



California Bill Would Limit Political Spending by Foreign-Influenced U.S. Corporations

Testimony Before the California State Assembly

By Michael Sozan February 10, 2023

Dear Assembly Member Lee:

I write in strong support of A.B. 83, the Get Foreign Money Out of California Elections Act, of which the Center for American Progress is a proud “co-sponsor.” If enacted, your people-powered legislation will help stop political spending by foreign entities, including foreign investors who own appreciable levels of stock in U.S. corporations. This would help protect California’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 research on preventing election-related spending by U.S. corporations that are appreciably owned by foreign investors. My publications include reports and fact sheets analyzing this policy, with one report republished in the Harvard Law School Forum on Corporate Governance.¹ These publications may be useful as the Legislature considers the pending legislation.

After reviewing A.B. 83, I conclude that it would provide an important tool to protect California’s elections and ballot initiatives from foreign influence and excess corporate money that can corrupt the political system. This bold bill would strengthen the right of California’s residents to determine the political and economic future of their state and help ensure that lawmakers are accountable to voters instead of corporations with appreciable levels of foreign investment. 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 1986.²

This popular legislation follows on the heels of a similar bill in Seattle, which passed in 2020 to protect its elections after a deluge of corporate political spending by at least one foreign-influenced U.S. corporation.³ Notably, within your state, San Jose

conditionally passed similar legislation last year.⁴ Moreover, in 2022, the New York State Senate passed a parallel bill on a bipartisan vote.⁵ Several similar bills have been filed at the federal level by members of Congress, including Sen. Elizabeth Warren (D-MA) and Rep. Jamie Raskin (D-MD).⁶

Discussion

In the U.S. Supreme Court’s misguided decision in *Citizens United v. Federal Election Commission*, the court gave American corporations the ability to spend money in elections based on the premise that corporations are “associations of citizens.”⁷ 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 Justice John Paul Stevens: Foreign entities can invest in U.S. corporations that then spend large amounts of money from their corporate treasuries to influence the results of elections and ballot initiatives.⁸

Your legislation would close that gaping loophole. At first glance, the 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 the CAP report referenced above, the foreign-ownership thresholds used in A.B. 83 are solidly grounded in corporate governance and related law; are constitutional; and have been supported by conservative lawmakers, corporate CEOs, and long-standing commissioners on the Federal Election Commission, among many others.⁹ Moreover, the U.S. Securities and Exchange Commission has recognized the power that shareholders have at the levels of ownership delineated in this legislation.¹⁰ This bill is not aimed at disincentivizing foreign investment in California-based companies but rather setting guardrails on when foreign-influenced companies can spend political dollars to influence U.S. elections and ballot measures.

Additionally, as detailed in CAP’s report, although the vast majority of U.S. businesses have no foreign investors, the largest U.S.-based corporations have considerable foreign ownership. For my report, I analyzed data on foreign ownership of 111 U.S.-based publicly traded corporations in the S&P 500 stock index.¹¹ 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 invested corporations voluntarily disclosed \$443 million spent in federal and state elections from their corporate treasuries in the years 2015, 2016, and 2017.

However, among smaller publicly traded corporations, only 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 be less likely to be affected by this legislation's ownership thresholds. This legislation would help enhance the political voices of California's smaller businesses, most of which likely have only American owners.

Conclusion

At a time of rising foreign interference in U.S. elections, California should be commended for positioning itself at the forefront of legislative efforts across the nation to take proactive, commonsense steps to stop political spending by American corporations that are appreciably owned by foreign investors. A.B. 83 would go a long way in reassuring the people of California that their democratic right to self-government is protected.

I urge the passage of this legislation. Please let me know if I can be of further assistance.

Sincerely,

Michael L. Sozan

Endnotes

- 1 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/>.
- 2 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>.
- 3 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>.
- 4 See 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/>.
- 5 Democracy Preservation Act, S. 1126B, 2021–2022 legislative session (January 10, 2022), available at <https://www.nysenate.gov/legislation/bills/2021/s1126>.
- 6 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-bills/5315?q=%7B%22search%22%3A%5B%22s5315%22%2C%22s5315%22%5D%7D&s=1&r=1>; 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-bills/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>.
- 7 *Citizens United v. Federal Election Commission*, 588 U.S. 310 (January 21, 2010), available at https://www.fec.gov/resources/legal-resources/litigation/cu_sc08_opinion.pdf.
- 8 For example, in 2020, California witnessed the outsized 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. I wrote about Proposition 22 in an op-ed published in *The Mercury News*. As I stated, one of these corporations that spent tens of millions of dollars to drive the ballot initiative – Uber – is partially owned and controlled by the government of Saudi Arabia. Another corporation – Lyft – which also spent tens of millions of dollars on Proposition 22, has seen appreciable ownership and control by a Chinese conglomerate and a Japanese conglomerate. This means that major foreign investors played a role – at least indirectly – in determining the fate of California policy. 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/>; 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," *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 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>.
- 9 Sozan, "Ending Foreign-Influenced Corporate Spending in U.S. Elections," pp. 32–38.
- 10 *Ibid.*
- 11 *Ibid.*