) holds 0.9% but no foreign investor is known to hold 1.0% or more. Aggregate ownership data, however, shows 7.4% in Europe (including Russia) and 0.9% in Asia. In fact, the total aggregate foreign ownership could be much higher, as the summary data show only 57.4% of shares owned in North America. CNBC obtains its geographic ownership concentration data from Thomson Reuters,

investors as a class are not all perfectly aligned on all issues, they can be assumed to share certain common interests and positions that may, in some cases, differ from those of U.S. shareholders—certainly when it comes to matters of state public policy. As the Center for American Progress has noted:

> Foreign interests can easily diverge from U.S. interests, for example, in the areas of tax, trade, investment, and labor law. Corporate directors and managers view themselves as accountable to their shareholders, including foreign shareholders. As the former CEO of U.S.-based Exxon Mobil Corp. starkly stated, "I'm not a U.S. company and I don't make decisions based on what's good for the U.S."[27]

Neither corporate law nor empirical research provide a bright-line threshold at which this type of aggregate foreign interest begins to affect corporate decision-making, but anecdotally it appears that CEOs do take note of this aggregate foreign ownership and that at a certain point it affects their decision-making. The Seattle model legislation selects a 5% aggregate foreign ownership threshold. Under federal securities law, 5% is the threshold that Congress has already chosen as the level at which a single investor *or group of investors working together* can have an influence so significant that the law requires disclosure not only of the stake, but also the residence and citizenship of the investors, the source of the funds, and even in some cases information about the investors' associates.[28] In this case, while it may not be appropriate to treat unrelated foreign investors as a single bloc for *all* purposes, it is appropriate to do so in the context of analyzing how corporate management conceive decision-making regarding political spending in U.S. elections.

Obviously, some companies do not have substantial foreign ownership. Even of those that do, many probably do not spend corporate money on the state's elections. Such companies either would not be covered at all (if they did not meet the threshold) or would not experience any practical impact (if they do not spend corporate money for political purposes).

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which in turn obtains it from Refinitiv, a provider of financial markets data that has access to some non-public sources.

[27] Michael Sozan, Ctr. for Am. Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), at 19, https://ampr.gs/2QIiNQT.

[28] 15 U.S.C. §§ 78m(d)(1)-(3).

The point here is *not* that FICs do not have connections to the state, nor that foreign investment in local companies should be discouraged, nor that the foreign owners of these companies are necessarily known to be exerting influence over the companies' decisions about corporate political spending, nor that they would do so nefariously to undermine democratic elections. Rather, the point is simply that *Citizens United* accorded corporations the right to spend money in our elections on the theory that corporations are "associations of citizens." But for companies of this type, that theory does not apply. Enough shares are owned or controlled by a foreign owner that the corporation's spending is at least, in part, drawn from money that "belongs to" that foreign entity—and furthermore, the entity could exert influence over how the corporation spends money from the corporate treasury to influence candidate elections.

Finally, to reiterate, this bill does not limit in any way how employees, executives, or shareholders of these companies may spend their *own* money—just how the foreign-influenced business entities' potentially vast corporate treasuries may be deployed to influence the state's electoral democracy.

III. Frequently asked questions

Does this bill affect individual immigrants?
No. The bill regulates *corporate* political spending by business entities.

Does this bill affect businesses owned in part by (a) green card holders, (b) dual U.S.-foreign citizens, or (c) U.S. citizens residing abroad?
(a) No; (b) no; and (c) no.

Has this bill been endorsed by leading scholars and experts?
Similar bills in other parts of the country have generally been endorsed by Professor Laurence Tribe of Harvard Law School and Professor Adam Winkler of the University of California Law School, experts in constitutional law; Professor John C. Coates IV of Harvard Law School (a former General Counsel and Director of the Division of Corporate Finance at the U.S. Securities Exchange Commission) and Professor Brian Quinn of Boston College School of Law, experts in corporate law and governance; and Federal Election Commissioner Ellen Weintraub, expert in election law.[29]

[29] *See* Letter from Prof. Laurence H. Tribe to Mass. Legis. Joint Comm. on Election Laws, Sept. 15, 2021, https://bit.ly/3E0CkTs; Letter from Fed. Election Comm'r Ellen L. Weintraub to Mass. Legis. Joint Comm. on Election Laws, Sept. 17, 2021, https://bit.ly/3EenbhN; Letter

Does this bill have bipartisan support?
A 2019 national poll of 2,633 voters showed that 73%—including majorities of both Democrats and Republicans—would support banning corporate political spending by corporations with *any* foreign ownership.[30] Even after polled individuals were deliberately exposed to partisan framing and opposition messages, voters continued to support the policy 58-24 overall; Trump voters supported it 52-30 and Clinton voters supported it 68-20.

Does this bill prevent corruption?
The Supreme Court currently recognizes two distinct public interests in regulating the amounts and sources of money in politics: (1) preventing corruption or the appearance of corruption, and (2) protecting democratic self-government against foreign influence. This bill focuses on the latter.

As Judge (now Justice) Kavanaugh explained in *Bluman*, the public "has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process."[31] The U.S. Court of Appeals for the Ninth Circuit has confirmed that this interest applies to state elections as well.[32]

Is the bill "narrowly tailored" to protecting democratic self-government?
Yes. The public interest in protecting democratic self-government from foreign influence is particularly strong and supports a wide range of restrictions ranging from investment in communications facilities to municipal public employment.[33] In the specific context of political spending, the facts of the *Bluman* decision are worth noting. The lead plaintiff wanted to contribute to three candidates (subject to dollar limits that in theory minimize the risk of *corruption*) and "to print flyers . . . and to distribute them in Central Park."[34] All these were banned by the federal statute, and the court upheld the ban on all of them.

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from Prof. John C. Coates IV to Seattle City Council, Jan. 3, 2020, https://bit.ly/3jjvfFP. Professors Winkler and Quinn have authorized us to convey their endorsement.

[30] Ctr. for Am. Progress Action Fund, NEW POLL: Bipartisan Support for Banning Corporate Spending in Elections by Foreign-Influenced U.S. Companies, https://bit.ly/3CrcWFV.

[31] Bluman v. Fed. Election Comm'n, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012).

[32] United States v. Singh, 924 F.3d 1030, 1042 (9th Cir. 2019).

[33] *See Bluman*, 800 F. Supp. 2d at 287 (collecting Supreme Court cases upholding limits on noncitizen employment in a wide variety of local positions); 47 U.S.C. § 310(b) (banning issuance of broadcast or common carrier license to companies under minority foreign ownership).

[34] *Id.* at 285.

In other words, in a context where the risk of corruption was essentially nil, the court found that the interest in protecting democratic self-government from foreign influence is so strong that a law that prohibits *printing flyers and posting them in a park* is narrowly tailored to that interest. Given that, a ban on corporate political spending—with the potential for far greater influence on elections than one individual printing flyers—by corporations with substantial foreign ownership, at levels known from corporate governance literature to bring the potential for investor influence, is also narrowly tailored to the same interest.

Does this bill go further than the federal statute at issue in Bluman?
Yes; that is the point. The federal statute prevents foreign entities from spending money directly in federal, state, or local elections.[35] The proposed bill applies to companies where those same foreign entities own substantial investments.

Has any court decided how much foreign ownership of a corporation renders a corporation "foreign" for purposes of First Amendment analysis?
No. That issue was not before the Supreme Court in *Citizens United*, and the Court expressly decided *not* to decide that question. The majority opinion did make a passing reference to corporations "funded predominately by foreign shareholders" as the type of issue that the decision was *not* addressing. This is what lawyers call "dictum"—something mentioned in a judicial opinion that is not part of its holding. Similarly, in *Bluman*, Judge Kavanaugh wrote that "[b]ecause this case concerns individuals, we have no occasion to analyze the circumstances under which a corporation may be considered a *foreign* corporation for purposes of First Amendment analysis."[36] For purposes of political spending, the question of how much foreign ownership is "too much" has not yet been decided by any court.

The analysis in the main part of the above memorandum shows how arguably *any* foreign ownership renders the entire pool of corporate funds foreign. However, this bill focuses more narrowly on corporations where foreign holdings exceed thresholds, established from empirical corporate governance research, where investors can exert influence on executives' decisions.

Notably, the Seattle Clean Campaigns Act (the model upon which these laws are based) has been in effect since February 2020, including the vigorously contested 2021 citywide election featuring an expensive mayoral race, yet none of the many multinational corporations in Seattle have been impelled to challenge it.

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[35] 52 U.S.C. § 30121, formerly codified as 2 U.S.C. § 441e.
[36] *Bluman*, 800 F. Supp. 2d at 292 n.4.

Is another court considering whether similar laws are constitutional?
In a decision that tramples over a state's right to protect its own democratic self-governance from foreign interference, a federal district court judge in Minnesota on February 7, 2025, permanently enjoined Minn. Stat. § 211B.15, a Minnesota statute that bars foreign-influenced corporations from spending unlimited money in Minnesota's elections. The decision undermines the state's authority to protect its elections and empowers corporations to serve as conduits through which powerful foreign entities can exert influence over U.S. corporations. And it is based on a misreading of prior Supreme Court rulings and of the evidence before the court.

The ruling veers sharply from Supreme Court precedent, which has recognized that states have a compelling interest in protecting its democratic self-government. It also fails to properly account for the significant evidence the State of Minnesota put before the court that (1) minority shareholders that satisfy the law's threshold can and do exert direct and indirect influence over corporate decision-making; (2) that such influence is hidden from public view and impossible to track; (3) that foreign governments are seeking to influence U.S. elections and have spent millions of dollars to do so; and (4) that foreign entities in fact have used corporations to unlawfully funnel money into U.S. elections. Further, the ruling provides foreign-influenced corporations with protections to which individuals are not entitled and demands states meet arbitrarily high evidentiary standards to support its interest in democratic self-government. Our further analysis on this ruling and a link to the court's opinion is available here.

The ruling has no binding impact on jurisdictions outside of Minnesota. And not all laws prohibiting foreign-influenced political spending are legally challenged. The City of Seattle, for instance, passed similar legislation in January 2020, and no one has challenged the law since, nor has anyone challenged the San Jose, California law which the city council there enacted in January 2024.

Unless and until the Supreme Court considers this issue again, courts are bound by the premise of *Bluman*: that foreign money in political spending is prohibited and states have a compelling interest to preserve their self-run democracy.

Do corporations know who their shareholders are?
Managers of privately-held corporations may know the identity of all shareholders at all times. Managers of publicly-traded corporations do not know moment to moment but can obtain a complete list of shareholders and number of shares owned for any particular "record date." They do this on a regular basis for routine corporate purposes, such as the corporate annual meeting. For more detail, see the letter from Professor John C. Coates IV of Harvard Law School, a former General

Counsel and Director of the Division of Corporate Finance at the U.S. Securities Exchange Commission.[37]

How many companies would be covered by this bill?
Foreign investment in U.S. companies has increased dramatically in recent years: "from about 5% of all U.S. corporate equity (public and private) in 1982 to more than 20% in 2015."[38] By 2019, that figure had increased to 40%.[39]

However, foreign ownership is not evenly distributed. Analysis by the Center for American Progress found that the thresholds in this bill would cover 98% of the companies listed on the S&P 500 index, but only 28% of the firms listed on the Russell Microcap Index—among the smallest companies that are publicly traded.[40]

It is much more difficult to obtain data regarding ownership of privately-held companies. But overall, most small local businesses have *zero* foreign ownership.

Does this bill create a compliance burden for small businesses?
As noted above, most small local businesses have zero foreign ownership, and they know it. In that case, they can easily provide a statement certifying that, after due inquiry, the company was not a foreign-influenced company (as defined by the law) on the date the independent expenditure or contribution was made.

For those few small businesses that do have a foreign investor, they typically know exactly who it is and how much the foreign investor owns. Thus, they can easily determine whether the foreign investment exceeds the thresholds (in which case they are prohibited from using corporate money for political spending) or not (in which case they can confidently provide the statement). Finally, the statement of certification explicitly only requires a reasonable inquiry. In most cases, this will be resolved by the address—an address in a foreign country establishes that the investor is foreign unless the investor is known to be a U.S. citizen residing abroad, and an address in the U.S. establishes a presumption that the investor is domestic.

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[37] Letter from Prof. John C. Coates IV to Seattle City Council, Jan. 3, 2020, https://bit.ly/3jjvfFP.
[38] John C. Coates IV, Ronald A. Fein, Kevin Crenny, & L. Vivian Dong, *Quantifying foreign institutional block ownership at publicly traded U.S. corporations*, Harvard Law School John M. Olin Center Discussion Paper No. 888 (Dec. 20, 2016), Free Speech For People Issue Report No. 2016-01, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957.
[39] *See* Steve Rosenthal and Theo Burke, *Who's Left to Tax? US Taxation of Corporations and Their Shareholders*, Urban-Brookings Tax Policy Ctr., paper presented at NYU School of Law (Oct. 27, 2020), https://bit.ly/3uLjVqE.
[40] Michael Sozan, Ctr. for Am. Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), at 42-45, https://ampr.gs/2QIiNQT.

Does this bill violate the rights of U.S. investors?
No. Obviously, individual U.S. investors may spend unlimited amounts of their *own* money on elections.

The question might be framed as whether the bill restricts the ability of U.S. investors to spend their money *through the vehicle of a corporation in which they share ownership with foreign investors*. At the outset, the assumption embedded in this framework is somewhat unrealistic; few if any U.S. investors buy stock in a for-profit business entity with the expectation that the corporation will engage in regulated political campaign spending.[41] But even if so, any right to invest in a corporation with that expectation is limited by valid restrictions imposed on the *other* co-owners of the corporation, namely, foreign investors. Any impact on *U.S. investors who have chosen to invest jointly with foreign investors* is incidental to the primary purpose of preventing foreign influence.

By analogy, in upholding a State Department order to shut down a foreign mission even though it had U.S. citizen and permanent resident employees, the U.S. Court of Appeals for the D.C. Circuit noted: "[The order] does not prevent [plaintiffs] from advocating the Palestinian cause, nor from expressing any thought or making any statement that they could have made before its issuance. The order prohibits [them] only from speaking *in the capacity of a foreign mission of the PLO*."[42]

Similarly, the U.S. investors can spend their money directly on political campaigns, or they can invest in a *different* corporation that is *not* foreign-influenced and which may spend treasury funds on political campaigns. If corporate political spending can be described as partly the speech of U.S. investors, then this bill would prohibit them only from speaking *in the capacity of investors in a foreign-influenced business entity*.

Finally, the question could be framed as involving freedom of association for those U.S. investors who "associate" with foreign investors in a corporation. But a recent U.S. Supreme Court decision, written by Justice Kavanaugh, held that U.S. citizens cannot "export" or extend their own constitutional rights to foreign entities. In *Agency for International Development v. Alliance for Open Society Int'l, Inc*., the Court considered a statute that imposed speech-related conditions on funding. After first holding that the conditions violated the First Amendment rights of U.S. funding recipients, the Court then *rejected* a constitutional challenge on behalf of

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[41] *See* Jonathan Macey & Leo E. Strine, Jr., Citizens United *as Bad Corporate Law*, 2019 Wis. L. Rev. 451, 451 (2019) (noting that for many American investors, corporate political spending "has no rational connection to their reason for investing").
[42] Palestine Information Office v. Shultz, 853 F.2d 932, 939 (D.C. Cir. 1988) (emphasis in original).

the foreign entities with which those U.S. entities associated. The Court explained that U.S. entities "cannot export their own First Amendment rights" to the foreign entities with which they associate.[43] The Court's reasoning leads to the same result when U.S. entities associate with foreign nationals in the corporate form: the mere fact that U.S. citizens have the independent right to contribute and make expenditures does not mean that those rights will flow to any association they form.

What if a U.S. investor holds a majority or controlling share?

The danger of foreign participation remains. As corporate law expert Professor John Coates of Harvard Law School and his co-authors note:

A stylized and largely uncontested fact is that institutional shareholders—the most likely to be blockholders of U.S. public companies—are increasingly influential in the governance of those companies. Various changes in markets and regulation have increased the ability of such institutions to encourage, pressure or force boards to adopt policies and positions that twenty years ago would have been beyond their reach. Board members are spending increased amounts of time responding to and directly "engaging" with blockholders. While in the past legal regimes tested "control" of foreign nationals at higher levels of ownership—majority voting power, or 25% blocks for example—those regimes may no longer catch the new forms of institutional influence.[44]

As it happens, federal communications law has been addressing a very similar issue for nearly 90 years. Since 1934, section 310 of the federal Communications Act has prohibited issuance of broadcast or common carrier licenses to companies with one-fifth foreign ownership.[45] Obviously, that raises a similar issue: a company with one-fifth foreign ownership has four-fifths U.S. ownership. Yet, as Congress determined, the risks were too great even with a four-fifths U.S. owner.

It makes little sense to say that a corporation with 75% U.S. ownership is too foreign-influenced to own a small local terrestrial radio station with limited reach, but not too foreign-influenced to spend tens of millions of dollars on statewide elections. Put another way, a U.S. investor that owns a very large percentage of a company but has foreign co-investors may be better suited choosing a different investment vehicle for buying radio stations *or* for spending money in elections.

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[43] 140 S. Ct. 2082, 2088 (2020).
[44] Coates et al., *supra* note 38, at 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957.
[45] *See* 47 U.S.C. § 310(b).

We are only aware of one constitutional challenge to Section 310 in its nearly 90-year-history—the challenge concerned a slightly different point, but the court upheld the provision.[46] The same logic would apply to this bill.

What if the corporation takes proactive steps to ensure that foreign investors have no influence on corporate decision-making regarding political spending?

The issue is generally not that foreign investors are directly participating in corporate decision-making regarding political spending. In major corporations, most investors do not participate in day-to-day operational decisions.

Rather, the issue is that corporate executives are fully aware of their major investors, act with a fiduciary duty towards those investors, and tend to avoid taking action that they anticipate will displease those major investors. Among other considerations, major investors have multiple options for influencing corporate governance writ large: they can submit shareholder proxy resolutions; they can attempt to replace directors on the board, and demand a change in management; in publicly traded corporations, they can dump their shares, decreasing the value of executives' stock options; etc. Investors do not need to literally be in the conference room debating specific political expenditures to exert an influence, any more than voters need to be in the conference room during legislative debates to exert an influence on elected officials.

A similar question has repeatedly arisen in the context of the Communications Act, where partly-foreign-owned entities have sought broadcast or common carrier licenses, claiming that they had developed contractual or other internal measures to insulate decision-making from foreign partners or investors. Courts have consistently rejected such challenges.[47]

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[46] *See* Moving Phones P'ship LP v. FCC, 998 F.2d 1051, 1056 (D.C. Cir. 1993) (applying rational basis review because "[t]he opportunity to own a broadcast or common carrier radio station is hardly a prerequisite to existence in a community"). Other courts have upheld related provisions of the same act that are even *more* restrictive than section 310. *See, e.g.*, Campos v. FCC, 650 F.2d 890, 891 (7th Cir. 1981) (upholding against constitutional challenge a Communications Act provision barring even *permanent residents* from holding radio operator licenses).

[47] *See* Cellwave Tel. Servs. LP v. FCC., 30 F.3d 1533, 1535 (D.C. Cir. 1994) (rejecting argument that FCC should have granted license to partly-foreign-owned partnership because "the alien partners had insulated themselves by contract from any management role in the partnerships"); Moving Phones P'ship L.P. v. FCC, 998 F.2d 1051, 1055-57 (D.C. Cir. 1993) (same).

Does this bill apply to non-profits?
The bill does not itself impose any direct prohibitions on non-profits. That includes trade associations.

The bill does not apply to a non-profit that receives a contribution directly from a foreign national; that situation is already substantially addressed by federal law.[48] The gap that this bill aims to plug pertains to foreign *investors* in U.S. corporations; there is no directly analogous gap in the law for non-profits.

What about trade associations with members that are foreign-influenced companies?
If a trade association establishes or qualifies as a political committee or incidental committee stating that money contributed to it will be used in candidate elections, this bill specifically provides that the committee may dedicate any contributions that do *not* satisfy the law for other lawful purposes. For example, a trade association might set aside funds received from businesses that did not submit a statement of certification and use those funds for activities *other than* spending them on candidate elections.

Does this bill apply to labor unions?
No. We are unaware of evidence that any money whatsoever from foreign members' dues is ever spent by unions in U.S. elections. As for noncitizen, non-permanent resident workers who may be members of U.S. labor unions, they are qualitatively different from the foreign entities that invest in U.S. corporations. Almost without exception, immigrant workers in U.S. labor unions are physically located in the United States, where they enjoy *most* rights under the U.S. Constitution; activities related to democratic self-government (including political spending) are the exception. By contrast, with rare exceptions, foreign investors in U.S. corporations are physically located abroad.[49] Under the Supreme Court's 2020 decision in *Agency for International Development v. Alliance for Open Society,* foreign entities located abroad have *no rights whatsoever* under the U.S. Constitution.[50] This weaker

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[48] *See* 52 U.S.C. § 30121(a)(2).

[49] A major source of foreign national investors who actually reside in the United States is the EB-5 Immigrant Investors Visa Program. Under this program, approximately 10,000 visas per year are issued to foreign investors who invest at least $500,000 in American businesses. Notably, an EB-5 visa grants "conditional permanent residence." Since 52 U.S.C. § 3012(b)(2) defines a "foreign national" as someone "who is not lawfully admitted for permanent residence," an EB-5 investor might not be considered a "foreign national" under 52 U.S.C. § 30121. But, either way, a resident EB-5 investor would presumably not be a foreign national "outside the United States."

[50] Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc., 140 S. Ct. 2082, 2086–87 (2020).

constitutional status of foreign entities located abroad makes the law more constitutionally defensible when limited to foreign-influenced business entities.

What compliance obligations does this bill impose on candidates and committees?

None. This bill provides that the CEO of any corporation contributing to a candidate or political committee must provide a statement of certification that the corporation is *not* foreign-influenced within seven days after making that contribution. This bill does not impose any obligations or requirements on candidates or committees—only the corporate donors.

SB-1032-SD-1
Submitted on: 2/18/2025 7:07:45 PM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

Thank you for this wonderful bill. It is another way to keep government clean. If naturalized citizen Elon Musk were not a citizen, he would not be able to spend megamillions to elect felon Trump president and act as our unelected president.

Please move this bill forward.

SB-1032-SD-1
Submitted on: 2/18/2025 11:31:25 PM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Amy Brinker	Individual	Support	Written Testimony Only

Comments:

Support

SB-1032-SD-1
Submitted on: 2/19/2025 8:47:14 AM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Jan K Baldado	Individual	Support	Written Testimony Only

Comments:

Aloha,

I SUPPORT SB 1032.

Mahalo nui.

LATE

SB-1032-SD-1
Submitted on: 2/19/2025 4:19:53 PM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this important bill. Mahalo.

LATE

SB-1032-SD-1
Submitted on: 2/19/2025 9:00:41 PM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Lorna Holmes	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill and urge you to pass it. Foreign entities should not be influencing our elections.

LATE

SB-1032-SD-1
Submitted on: 2/20/2025 2:18:32 AM
Testimony for JDC on 2/20/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Taurie Kinoshita	Individual	Support	Written Testimony Only

Comments:

To the Honorable Committee,

I am writing in strong support of SB1032 SD1. Politicians must be prohibited from accepting campaign donations and funding from all foreign entities. Allowing forgeign nationals, organizations or countries to help finance politics is a clear conflict of interest.

Thank you for your consideration.

Sincerely,

Taurie Kinoshita