January 29, 2025

Senator Chris Lee, Chair
Senator Lorraine Inouye, Vice Chair
Committee on Transportation and
Culture and the Arts
Hawai'i State Senate

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

Dear Chair Lee and Vice Chair Inouye,

On behalf of Free Speech For People, we write in strong support of passing 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 Minnesota, a federal district court judge correctly recognized that states can enact campaign finance laws to block foreign influence, and that these laws are not preempted by the Federal Election Campaign Act. *See Minn. Chamber of Commerce v. Choi*, No. 23-cv-2015, 2023 WL 8803357 (D. Minn. 2023). He further recognized that states have "a compelling interest to limit the participation of foreign citizens and foreign corporations in activities of American democratic self-government, including spending money to expressly advocate for or against a political candidate." Notwithstanding this basic principle, the judge issued a temporary injunction, accompanied by an unpublished opinion, to temporarily block Minnesota's law banning foreign-influenced corporate spending in state and local elections to preserve the status quo while the litigation is pending. Contrary to the expert analysis of Professor Coates, the judge demanded a level of evidence of particular foreign investors influencing particular corporate decisions that far exceeds what federal courts ordinarily require for prophylactic legislation such as this, especially at the preliminary injunction stage. The Minnesota Attorney General's office continues to defend the state law, and the case is now pending before the district court on summary judgment motions.

Regardless of what the ultimate decision may be in Minnesota, such a ruling will not bear weight anywhere outside that jurisdiction. Decisions of federal district courts are not even precedential as to the same judge. And not all laws prohibiting foreign-influenced political spending are legally challenged. The City of Seattle, for instance, passed similar legislation in 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.

HARVARD LAW SCHOOL

HAUSER HALL 420
1575 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02138

LAURENCE H. TRIBE
Carl M. Loeb University Professor Emeritus

TEL: (617) 495-1767
E-MAIL: tribe@law.harvard.edu

Representative Bill Ramos, Chair
House State Government and Tribal Relations Committee
Washington State Legislature
Olympia, WA

RE: HB 1885, bill to ban political spending by foreign-influenced corporations

January 12, 2024

Dear Chair Ramos,

I write to you to express my opinion on an issue pertaining to the above-referenced bill currently before you. First, that U.S. Supreme Court constitutional precedent permits limits on political spending by foreign-influenced corporations in the form of "independent expenditures," electioneering communications, spending on ballot measure campaigns, or contributions to super PACs. Second, that I consider such bills to be valuable tools for protecting and preserving the integrity of state and local elections, including in California, from the threat to the American ideal of self-government posed by foreign-influenced political spending.

Background
I am the Carl M. Loeb University Professor and Professor of Constitutional Law Emeritus at Harvard University and Harvard Law School, where I have taught since 1968 and where my specialties include constitutional law and the U.S. Supreme Court.[*] I have prevailed in three-fifths of the many appellate cases I have argued (including 35 in the U.S. Supreme Court).

Constitutionality of regulating political spending by foreign-influenced corporations
Regulating political spending by corporations with significant foreign ownership is consistent with the Constitution and Supreme Court precedent. Indeed, concern about potential foreign influence over our democratic politics is written into the Constitution

[*] Title and university affiliation included for identification purposes only.

itself.[1] And while the Supreme Court has held that the First Amendment prohibits limits on independent expenditures *in general*, it has made an important exception for spending by foreign entities.

Federal law already prohibits foreign nationals—a category defined by federal law to include foreign governments, corporations incorporated or with their principal place of business in foreign countries, and individuals who are not U.S. citizens or lawful permanent residents—from spending money on federal, state, or local elections.[2] In the 2012 decision *Bluman v. Federal Election Commission*, the Supreme Court upheld this law against a post-*Citizens United* constitutional challenge, confirming the federal government's ability to ban independent expenditures by foreign nationals.[3] As explained by the lower court opinion in that case, written by then-Circuit Judge Brett Kavanaugh and affirmed by the Supreme Court, the legal rationale for restricting political spending by foreign nationals is that "foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government."[4]

The Supreme Court's decision in *Citizens United* created a loophole through which foreign investors can circumvent this ban using the corporate form. Yet if foreign investors do not have a constitutional right to spend money to influence federal, state, or local elections, then they do not have a constitutional right to use the corporate form to do indirectly what they could not do directly.[5] This logic applies to a foreign investor that is located within the United States, but it is even stronger when applied to the types of foreign entities (sovereign wealth funds, banks, private equity funds, and insurance conglomerates) that tend to own large stakes in U.S. corporations, which are almost always located abroad. In the recent case *Agency for International Development v. Alliance for Open Society,* the Supreme Court held that foreign entities located abroad have *no* rights under the First Amendment to the U.S. Constitution.[6]

This is not only an issue of corporations that are majority-owned by foreign investors. As I told the federal House of Representatives Committee on the Judiciary shortly after the

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[1] *See* U.S. Const. art. I, § 9, cl. 8 (prohibiting federal officials from accepting "any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State").
[2] 52 U.S.C. § 30121(a).
[3] Bluman v. Fed. Election Comm'n, 565 U.S. 1104 (2012) (mem.).
[4] Bluman v. Fed. Election Comm'n, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (3-judge court), *aff'd mem.,* 565 U.S. 1104 (2012). Despite this quotation's reference to "foreign citizens," the *Bluman* decision later noted that the federal statute specifically does *not* define lawful permanent residents as "foreign nationals" subject to the political spending prohibition. *See id.* at 292. Since the bills use the exact same definition of "foreign national" as does the federal law, lawful permanent residents would not be affected in the slightest.
[5] *See* Ellen Weintraub, "Taking on *Citizens United*," Mar. 30, 2016, N.Y. TIMES, https://nyti.ms/1qhmpKB.
[6] Agency for Int'l Development v. Alliance for Open Soc'y Int'l, Inc., 140 S. Ct. 2082, 2087 (2020).

Citizens United decision, the same Supreme Court that decided *Citizens United* would probably have upheld a law limiting political advertising by corporations with a considerably smaller percent of equity held by foreign investors.[7] Indeed, the reasoning behind the *Bluman* decision suggests this limit could apply to corporations with *any* equity held by foreign investors.

Unfortunately, neither Congress nor the beleaguered Federal Election Commission are in any position to lead this fight. As I wrote in the *Boston Globe* in 2017, the 2016 election and the federal government's failure to act shows why state and local governments should close the foreign corporate political spending loophole.[8] I believe California's interest in local self-government provides a comparable and constitutionally sufficient ground to support regulating independent expenditures, and contributions to super PACs, by such "foreign-influenced corporations." As such, I believe such a policy to be constitutional under the Court's *Citizens United, Bluman*, and *Agency for International Development* decisions, and a reasonable complement to existing federal law.

Similar logic applies to prohibitions on spending by foreign-influenced corporations in ballot measure elections. In most cases, current precedent bars limits on contributions, or corporate spending, in ballot measure elections.[9] The underlying principle is that, unlike candidate elections, ballot measure elections do not present the risk of *corruption* since there is no candidate to be corrupted. However, the courts have not considered the role of foreign influence in ballot measure elections,[10] and the general rule is likely to admit exceptions. It seems nearly unimaginable, for instance, that a court would invalidate a law banning foreign governments from spending money to influence ballot questions. The same would likely apply to foreign investors themselves. Proceeding by the same logic discussed earlier, if a foreign investor cannot spend its own money to influence a ballot measure election, then it ought not be able to do so through a corporation.

I am aware that a trial judge in Minnesota recently issued a preliminary injunction, accompanied by an unpublished opinion, that temporarily blocked a similar law in Minnesota.[11] The judge in that case correctly recognized that states can enact campaign finance laws to block foreign influence, and that these laws are not preempted by the Federal Election Campaign Act. He further recognized that states have "a compelling interest to limit the participation of foreign citizens and foreign corporations in activities of American democratic self-government, including spending money to expressly

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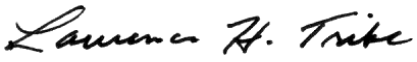
[7] Laurence H. Tribe, "Citizens United v. Federal Election Commission: How Congress Should Respond," Testimony to U.S. House of Representatives, Comm. on the Judiciary, Subcomm. on the Constitution, Civil Rights & Civil Liberties 7 (Feb. 3, 2010).
[8] *See* Laurence H. Tribe & Ron Fein, "How Massachusetts can fight foreign influence in our elections," BOSTON GLOBE, Sept. 26, 2017, http://bit.ly/2fOULSH.
[9] *See* Citizens Against Rent Control. v. City of Berkeley, 454 U.S. 290 (1981); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978).
[10] *Bluman* specifically noted that its holding "does not address such questions" because ballot measure campaigns were not at issue in that case. *See* 800 F. Supp. 2d at 292.
[11] Minn. Chamber of Commerce v. Choi, No. 23-cv-2015, 2023 WL 8803357 (D. Minn. 2023).

advocate for or against a political candidate." However, contrary to the expert analysis of my Harvard Law colleague John Coates, a corporate law expert who explained in a letter submitted for the legislative record how even minority (1% or less) investors can exert substantial influence on corporate decision-making, the judge in that case demanded a level of evidence of particular foreign investors influencing particular corporate decisions that far exceeds what federal courts ordinarily require for prophylactic legislation such as this. The Minnesota judge's ruling is wrong on the merits and should not deter you from standing up to protect your own state's elections.

Conclusion

I applaud the Washington legislature for considering issues so critical to the health of our democracy, and I thank you for sparking an admirable effort to guard our political systems from the dangers posed by foreign corporate spending. I am confident that the U.S. Supreme Court would uphold a ban on foreign-influenced corporations' independent expenditures, electioneering communications, expenditures on ballot measure campaigns, or contributions to super PACs or ballot question committees.

If I can be of further assistance regarding HB 1885, please do not hesitate to contact me.
Sincerely,



Laurence H. Tribe
Carl M. Loeb University Professor and Professor of Constitutional Law Emeritus
Harvard Law School

cc: Representative Sharlett Mena

HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

John C. Coates IV
John F. Cogan, Jr. Professor of Law and Economics

Phone: 617-496-4420
Fax: 617-495-5156
jcoates@law.harvard.edu

January 5, 2024

The Honorable Alex Lee California
State Capitol Sacramento, CA 95814

RE: Proposed bill AB 83 re: political spending by foreign-influenced corporations

Dear Honorable Councilmembers,

I am writing to express my support for the proposed bill AB 83 regarding political spending by foreign-influenced corporations in California. The proposal would be a critical tool for uncovering foreign influences in our elections. Unlike many commentators, my background is not in constitutional law. What I may add to this debate is corporate law knowledge – both from study as an academic and perhaps more importantly from extensive practical experience, sketched below. Drawing on that experience, below I explain how investors holding even just one percent of corporate equity can influence corporate governance, and how in corporations could – practically and at reasonable expense – obtain responsive information about the foreign national status of shareholders, as would be required by the law.

Background

I am the John F. Cogan Professor of Law and Economics at Harvard Law School, where I also serve as Special Advisor for Planning, Chair of the Committee on Executive Education and Online Learning, and Research Director of the Center on the Legal Profession. Before joining Harvard, I was a partner at Wachtell, Lipton, Rosen & Katz, specializing in financial institutions and M&A. At HLS and at Harvard Business School, he teaches corporate governance, M&A, finance, and related topics, and I am a Fellow of the American College of Governance Counsel. I have testified before Congress and provided consulting services to the U.S. Department of Justice (DOJ), the U.S. Department of Treasury, the New York Stock Exchange, and participants in the financial markets, including hedge funds, investment banks, and private equity funds. In 2021 I served as General Counsel

and Acting Director of the Division of Corporation Finance of the Securities and Exchange Commission. In June 2016, I testified by invitation at a forum on "Corporate Political Spending and Foreign Influence" at the Federal Election Commission.

Foreign corporate spending in American elections

Since the Supreme Court's 2010 *Citizens United* decision invalidated restrictions on corporate political spending,[1] the possibility that American elections could be influenced by foreign interests via corporations has attracted considerable public and policymaker interest. Foreign governments, foreign-based companies, and people who are neither U.S. citizens nor permanent residents are currently barred by federal law from contributing or spending money in connection with federal, state, or local elections.[2] Unfortunately, *Citizens United* created a loophole to this ban: these foreign entities can invest money through U.S.-based corporations that can – as a result of the decision – then spend unlimited amounts of money in American elections.

The policy interest in regulating foreign influence need not rest on the idea that foreign investors are tied to hostile governments that are actively trying to undermine the democracy or economy of the United States, although there is now evidence that Russia sought to do just that in the last presidential election, and is expected to try to do so again in future elections. In addition, it may separately rest on the observation that foreign nationals (even those in countries that are staunch U.S. allies) are simply not part of the U.S. polity. Democratic self-governance presumes a coherent and defined population to engage in that activity. Foreign nationals have a different set of interests than their U.S. counterparts, as regards a range of policies, such as defense, environmental regulation, and infrastructure. Few dispute the idea that a given government may properly seek to limit foreign influence over, in the words of the U.S. Supreme Court, "activities 'intimately related to the process of democratic self-government.'"[3] There is nothing particularly surprising or pernicious about this fact. Foreign and domestic interests predictably diverge.

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[1] *Citizens United v. FEC*, 558 U.S. 310 (2010).

[2] 52 U.S.C. § 30121(a). This prohibition was upheld by a unanimous U.S. Supreme Court in 2012. *See Bluman v. FEC*, 132 S. Ct. 1087 (2012).

[3] *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011)(quoting *Bernal v. Fainter,* 467 U.S. 216, 220 (1984)), *aff'd*, 132 S.Ct. 1087 (2012).

Depending on the degree of their influence, foreign governments (or agents, such as sovereign wealth funds), foreign corporations, or other foreign investors might be able to leverage ownership stakes in U.S. corporations to affect corporate governance. Through that channel, they could influence corporate political activity in a manner inconsistent with democratic self- government, or at least out of alignment with the interests of U.S. voters.

Every country regulates some types of foreign and domestic business activities differently. In many domains of the American economy, long-standing statutes, regulations, and legal traditions treat foreign companies or foreign- influenced companies differently than domestic companies. The United States has specific foreign restrictions across a number of different industries. In shipping, aircraft, telecom, and financial services, laws governing all of these industries limit or regulate foreign ownership or control. Some ban foreign ownership completely, and, for some, foreign ownership or control triggers special government approval procedures.

The same spirit of those bodies of law should inform regulation of election spending by foreign-influenced corporations. Since *Citizens United* opened the door for political activity by corporations, some corporations of which ownership or control is likely held in significant part by foreign entities have devoted considerable financial resources to influencing American elections.

In practice, the policy preferences of foreign-influenced corporations are sometimes clear from public sources. In May 2016, Uber and Lyft spent over $9 million on a ballot initiative in Austin, Texas that would have overturned an ordinance passed by the Austin City Council requiring the companies' drivers to submit to fingerprint-based criminal background checks.[4] Weeks later, Uber disclosed that the Saudi Arabian government had invested $3.5 billion in the company, giving the Kingdom over five percent ownership and a seat on its board of directors.[5] Also in 2016, the multinational "homestay" corporation Airbnb responded to the New York Legislature's growing interest in regulating the industry by arming a super PAC with $11 million to influence New York's

[4] Nolan Hicks, "Prop 1 campaign crosses $9 million threshold," AUSTIN-AMERICAN STATESMAN, May 9, 2016, http://atxne.ws/29pbFBk.

[5] *See* Elliot Hannon, "Saudi Arabia Makes Record $3.5 Billion Investment in Uber," SLATE, June 1, 2016, http://slate.me/1UvvM3x. Uber also spent roughly $600,000 on a 2015 voter referendum in Seattle. *See* Karen Weise, "This is How Uber Takes Over a City," BLOOMBERG, June 23, 2015, http://bloom.bg/1Ln2MaN.

legislative races.[6] Airbnb – a privately held company – is partly owned by Moscow-based DST Global.[7]

In another striking example, APIC, a San Francisco-based company described as "controlled" and "100 percent owned" by Gordon Tang and Huaidan Chen -- two Chinese citizens with permanent residence in Singapore -- gave $1.3 million to a super PAC that had supported Jeb Bush's run for president.[8] Though the story made headlines, it echoes similar, yet less publicized, efforts to influence high-profile state and national races. For example, in 2012, a Connecticut-based subsidiary of a Canadian insurance and investment corporation gave $1 million to the pro-Mitt Romney super PAC Restore Our Future.[9] In 2013, a New Jersey-based subsidiary of a Chinese- owned business contributed $120,000 directly to Terry McAuliffe's gubernatorial campaign in Virginia.[10]

Ballot initiatives have been particularly strong magnets for spending by multinational corporations. American Electric Power, Limited Brands, and Nationwide Insurance

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[6] Kenneth Lovett, "Airbnb to spend $10 on Super PAC to fund pre-Election day ads," N.Y. DAILY NEWS, Oct. 11, 2016, http://www.nydailynews.com/news/politics/airbnb-spend-10m-super-pac- fund-pre-election-day-ads-article-1.2825469.

[7] *See* Dan Primack, "Yuri Milner adds $1.7 billion to his VC war chest," FORTUNE, Aug. 3, 2015, http://fortune.com/2015/08/03/yuri-milner-adds-1- 7-billion-to-his-vc-warchest/ (DST Global is Moscow based); Scott Austin, "Airbnb: From Y Combinator to $112M Funding in Three Years, The Wall Street Journal, July 25, 2011, http://blogs.wsj.com/venturecapital/2011/07/25/airbnb-from-y-combinator- to-112m-funding-in-three-years/ (DST Global is a major investor in Airbnb).

[8] Jon Schwartz & Lee Fang, "The Citizens United Playbook," THE INTERCEPT, Aug. 3, 2016, http://bit.ly/2auW75p.

[9] Michael Beckel, "Foreign-Owned Firm Gives $1 Million to Romney Super-PAC," MOTHER JONES, Oct. 5, 2012, http://www.motherjones.com/politics/2012/10/canadian-foreign-donation- super-pac-restore-our-future.

[10] John Schwartz, "Va. Gov. Terry McAuliffe Took $120K from a Chinese Billionaire—but the Crime Is That It Was Legal," THE INTERCEPT, June 1, 2016, http://bit.ly/1XPvuXN.

spent a combined $275,000 against a municipal initiative aimed at reconfiguring the Columbus City Council.[11] In 2012, a Los Angeles County ballot measure, the "Safer Sex in the Adult Film Industry Act," attracted over $325,000 from two companies tied to a Luxembourg corporation that ran adult webpages.[12] The company's then-CEO was a German national.[13] That same year, a statewide ballot initiative in California that would have required all foods containing genetically modified organisms to be labeled as such attracted $45 million in spending by multinationals such as Monsanto and DuPont.[14] Opponents of the measure spent five times more than its supporters, and ultimately defeated it by a 53-47 margin.[15]

Of course, not all politically active corporations are owned or controlled in significant part by foreign entities. Many privately held companies are owned directly by one or a small number of U.S. citizens. Among U.S. public companies, foreign ownership varies. I have carefully researched foreign ownership of large U.S. companies (see the short paper attached as an appendix to this letter) finding that, among publicly traded corporations in the Standard & Poor's (S&P) 500 index, one in eleven (~9 percent) has a foreign institutional investor with more than five percent of the company's voting shares. (Five percent was chosen for the study because it is the threshold at which federal securities law requires public disclosure of large stockholdings of US public companies.[16])

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[11] Lucas Sullivan, "Follow the money flowing to ward initiative campaigns in Columbus," THE COLUMBUS DISPATCH, July 22, 2016, http://bit.ly/2ahlSpq.

[12] *See* Ciara Torres-Spelliscy, "How a Foreign Pornographer Tried to Win a U.S. Election," THE BRENNAN CENTER FOR JUSTICE, Nov. 6, 2015, http://bit.ly/29pesu2.

[13] *Id.*

[14] Suzanne Goldenberg, "Prop 37: food companies spend $45m to defeat California GM label bill," THE GUARDIAN, Nov. 5, 2012, http://bit.ly/29I3SE7.

[15] *Id.*

[16] Under Section 13(d) of the Securities Exchange Act of 1934 (as amended by the Williams Act), any person or group of persons who acquire beneficial ownership of more than five percent of the voting class of the equity of a corporation that is listed or otherwise required to register as a "public" company under that law, must, within ten days, report that acquisition to the Securities and Exchange Commission (SEC)

But other corporations may have foreign ownership at substantial levels that would make unaffiliated foreign investors capable of exerting influence on the corporate political spending, even at levels below five percent of total stock. One such method is by presenting proposals for a vote by the shareholders. Any investor who can present a shareholder proposal (either alone, or by working with a group of other investors) has substantial leverage. Indeed, in recent proxy seasons, the New York City Pension Fund, despite owning less than one percent of outstanding shares in the target companies, led successful shareholder proposal campaigns regarding proxy access.[17] Furthermore, this type of influence is not limited to actually presenting shareholder proposals; the ability to do so creates indirect means of influence, such as *threatening* a shareholder proposal, and it means that, in many cases, an investor at that level can get upper management, including the CEO, on the phone.

Until September 2020, under a federal law known as Rule 14a-8, the threshold for presenting a shareholder proposal at a publicly-traded company was owning either 1% of voting shares or $2,000 in market value.[18] In the years prior to its amendment, political debate about how to revise the law centered around the question of whether raise or eliminate the $2,000 qualification or whether to *lower* the ownership requirements. Virtually *no one* questioned that owning *at least* 1% of voting shares should continue to qualify an investor for this method of influence. Rather, the debate concerned whether that threshold is too *high*, and whether investors who own *less than 1%* should be able to present shareholder proposals.

For example, one of the first bills proposed in 2017 in the U.S. House of Representatives was the Financial CHOICE Act of 2017, which proposed to eliminate the $2,000 market value threshold, but retain the 1% ownership

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via Schedule 13D (or, in some cases, Schedule 13G). *See* 15 U.S.C. § 78m(d); 17 C.F.R. §§ 240.13d-1, 240.13d- 101.

[17] See Paula Loop, "The Changing Face of Shareholder Activism," Harvard Law School Forum on Corporate Governance and Financial Regulation, Feb. 1, 2018, https://corpgov.law.harvard.edu/2018/02/01/the-changing-face-of- shareholder-activism/.

[18] 17 C.F.R. 240.14a-8(b) (2019), *available at* https://www.govinfo.gov/app/collection/cfr/2019/.

threshold.[19] In committee markup debate over the CHOICE Act, then-Rep. Jeb Hensarling (R-Tex.) explained that "we have something fairly reasonable and that is, you know, if you are going to put forward these proposals, have some real significant skin in the game. And what we say is 1 percent. One percent to put forward a shareholder proposal."[20]

Indeed, as part of those same political discussions, the Business Roundtable, a group of chief executive officers of major U.S. corporations formed to promote pro-business public policy, proposed a threshold *below* 1% for shareholder proposals:

> For proposals related to topics other than director elections, a truly reasonable standard could be to use a sliding scale based on the market capitalization of the company, with a required ownership percentage of **0.15 percent for proposals submitted to the largest companies and up to 1 percent for proposals submitted to smaller companies**. Additionally, if a proposal were submitted by a group or by a proponent acting by proxy, the ownership percentage sliding scale could be increased to up to 3 percent.[21]

In other words, the Business Roundtable recognized that investors can *and should* have significant influence over corporate decision-making at ownership levels between 0.15% to 1%, or 3% for groups of investors.

In December 2019, the federal Securities and Exchange Commission formally proposed to revise Rule 14a-8 to not just lower but *eliminate* the 1% threshold for

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[19] *See* Financial CHOICE Act of 2017, H.R. 10 (115th Cong.), § 844. https://www.congress.gov/bill/115th-congress/house-bill/10/.

[20] House Financial Services Committee, remarks of Rep. Jeb Hensarling, May 3, 2017.

[21] Business Roundtable, "Responsible Shareholder Engagement & Long-Term Value Creation," https://www.businessroundtable.org/archive/resources/responsible-shareholder-engagement-long-term-value-creation (emphasis added).

presenting shareholder proposals.[22] The SEC adopted the revised rule in September 2020.[23] As the SEC explained:

> We also propose to eliminate the current 1 percent ownership threshold, which historically has not been utilized. *The vast majority of investors that submit shareholder proposals do not meet a 1 percent ownership threshold.* In addition, we understand that *the types of investors that hold 1 percent or more of a company's shares generally do not use Rule 14a-8 as a tool for communicating with boards and management*.[24]

In support of these points, the SEC cited statements from some of the world's largest and most influential pension fund investors, including the California State Teachers' Retirement System and the New York City Comptroller—both of which have led successful shareholder campaigns and are considered quite influential in corporate governance—that "[w]hile one percent may sound like a small amount, even a large investor like the $200 billion CalSTRS fund does not own one percent of publicly traded companies," and "[d]espite being among the largest pension investors in the world, [New York City funds] rarely hold more than 0.5% of any individual company, and most often hold less."[25] In other words, for a publicly-traded corporation, one percent is in fact a very large ownership stake, and some of the largest and most influential-in- governance investors rarely if ever hold that much.

By the same token, the SEC cited an observation from its 2018 "Roundtable on the Proxy Process"[26] with which few of those with experience in corporate governance would disagree:

> Large institutional investors—the Blackrocks and State Streets and Vanguards of the world—do not need the shareholder proposal rule

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[22] *See* SEC, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, 84 Fed. Reg. 66,458 (Dec. 4, 2019). The SEC's proposed rule would also modify the absolute-dollar-value thresholds, which are not relevant here.

[23] 17 C.F.R. 240.14a-8(b).

[24] *Id.* at 66,646 (emphasis added).

[25] *Id.* n.58.

[26] I was a panelist at this roundtable.

> process to get the attention of management or the board of directors. There's not a corporate secretary or investor relations department in the country that would not return their call within 24 hours.[27]

The point here is not that foreign investors will use the shareholder proposal process to influence corporate political spending. Rather, the point is that the SEC itself recognizes that one percent ownership is large enough that investors with that level of ownership don't even need that process; they typically can easily get executive-suite management on the phone, and through that direct "engagement" have an influence on corporate managers, strategy, and decision-making.

Whatever happens with the SEC rulemaking, California can rely on the general agreement among major capital investors, corporate management, and governance experts that one percent ownership confers substantial influence over corporate governance.

Regulating foreign corporate spending

California can simultaneously welcome foreign investment without exposing itself to the risk of foreign money influencing its elections. The proposed law addresses this issue through a requirement that prohibits a corporation from spending certain types of money in city elections if it is a "foreign-influenced corporation" – a definition based, in part, on the extent of foreign ownership of corporate stock.[28] The proposed bill is a reasonable response to an increasingly localized problem, and is constitutional under the Court's decision in *Citizens United*. The remainder of this letter details how this certification requirement could operate.

The mechanics of the bill's foreign-influenced-corporation requirements

1. Ownership of corporate stock

To begin, as a general matter, corporate stock may be "owned" in three

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[27] SEC, *Transcript of the Roundtable on the Proxy Process* (Nov. 15, 2018), available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf, at 150 (comments of Brandon Rees, Deputy Director of Corporations & Capital Markets, AFL-CIO).

[28] The types of prohibited spending for foreign-influenced corporations are independent expenditures or contributions to independent expenditure PACs (often called super PACs). Other forms of corporate political activity, such as lobbying or operating a corporate PAC, are not restricted.

different forms. First, many companies that have one or a relatively small number of shareholders hold paper stock certificates. Among larger, stock exchange listed companies, with numerous owners, such direct ownership is rare, and increasingly so. At such companies, shares are more commonly held in "street name" through a broker (e.g., Fidelity or Charles Schwab). In these instances, the name on the stock certificate is actually the broker, but the broker keeps track in a database of how many shares belong to each client.
Clients who hold shares in street name are "beneficial owners" under SEC rules, can direct brokers how to vote or sell shares, and can participate in corporate governance.

Most shares of large, listed companies, however, are now held by separate legal entities, such as mutual funds, pension funds, insurance companies, and hedge funds. As an economic matter, these entities hold stock on behalf of their clients or beneficiaries. However, as a legal matter, the investment entities themselves are the owners of the stock, and they do not pass through to beneficiaries either the right to vote or the right to sell the shares of the stock that the entity purchases. Individuals whose wealth is invested through these types of institutional investments cannot exercise voting rights associated with the shares. Instead, those rights are exercised by the management of the institutions.

2. Determining shareholders

Most corporate stock is not traded on public markets. As of 2012, more than five million corporations filed U.S. income tax returns. Only about 4,000 corporations were listed on a U.S. stock exchange – less than 0.1 percent of corporations that filed tax returns. Of the rest, many are owned by a single shareholder, or are beneficially owned by up to 500 individual owners. (SEC rules generally require public registration and disclosure for companies with more than 500 owners and $10 million in assets.) Companies without public markets are still large and have substantial numbers of shareholders. Examples include Cargill, with revenues exceeding $130 billion and over 200 shareholders, and Mars, with revenues exceeding $33 billion and over 45 shareholders. Because shares of such companies do not trade freely in the public markets, such companies generally can and do track the identity of their shareholders directly.

For corporations listed on public markets, shares trade in significant volume—thousands of shares per day. Since public company shareholders change daily, even hourly, perfect real-time knowledge of the extent of foreign ownership or influence is not possible. However, publicly traded corporations have the ability to ascertain the exact ownership of their shares as of any arbitrary "record date." In fact, this happens at least annually, because companies are required by corporate law to have

annual shareholder meetings, for which they must set a record date to determine which shareholders are eligible to attend and vote at the meeting. In fact, record dates are set and shareholder lists are created more frequently than that at many public companies, to allow for votes on off-cycle events, such as a merger proposal or charter amendments, which are brought to a vote at special meetings, or to determine recipients of dividends.
Furthermore, at any point during the year, a qualifying shareholder can demand a shareholder list to solicit proxies, or a third party may demand a list to make a tender offer for shares.

Consequently, the ability to determine record stock ownership as of a given date is essential to the basic governance of corporations.

Few if any publicly traded corporations engage in the process of determining their record shareholders for a given record date themselves. They use an intermediary – most commonly, American Stock Transfer (AST) – that is dedicated to this function. Under state law, shareholders seeking to file a derivative suit or solicit shareholder support for a shareholder resolution or proxy contest can also obtain the list of shares using the same method. A corporation that needs the list of shareholders as of a specific date would engage AST to produce the list of shareholders as of that date. Under SEC rules, public companies also reach out beyond their record holders to the beneficial owners of broker- or bank-owned stock, and engage AST to contact banks, brokers or other intermediaries that are nominally record owners. Those firms, in turn, provide information about non-objecting beneficial owners to AST, which then compiles it and provides it to the corporation. Typically, banks, brokers and other intermediaries provide AST (and the corporation) with non-objecting client names, addresses, shares held, and purchase dates (which could be multiple blocks if a given shareholder bought multiple blocks of shares over time).

In addition to these basic corporate and securities law mechanisms, Section 13 of the federal Securities Exchange Act of 1934 requires any person or group of persons who acquire beneficial ownership of more than five percent of the voting class of a listed corporation's equity to within ten days report that acquisition to the SEC on a Schedule 13D (or, in some cases, Schedule 13G).[29]

These acquisitions are, in turn, made public by the SEC, and available through the SEC's EDGAR online database.

3. Determining whether shareholders are "foreign owners"

[29] *See* 15 U.S.C. § 78m(d); 17 C.F.R. §§ 240.13d-1, 240.13d-101.

The bill requires a corporation that plans to engage in political spending to ascertain whether it meets the threshold of "foreign-influenced corporation." As just described above, acquisitions of five percent or more of the stock of public U.S. companies must already be disclosed under SEC rules, including the identity of the purchaser's citizenship.[30] Thus, the information is already publicly available (and readily available on commonly used search web sites such as Yahoo Finance or MSN Finance) for five percent blockholders of public companies. For ownership at lower thresholds,[31] the information is not always publicly available, but can be ascertained. Outside of the blockholder context, for most purposes, corporations typically do not inquire into the citizenship or permanent residency status of shareholders. Many brokerage firms impose restrictions on non-citizens, or specifically limit their customers to citizens or permanent residents. A 2012 sampling of major brokers by financial markets reporter Matt Krantz found divergence in practices:

> For instance, at Fidelity, the company says only U.S. citizens may open an account. . . . Over at TD Ameritrade, investors do not need to be a U.S. citizen to open an account. With that said, the stipulations and requirements vary dramatically based on the country the resident lives in and the potential customers' nationality, the company says. . . .
> Similarly at E-Trade, the brokerage has different rules based on the country. . . . The rules vary widely based on the nationality of the person wanting the account . . . . TradeKing requires investors, including U.S. citizens, to be U.S. residents to establish the account. It makes an exception for customers who are living abroad and have a valid U.S. military or government address. Investors who are not U.S. citizens, yet legally in the U.S., may open an account if they have a Social Security number and aren't from 27 specific [prohibited] countries . . . .[32]

The process of ascertaining the foreign owner status of shareholders would be simple in many cases. If a publicly traded corporation asks American Stock

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[30] *See* 17 C.F.R. § 240.13d-101 (item #6, requiring reporting of "Citizenship or place of organization").

[31] Obviously, if a corporation determines from publicly available information that it has a 5% foreign owner, then it already meets the definition of foreign- influenced corporation and the inquiry is over; there is no need to *further* ascertain whether it *also* has additional foreign owners at lower ownership levels.

[32]Matt Krantz, USA TODAY, "U.S. online brokerage options are limited for foreigners," http://usat.ly/KXpDan (May 16, 2012).

Transfer to produce its list of shareholders (or just those shareholders who are foreign nationals), and AST in turn asks Fidelity, Fidelity's citizens-only customer policy would enable it to truthfully and simply answer that zero percent of the company's shares held through Fidelity are held by foreign nationals.

Similarly, where stock is held by a non-human shareholder, such as another corporation, the "foreign" status of that corporation can be ascertained readily by examining its place of incorporation and principal place of business.

The proposed law counts stock owned by domestic subsidiaries of foreign parent corporations the same as stock owned by foreign corporations. (In the terms of the law, either would be defined as a "foreign owner.") To the extent that a U.S. subsidiary of a foreign corporation has the potential to influence U.S. portfolio companies in which it invests, it has the potential to do so at the foreign parent's bidding or with the foreign parent's approval.

However, the law does *not* require "piercing" through the beneficial ownership of institutional entities such as mutual funds. For the bill's purpose, corporate stock owned by a mutual fund is not corporate stock held by a foreign national, even if many of the mutual fund's customers are themselves foreign nationals, as long as the advisor to the fund is a U.S. entity (a fact that can be readily determined with public information). This is a reasonable approach, because customers of mutual funds cannot themselves directly participate in governance of the corporation actually spending money in a city election. Instead, it is the management of the advisory firm that plays that role.

4. "Due inquiry"

Importantly, the law addresses any remaining possible difficulties that U.S. corporations might have in certifying as to whether they are foreign-influenced. As noted above, some brokerage firms allow foreign investors to buy stock of U.S. companies through them, and they may not report citizenship information about such customers to the corporations in which they invest. Thus, it may not be possible for every corporation to verify the U.S. or foreign national status of all of its shareholders with complete confidence. (Note, however, that the law does not actually require a corporation to verify *all* of its shareholders' statuses: Given the 5 percent, "aggregate" threshold, verifying that just over 95 percent of shareholders are not foreign owners would be sufficient.)

However, given this possibility, it is reasonable for the proposed law to impose a certification requirement that specifies that the chief executive officer of the corporation certify that the information is provided after "due inquiry." The

"due inquiry" standard is familiar from securities law,[33] as well as from other areas of law with which corporate executives are acquainted.[34] It imposes only the customary obligation to make such reasonable inquiry as the corporation would do in any event. Thus, the law does not impose a meaningful additional information-gathering cost beyond what it would already be required to do under existing law.

Conclusion

The law is a reasonable solution to the risk of foreign influence in local elections through corporate political spending. The law is constitutional under *Citizens United*, and reasonable from a corporate and securities law perspective. The law would only apply to corporations that spend money on independent expenditures or make contributions to candidates or "super PACs" in candidate elections. The law imposes no obligations on corporations that do not spend money on candidate elections. For those corporations that do engage in such spending, the requirement that corporations certify that they are not foreign-influenced is practicable and reasonable for both privately and publicly traded corporations, conditioned as it is on corporations engaging in "due inquiry," a standard that will not add material costs to the information-gathering and record-keeping in which corporations already engage.

If you have any further questions, please let me know.

Sincerely,

John C. Coates IV
John F. Cogan, Jr. Professor of Law and Economics
Harvard Law School

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[33] *See, e.g.,* 17 C.F.R. § 275.206(4)-2(a)(3).

[34] *See, e.g., SRI Int'l, Inc. v. Advanced Tech. Labs., Inc.*, 127 F.3d 1462, 1464–65 (Fed. Cir. 1997) (in patent law, standard for whether infringement was "willful" is "whether the infringer, acting in good faith and upon due inquiry, had sound reason to believe that it had the right to act in the manner that was found to be infringing"); *Black Diamond Sportswear, Inc. v. Black Diamond Equip., Ltd.*, No. 06- 3508-CV, 2007 WL 2914452, at *3 (2d Cir. Oct. 5, 2007) ("A trademark owner is "'chargeable with such knowledge as he might have obtained upon [due] inquiry."') (quoting *Polaroid Corp. v. Polarad Electronics Corp.,* 182 F. Supp. 350, 355 (E.D.N.Y. 1960)) (alteration in original).

COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mayor and City Council
City of San Jose

via e-mail only to
City Clerk Toni Taber
city.clerk@sanjoseca.gov

March 21, 2022

Mayor Liccardo, Vice Mayor Jones, and Councilmembers:

I write to you today in my individual capacity as a Commissioner on the U.S. Federal Election Commission in support of the proposal to draft an ordinance that would prohibit spending by foreign-influenced corporations in San Jose's elections. And I write to thank you for taking the lead on such an important topic.

If San Jose enacts such an ordinance, it will be the largest jurisdiction in the nation to do so. Helping ensure that San Jose's municipal elections belong to San Jose's voters would be commendable leadership on its own. But it would also set an exceptionally well-timed example for the California Assembly, which is considering similar protections to help ensure that your state's elections belong to California's voters.

The recommendation put forward by Councilmembers Cohen, Arenas, Jimenez, and Foley would, if enacted, strike a bold blow. But it would nonetheless fit comfortably within existing federal statutory law and Supreme Court precedent. It is fully in keeping with *Citizens United's* prescription for greater transparency in political spending; as the Supreme Court wrote, "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

The councilmembers' recommendation regarding foreign-influenced corporations is consistent with an approach I laid out in an op-ed for *The New York Times* (attached) that described a new way to read the *Citizens United* decision together with the foreign-national political-spending ban.

In a nutshell, I noted that since the *Citizens United* majority protected the First Amendment rights of corporations as "associations of citizens," and held that a corporation's right to

participate in elections flows from the collected rights of its individual shareholders to participate, it follows that the *limits* on the rights of a corporation's shareholders must *also* flow to the corporation.

And one of the most important campaign-finance limits we have is that foreign nationals are absolutely barred from spending directly or indirectly in U.S. elections at *any* political level – federal, state, county, or city. It thus defies logic to allow groups of foreign nationals, or foreign nationals in combination with American citizens, to fund political spending through corporations. One cannot have a right collectively that one does not have individually.

Accordingly, the ordinance recommended by Councilmembers Cohen, Arenas, Jimenez, and Foley seeks to ensure that only those corporations owned and influenced by people who have the right to participate in San Jose's elections are doing so.

The risks addressed by this measure are not theoretical. The largest aggregate penalty in a single matter in the post-*Citizens United* era stemmed from $1.3 million in illegal foreign donations to a super PAC routed through APIC, a California subsidiary of a foreign corporation. Had APIC's corporate officers been required to sign the statements of certification required by the ordinance recommended to you, the illegal behavior may well have been deterred.

Please do not hesitate to get in touch with me if I may be of any further assistance. I am available at commissionerweintraub@fec.gov and (202) 694-1035.

Sincerely,

Ellen L. Weintraub
Commissioner, Federal Election Commission

Attachment: "Taking On Citizens United" (March 30, 2016), NY TIMES, http://nyti.ms/230BOgq

The New York Times | http://nyti.ms/1qhmpKB

The Opinion Pages | OP-ED CONTRIBUTOR

Taking On Citizens United

By ELLEN L. WEINTRAUB MARCH 30, 2016

SOMETHING is very wrong with the way we fund our elections. This has become especially clear since Citizens United, the 2010 Supreme Court decision that struck down campaign spending limits on corporations, ruling they were intrusions on free speech.

The majority opinion in Citizens United v. Federal Election Commission was clear: The First Amendment rights of corporations may not be abridged simply because they are corporations. But while corporations may be deemed to have some of the legal rights of people, the court has never held that corporations have any of the political rights of citizens.

This key distinction, read in harmony with existing law, provides ways to blunt the impact of the decision that gave corporations the right to spend unlimited sums of money on federal elections.

The effect of that decision has been pronounced: The Washington Post reported this month that through the end of January, 680 corporations had given nearly $68 million to “super PACs” in this election cycle — 12 percent of the $549 million raised by such groups. This figure does not include the untold amounts of “dark money” contributions to other groups that are not disclosed by the donor or the recipient.

Throughout Citizens United, the court described corporations as “associations of citizens”: “If the First Amendment has any force,” Justice Anthony M. Kennedy wrote, “it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.” In other words, when it comes to political speech, which the court equated with political contributions and expenditures, the rights that citizens hold are not lost when they gather in corporate form.

Foreign nationals are another matter. They are forbidden by law from directly or indirectly making political contributions or financing certain election-related advertising known as independent expenditures and electioneering communications. Government contractors are also barred from making contributions.

Thus, when the court spoke of “associations of citizens” that have the right to participate in American elections, it can only have meant associations of American citizens who are allowed to contribute.

But many American corporations have shareholders who are foreigners or government contractors. These corporations are not associations of citizens who are allowed to contribute. They are an inseparable mix of citizens and noncitizens, or of citizens and federal contractors.

Since the court held that a corporation’s right to participate in elections flows from the collected rights of its individual shareholders to participate, it follows that limits on those individuals’ rights must also flow to the corporation.

You cannot have a right collectively that you do not have individually. Individual foreigners are barred from spending to sway elections; it defies logic to allow groups of foreigners, or foreigners in combination with American citizens, to fund political spending through corporations. If that were true, foreigners could easily evade the restriction by simply setting up shell corporations through which to funnel their contributions.

Arguably, then, for a corporation to make political contributions or expenditures legally, it may not have any shareholders who are foreigners or federal contractors. Corporations with easily identifiable shareholders could meet this

standard, but most publicly traded corporations probably could not.

This may sound like an extreme result, but it underscores how urgently policy makers need to examine these issues with an eye toward drawing acceptable lines. Perhaps we could require corporations that spend in federal elections to verify that the share of their foreign ownership is less than 20 percent, or some other threshold. The Federal Communications Commission, for example, bars companies that are more than 20 percent owned by foreign nationals from owning a broadcast license. At the moment, without a clarifying rule, the only standard that follows the law is a zero-tolerance standard.

If one thing is clear this election season, it is that many voters feel that their voices are not being heard. We should make sure that the voices of citizens are not being drowned out by corporate money. American billionaires already have an outsize influence on our elections. Let's not cede yet more power to foreign elites.

To that end, at the next public meeting of the Federal Election Commission, I will move to direct the commission's lawyers to provide us with options on how best to instruct corporate political spenders of their obligations under both Citizens United and statutory law. The American people deserve assurances from American corporations that they are not using the money of foreign shareholders to influence our elections.

Regardless of whether the perpetually deadlocked F.E.C. takes action, lawyers may wish to think twice before signing off on corporate political giving or spending that they cannot guarantee comes entirely from legal sources.

States can also take action, since Citizens United and federal law barring foreign money apply with equal force at the state level. 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.

Polls show that overwhelming majorities of Americans reject the conclusions of Citizens United and want to see it overturned. But in the meantime, federal and state policy makers and authorities can at least ensure that corporations are not being

used as a front to allow foreign money to seep into our elections.

Ellen L. Weintraub is a member of the Federal Election Commission.

Follow The New York Times Opinion section on Facebook and Twitter, and sign up for the Opinion Today newsletter.

A version of this op-ed appears in print on March 30, 2016, on page A21 of the New York edition with the headline: Taking On Citizens United.

INTERNATIONAL
LONGSHORE &
WAREHOUSE UNION

1188 FRANKLIN STREET, 4th FLOOR
SAN FRANCISCO
CALIFORNIA 94109
(415) 775-0533
(415) 775-1302 FAX
www.ILWU.org

The Thirty Third Legislature
Regular Session of 2025
COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS
Senator Chris Lee, Chair
Senator Lorraine R. Inouye, Vice Chair
Conference Room 224 & Videoconference
Thursday, January 30, 2025, 3:00 p.m.

STATEMENT OF THE ILWU INTERNATIONAL – HAWAII ON SB 1032 RELATING TO CAMPAIGN FINANCE

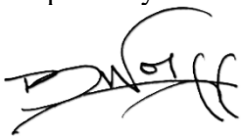
Chair Lee, Vice Chair Inouye and Honorable Committee Members,

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

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

January 29, 2025

The Thirty-Third Legislature
Regular Session of 2025

THE SENATE
Committee on Transportation and Culture and the Arts
Sen. Chris Lee, Chair
State Capitol, Conference Room 224 & Videoconference
Thursday, January 30, 2025; 3:00 p.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

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

January 29, 2025

Senate Committee on Transportation and Culture and the Arts
Sen. Chris Lee, Chair
Sen. Lorraine R. Inouye, Vice Chair

Testimony in Support of SB1032 for hearing on 1/30/25

Chair Lee, Vice Chair Inouye, 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.

We challenge opponents of SB1032 to make their case as to why we *shouldn't* prevent foreign corporate corruption of our democratic system. Removing outside influence from Hawaii's electoral process is obviously the correct move and self-evident.

Non-Hawai'i-based corporations have interests distinct from and in many cases opposed to the best interests of Hawai'i's working families. There is no reason for working people to argue for *more* corporate influence in our democratic process, foreign or otherwise.

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. We urge you to protect our political system from unwanted, harmful outside influence by working to pass SB1032.

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/

HAWAIʻI ALLIANCE *for* PROGRESSIVE ACTION

Senate Committee on Transportation And Culture And The Arts

Hawaiʻi Alliance for Progressive Action (HAPA) Strongly Supports: SB 1032
Thursday, January 30, 2025 at 3:00PM; Conference Room 224

Dear Chair Lee, Vice Chair Inouye, and Members of the Committee,

HAPA is submitting testimony in STRONG Support of SB1032, which helps protect Hawaiʻi's elections from foreign influence. Our democracy should be shaped by the people of Hawaiʻi, not outside entities trying to control our political system.

This bill significantly strengthens our existing laws to protect the integrity of our election process by prohibiting foreign-owned businesses from making campaign contributions and expenditures. Having businesses certify they have no forgien ownership before being able to make political donations promotes transparency and accountability to both our candidates receiving the donations and the voters. To further enhance the clarity of political advertising, the bill requires top contributors to disclose their sources of funding. We strongly encourage support for this important measure.

Mahalo for your consideration,

Anne Frederick
Executive Director

Committee on Transportation and Culture and the Arts
Chair Chris Lee, Vice Chair Inouye

Thursday, January 30, 2025, 3:00 p.m.
SB1032 – Relating to Campaign Finance

TESTIMONY
Judith Wong, Legislative Committee, League of Women Voters of Hawaii

Chair Lee, Vice Chair Inouye, and Committee Members:

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

Thank you for the opportunity to submit testimony.

LEAGUE OF WOMEN VOTERS OF HAWAII
P.O. Box 235026 ♦ Honolulu, HI 96823
Voicemail 808.377.6727 ♦ my.lwv.org/hawaii ♦ voters@lwvhi.org

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.

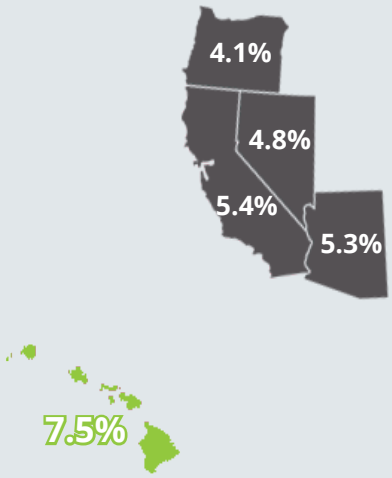
MANY EMPLOYERS

350 international employers have operations in Hawaii.

INTERNATIONAL INVESTMENT CONTRIBUTES TO HAWAII'S ECONOMY

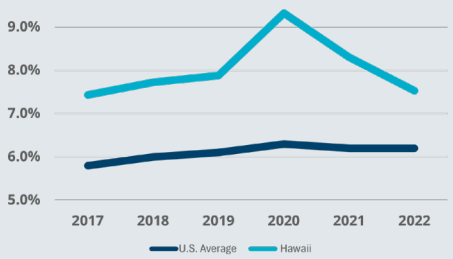
Hawaii vs. Its Neighbors

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
Submitted on: 1/30/2025 12:55:18 AM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Evan Weber	Testifying for Our Hawai'i	Support	Written Testimony Only

Comments:

On behalf of Our Hawai'i's 37,000 members and supporters, we write to express strong support for Senate Bill 1032, which seeks to strengthen the prohibition against foreign nationals and foreign corporations making campaign finance contributions and expenditures.

This legislation is crucial for safeguarding the integrity of our electoral process. By strengthening restrictions on foreign contributions, SB1032 ensures that our political decisions remain in the hands of Hawai'i's residents, not foreign corporate interests.

A 2019 report by the Center for American Progress highlighted the increasing threat of foreign influence in U.S. elections, noting that foreign investors owned approximately 35% of U.S. stock at that time. The report emphasized that the Supreme Court's 2010 decision in Citizens United v. Federal Election Commission opened a loophole allowing foreign entities to indirectly influence U.S. elections through their investments in U.S. corporations. This is particularly concerning as corporate spending in elections has surged post-Citizens United, often through undisclosed channels.

Implementing stricter regulations on campaign contributions, as proposed in SB1032, is a significant step toward enhancing transparency and accountability in our political system. By closing existing loopholes, this bill will help prevent foreign-influenced corporations from exerting undue influence on our elections, thereby upholding the principles of self-governance and public trust.

We urge the committee to pass SB1032 to uphold the transparency and fairness of our state's elections.

Mahalo nui.

SB-1032
Submitted on: 1/28/2025 7:54:34 PM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nanea Lo	Individual	Support	Written Testimony Only

Comments:

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

My name is Nanea Lo, and I am writing in **strong support of SB 1032**, which seeks to keep foreign nationals and corporations from influencing our elections through campaign spending.

I serve on the Sierra Club of Hawaii's Executive Commission, sit on the board of the Hawai'i Workers Center, and am a Kanaka Maoli, a lineal descendant of the Hawaiian Kingdom. Through my work in community advocacy, I have seen how corporate and foreign influence distorts our democratic process, often prioritizing profits over the well-being of Hawai'i's people. Allowing foreign money into our elections undermines local decision-making, weakens community trust, and threatens the sovereignty of our electoral system.

Our elections should reflect the will of Hawaii's people, not the financial interests of foreign entities. SB 1032 is a necessary safeguard to ensure that only those who have a true stake in our communities—our residents, workers, and 'ohana—are shaping the policies that impact our daily lives.

I urge you to pass SB 1032 to protect the integrity of Hawaii's elections and ensure that our government remains accountable to the people, not outside interests.

Me ke aloha 'āina,

Nanea Lo
Mō'ili'ili, HI 96826
Sierra Club of Hawai'i Executive Commission Member
Board Member, Hawai'i Workers Center
Kanaka Maoli / Lineal Descendant of the Hawaiian Kingdom

SB-1032
Submitted on: 1/29/2025 5:36:53 AM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Noel Shaw	Individual	Support	Written Testimony Only

Comments:

Keep elections clean. Keep them free of outside influence so Hawaii can truly be led by Hawaii and for Hawaii!!

SB-1032
Submitted on: 1/28/2025 5:24:38 PM
Testimony for TCA on 1/30/2025 3:00:00 PM

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

Comments:

Please support this important bill. Mahalo.

SB-1032
Submitted on: 1/29/2025 9:48:04 AM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Chiwa	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Senator Lee, Vice Chair Senator Inouye and Members of the Committee on Transportation and Culture and the Arts.

Please support SB1032 which, to my understanding, would require disclosure via a statement of certification regarding limited foreign influence.

Mahalo.

Jennifer Chiwa

Makiki

SB-1032
Submitted on: 1/29/2025 3:34:54 PM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Kuzmier	Individual	Support	Written Testimony Only

Comments:

Aloha, I am writing in favor of SB1032 which states that while we are a state of many nationalities, the elections should be determined and influenced by the people of Hawaii. Banning any foreign monies and corporations from our electoral processes is a way to limit the scope of CItizens United which says unlimited corporate dollars is protected speech. Mahalo.

LATE

SB-1032
Submitted on: 1/29/2025 8:51:11 PM
Testimony for TCA on 1/30/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Patricia Blair	Individual	Support	Written Testimony Only

Comments:

Support