



# San Jose Bill Would Limit Political Spending by Foreign-Influenced U.S. Corporations

Letter of Support Filed With the City Council of San Jose, California

*Michael Sozan, a senior fellow at the Center for American Progress, submitted a formal letter of support to the City Council of San Jose, California, in support of a recommended ordinance that would limit political spending by foreign-influenced U.S. corporations. His testimony before the council is provided below, with light edits for style and clarity. After his testimony on March 22, 2022, the council and mayor voted 9-1 to support the recommended ordinance.<sup>1</sup>*

Dear Mayor Liccardo, Vice Mayor Jones, and Members of the City Council:

I write in support of councilmembers' memorandum directing staff to return to Council with a draft ordinance requiring that corporations certify that they are not foreign-influenced before making independent expenditures or contributing to campaigns and independent expenditure committees.<sup>2</sup> If enacted, this people-powered ordinance would help stop political spending by foreign entities, including foreign investors who own appreciable levels of stock in U.S. corporations, thereby protecting the city's right to self-government. In recent weeks, this policy has taken on additional importance in light of Russia's invasion of Ukraine, given reports that Russian investors—including sanctioned Russian oligarchs—own appreciable amounts of American corporations.<sup>3</sup> Quite simply, the city should update its laws to prevent foreign entities from influencing elections and ballot measures, which should be the purview solely of the city's voters.

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 research in the area of preventing political spending by foreign-influenced U.S. corporations. I have submitted written and oral testimony on this policy in several state legislatures and have worked closely with lawmakers at the federal, state, and local levels to draft legislation to enact this structural reform. My publications include a report and fact sheet analyzing this policy, with the report republished in the Harvard Law School Forum on Corporate Governance.<sup>4</sup> These publications may be useful as you consider the recommended ordinance.

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## Summary

After reviewing the councilmembers' memorandum, I conclude that the recommended ordinance would provide an important tool to protect San Jose's elections and ballot initiatives from foreign influence and reduce the outsized role that corporate money can play in the results of elections and ballot initiatives. The common-sense recommended ordinance would strengthen the right of San Jose's residents to determine the political and economic future of their city and help ensure that lawmakers are accountable to voters instead of foreign-influenced corporations. This recommended ordinance is particularly important given that foreign investors now own approximately 40 percent of U.S. corporate equity, compared with just 4 percent in 1986, a stunning increase.<sup>5</sup>

The recommended ordinance would follow Seattle, Washington, which passed similar legislation in 2020 to protect its elections after a deluge of corporate political spending by at least one foreign-influenced U.S. corporation, Amazon.<sup>6</sup> Moreover, the New York State Senate recently passed similar legislation in a bipartisan vote, and that bill is now pending in the state assembly.<sup>7</sup> Several similar bills have been filed at the federal level by leading members of Congress, including Sen. Elizabeth Warren (D-MA) and Rep. Jamie Raskin (D-MD).<sup>8</sup>

California certainly is no stranger to prodigious political spending by foreign-influenced U.S. corporations. As I discussed in an op-ed published in *The Mercury News* in 2020, multiple foreign-influenced companies, including Uber, Lyft, and DoorDash, teamed up to spend more than \$200 million to get their desired result on Proposition 22, which invalidated a state law and allowed companies to classify their gig workers as contractors instead of employees.<sup>9</sup> This means that major foreign investors played a role—at least indirectly—in determining the fate of California policy.

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## Analysis

In the U.S. Supreme Court's misguided decision in *Citizens United v. Federal Election Commission*, the conservative majority gave American corporations the ability to spend money in elections based on the premise that corporations are "associations of citizens."<sup>10</sup> However, many of the largest American-based corporations are owned appreciably by foreign entities. This creates a loophole in the Supreme Court's ruling, as recognized in a dissenting opinion by former Justice John Paul Stevens: Foreign entities can invest in U.S. corporations, which then spend large amounts of money from their corporate treasuries to influence the results of elections and ballot initiatives.<sup>11</sup> This dangerous loophole allows foreign entities to circumvent the long-standing federal prohibition against their participating directly or indirectly in U.S. elections.<sup>12</sup>

The recommended ordinance proposes a cogent method to close this anti-democratic loophole by using bright-line thresholds to determine when a corporation has appreciable foreign ownership. The ordinance would amend the municipal code to define foreign-influenced corporations as any corporation—as defined by California’s Political Reform Act—in which at least one of the following conditions is true:

- 1 percent or more of the total ownership interests of the corporation are held by a single foreign entity.
- 5 percent or more of the total ownership interests of the corporation are held by two or more foreign entities in aggregate.
- The corporation is owned by a foreign entity that directly or indirectly participates in decisions on the corporation’s political activities in the United States.

I note that the recommended ordinance reasonably does not appear to limit foreign-influenced corporations from contributing money from their political action committees—where, by law, funds are derived from U.S. employees—nor does it limit either contributions from executives or employees in their personal capacities or a corporation’s lobbying activities. Instead, the ordinance aims to limit spending directly from corporations’ treasuries—spending that can be done via secret, dark money routes. It is also important that the recommended ordinance not apply to nonprofit corporations or have any impact on individual immigrants in the United States.

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## **Substantial support for foreign ownership thresholds**

The foreign ownership thresholds used in this recommended ordinance are solidly grounded in corporate governance and related law, even though at first glance, they may appear to be relatively low. Moreover, the framework in the recommended ordinance is constitutional under federal jurisprudence,<sup>13</sup> as discussed at length by Harvard Law School professor Laurence Tribe in his letter filed in these proceedings.<sup>14</sup>

Corporate managers, governance experts, and regulators recognize that a shareholder who owns at least 1 percent of corporate stock can influence corporate decision-making, including decisions about political spending.<sup>15</sup> Relatively few individual shareholders ever own as much as 1 percent of a major publicly traded corporation; if they do, their stock likely is worth hundreds of millions of dollars, if not more.<sup>16</sup> These rare shareholders can almost always get the immediate attention of corporate executives and often have power over a corporation’s strategic direction.

As discussed at length and cited in my 2019 report:

- The 1 percent ownership threshold is anchored in regulations of the U.S. Securities and Exchange Commission (SEC) governing thresholds for shareholder proposals.

- Former Republican Chairman of the U.S. House Committee on Financial Services Jeb Hensarling (TX) recognized—in the area of proxy contests—that shareholders who own 1 percent of corporate stock are important players who have the very real opportunity to influence corporate decision-making.
- The Business Roundtable, an association representing corporate CEOs, also acknowledged this dynamic. In fact, the Business Roundtable suggested a sliding scale for considering shareholder proposals that would fall far below the 1 percent threshold for the largest U.S. corporations—to a 0.15 percent share of ownership.

The higher 5 percent aggregate foreign-ownership threshold also has strong merit. A significant number of smaller shareholders who band together may share a commonality—such as foreign domicile—which can influence corporate managers’ decisions in the manner described above. Additionally, where several shareholders each own slightly less than 1 percent of a corporation but together own at least 5 percent of the corporation, the law cannot ignore the possibility that these smaller shareholders could join forces to do what a single 1 percent shareholder could do alone. Moreover, the Business Roundtable supported the right of a group of shareholders to submit a proposal for consideration if those shareholders owned only 3 percent of a corporation’s shares.<sup>17</sup>

As Ellen Weintraub, longtime commissioner on the Federal Election Commission, has written, the United States is not working its way down from a 100 percent foreign-ownership standard; it is working its way up from the zero foreign-influence standard that a strict legal interpretation of federal law suggests.<sup>18</sup> When an American-based 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 nonpartisan organization Free Speech For People.<sup>19</sup>

### **Practical effect of foreign ownership thresholds**

In my 2019 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 corporations voluntarily disclosed the very large sum of \$443 million spent in federal and state elections from their corporate treasuries in the years 2015, 2016, and 2017.

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

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## Process for corporations to determine foreign ownership

Corporations can and do regularly ascertain foreign-ownership thresholds. Opponents' arguments that this process is impractical are not well-founded.

According to testimony from former SEC counsel and Harvard Law School professor John Coates, the vast majority of corporations are owned by a single shareholder or a small, discernible group of shareholders, so it would be relatively simple to measure levels of appreciable foreign ownership.<sup>20</sup> Large publicly traded corporations already collect this type of stockholder information for their annual shareholder meetings, and sometimes more frequently, to allow votes regarding off-cycle events.<sup>21</sup> Professor Coates' testimony explains how corporations can reasonably conduct the requisite inquiry to determine their levels of foreign ownership. Finally, multiple publicly available finance-related websites supply detailed information on corporations' largest shareholders, as well as approximate data regarding aggregate foreign ownership.<sup>22</sup> If corporations do not know who their owners are, then it only strengthens the case that those corporations should not be allowed to spend to influence elections or ballot measures.

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## Conclusion

At a time of rising foreign interference in U.S. elections, San Jose should be commended for helping lead the way in legislative efforts across the nation to take proactive, commonsense steps to stop political spending by foreign-influenced American corporations. The recommended ordinance does not appear to be aimed at disincentivizing foreign investment in the United States but rather at setting guardrails on when foreign-influenced companies can spend political dollars to influence elections and ballot measures. The recommended ordinance would be a big step forward in reassuring the people of San Jose that their democratic right to self-government is protected.

I urge favorable consideration of the recommended ordinance. Please let me know if I can be of further assistance.

Sincerely,  
Michael L. Sozan

## Endnotes

- 1 Grace Hase, "San Jose looking to limit foreign influence on city elections," *The Mercury News*, March 22, 2022, available at <https://www.mercurynews.com/2022/03/22/san-jose-looking-to-limit-foreign-influence-on-elections/>.
- 2 Councilmember Cohen and others, Memorandum regarding campaign finance reform, San Jose, California, City Council, March 18, 2022, available at <https://sanjose.legistar.com/View.ashx?M=F&ID=10663968&GUID=ECA16DE6-2EC4-481D-BEC0-FB8139AA7C5F>.
- 3 One high-profile example of a sanctioned Russian oligarch indirectly owning an appreciable portion of a politically connected American company is discussed in my 2019 report, "Ending Foreign-Influenced Corporate Spending in U.S. Elections." 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/> (discussing Oleg Deripaska and Braidy Atlas). See also David Hodges, "Russian oligarchs invest millions in North Carolina companies," *WBTV*, March 8, 2022, available at <https://www.wbvt.com/2022/03/08/russian-oligarchs-invest-millions-north-carolina-companies/>.
- 4 *Ibid.*; 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/>.
- 5 Steven Rosenthal and Theo Burke, "Who's Left to Tax? US Taxation of Corporations and Their Shareholders" (New York: New York University School of Law, 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>.
- 6 Annie Palmer, "Blow to Amazon as Seattle passes new political spending restrictions," *CNBC*, January 13, 2020, available at <https://www.cnbc.com/2020/01/13/blow-to-amazon-as-seattle-passes-new-political-spending-restrictions.html>.
- 7 Democracy Preservation Act, S. 1126B, 2021-2022 legislative session (passed by N.Y. State Senate on January 10, 2022), available at <https://www.nysenate.gov/legislation/bills/2021/s1126>.
- 8 Anti-Corruption and Public Integrity Act, S. 5070, Section 721, 116th Cong., 2nd sess. (December 19, 2020), available at <https://www.congress.gov/bill/116th-congress/senate-bill/5070/text?q=%7B%22search%22%3A%5B%22warren%22%5D%7D&r=2&s=2>; 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%22mone+y%22%2C%22out%22%5D%7D&s=1&r=1>.
- 9 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 there, Uber, one of the corporations that spearheaded the ballot initiative, "is partially owned and controlled by the government of Saudi Arabia." *Financial Times*, "'Never waste a crisis': inside Saudi Arabia's shopping spree," May 24, 2020, available at <https://www.ft.com/content/af2deefd-2234-4e54-a08a-8dbb205f5378>. Another corporation—Lyft—has seen appreciable ownership and control by a Chinese conglomerate and a Japanese conglomerate. Zoe Henry, "Alibaba's 9 most high-profile investments in US start-ups," *CNBC*, October 14, 2016, available at <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>.
- 10 *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](https://www.fec.gov/resources/legal-resources/litigation/cu_sc08_opinion.pdf).
- 11 *Ibid.* (dissent by Justice Stevens).
- 12 The Federal Election Campaign Act, 52 U.S.C. § 30121(a), as amended by the Bipartisan Campaign Reform Act of 2002, Public Law 155, 116 Stat. 81, § 303 (2002), available at <https://www.law.cornell.edu/uscode/text/52/30121>.
- 13 The U.S. Supreme Court affirmed (without opinion) a decision authored by then-Judge Brett Kavanaugh, which recognized that the First Amendment allows the government to prohibit contributions from foreign entities, a ruling found to be consistent with *Citizens United*. *Bluman and Steiman v. Federal Election Commission*, memorandum opinion, U.S. District Court for the District of Columbia, No. 10-1766 (August 8, 2011), available at [https://www.bloomberglaw.com/public/desktop/document/Bluman\\_v\\_Federal\\_Election\\_Commission\\_Civil\\_No\\_101766\\_BMK\\_RMUR-MC\\_2?1565223708;aff'd,132S.Ct.1087\(2012\)\(Mem.\)](https://www.bloomberglaw.com/public/desktop/document/Bluman_v_Federal_Election_Commission_Civil_No_101766_BMK_RMUR-MC_2?1565223708;aff'd,132S.Ct.1087(2012)(Mem.)), available at <https://www.supremecourt.gov/orders/courtorders/010912zor.pdf>.
- 14 Carol M. Watts, "Options for Campaign Finance Regulations Related to Public Financing, Foreign Influence in Elections, and Other Limits on Corporations and Other Entities," League of Women Voters of San Jose/Santa Clara, November 15, 2021, available at <https://sanjose.legistar.com/View.ashx?M=F&ID=10646879&GUID=004D90F1-27F7-4551-98CC-E82408F24FFC>.
- 15 See Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections," pp. 32–34.
- 16 According to internal research conducted by CAP in 2021, the average 1 percent shareholder of an S&P 500 corporation owns stock worth \$864 million, while the median 1 percent shareholder of an S&P 500 corporation owns stock worth \$335 million. Data obtained regarding each corporation via searches on *CNBC.com*.
- 17 See Ning Chiu, "Business Roundtable Urges Improvements to Rule 14a-8 and Related Processes," Davis Polk, November 16, 2016, available at <https://www.davispolk.com/insights/client-update/business-roundtable-urges-improvements-rule-14a-8-and-related-processes>; Business Roundtable, "Re: File Number 4-725" (Washington: 2018), p. 5, available at <https://s3.amazonaws.com/brt.org/2018.11.09-BRT.SECProxy-RoundtableCommentLetter.pdf>.
- 18 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>.

19 See Ron Fein, "RE: Political spending by foreign-influenced corporations S.454 (Comerford), S.482 (Montigny), H.839 (Uyterhoeven); Limits on contributions to super PACs S.455 (Comerford), H.772 (Day), H.840 (Uyterhoeven)," Free Speech For People, September 17, 2021, p. 8, available at <https://freespeechforpeople.org/wp-content/uploads/2021/09/rfein-written-testimony-election-laws-20210917-combined.pdf>.

20 John C. Coates IV, Statement submitted to Massachusetts House of Representatives regarding an act to limit spending by foreign-influenced corporations, Harvard Law School, May 14, 2019, pp. 9-10, available at <https://freespeechforpeople.org/wp-content/uploads/2019/05/2019-Coates-MA-FIC-20190514-PDF-final.pdf>.

21 Ibid.

22 For an example, see CNBC's finance website. Using Chevron as an example, a user can ascertain important foreign ownership data from the "Ownership" page. CNBC, "Chevron Corp.," available at <https://www.cnbc.com/quotes/CVX?tab=ownership> (last accessed March 2022).