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**STATE OF HAWAI'I**
**CAMPAIGN SPENDING COMMISSION**
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HONOLULU, HAWAII 96813

February 20, 2024

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

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

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

SUBJECT: **Testimony on S.B. No. 3243, SD1, Relating to Campaign Finance.**

Friday, February 23, 2024
9:30 a.m., Conference Room 016 & Videoconference

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

The purpose of this bill is to amend Chapter 11, Hawaii Revised Statutes ("HRS"), to: (1) Prohibit foreign entities and foreign-influenced business entities[1] from making independent expenditures, electioneering communications, or contributions to candidate or noncandidate committees (including donations or contributions earmarked for political spending); (2) Require every business entity that makes contributions or expenditures to file a statement of certification regarding its status as a foreign-influenced business entity or foreign corporation; and (3) Require noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement that funds contributed from a top contributor were not derived from a foreign corporation or foreign-influenced business entity.

[1] Hawaii's ban on contributions from foreign nationals and foreign contributions is based, in part, upon the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30121, which bans contributions and expenditures by foreign nationals. To the extent the bill departs from federal law, the Commission will not have the benefit of Federal Election Commission advisory opinions or other guidance.

To the extent that this bill expands the foreign national contribution and expenditure ban derived from FECA to also ban contributions and expenditures by foreign-influenced business entities, the Commission is concerned that the bill raises serious First Amendment and FECA preemption concerns that should be addressed by the committees of the Legislature hearing this bill. *See*, https://www.reuters.com/legal/legalindustry/states-localities-take-foreign-influenced-political-spending-2023-05-30/. The Commission recommends that this Committee seek an opinion from the Department of the Attorney General.

Committee on Judiciary
Chair Karl Rhoads, Vice Chair Mike Gabbard

Friday, February 23, 2024 9:30 am Room 016 & Videoconference
SB3243 SD1 — RELATING TO CAMPAIGN FINANCE

TESTIMONY
Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

**The League of Women Voters of Hawaii supports SB3243 SD 1, which prohibits foreign/foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election purposes; requires every business entity that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence; and requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor to be listed in an advertisement.**
**We also suggest a minor clarifying edit to its wording.**

The League of Women Voters of the United States believes that the methods of financing political campaigns should ensure maximum participation by **citizens** in the political process and ensure transparency and the public's right to know who is using money to influence elections (emphasis added). The preamble to SB3243 SD1makes clear that preventing foreign influence on elections is necessary to ensure the Hawaii elections meet these standards.

While we appreciate the considerable burden on businesses to fulfill the requirement for certification included in this bill, we are confident that the Campaign Spending Commission or another appropriate body will provide education for businesses in how to identify foreign influence, and standard certification forms for submittal. We support this requirement to ensure transparency and accountability.

We note the overwhelming predominance of supportive testimony both in 2023 (SB1179) and in the recent hearing on SB3243.

We suggest a minor edit to Section C 3, p. 9 lines 16ff, which currently reads

" (c) No contribution or donation shall be made to any person by a foreign national, foreign corporation, or

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**18** foreign-influenced business entity if the contribution or

**19** donation is earmarked for the recipient to make a contribution

**20** or expenditure, including independent expenditure or

**21** electioneering communication."

We suggest adding the words "campaign finance" before the word "contribution" in line 19, so the line reads: "…donation is earmarked for the recipient to make a campaign finance contribution…". That addition clarifies for the reader that the donation is intended to help finance a political campaign, not for another purpose.

Thank you for the opportunity to submit testimony.

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LOCAL 142

February 21, 2024

The Thirty-Second Legislature
Regular Session of 2024

THE SENATE
**Committee on Judiciary**
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

**STATEMENT OF THE ILWU LOCAL 142 IN STRONG SUPPORT OF SB3243 RELATING TO CAMPAIGN FINANCE**

I am writing on behalf of the International Longshore and Warehouse Union Local 142, which represents 16,000 members who live and work in Hawai'i. The ILWU is perhaps most known as a militantly *democratic* union. Protecting our members' ability to determine their own future is a foundational principle of the ILWU. This principle extends beyond our membership to all working families in Hawai'i.

For this reason, we stand in **Strong Support** of SB3243, which recognizes the State's compelling interest in securing its democratic self-governance from foreign influence, in particular, through proactive measures to protect Hawaii's elections.

The extensive findings outlined in SB3243 resonate with the concerns of our union members. While we embrace the diversity of immigrants, visitors, and investors who contribute to our state, it is imperative that the decisions shaping our elections remain firmly in the hands of the people of Hawai'i.

SB3243 acknowledges that the interests of multiple foreign investors not only impact corporate decision-making but also bleeds into democratic processes at the state and local levels. This legislation recognizes the fiduciary responsibility of corporations to shareholders, and the potential conflict of interest when foreign investors' interests diverge from those of Hawai'i's residents.

These findings are supported by the ILWU's "Ten Guiding Principles", which state that, "powerful financial interests…are bound together in united organization to promote their own welfare and resist the demands of labor." As the state's largest private union, our alignment with this legislation stems from our commitment to protecting the rights of the hardworking people of Hawai'i to sound democratic governance.

The ILWU Local 142 urges the Committee to support and advance the passage of SB3243. This legislation is crucial for safeguarding the democratic principles upon which both our Union, and the State of Hawai'i were founded. We trust that you will prioritize the well-being and democratic rights of the people of Hawai'i in your deliberations.

Thank you for the opportunity to voice our support for SB3243.

Christian West
President, ILWU Local 142

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

RE: SB3243, Relating to campaign finance

DATE: February 22, 2024

Dear Chair Rhoades and Vice Chair Gabbard,

On behalf of Free Speech For People, I write in strong support of the provisions of SB 3243 that would ban corporate political spending by foreign-influenced business entities.

**Background**
Free Speech For People is a national nonpartisan nonprofit 501(c)(3) organization that has helped develop and advocate for legislation like this around the country. Similar legislation was enacted in the City of Seattle, where it has been in effect since January 2020) and in Minnesota. A similar bill was passed by the New York State Senate last year, and is expected to pass both chambers this year; and similar bills are or will soon be pending in the U.S. Congress and in several other state legislatures.

We have developed the 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 I have attached some of their prior testimony submitted to other state legislatures considering similar bills.

This introduction is followed by a memorandum. Section I of the memorandum sets forth the general and legal background for the bill. Section II explains the foreign ownership thresholds. Section III answers certain frequently-asked questions that have emerged as we have developed this legislation in Seattle and in other states. Section IV provides some examples of how foreign-influenced corporations have injected money into Hawaii elections in recent years. After the memorandum, several expert letters in support of similar bills elsewhere are attached.

The bill is consistent with our current model legislation, which we have developed in partnership with the Center for American Progress, in various other states. If you have any questions about particular policy or drafting issues (some of which may be subtle) in the bill, we would be happy to discuss.

Sincerely,

Amira Mattar, Counsel
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

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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.

corporations partly owned by foreign investors, the Supreme Court simply noted "[w]e need not reach the 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 such as Hawaii 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 is currently preparing to spend millions on a similar ballot measure in Massachusetts. 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.[7] 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.

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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] 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 3.9% of Uber stock. *See* Uber, https://www.cnbc.com/quotes/UBER?tab=ownership (last visited Mar. 8, 2021).

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.[8] Airbnb received crucial early funding from, and was at that time partly owned by, Moscow-based (and Kremlin-linked) DST Global.[9] 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.[10]

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."[11]

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,[12] would apply. Indeed, after deciding *Citizens United*, the Supreme Court in *Bluman v. Federal Election Commission* specifically upheld the federal ban on

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[8] 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.

[9] *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.

[10] 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.

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

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

foreign nationals spending their *own* money in U.S. elections.[13] 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*.[14]

## 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 commonly accepted understanding, corporate shareholders are "the firm's residual claimants."[15] As the Hawaii Supreme Court has explained, after "all other creditors have been satisfied," shareholders lay claim to a company's "shares and the residual estate."[16] Put another way by the California Court of Appeal, "it is the shareholders who own a corporation, which is managed by the directors. In an economic sense,

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[13] 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.

[14] 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.

[15] 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").

[16] Ito v. Investors Equity Life Holding Co., 135 Haw. 49, 80 (2015).

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) (noting that 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 those pending in states

[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.

such as New York, Massachusetts, and Minnesota, and in the U.S. Congress—generally follow the Seattle model.[24]

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*.[25] 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.[26]

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 currently is owned 1% by the Norwegian government's oil fund (Norges Bank Investment Management), and at least 8.8% of its equity (and possibly

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[24] The Minnesota bill was temporarily enjoined to preserve the status quo pending litigation. *See Minn. Chamber of Commerce v. Choi*, __ F. Supp. 3d. __, 2023 WL 8803357 (D. Minn. Dec. 20, 2023). The state is vigorously defending the bill and expects to prevail on a full record.

[25] 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.

[26] *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).

much more) is owned by foreign investors.[27] 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."[28]

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.[29] 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

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[27] *See Amazon.com*, CNBC, https://www.cnbc.com/quotes/AMZN?tab=ownership (visited Feb. 5, 2024) (ownership tab). As of the date of writing, at least one foreign investor (Norges Bank) holds 1.0%. Aggregate ownership data, however, shows 8.8% held in Europe, Asia, and Australasia. In fact, the total aggregate foreign ownership could be much higher, as the summary data show only 55.3% 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.

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

[29] 15 U.S.C. §§ 78m(d)(1)-(3).

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).

The point here is *not* that FICs do not have connections to Hawaii, nor that foreign investment in Hawaii 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, the 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 Hawaii electoral democracy.

## III. Frequently asked questions

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

***What types of companies are covered?***
The bill defines the term "business entity" to include a for-profit corporation, company, limited liability company, limited partnership,

business trust, business association, or other similar for-profit business entity.

***Has the bill been endorsed by leading scholars and experts?***
Similar bills in other parts of the country have 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 (also 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.[30]

***Does the 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.[31] 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 the 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 Kavanaugh explained in *Bluman*, the public "has a compelling interest for purposes of First Amendment analysis in limiting the

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[30] *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 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.

[31] 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.

participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process."[32] The U.S. Court of Appeals for the Ninth Circuit has confirmed that this interest applies to state elections as well.[33]

***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.[34] 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."[35] All these were banned by the federal statute, and the court upheld the ban on all of them.

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 prohibiting *printing flyers and posting them in a park* is narrowly tailored to that interest. Thus, 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.[36] The

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

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

[34] *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).

[35] *Id.* at 285.

[36] 52 U.S.C. § 30121, formerly codified as 2 U.S.C. § 441e.

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.[37] 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."[38] For purposes of poltical 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, the 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 this bill is 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.

***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

[37] *See Citizens United*, 558 U.S. at 362.
[38] *Bluman*, 800 F. Supp. 2d at 292 n.4.

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.[39]

***How many companies would be covered by the 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."[40] By 2019, that figure had increased to 40%.[41]

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.[42]

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.

***Does the 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

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[39] Letter from Prof. John C. Coates IV to Seattle City Council, Jan. 3, 2020, https://bit.ly/3jjvfFP.
[40] 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.
[41] *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.
[42] 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.

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.[43] 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, i.e., 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*."[44]

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 the bill prohibits 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 the foreign entities with which

[43] *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").
[44] Palestine Information Office v. Shultz, 853 F.2d 932, 939 (D.C. Cir. 1988) (emphasis in original).

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.[45] 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.[46]

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.[47] 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.

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[45] 140 S. Ct. 2082, 2088 (2020).
[46] Coates et al., *supra* note 40, at 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957.
[47] *See* 47 U.S.C. § 310(b).

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.

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.[48] 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

[48] *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).

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.[49]

***Does the bill apply to non-profits?***

The bill does not impose any prohibitions on non-profits. To prevent circumvention, the bill does prohibit a foreign-influenced business entity from making a donation to a third party (including a non-profit) that is earmarked for political spending. For example, a foreign-influenced business entity cannot make a donation to a non-profit subject to an earmark that the non-profit will then spend the money on independent expenditures. This makes it harder for foreign-influenced business entities to "launder" political spending through non-profits or other intermediaries.

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.[50] The gap that the bill aims to plug pertains to foreign *investors* in U.S. corporations; there is no directly analogous gap in the law for non-profits.

***Does the bill affect immigrant-owned businesses?***

No. The bill defines an individual foreign investor as "[a]n individual *outside the United States* who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence." That means that a naturalized U.S. citizen is not a "foreign investor"; an individual with lawful permanent residence

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[49] *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).

[50] *See* 52 U.S.C. § 30121(a)(2).

(green card) is not a "foreign investor"; and even a foreign citizen in Hawaii or elsewhere within the United States who does *not* have lawful permanent status is not a "foreign investor." To be a foreign investor, they must be "outside the United States."

***Does the bill apply to labor unions?***

No. The noncitizen, non-permanent resident workers who may be members of U.S. labor unions 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.[51] And indeed, the bill only applies to investment by foreign entities or by foreign individuals "outside the United States."

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.[52] This weaker constitutional status of foreign entities and individuals located abroad makes the law more constitutionally defensible when limited to foreign-influenced business entities. Applying the bill to entities that may be partly funded foreign individuals located *within the United States* would raise more constitutional questions.

[51] 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 not be a foreign national "outside the United States."

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

## IV. Have foreign-influenced corporations spent money in recent Hawaii elections?

Yes. While it is not possible (due to the prevalence of "secret money" groups that do not disclose their donors) to produce a comprehensive report, in collaboration with Michael Sozan of the Center for American Progress, in early 2023 we examined publicly available data posted on the Campaign Spending Commission's web site and found several examples.

These examples are illustrative only, and not intended to be representative or comprehensive of the larger phenomenon. Nor is the analysis that follows intended to suggest that the entities named below are unusual "bad actors," or that (to our knowledge) they have violated any current law. The point of the following examples is only to provide examples of how foreign-influenced business entities as defined by this bill can and do inject money into Hawaii elections.[53]

### A. Noncandidate committees

Purely as an example, consider the Hawaii Hotel Alliance (HHA). It filed a Statement of Information for Electioneering Communication on 8/4/2022. It states that it spent $31,378 in support of three candidates.[54]

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[53] We differentiated and excluded spending by a corporation's PAC from the corporation itself, to the extent the Campaign Spending Commission's data provided that information. We were not able in every case to determine from the Commission's data which reported funds come from corporate treasuries as opposed to PACs. But the Charter Communications examples mentioned below are instructive. Note also that there is one noncandidate committee (NC20871) registered for "Charter Communications, Inc." (based in Stamford, CT) and a separate noncandidate committee (NC20839) for "Charter Communications, Inc., Hawaii Political Action Committee" (based in Sacramento, CA). From the names, we presume that NC20871 is corporate treasury money and NC20839 is an employee PAC.

Note also that corporate ownership changes (especially so for publicly-traded corporations), and so a corporation that may qualify as a foreign-influenced business entity now may not have been at the time the money was spent, or may no longer qualify between the submission and later reading of this memorandum. The bill requires the business entity to certify that it "was not a foreign-influenced business entity or foreign corporation *on the date the expenditure, independent expenditure, contribution, or expenditure for an electioneering communication was made*."

[54] https://ags.hawaii.gov/campaign/files/2022/08/HawaiiHotelAlliance-080422.pdf

The HHA is a trade association organized under section 501(c)(6) of the Internal Revenue Code.[55] No federal law requires entities organized under section 501(c)(4) or (c)(6) to disclose their donors; nor does Hawaii campaign finance law. This is known as "secret money" or sometimes "dark money." The true source of the funds is not publicly available.

However, in this case we can make some educated guesses about the source of the money. The Board of Directors of the Hawaii Hotel Alliance, as listed on its web site,[56] includes hotels owned by Marriott International and Disney, among other companies. These both easily meet the aggregate foreign ownership threshold and qualify as foreign-influenced business entities.[57] While the exact amount that the Hawaii Hotel Alliance receives from these corporations is undisclosed, it's likely a substantial percentage, given that they hold seats on the Alliance's board. That is one example of how foreign-influenced corporations (such as Marriott and Disney) use trade associations to inject "secret money" into Hawaii elections.

Many other entities that are registered as noncandidate committees are either themselves foreign-influenced corporations, or secret money groups that receive some of their funding from foreign-influenced corporations. One instructive example, if a bit out of date, is the Commission's web page entitled "NEXT REPORT DUE DECEMBER 8, 2016 FOR NONCANDIDATE COMMITTEES."[58] This page lists several dozen foreign-influenced corporations. Just looking at those beginning with the letter "A," we found several examples, including:

- Allstate Insurance Company [which the Commission distinguishes from "Allstate Insurance Company PAC," presumably an employee PAC]. Allstate is a foreign-influenced corporation, again easily meeting the aggregate foreign ownership threshold.[59] We searched the Commission's "Contributions Received By Hawaii

[55] https://apps.irs.gov/pub/epostcard/dl/FinalLetter_86-2146546_HAWAIIHOTELALLIANCE_03232021_00.tif (download link).
[56] https://www.hawaiihotelalliance.com/team-3.
[57] https://www.cnbc.com/quotes/MAR?tab=ownership; https://www.cnbc.com/quotes/DIS?tab=ownership.
[58] https://ags.hawaii.gov/campaign/nc-supplemental-report-due-january-31-2017/.
[59] https://www.cnbc.com/quotes/ALL?tab=ownership.

Noncandidate Committees From January 1, 2008 Through December 31, 2022" dataset[60] and the only information we found is that on 7/29/2022, "Allstate Insurance Company" contributed $55,700 to the "Allstate Insurance Company" noncandidate committee (NC20556). In other words, the noncandidate committee is simply a pass-through for the corporate funds.

- "Altria Client Services LLC & Its Affiliates-Philip Morris USA Inc, John Middleton Co, US Smokeless Tobacco Co & Nu Mark." Altria is a subsidiary of the Philip Morris tobacco and alcohol conglomerate. It is a foreign-influenced company (via the aggregate foreign ownership threshold).[61] Again, searching the "Contributions Received By Hawaii Noncandidate Committees From January 1, 2008 Through December 31, 2022" shows that this noncandidate committee (NC20569) is simply a pass-through for the corporate funds.
- American Chemistry Council. Like the Hawaii Hotel Alliance, this is a trade association registered under section 501(c)(6) of the Internal Revenue Code. It represents chemical manufacturing companies. The "Contributions Received By Hawaii Noncandidate Committees" dataset shows that the noncandidate committee "American Chemistry Council" (NC20576) received 100% of its funds from "American Chemistry Council." And because the American Chemistry Council is not legally required to report its donors to the IRS, examining its federal 990 form does not reveal its donors either.[62] In other words, major chemical manufacturers—many of which are foreign-influenced corporations—inject money into Hawaii elections through secret money groups, such as the American Chemistry Council.
- Other examples of secret money trade organizations with likely foreign-influenced corporations as members include the American Beverage Association (NC20586) (members include businesses owned by Coca-Cola, which is a foreign-influenced corporation[63]), and the Recording Industry Association of America (NC20865)

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[60] https://hicscdata.hawaii.gov/dataset/Contributions-Received-By-Hawaii-Noncandidate-Comm/rajm-32md.

[61] https://www.cnbc.com/quotes/MO?tab=ownership.

[62] https://projects.propublica.org/nonprofits/organizations/530104410.

[63] https://www.cnbc.com/quotes/KO?tab=ownership.

(members include Universal Music Group, a foreign-owned (Dutch) corporation).[64]

Again, those were just a few examples beginning with the letter "A."

### B. Direct contributions to candidates

We found numerous examples of foreign-influenced corporations contributing directly to candidates, by looking at the "Campaign Contributions Received by Hawaii State and County Candidates" dataset.[65] Again, the following examples are not remotely intended to be representative, nor is the intent to "name and shame," but rather simply to demonstrate that the phenomenon exists.

- Elevance Health, Inc. is a foreign-influenced corporation, with quite substantial aggregate foreign ownership and at least one foreign 1% investor (Baillie Gifford).[66] On 8/29/2022, it contributed $6,000 to a candidate for state office (CC10174).
- Charter Communications, Inc. is a foreign-influenced corporation, both due to aggregate foreign ownership and at least one foreign 1% investor (MFS Investment Management).[67] Just since 1/1/2020, it has made well over a hundred contributions to various candidates, typically $1000 each.[68]
- Other foreign-influenced corporations which have contributed directly to candidates include Allstate Insurance Company, with extensive aggregate foreign ownership;[69] and Altria Client Services (wholly owned by the tobacco company PhillipMorris, itself owned by Altria Group);[70] searching on these names in the contributions-received dataset shows many examples.

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[64] https://en.wikipedia.org/wiki/Universal_Music_Group.
[65] https://hicscdata.hawaii.gov/dataset/Campaign-Contributions-Received-By-Hawaii-State-an/jexd-xbcg/data
[66] https://www.cnbc.com/quotes/ELV?tab=ownership.
[67] https://www.cnbc.com/quotes/CHTR?tab=ownership.
[68] Please note that for this purpose we just examined the contributions from "Charter Communications, Inc." (presumably, the company itself) and not at contributions from "Charter Communications PAC" (presumably, an employee PAC) nor "Charter Communications, Inc. Hawaii PAC" (also presumably an employee PAC), both of which made their own contributions.
[69] https://www.cnbc.com/quotes/ALL?tab=ownership.
[70] https://www.cnbc.com/quotes/MO?tab=ownership.

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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).

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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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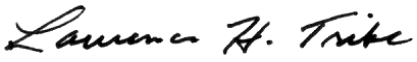
[7] Laurence H. Tribe, "Citizens United v. Federal Election Commission: How Congress Should Respond," Testimony to U.S. House of Representatives, Comm. on the Judiciary, Subcomm. on the Constitution, Civil Rights & Civil Liberties 7 (Feb. 3, 2010).
[8] *See* Laurence H. Tribe & Ron Fein, "How Massachusetts 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

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.

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February 23, 2024

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

**RE: Committee hearing on S.B. 3243, a bill relating to campaign finance**

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

I submit this written testimony in strong support of S.B. 3243, a pro-democracy bill sponsored by Sen. Chris Lee that is aimed at reducing foreign influence in Hawaii's elections.[1] This legislation is the subject of a February 23 hearing by the Senate Committee on Judiciary. If enacted, this people-powered legislation would prohibit political spending by foreign entities, including foreign investors who own appreciable levels of U.S. corporations, which would ultimately help strengthen Hawaii's right to self-government.

I am a senior fellow at the Center for American Progress. 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 scholarship in the areas of greater transparency of political-related spending, as well as preventing election-related spending by foreign-influenced U.S. corporations. My publications include reports and fact sheets analyzing this policy, with one report republished in the *Harvard Law School Forum on Corporate Governance*.[2] These publications may be useful as the committee considers the pending legislation.

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[1] A bill relating to campaign finance, S.B. 3243, 2024 legislative session (January 24, 2024), available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=3243&year=2024.

[2] 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: Stopping Political Spending by Foreign-Influenced U.S. Corporations" (Washington: Center for American Progress, 2022), available at https://www.americanprogress.org/article/fact-sheet-stopping-political-spending-by-foreign-influenced-u-s-corporations/; 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/.

After reviewing the pending legislation, I conclude that it contains carefully tailored provisions designed to protect Hawaii's elections from foreign influence and reduce the outsize role that corporate money, often donated through secret money channels, plays in campaign outcomes. The bill would achieve these goals by stopping political spending by foreign entities, including foreign investors who own appreciable levels of stock in U.S. corporations. This legislation is particularly timely given that foreign investors now own approximately 40 percent of U.S. corporate equity, compared with just 4 percent of U.S. equity in 1986.[3]

In the long run, this policy fosters important broader goals for a strong democracy: helping protect Hawaii's right to self-government, strengthening the ability of the state's residents and small businesses to determine the political and economic future of their state, and holding lawmakers accountable to voters instead of multinational corporations. These steps, in turn, would increase people's trust in government.

As you know, the committee's consideration of this legislation follows a similar law that Seattle passed in 2020 to protect its elections after a deluge of corporate political spending by at least one foreign-influenced U.S. corporation.[4] Seattle's groundbreaking ordinance spurred momentum for parallel legislation across the nation, at the local, state, and federal levels. For example, the City of San Jose, California, passed similar legislation into law in December 2023.[5] Months earlier, Minnesota became the first state in the nation to sign similar legislation into law.[6] In January 2024, the New York State Senate passed similar legislation.[7] Moreover, several similar bills have been filed at the federal level by members of Congress, including Sen. Elizabeth Warren (D-MA), Rep. Pramila Jayapal (D-WA), and Rep. Jamie Raskin (D-MD).[8]

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[3] 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.

[4] See Greg Scruggs, "Seattle passes campaign finance curbs on 'foreign-influenced' firms," Reuters, January 13, 2020, available at https://www.reuters.com/article/us-usa-politics-seattle/seattle-passes-campaign-finance-curbs-on-foreign-influenced-firms-idUSKBN1ZD04T.

[5] See "San Jose bans city election contributions from multinational corporations," Ojai Valley News, December 13, 2023, available at https://www.ojaivalleynews.com/news/elections/san-jose-bans-city-election-contributions-from-multinational-corporations/article_8be0257c-99f9-11ee-97ae-9346565f658c.html.

[6] See Emily Baude, "Walz signs voting accessibility and protections bill," KSTP-TV, May 5, 2023, available at https://kstp.com/kstp-news/top-news/walz-to-sign-voting-accessibility-and-protections-bill-on-friday/.

[7] Democracy Preservation Act, S. 371, 2023–2024 legislative session (January 3, 2024), available at https://www.nysenate.gov/legislation/bills/2023/S371.

[8] Anti-Corruption and Public Integrity Act, S. 5315, Section 721, 117th Cong., 2nd sess. (December 20, 2022), available at https://www.congress.gov/bill/117th-congress/senate-bill/5315?q=%7B%22search%22%3A%5B%22s5315%22%2C%22s5315%22%5D%7D&s=1&r=1; Anti-Corruption and Public Integrity Act, H.R. 9623, Section 721, 117th Cong., 2nd sess. (December 20, 2022), available at https://www.congress.gov/bill/117th-congress/house-bill/9623?q=%7B%22search%22%3A%5B%22jayapal+anti+corruption%22%5D%7D&s=6&r=10; Get Foreign Money Out of U.S. Elections Act, H.R. 6283, 117th Cong., 1st sess. (December 14, 2021), available at https://www.congress.gov/bill/117th-congress/house-bill/6283?q=%7B%22search%22%3A%5B%22raskin+get+foreign+money+out%22%2C%22raskin%22%2C%22get%22%2C%22foreign%22%2C%22money%22%2C%22out%22%5D%7D&s=1&r=1.

The bill under committee consideration would reduce foreign influence in Hawaii's elections by preventing political spending from U.S. corporations that meet one of the following criteria:

- A single foreign shareholder owns or controls 1 percent or more of the corporation's equity.
- Multiple foreign shareholders own or control—in the aggregate—5 percent or more of the corporation's equity.
- Any foreign entity participates directly or indirectly in the corporation's decision-making process about political activities in the United States.

These bright-line thresholds would not bar political spending in Hawaii by *all* U.S. corporations but rather U.S. corporations that have levels of foreign ownership appreciable enough to influence the decision-making of corporate managers either explicitly or implicitly.

The current legal framework

Current law and U.S. Supreme Court precedent are clear when it comes to foreign influence: It is illegal for foreign governments, foreign corporations, or foreign individuals to directly or indirectly spend money to influence U.S. elections.[9]

The statutory prohibition against foreign involvement is foundational to U.S. self-government and exists primarily because foreign entities are likely to have policy and political interests that do not align with America's best interests. This bedrock principle was discussed at length and developed by the nation's founders and enshrined in the U.S. Constitution. It was reaffirmed just twelve years ago in the case of *Bluman v. Federal Election Commission*, written by now-U.S. Supreme Court Justice Brett Kavanaugh, who was part of a special panel deciding the case.[10] In that case, the court stated 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." The Supreme Court affirmed the *Bluman* decision without writing a decision.

Yet a loophole in current law makes the United States vulnerable to foreign influence because foreign entities can invest in an American-based corporation—and then that corporation can spend unlimited amounts of money on elections from its corporate treasury, often secretly. This loophole was opened in the Supreme Court's misguided 2010 decision in *Citizens United v. Federal Election Commission*, in which the court gave American corporations the ability to spend money in elections based on the premise that corporations are "associations of citizens."[11] However, many of the largest American-based corporations are owned appreciably

[9] See Legal Information Institute, "52 U.S. Code § 30121 – Contributions and donations by foreign nationals," available at https://www.law.cornell.edu/uscode/text/52/30121 (last accessed February 2023).
[10] *Bluman v. Federal Election Commission*, 800 F. Supp. 2d 281 (D.D.C. 2011), aff'd, 132 S. Ct. 1087 (January 9, 2012) (Mem.), available at https://www.scotusblog.com/case-files/cases/bluman-v-federal-election-commission/.
[11] *Citizens United v. Federal Election Commission*, 588 U.S. 310 (2010), available at https://www.fec.gov/resources/legal-resources/litigation/cu_sc08_opinion.pdf.

not only by citizens, but also by foreign entities; and foreign entities do *not* have a constitutional right to participate in activities of American self-government and are legally barred from spending directly or indirectly in U.S. elections.[12] Even with the existence of this loophole, the subsequent *Bluman* decision concluded that nothing in *Citizens United* was inconsistent with the law that bans foreign contributions and expenditures in U.S. elections.

The legislation is rooted in well-accepted principles of corporate governance law and practice

Ownership thresholds are not new or untested in U.S. law. Rather, they are common regulatory tools used in many contexts—such as telecommunications, defense, and financial services—to help prevent undue foreign influence over U.S. sovereignty or national security and the divergent policy interests that flow therefrom.[13]

Hawaii's interest in regulating foreign influence need not rest on the idea that foreign investors may be linked to hostile entities actively trying to weaken democracy. Rather, because current federal law does not explicitly prevent U.S.-based corporations with foreign owners from spending money in elections, foreign interests are almost inevitably going to influence the political system. That is because, pursuant to long-standing corporate governance principles, corporate managers are obliged to spend resources in ways that serve all 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."[14]

The preamble to S.B. 3243 correctly states that "the explicit or implicit influence of major foreign investors subjects corporate decision-making to foreign influence as executives consider interests of foreign investors."[15] Corporate managers have a fiduciary obligation to look out for the best interests of all of their investors, including foreign investors. Even where a corporate manager may not have *explicitly* discussed an issue with a major foreign investor, the manager *implicitly* knows that investor's policy preferences, just as a legislative aide knows the policy preferences of the elected official for whom they work. Whether explicit or implicit, the policy interests of major foreign investors can appreciably influence the manager's decision-making in ways that are not aligned with the interests of Hawaiians.

Additionally, S.B. 3243 accurately provides another important reason for a ban on political spending by foreign-influenced U.S. corporations. As the bill's preamble states, "Investors are the ultimate beneficiaries of corporate interests. … Where part of the shareholders' equity is

[12] Legal Information Institute; "52 U.S.C. § 30121(a) – Contributions and donations by foreign nationals," available at https://www.law.cornell.edu/uscode/text/52/30121 (last accessed February 2024); *Bluman v. Federal Election Commission;* Ellen L. Weintraub, "Seattle Takes on Citizens United," *The New York Times*, January 14, 2020, available at https://www.nytimes.com/2020/01/14/opinion/seattle-citizens-united.html. For further discussion of the loophole, see Justice John Paul Stevens' dissent in *Citizens United v. Federal Election Commission*.
[13] See Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections."
[14] Steve Coll, *Private Empire: ExxonMobil and American Power* (New York: Penguin Books, 2012), p. 71 (quoting Lee Raymond).
[15] S.B. 3243 at p. 3, lines 9-12.

attributable to foreign investors, spending corporate treasury funds on Hawaii elections means spending the equity of foreign entities on Hawaii's elections."[16] The legislation under consideration fixes this problem, allowing Hawaiians to know that American corporations are not using the money of foreign investors to influence the state's elections.[17]

The legislation's foreign-ownership thresholds are carefully crafted

As mentioned above, this bill is not aimed at disincentivizing foreign investment in U.S. companies but rather setting ownership threshold guardrails on when foreign-influenced companies can spend political dollars to influence Hawaii's system of self-government via elections. Ownership thresholds are not new or untested in U.S. law. Rather, they are common regulatory tools used in many contexts—such as telecommunications, defense, and financial services—to help prevent undue foreign influence over U.S. sovereignty or national security and the divergent policy interests that flow therefrom.[18]

At first glance, this legislation's ownership thresholds to determine when a corporation is "foreign influenced"—1 percent for a single foreign shareholder and 5 percent for aggregate foreign ownership—may appear to be relatively low. However, as detailed in CAP's report, referenced above, the foreign ownership thresholds used in this bill are solidly grounded in corporate governance and related law, are constitutional, and have been supported by conservative lawmakers and corporate managers, among many others.[19]

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 is likely 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.[20] 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

[16] *Ibid* at p. 2, lines 1-9.
[17] See 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.
[18] See Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections."
[19] Ibid.
[20] 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 February 2024).

single owner threshold can, in fact, exercise substantial influence on a corporation's decisions.[21]

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 a 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 have banded—together to force votes on proposals that affect corporate decision-making.[22]

Finally, as Ellen L. Weintraub, longtime commissioner on the Federal Election Commission, has written, we are not working our way down from a 100 percent foreign-ownership standard, we are working our way up from the zero foreign-influence standard that a strict legal interpretation of federal law suggests.[23] Weintraub's argument is rooted in *Citizens United*, where the Supreme Court held that corporations could spend freely in politics, calling them "associations of citizens," and that corporations' rights to spend in politics flows 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."[24] Under these circumstances where 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 the non-partisan organization Free Speech For People.[25]

The legislation is constitutional

The foreign-ownership thresholds in this legislation are constitutional, a conclusion supported by several noted experts in constitutional, election, and corporate law.[26] At root, this legislation is consistent with the *Bluman* decision—which the Supreme Court affirmed—declaring that foreign entities have no constitutional right to participate in U.S. elections.

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[21] 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.

[22] See John C. Coates IV, "RE: An Act to limit spending by foreign-influenced corporations, S.418 (Montigny), H.640 (Cutler), H.703 (Naughton)," (Cambridge, MA: Harvard Law School, 2019), pp. 6–7, available at https://freespeechforpeople.org/wp-content/uploads/2019/05/2019-Coates-MA-FIC-20190514-PDF-final.pdf.

[23] Weintraub, "Taking On Citizens United."

[24] Ellen L. Weintraub, "Seattle Takes On Citizens United," *The New York Times*, January 14, 2020, available at https://www.nytimes.com/2020/01/14/opinion/seattle-citizens-united.html.

[25] Ron Fein, "RE: Political spending by foreign-influenced corporations, S.454 (Comerford), S.482 (Montigny), S.839 (Uyterhoven); Limits on contributions to super PACs, S.455 (Comerford), H.772 (Day), S.840 (Uyterhoven)," (Boston: Free Speech For People, 2021), p. 8, available at https://freespeechforpeople.org/wp-content/uploads/2021/09/rfein-written-testimony-election-laws-20210917-combined.pdf.

[26] See Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections."

Moreover, this legislation follows the approach laid out by Commissioner Weintraub, which provided a new, cogent way to read *Citizens United* in conjunction with the ban on foreign spending in U.S. elections. As discussed in the section above, Weintraub pointed out that *Citizens United* allows corporations to spend freely in politics by calling them "associations of citizens," and that corporations' rights to spend in politics flows from the collective First Amendment rights of their individual shareholders. Weintraub stated that it "logically follows, then, that *restrictions* on the rights of shareholders must also apply to the corporation." She also wrote, "One cannot have a right collectively that one does not have individually."[27] Therefore, according to Weintraub, "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."[28]

How the foreign-ownership thresholds practically would affect corporations

As discussed at length in CAP's report, although the overwhelming majority of U.S. businesses have no foreign owners, the largest American-based corporations have appreciable foreign ownership. For the report, 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 politically connected corporations voluntarily disclosed $443 million spent in federal and state elections from their corporate treasuries in the years 2015, 2016, and 2017.[29]

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[27] Weintraub, "Seattle Takes On Citizens United."

[28] Weintraub, "Taking On Citizens United."

[29] Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections." Moreover, in 2020, California witnessed the major effect of foreign-influenced corporate spending on a state ballot initiative. That initiative, known as Proposition 22, invalidated a pro-worker state law and allowed companies to classify their workers as contractors instead of employees. See Michael Sozan, "Opinion: Stop political spending by foreign-influenced U.S. firms," The Mercury News, December 15, 2020, available at https://www.mercurynews.com/2020/12/15/opinion-stop-political-spending-by-foreign-influenced-u-s-firms/. As I wrote in this op-ed, one of these corporations that spent tens of millions of dollars to drive the ballot initiative, Uber, was partially owned by the government of Saudi Arabia. Another corporation, Lyft, which also spent tens of millions of dollars on Proposition 22, has seen appreciable ownership by Chinese and Japanese conglomerates. This means that major foreign investors may have played a role—at least indirectly—in influencing the fate of California policy. See Brian Melley, "Uber, Lyft spend big, win in California vote about drivers," The Associated Press, November 4, 2020, available at https://apnews.com/article/business-california-837ebb151c7aa65596537b4a5f7a2f9d; George Skelton, "It's no wonder hundreds of millions have been spent on Prop. 22. A lot is at stake," Los Angeles Times, October 16, 2020, available at https://www.latimes.com/california/story/2020-10-16/skelton-proposition-22-uber-lyft-independent-contractors; Bradley Hope and Justin Scheck, "How the crown prince of Saudi Arabia made his way into Silicon Valley circles with a $3.5 billion investment in Uber," Business Insider, September 2, 2020, available at https://www.businessinsider.com/how-investment-in-uber-brought-saudi-prince-to-silicon-valley-2020-9; Zoe Henry, "Alibaba's 9 most high-profile investments in U.S. start-ups," CNBC, October 14, 2016, available at

The CAP report also concludes that, among *smaller* publicly traded corporations, only 28 percent of the corporations that were randomly sampled exceeded the 5 percent aggregate foreign-ownership threshold.[30] 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. This legislation would ultimately help amplify the voices of small, locally owned businesses in Hawaii, at a time when large foreign-influenced corporations are able to spend political dollars through routes like Hawaii's "noncandidate committees" or trade associations, such as the Hawaii Hotel Alliance, which made expenditures for electioneering communications as recently as 2022.[31]

Conclusion

At a time of rising dark-money campaign-related spending and foreign interference in U.S. elections, Hawaii is laudably positioning itself at the forefront of nationwide legislative efforts to take proactive, reasonable steps to impose transparency requirements related to campaign financing and stop political spending by foreign-influenced American corporations. This legislation would go far in reassuring the people of Hawaii that their elected leaders are enacting measures to protect the state's democratic right to self-government and to create a political system that more fairly represents the priorities of everyday people.

I urge passage of this legislation. Please let me know if I can be of further assistance. I can be reached at msozan@americanprogress.org.

Sincerely,
/s/ Michael L. Sozan
Senior Fellow

https://www.cnbc.com/2016/10/14/alibabas-9-most-high-profile-investments-in-us-start-ups.html; Toru Hatano, "Rakuten books $240m write-down as Mikitani exits Lyft's board," Nikkei Asia, September 1, 2020, available at https://asia.nikkei.com/Business/Technology/Rakuten-books-240m-write-down-as-Mikitani-exits-Lyft-s-board.

[30] Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections."

[31] State of Hawaii Campaign Spending Commission, "Statement of Information for Electioneering Communication (9/15/21)" (Honolulu: 2022), available at https://ags.hawaii.gov/campaign/files/2022/08/HawaiiHotelAlliance-080422.pdf.

**SB-3243-SD-1**
Submitted on: 2/19/2024 4:21:34 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Jason E. Korta | Individual | Support | Written Testimony Only |

Comments:

**Testimony in Support of Senate Bill 3243**

Our state law prohibits foreign nationals from contributing to state political campaigns. But foreign nationals can circumvent our law by indirectly contributing to campaigns through corporations. Please close this loophole by passing Senate Bill 3243. Thank you.

**SB-3243-SD-1**
Submitted on: 2/20/2024 9:58:54 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Ted Bohlen | Individual | Support | Written Testimony Only |

Comments:

Support!

**SB-3243-SD-1**
Submitted on: 2/20/2024 7:20:51 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| B. Hansen | Individual | Support | Written Testimony Only |

Comments:

Strong **Support** SB3243! Being an isolated island chain in the heart of the Pacific, Hawaii's unique political and cultural landscape demands vigilance against foreign influence. SB3243 recognizes this critical need by safeguarding our election processes from the potential manipulation of foreign entities

**SB-3243-SD-1**
Submitted on: 2/21/2024 12:45:55 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Greg Misakian | Individual | Support | Written Testimony Only |

Comments:

I support SB3243 SD1.

Gregory Misakian

Kokua Council, 2nd Vice President

Waikiki Neighborhood Board, Sub-District 2 Vice Chair

**SB-3243-SD-1**
Submitted on: 2/21/2024 6:46:40 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Keenan Luke | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of sb3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 6:46:43 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Blair Nahale | Individual | Support | Written Testimony Only |

Comments:

I support sb3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 6:57:27 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Burton Chun | Individual | Support | Written Testimony Only |

Comments:

I strongly support SB3243.

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:02:20 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Edward klaneski | Individual | Support | Written Testimony Only |

Comments:

I support this bill

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:07:30 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Dane Kaluhiwa | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:12:10 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Hubert Pruett | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:27:31 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Kekoa Bruhn | Individual | Support | Written Testimony Only |

Comments:

In strong support of sb 3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:33:07 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| William Campbell | Individual | Support | Written Testimony Only |

Comments:

I strongly support SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:33:50 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Walter Walker | Individual | Support | Written Testimony Only |

Comments:

I strongly support

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:47:33 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Chauncey Dunhour | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243!

**SB-3243-SD-1**
Submitted on: 2/21/2024 7:54:40 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Ka'ena Paikai | Individual | Support | Written Testimony Only |

Comments:

I am in strong support

**SB-3243-SD-1**
Submitted on: 2/21/2024 8:06:34 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| chad Failma | Individual | Support | Written Testimony Only |

Comments:

I strongly support bill SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 12:16:15 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Pita Hiko | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 12:21:32 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Pomai Kalama | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243!

**SB-3243-SD-1**
Submitted on: 2/21/2024 12:21:52 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Jacob Ramos | Individual | Support | Written Testimony Only |

Comments:

I strongly support Bill SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 2:24:47 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Rodney Choy Foo | Individual | Support | Written Testimony Only |

Comments:

Strongly support of SB3243

**SB-3243-SD-1**
Submitted on: 2/21/2024 2:53:18 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Sy Delizo | Individual | Support | Written Testimony Only |

Comments:

I strongly support this bill.

**SB-3243-SD-1**
Submitted on: 2/21/2024 4:47:03 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Levi Archuleta | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of this bill.

**SB-3243-SD-1**
Submitted on: 2/22/2024 2:02:51 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| noah | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of bill sb3243.

**SB-3243-SD-1**
Submitted on: 2/22/2024 7:14:47 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Cisco Valeho | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243

**SB-3243-SD-1**
Submitted on: 2/22/2024 7:29:03 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Christopher Finau | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of bill!

**SB-3243-SD-1**
Submitted on: 2/22/2024 8:17:54 AM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Ashkhon Kuhaulua | Individual | Support | Written Testimony Only |

Comments:

I am in strong support of SB3243!

**SB-3243-SD-1**
Submitted on: 2/22/2024 4:02:28 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Montgomery Meyer | Individual | Support | Written Testimony Only |

Comments:

In strong support

**SB-3243-SD-1**
Submitted on: 2/22/2024 9:12:52 PM
Testimony for JDC on 2/23/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---|---|---|---|
| Robert Like | Individual | Support | Written Testimony Only |

Comments:

I Robert Like, support SB3243.