



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

Testimony Submitted to the State Government and Tribal Relations Committee of the Washington State House of Representatives

By Michael Sozan March 14, 2023

Dear Chair Ramos, Vice Chair Stearns, Ranking Member Abbarno, and members of the committee:

I submit this written testimony in support of S.B. 5284, an important bill relating to campaign finance disclosure. This pro-democracy legislation is the subject of a March 10, 2023, hearing by the House State Government and Tribal Relations Committee. If enacted, this legislation would strengthen campaign-related spending disclosure requirements, as well as prohibit political spending by U.S. corporations with appreciable levels of foreign ownership.

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.¹ These publications may be useful as the committee considers the pending legislation.

Discussion

Of particular note are this legislation's provisions designed to protect Washington's elections and ballot propositions from foreign influence and reduce the outsized 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. Ultimately, this people-powered policy would help protect Washington’s right to self-government, strengthen the right of the state’s residents and small businesses to determine the political and economic future of their state, and help ensure that lawmakers are accountable to voters instead of multinational 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 1986.²

As you know, the committee’s consideration of this legislation follows on the heels of a similar bill 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.³ No legal challenges have been mounted against the Seattle legislation.

Seattle’s groundbreaking ordinance has helped build momentum for parallel legislation across the nation, at the local, state, and federal levels. For example, the city of San Jose, California, conditionally passed similar legislation last year.⁴ Earlier in March, the Hawaii State Senate passed a parallel bill on a bipartisan vote.⁵ In 2022, the New York State Senate did the same.⁶ 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).⁷

The bill under committee consideration would reduce foreign influence in Washington’s elections and ballot propositions 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 Washington 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.

In the U.S. Supreme Court’s misguided decision in *Citizens United*, the court gave American corporations the ability to spend money in elections based on the premise that corporations are “associations of citizens.”⁸ However, many of the largest American-based corporations are owned appreciably not only by citizens but also by foreign entities; yet foreign entities are legally barred from spending directly or indirectly in our elections.⁹ 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, a scenario that now regularly occurs.¹⁰

This legislation would close that gaping loophole. 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 legislation 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. Moreover, the U.S. Securities and Exchange Commission has recognized the substantial power that shareholders can wield at the 1 percent and 5 percent ownership levels delineated in this legislation. This bill is not aimed at disincentivizing foreign investment in U.S. companies but rather setting guardrails on when foreign-influenced companies can spend political dollars to influence Washington’s system of self-government via elections and ballot propositions.

Additionally, 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.

As the CAP report discusses, 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 likely be less affected by this legislation’s ownership thresholds. This legislation would therefore help amplify the voices of small, locally owned businesses in Washington.

Conclusion

At a time of rising dark money campaign-related spending and foreign interference in U.S. elections, Washington should be heralded for 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 a long way in reassuring the people of Washington that their elected leaders are enacting measures to protect the state's democratic right to self-government and 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.

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 Bill related to campaign finance, S.B. 1179 S.D. 1, 2022 legislative session (January 20, 2023), available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1179&year=2023.
- 6 Democracy Preservation Act, S. 1126B, 2021–2022 legislative session (January 10, 2022), available at <https://www.nysenate.gov/legislation/bills/2021/s1126>.
- 7 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>.
- 8 *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.
- 9 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 March 2023); *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_RMURMC_2?1565223708.
- 10 For example, in 2020, California witnessed the outsized effect of foreign-influenced corporate spending on a state ballot initiative. The 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*. 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 stated, Uber, one of the corporations that spent tens of millions of dollars to drive the ballot initiative, was then (and still is) partially owned and controlled by the government of Saudi Arabia. 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>. Another corporation, Lyft, also spent tens of millions of dollars on Proposition 22, has seen appreciable ownership and control by a Chinese conglomerate and a Japanese conglomerate. Zoe Henry, "Alibaba's 9 most high-profile investments in U.S. 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>. This means that major foreign investors played a role – at least indirectly – in determining the fate of California policy.