

Statement Before The  
**SENATE COMMITTEE ON JUDICIARY**  
Thursday, February 17, 2022  
9:30 AM  
Via Videoconference

in consideration of  
**SB 166, PROPOSED SD1**  
**RELATING TO CAMPAIGN FINANCE.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii appreciates the intent of SB 166, proposed SD1, which (1) prohibits foreign nationals and foreign corporations from making independent expenditures, (2) requires every corporation that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence, and (3) requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement.

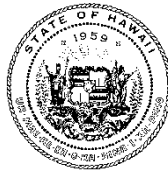
Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Common Cause Hawaii understands the need for a bill similar to SB 166, proposed SD1 to protect Hawaii's elections from foreign interference, which is foundational to our representative democracy. Our democracy cannot function properly if our elections have been subverted by foreign influence. SB 166, proposed SD1 is an excellent start to protecting our elections from foreign intervention. While SB 166, proposed SD1 is a good start to protecting our State's democratic self-governance, Common Cause Hawaii suggests additional refinement is necessary to the foreign ownership thresholds, certification provisions, and more.

The integrity of our elections is important to us all, and we must protect it from undue foreign influence. Therefore, Common Cause Hawaii appreciates the intent of SB 166, proposed SD1. If you have questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**


235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 15, 2022

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

The Honorable Jarrett Keohokalole, Vice Chair  
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director  
Campaign Spending Commission 

SUBJECT: **Testimony on S.B. No. 166, Relating to Campaign Finance  
(Proposed S.D. 1)**

Thursday, February 17, 2022  
9:30 a.m., Via Videoconference

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

This purpose of the bill is to prohibit foreign influence on state governance by (1) prohibiting foreign nationals and foreign-influenced corporations from making independent expenditures, electioneering communications, or contributions to candidates or committees,<sup>1</sup> (2) requiring corporations that contribute or expend funds in a State election to file a statement of certification with the Commission regarding their status as a foreign-influenced corporation, (3) requiring every entity that expends funds in a state election and receives contributions or donations from a corporation to ensure that funds derived from foreign-influenced corporations are not used for political spending, and (4) requiring noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement that none of the funds used by the top contributor were derived from a foreign-influenced corporation.

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<sup>1</sup> Foreign nationals and foreign corporations are already prohibited from making contributions and expenditures in Hawaii. Hawaii Revised Statutes (“HRS”) §11-356(a). This bill extends the prohibition to foreign-influenced corporations.

Section 2 of the bill incorporates the commonly understood definition of “foreign corporation” into the definition of “foreign-influenced corporation.”

In addition to broadening the ban on contributions and including a ban on expenditures, from foreign-influenced corporations, Section 3 of the bill amends HRS §11-356 (beginning at page 6) by (1) adding a new subsection (b) that prohibits a foreign national or foreign-influenced corporation from making independent expenditures or expenditures for electioneering communications, (2) adding a requirement in a new subsection (c) that a corporation that makes a contribution or expenditure to a committee must, within seven business days, file a certification with the Commission that the corporation was not a foreign-influenced corporation when the contribution or expenditure was made, and (3) adding a requirement in a new subsection (d) that a person who receives a contribution or donation from a corporation may not use that contribution or donation to make an expenditure unless (A) the person receives from the corporation a copy of the statement of certification described above, (B) the person does not have actual knowledge that the statement of certification is false, (C) the person separately designates, records, and accounts for these funds, and (D) the person’s use of the funds is otherwise lawful.

The Commission notes that organizations like corporations do not have to register with the Commission and file reports unless the organization has spent more than \$1,000 in a two-year election period. HRS §11-321(g). This measure, beginning on page 6 at line 9, appears to require corporations to file a statement of certification within seven business days of making a contribution or expenditure without regard to the amount spent.

Finally, Section 4 of the bill amends HRS §11-393 by adding a new subsection (d)<sup>2</sup> that requires a noncandidate committee that is required to disclose top contributors, to obtain from each top contributor a statement of certification that none of the funds contributed by the top contributor were derived from a foreign-influenced corporation. If the noncandidate committee does not receive the statement of certification, the advertisement must contain the following statement: “Some of the funds to pay for this message may have been provided by foreign-influenced corporations.” Instead of requiring this statement on the advertisement, which will no doubt cause an investigation to be launched, the Commission suggests that the bill require the return of the contribution if the statement of certification is not provided by the top contributor.

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<sup>2</sup> Beginning at page 11 of the bill.

Committee on Judiciary  
Hawaii State Senate  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: SB166 – Proposed SD1 (relating to campaign finance)  
Endorse subject to amendment

February 16, 2022

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the committee:

We write in qualified support of SB166, conditioned on one critical amendment.

Free Speech For People is a national nonpartisan non-profit organization, that works to renew our democracy and limit the influence of money in elections. We have helped develop legislation to limit corporate political spending by foreign-influenced corporations. Specifically, we helped develop a law passed by Seattle, Washington in January 2020; a bill that this year passed the New York Senate; a bill recently introduced into the U.S. House of Representatives by Rep. Jamie Raskin; and similar legislation introduced into several state legislatures. The bill as we propose to modify it would be consistent with our current model legislation, which we have developed in partnership with the Center for American Progress, in New York and elsewhere. With these changes, we would be pleased to endorse it.

Most of the amendments to SB166 in proposed SD1 are positive and beneficial. However, we recommend re-inserting the following language from the original draft of SB166, to expand the definition of a foreign-influenced corporation:

- (1) A **single foreign owner** holds, owns, controls, or otherwise has direct or indirect beneficial ownership of **one per cent or more** of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation;
  
- (2) **Two or more foreign owners**, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of **five per cent or more** of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation . . .

A short explanation for this change follows.

## I. Foreign influence and ownership thresholds

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,<sup>1</sup> **the thresholds in the original SB166—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. Thus, since the passage of Seattle’s 2020 law, newer bills—pending in states such as New York, Massachusetts, and Minnesota, and in the U.S. Congress—generally follow the Seattle model.

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*.**<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See Michael Sozan, Ctr. for American Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), <https://ampr.gs/2QIiNQT>.

<sup>2</sup> 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.

<sup>3</sup> See 84 Fed. Reg. 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).

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 8.3% of its equity (and possibly much more) is owned by foreign investors.<sup>4</sup> While presumably foreign 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 Hawaii 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.”<sup>5</sup>

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

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<sup>4</sup> See *Amazon.com*, CNBC, <https://cnb.cx/3HVuWvg> (visited Feb. 15, 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 7.6% in Europe (including Russia) and 1.1% in Asia. In fact, the total aggregate foreign ownership could be much higher, as the summary data show only 55.6% of shares owned in North America. CNBC obtains its geographic ownership concentration data from Thomson Reuters, which in turn obtains it from Refinitiv, a provider of financial markets data that has access to some non-public sources.

<sup>5</sup> Michael Sozan, Ctr. for Am. Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), at 19, <https://ampr.gs/2QLiNQT>.

cases information about the investors' associates.<sup>6</sup> 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 Hawaii 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).

## II. Frequently asked questions

***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.<sup>7</sup> 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.”<sup>8</sup> For purposes of political spending, the question of how much foreign ownership is “too much” has not yet been decided by any court.

Our January 28, 2022 testimony shows how arguably *any* foreign ownership renders the entire pool of corporate funds foreign. However, the bill focuses 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 this bill is based) has been in effect since February 2020, including the vigorously contested 2021 city election with an expensive mayoral race, yet none of the many multinational corporations in Seattle were impelled to challenge it.

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<sup>6</sup> 15 U.S.C. §§ 78m(d)(1)-(3).

<sup>7</sup> See *Citizens United*, 558 U.S. at 362.

<sup>8</sup> *Bluman*, 800 F. Supp. 2d at 292 n.4.

### ***How many companies would be covered by the bill at 1%/5% thresholds?***

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.”<sup>9</sup> By 2019, that figure had increased to 40%.<sup>10</sup>

However, foreign ownership is not evenly distributed. The Center for American Progress found that the original 1%/5% thresholds in SB166 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.<sup>11</sup> By contrast, the threshold in proposed SD1 would cover only 9% of the S&P 500.<sup>12</sup>

It is much more difficult to obtain data regarding ownership of privately-held companies. Intuition suggests that the vast majority of small local businesses have zero foreign ownership.

### **III. Other information**

We also share with you, and incorporate by reference, written testimony prepared by leading national experts in support of the Massachusetts legislation, to which SB166 would be extremely similar if amended as discussed above:<sup>13</sup>

Commissioner Ellen Weintraub, Federal Election Commission  
<http://bit.ly/WeintraubMALtr>

Professor Laurence Tribe, Harvard Law School  
<http://bit.ly/TribeMALtr>

Professor John C. Coates IV, Harvard Law School; former General Counsel of U.S. Securities and Exchange Commission  
<http://bit.ly/CoatesMALtr>

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<sup>9</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957).

<sup>10</sup> 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>.

<sup>11</sup> 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>.

<sup>12</sup> See Coates et al., *supra* note 9.

<sup>13</sup> These links are included only for informational purposes regarding the experts' support of the Massachusetts legislation.



If you have any questions about particular policy or drafting choices (some of which may be subtle) made in the development of the draft, we would be happy to discuss. (And please see our January 28, 2022 written testimony for discussion of other issues.)

Sincerely,

Ron Fein, Legal Director

Courtney Hostetler, Senior Counsel

John Bonifaz, President

Ben Clements, Board Chair and Senior Legal Advisor

Free Speech For People



February 16, 2022

Committee on Judiciary  
Hawaii State Senate  
415 South Beretania Street  
Honolulu, Hawaii 96813

**RE: Committee hearing SD1—SB166, a bill relating to campaign finance**

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the committee:

I hereby submit this written testimony to support the intent of SD1, which amends SB166, relating to campaign finance. This pro-democracy legislation, which is aimed at prohibiting political spending by foreign nationals and foreign-influenced corporations, is the subject of tomorrow's hearing by the Committee on Judiciary. My written testimony includes suggestions for a critically important amendment that would strengthen this legislation and help it achieve its public policy objectives.

I am a senior fellow at the Center for American Progress (CAP). Based in Washington, D.C., CAP is an independent, nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive policies. My democracy reform work at CAP has involved research in the area of preventing election-related spending by foreign-influenced U.S. corporations. My publications include a report and fact sheet analyzing this policy, with the report republished in the Harvard Law School Forum on Corporate Governance.<sup>1</sup> These publications may be useful as the committee considers the pending legislation.

After reviewing this legislation, I conclude that, if amended, it would provide an important tool to protect Hawaii's elections from foreign influence and reduce the outside role that corporate money plays in election outcomes. If amended, this bold bill would strengthen the right of Hawaii's residents to determine the political and economic future of their state and help ensure that lawmakers are accountable to voters instead of foreign-influenced corporations. This legislation is particularly timely given that foreign investors now own approximately 40 percent of U.S. corporate equity, compared to just 4 percent of US equity in 1986.<sup>2</sup>

On January 27, 2022, I submitted testimony in qualified support of SB166, the legislation originally sponsored by Senator Lee.<sup>3</sup> I suggested multiple amendments aimed to improve the effectiveness of the legislation. Almost identical suggestions were offered by the non-profit, non-partisan Free Speech For People. It appears that SD1 includes most of these beneficial suggestions.

Nonetheless, SD1 unfortunately includes amended language that severely weakens the foundation of the legislation – by watering down the foreign ownership thresholds that appeared in SB166. I strongly recommend including the original foreign ownership thresholds from SB166, which provide a robust and common-sense way to measure whether a U.S. corporation is appreciably foreign influenced:

- (1) A single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of one per cent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation;
- (2) Two or more foreign owners, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of five per cent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation....

The foreign ownership thresholds in SB166 were carefully crafted

The legislation’s original foreign ownership thresholds are solidly grounded in corporate governance and related law. Without these thresholds, the legislation risks capturing very little spending by foreign-influenced American corporations, which in turn could weaken Hawaii’s self-government.

Corporate managers, capital investors, regulators, and governance experts recognize that a shareholder who owns at least 1 percent of stock in a corporation can influence corporate decision-making, including decisions about political spending.<sup>4</sup> There are relatively few individual shareholders who ever own as much as 1 percent of a major publicly traded corporation, and if they do, their stock likely is worth tens of millions of dollars, if not more. Shareholders who own 1 percent of corporate stock are rare and powerful; they are able to get their calls returned by executive suite managers and have sway over the strategic direction of a corporation.

The legislation’s 1 percent threshold is rooted in regulations of the U.S. Securities and Exchange Commission’s (SEC) governing thresholds for shareholder proposals. These regulations state that if a shareholder owns at least 1 percent of a corporation’s shares, that shareholder has the unique right to submit shareholder proposals to dictate a corporation’s course of action.<sup>5</sup> In November 2019, the SEC even proposed eliminating the 1 percent threshold, finding that the vast majority of investors who submit shareholder proposals do not even have that level of equity ownership and that institutional investors below the 1 percent single owner threshold can, in fact, exercise substantial influence on a corporation’s decisions.<sup>6</sup>

The former Republican chairman of the U.S. House Committee on Financial Services, Jeb Hensarling, recognized—in the area of proxy contests—that shareholders who own 1 percent of corporate stock are important players who have the very real opportunity to influence corporate decision-making.<sup>7</sup> The Business Roundtable, an association representing corporate CEOs, also acknowledged this dynamic.<sup>8</sup> In fact, the Business Roundtable suggested a sliding

scale for shareholder proposals that would dip far below the 1 percent threshold for the largest U.S. corporations—to a 0.15 percent share of ownership.

A 5 percent aggregate foreign-ownership threshold is also well supported. When a significant number of smaller shareholders together have a commonality—such as foreign domicile—it can influence corporate managers’ decisions, in the manner described above. Moreover, if several shareholders each own slightly less than 1 percent of the corporation, but together own at least 5 percent of a corporation, it makes little sense to ignore the possibility that they could join forces to do what a single 1 percent shareholder could do alone.

One avenue for smaller shareholders to exert their collective influence is during “proxy season,” when they can threaten to band—or actually do band—together to force votes on proposals that affect corporate decision-making.<sup>9</sup> The Business Roundtable stated that it supported the right of a group of shareholders to submit a proposal for consideration if those shareholders owned only 3 percent of a corporation’s shares.<sup>10</sup>

Finally, as Ellen Weintraub, longtime commissioner on the Federal Election Commission, has written, the United States is not working its way down from a 100 percent foreign-ownership standard; the nation is working its way up from the zero foreign-influence standard that a strict legal interpretation of federal law suggests.<sup>11</sup> Weintraub’s argument is rooted in *Citizens United*, in which the Supreme Court held that corporations could spend freely in politics, calling them “associations of citizens,” and that corporations’ rights to spend in politics flow from the collective First Amendment rights of their individual shareholders. Weintraub concluded that it “logically follows, then, that *restrictions* on the rights of shareholders must also apply to the corporation.” Under these circumstances in which a corporation is not an “association of citizens,” *any* amount of foreign investment in a corporation should preclude management’s political expenditures, a point argued compellingly by experts at Free Speech For People.<sup>12</sup>

#### How the foreign-ownership thresholds in SB166 practically would affect corporations

The vast majority of U.S. businesses have no foreign owners. But in the CAP report referenced above, I analyzed data on foreign ownership of 111 U.S.-based publicly traded corporations in the S&P 500 stock index. The results include the following:

- When applying the 1 percent *single* foreign shareholder threshold, 74 percent of the corporations studied exceeded the threshold.
- When applying the 5 percent *aggregate* foreign shareholder threshold, 98 percent of the corporations studied exceeded the threshold.

These 111 corporations voluntarily disclosed \$443 million spent in federal and state elections from their corporate treasuries in the years 2015, 2016, and 2017.

Among smaller publicly traded corporations, 28 percent of the corporations that were randomly sampled exceeded the 5 percent aggregate foreign-ownership threshold. From this analysis, it appears that smaller publicly traded corporations may be less likely to have as much aggregate foreign ownership as their larger counterparts and therefore would likely be less affected by this legislation's ownership thresholds.

### Conclusion

At a time of rising foreign interference in U.S. elections, Hawaii should be commended for positioning itself at the forefront of legislative efforts across the nation to take proactive, commonsense steps to stop political spending by foreign-influenced U.S. corporations. If amended, SD1-SB166 is a people-powered proposal that would go a long way in reassuring the people of Hawaii that their democratic right to self-government is protected.

For the reasons stated above, I urge the committee's adoption of amended language and passage of the pending legislation. Please let me know if I can be of further assistance.

Sincerely,

/s/ Michael L. Sozan

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<sup>1</sup> Michael Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections" (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/>; Michael Sozan, "Fact Sheet: Ending Foreign-Influenced Corporate Spending in U.S. Elections" (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477468/ending-foreign-influenced-corporate-spending-u-s-elections-2/>; Michael Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections" (Cambridge, MA: Harvard Law School Forum on Corporate Governance, 2019), available at <https://corpgov.law.harvard.edu/2019/12/06/ending-foreign-influenced-corporate-spending-in-u-s-elections/>.

<sup>2</sup> Steven Rosenthal and Theo Burke, "Who's Left to Tax? US Taxation of Corporations and Their Shareholders" (Washington: Urban-Brookings Tax Policy Center, 2020), p. 2, available at <https://www.law.nyu.edu/sites/default/files/Who%E2%80%99s%20Left%20to%20Tax%3F%20US%20Taxation%20of%20Corporations%20and%20Their%20Shareholders-%20Rosenthal%20and%20Burke.pdf>.

<sup>3</sup> Michael Sozan, Statement submitted to Hawaii Senate regarding a bill relating to campaign finance (January 27, 2022), pp. 9-15, available at [https://www.capitol.hawaii.gov/Session2022/Testimony/SB166\\_TESTIMONY\\_JDC\\_01-28-22\\_.PDF](https://www.capitol.hawaii.gov/Session2022/Testimony/SB166_TESTIMONY_JDC_01-28-22_.PDF).

<sup>4</sup> See Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections," pp. 32–34.

<sup>5</sup> Legal Information Institute, "17 CFR. § 240.14a-8 - Shareholder proposals, (b)," available at <https://www.law.cornell.edu/cfr/text/17/240.14a-8> (last accessed September 2021).

<sup>6</sup> U.S. Securities and Exchange Commission, "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (Washington: 2019), pp. 22–23, 154, available at <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>.

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<sup>7</sup> U.S. House of Representatives Committee on Financial Services, transcript of committee debate and markup of Financial CHOICE Act, H.R. 10, § 844(b), 115th Cong., 1st sess. (May 3, 2017), available at <https://plus.cq.com/doc/congressionaltranscripts-5096442?9>, on file with author

<sup>8</sup> See Ning Chiu, “Business Roundtable Urges Improvements to Rule 14a-8 and Related Processes,” Davis Polk, November 16, 2016, available at <https://www.davispolk.com/insights/client-update/business-roundtable-urges-improvements-rule-14a-8-and-related-processes>; Business Roundtable, “Re. File Number 4-725” (Washington: 2018), p. 5, available at <https://s3.amazonaws.com/brt.org/2018.11.09-BRT.SECProxyRoundtableCommentLetter.pdf>.

<sup>9</sup> See John C. Coates IV, Statement submitted to Massachusetts House of Representatives regarding an act to limit spending by foreign-influenced corporations, Harvard Law School (May 14, 2019), pp. 6–7, available at <https://freespeechforpeople.org/wp-content/uploads/2019/05/2019-Coates-MA-FIC-20190514-PDF-final.pdf>.

<sup>10</sup> See Chiu, “Business Roundtable Urges Improvements to Rule 14a-8 and Related Processes”; Business Roundtable, “Re. File Number 4-725.”

<sup>11</sup> Ellen L. Weintraub, “Taking On Citizens United,” *The New York Times*, March 30, 2016, available at <https://www.nytimes.com/2016/03/30/opinion/taking-n-citizens-united.html>.

<sup>12</sup> See Ron Fein, Statement submitted to Massachusetts Legislature Joint Committee on Election Laws regarding bills to limit political spending by foreign-influenced corporations, Free Speech For People (September 17, 2021), p. 8, available at <https://freespeechforpeople.org/wp-content/uploads/2021/09/rfein-written-testimony-election-laws-20210917-combined.pdf>.

**LATE**

**SB-166**

Submitted on: 2/16/2022 11:12:12 AM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Nikos Leverenz	Individual	Support	No

Comments:

Chair Rhoads, Vice-Chair Keohokalole, and Committee Members:

I am writing in **strong support** of SB166.

Foreign funding of American elections was viewed as an anathema to our democratic republic until very recently. The influence of dark money in the post-*Citizens United* era via independent expenditure committees requires the kind of increased regulatory vigilance contemplated in this measure.

Mahalo for the opportunity to provide testimony.

**LATE**

**SB-166**

Submitted on: 2/17/2022 8:21:22 AM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jason E. Korta	Individual	Support	No

Comments:

I strongly support this important legislation. Our current election law is woefully insufficient. One may easily make a make a prohibited contribution or expenditure without penalty.

The people should know who is trying to influence our elections and our elected leaders. This bill would close staggering large loopholes in our election law that allow prohibited contributions and expenditures to go unnoticed.

Please pass this bill.