March 18, 2026

Chairperson Maurice A. West, II
Vice-Chairperson Katie Stuart
Members of the House Ethics & Elections Committee
Illinois 104th General Assembly

RE: **Free Speech For People Written Testimony in Support of HB 3071 to prohibit foreign-influenced business entity election spending in Illinois**

On behalf of Free Speech For People, we write in strong support of passing HB 3071, legislation to ban corporate political spending by foreign-influenced business entities in Illinois. Free Speech For People is a national nonpartisan non-profit organization that has helped to develop and advocate for 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; former 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.

We strongly urge you to take similar steps to protect Illinois's elections. The incorporated memorandum explains why HB 3071 is a constitutional, commonsense proposal that will provide critical protections for Illinois's democratic self-government. In Section I of the memorandum, we set forth the general and legal background for the proposed bill; Section II explains the foreign ownership thresholds; and Section III answers frequently-asked questions that have emerged as we have developed this legislation.

I. General and legal background

Under well-established federal law, upheld by the U.S. Supreme Court in 2012, it is illegal for a foreign government, business, or individual to spend any amount of

money, "directly or indirectly," to influence federal, state, or local elections.[1] This existing provision is a blanket prohibition. 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]

At the time the legislation was written, all corporations were subject to strict contribution and independent expenditure limits. It is therefore not surprising that the drafters of the legislation, despite clear intentions to block *all* avenues for foreign money to directly or indirectly be spent on U.S. elections, did not specifically address election spending by the type of corporation at issue here: foreign-influenced business entities, which are incorporated in the United States but which are materially owned by foreign investors.

The U.S. Supreme Court's 2010 *Citizens United* decision lifted federal limitations on independent expenditures by corporations.[3] Its holding rests on its theory that corporations have speech rights because they are "associations of citizens."[4] It did not "reach the question" of corporations partly owned by foreign investors because the law before it applied to all corporations.[5]

As a result, federal law currently does not prevent foreign-influenced business entities (FIBEs) from making contributions to super PACs, independent expenditures, expenditures on ballot measure campaigns, or even (in states where it

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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, 349, 354, 356 (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.
[5] *Id.* at 362.

is otherwise legal) contributions directly to candidates. But it is also clear that the *Citizens United* decision does not curtail Illinois's authority to protect its democratic self-government by prohibiting election spending by FIBEs, which are, by definition, not associations of citizens.

Two years after *Citizens United*, the Supreme Court affirmed *Bluman v. FEC*, the three-judge panel decision authored by then-Judge Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit, sitting by designation, which upheld a total prohibition on foreign governments, individuals, or entities from spending on U.S. elections. In *Bluman*, the court acknowledged that the government's concern for its elections "is part of a common international understanding of the meaning of sovereignty and shared concern about foreign influence over elections." *Bluman*, 800 F. Supp. 2d at 291-91. The state's compelling interest in its own democratic self-government ultimately is sufficient to justify a total ban on election spending by foreign entities. Indeed, the case's lead plaintiff was a valid visa holder who had lived, been educated, and worked in the United States for years and sought to spend a vanishingly small amount of money, including minor expenditures to print flyers in support of a candidate. None of these facts could overcome the basic principles espoused by the court: that elections are at the heart of democratic self-government, and stringent limitations on the participation of foreign entities are constitutional, up to and including a complete prohibition on direct or indirect election spending by foreign nationals, governments, or entities.

Since 2010, neither Congress nor the beleaguered Federal Election Commission have done anything to prevent FIBEs from spending money on U.S. elections. However, as Professor Laurence Tribe of Harvard Law School and former Federal Election Commissioner Ellen Weintraub have written, a state does not need to wait for federal action to protect its state and local elections from foreign influence. Illinois can act now.

And it should. Foreign-influenced corporations, speaking for their powerful foreign shareholders and acting on their behalf, are spending on local and state elections throughout the country. For example, Uber, DoorDash, and AirB&B have spent significant sums of money on elections across the country in recent years. DoorDash is 7% owned by Singapore's sovereign wealth fund; the Saudi government made an enormous (and critical) early investment in Uber and still owns several

percent of the company's stock.[6] In California, Uber spent $58 million on Proposition 22, which successfully overturned worker protections for Uber drivers.[7] Uber and DoorDash spent millions on a similar ballot measure in Massachusetts in 2023,[8] and poured money into New York City's local elections in 2025.[9]

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.[10] Airbnb received crucial early funding from, and was at that time partly owned by, Moscow-based (and Kremlin-linked) DST Global.[11]

In the New York Times, then-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

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[6] *GIC Private Updates Holdings in DoorDash (DASH)*, NASDAQ (Feb. 13, 2023), https://www.nasdaq.com/articles/gic-private-updates-holdings-in-doordash-dash (accessed Jan. 20, 2026); GIC Private Limited, https://www.gic.com.sg/ (accessed Jan. 20, 2026); Rohan Goswami, *Lucid, Activision, EA, Uber: Here's Where Saudi Arabia's Sovereign Wealth Fund Has Invested*, Business Insider (July 11, 2023), https://www.cnbc.com/2023/07/11/activision-ea-uber-heres-where-saudi-arabias-pif-has-invested.html (accessed January 20, 2026); Eric Newcomer, *The Inside Story of How Uber Got Into Business with the Saudi Arabian Government*, Bloomberg (Nov. 3, 2018), https://bloom.bg/2SWWDgv (accessed January 20, 2026).

[7] 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.

[8] Year-end Report 1/1/2024-12/31/2024, Flexibility and Benefits for Massachusetts Drivers 2024 Committee, Receipts, Massachusetts Office of Campaign and Political Finance, https://ocpf.us/reports/displayreport?id=960761 (accessed January 20, 2026).

[9] Claudia Irizarry Aponte, *Uber and DoorDash Accelerate Spending Local Council Races*, The City (May 29, 2025), https://www.thecity.nyc/2025/05/29/uber-doordash-political-spending-city-council-races-shahana-hanif/ (accessed Jan. 20, 2026.

[10] 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.

[11] *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.

citizens—and enforce the ban on foreign political spending against those that are not."[12]

As Weintraub noted, partial foreign ownership of corporations changes the *Citizens United* calculus. Foreign-influenced corporations are not "associations of citizens," and indeed *Citizens United* expressly reserved questions related to foreign shareholders.[13] And, after deciding *Citizens United*, the Supreme Court in *Bluman v. FEC* specifically upheld the federal ban on foreign nationals spending their *own* money in U.S. elections.[14] In light of the Court's post-*Citizens United* decision in *Bluman*, a restriction on political spending by corporations with foreign ownership at levels capable of influencing corporate governance is constitutional.[15]

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. Corporate shareholders are "the firm's residual

[12] Ellen Weintraub, *Taking on Citizens United*, N.Y. Times, Mar. 30, 2016, http://nyti.ms/1SwK4gK.
[13] Citizens United, 558 U.S. at 349, 354, 356, 362.
[14] 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.
[15] 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. In a decision that tramples over a state's right to protect its own democratic self-governance from foreign interference, a federal district court judge in Minnesota on February 7, 2025, permanently enjoined Minn. Stat. § 211B.15, a Minnesota statute that bars foreign-influenced corporations from spending unlimited money in Minnesota's elections. The decision undermines the state's authority to protect its elections and empowers corporations to serve as conduits through which powerful foreign entities can exert influence over U.S. elections. It is based on a misreading of prior Supreme Court rulings and of the evidence before the court. See further discussion of the ruling in the frequently asked questions section below.

claimants."[16] As explained by the California Court of Appeal, "it is the shareholders who own a corporation, which is managed by the directors. In an economic sense, 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 his dissent from 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]

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.[19]

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[16] 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), *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"); Ito v. Investors Equity Life Holding Co., 135 Haw. 49, 80 (2015) (after "all other creditors have been satisfied," shareholders lay claim to a company's "shares and the residual estate").

[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) (shareholders are the "residual beneficiaries of any increase in the company's value" when it is solvent) (cleaned up).

[18] Citizens United, 558 U.S. at 475 (Stevens, J., dissenting).

[19] 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").

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.[20]

But we need not reach that far. The proposed law sets a threshold at 1% ownership by a single foreign investor, or 5% ownership by foreign investors in aggregate. These levels reflect commonsense thresholds at which owners hold and can exert significant influence over a corporation.

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 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 and often is 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 report by the Center for American Progress,[21] 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 that passed in San Jose in 2024, and that is pending in states such as Illinois, Massachusetts, New York, Pennsylvania and Virginia, and in the U.S. Congress—generally follow the Seattle model.

Federal securities law provides powerful tools of corporate influence to investors at these levels. Seattle's 1% threshold was grounded in a rule of the U.S. Securities and Exchange Commission regarding eligibility of shareholders to submit

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[20] 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.

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

proposals for a shareholder vote—a threshold that the SEC ultimately concluded was, if anything, *too high*.[22] 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.[23] Investors at this level also can wage or threaten to wage proxy fights, with significant success.[24]

This does not mean that every investor who owns 1% of shares will always influence corporate governance. However, 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 material aggregate stake. While foreign investors may not be 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, particularly when it comes to matters of state public policy, or when weighing financial interests against matters of public interest that do not affect them, but which would affect citizens or permanent residents. As the Center for American Progress has noted:

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[22] 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.

[23] *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).

[24] *See, e.g.*, Michael R. Levin, *Activists Wins Another Vote Under Universal Proxy*, Harv. L. Sch. Forum on Corporate Governance (May 18, 2023), https://bit.ly/3obvM2h (accessed Jan. 20, 2026); Lillian Rizzo & Alex Sharman, *Nelson Pelz Increases Disney Stake, Reignited Potential Proxy Battle*, CNBC (Oct. 9, 2023), https://www.cnbc.com/2023/10/09/nelson-peltz-increases-disney-stake-reignites-potential-proxy-battle.html (accessed Jan. 20, 2026).

> 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.[25]

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.[26] In this case, while it may not be appropriate to treat unrelated foreign investors as a single bloc for *all* purposes, it is appropriate to do so in the context of analyzing how corporate management conceive decision-making regarding political spending in U.S. elections.

The point here is *not* that FIBEs do not have connections to the state, or that foreign investment in local companies should be discouraged. 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. They are at best hybrid associations of citizens and non-citizens; the corporate voice is that of the hybrid association, and the corporation spends their money and serves their interests. Even the corporations acknowledge this. 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."[27]

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

[26] 15 U.S.C. §§ 78m(d)(1)-(3).

[27] Steve Coll, *Private Empire: ExxonMobil and American* Power 71 (2012); Michael Sozan, Ctr. for Am. Progress, *Ending Foreign-Influenced Corporate Spending in U.S. Elections* (Nov. 21, 2019), at 19, https://ampr.gs/2QIiNQT.

III. Frequently asked questions

Does this bill affect individual immigrants?

No. The bill regulates corporate political spending by for-profit business entities. Individuals who are not citizens or permanent residents are barred from election spending by federal law.

Is the bill's threshold triggered by owners who are (a) green card holders, (b) dual U.S.-foreign citizens, or (c) U.S. citizens residing abroad?

(a) No; (b) no; and (c) no.

Has this bill been endorsed by leading scholars and experts?

Similar bills in other parts of the country have generally 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 (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 former Federal Election Commissioner Ellen Weintraub, expert in election law.[28]

Does this 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.[29] 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 this 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

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[28] *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.

[29] 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.

or the appearance of corruption, and (2) protecting democratic self-government against foreign influence. The second interest is triggered where, as here, the legislation in question limits foreign spending in, or influence over, U.S. elections. The bill may well prevent corruption; but the state's primary interest is in protecting its own sovereignty.

As Judge (now Justice) Kavanaugh explained in *Bluman*, Illinois's concern for its elections "is part of a common international understanding of the meaning of sovereignty and shared concern about foreign influence over elections." *Bluman*, 800 F.Supp.2d at 291–92. The public "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."[30] The U.S. Court of Appeals for the Ninth Circuit has confirmed that this interest applies to state elections as well.[31]

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.[32] In the specific context of political spending, the state's interest is compelling enough to warrant a total prohibition on foreign nationals, governments, or entities spending directly or indirectly on U.S. elections. Indeed, in *Bluman v. FEC*, the lead plaintiff—a practicing attorney who was licensed to practice law in New York, who had a work visa, and was educated in and worked in the United States—wanted to make small contributions to three candidates and "to print flyers . . . and to distribute them in Central Park."[33] These contributions and expenditures were prohibited by the federal statute, and the court upheld the ban on all of them.

In other words, the court found that this total prohibition on spending by foreign actors—which blocked a visa-holder from printing flyers—is narrowly tailored to serve the powerful, compelling state interest in protecting democratic self-government. Given that, a ban on corporate political spending by corporations

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[30] Bluman v. Fed. Election Comm'n, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012).
[31] United States v. Singh, 924 F.3d 1030, 1042 (9th Cir. 2019).
[32] *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).
[33] *Id.* at 285.

with material foreign ownership, with the potential for far greater influence on elections than one individual printing flyers, is also narrowly tailored to the same interest.

Does this bill go further than the federal statute at issue in Bluman?

Yes. The federal statute prevents foreign entities from spending money directly in federal, state, or local elections.[34] The proposed bill will extend that prohibition to companies in which those same foreign entities are material owners or investors.

Has the Supreme 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 declined to reach that question. 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.[35] 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."[36]

Is another court considering whether similar laws are constitutional?

In a decision that tramples over a state's right to protect its own democratic self-governance from foreign interference, a federal district court judge in Minnesota on February 7, 2025, permanently enjoined Minn. Stat. § 211B.15, a Minnesota statute that bars foreign-influenced corporations from spending unlimited money in Minnesota's elections. The decision undermines the state's authority to protect its elections and empowers corporations to serve as conduits through which powerful foreign entities can exert influence over U.S. corporations. And it is based on a misreading of prior Supreme Court rulings and of the evidence before the court.

The ruling veers sharply from Supreme Court precedent, which has recognized that states have a compelling interest in protecting its democratic self-

[34] 52 U.S.C. § 30121, formerly codified as 2 U.S.C. § 441e.
[35] *Citizens United*, 558 U.S. at 362.
[36] *Bluman*, 800 F. Supp. 2d at 292 n.4.

government. It also fails to properly account for the significant evidence the State of Minnesota put before the court that (1) minority shareholders that satisfy the law's threshold can and do exert direct and indirect influence over corporate decision-making; (2) that such influence is hidden from public view and impossible to track; (3) that foreign governments are seeking to influence U.S. elections and have spent millions of dollars to do so; and (4) that foreign entities in fact have used corporations to unlawfully funnel money into U.S. elections. Further, the ruling provides foreign-influenced corporations with protections to which individuals are not entitled and demands states meet arbitrarily high evidentiary standards to support its interest in democratic self-government.[37]

The district court of Maine, in a decision affirmed by the First Circuit, also has temporarily enjoined a different law, which prohibits spending by corporations materially owned by foreign governments, and which did not draw from the model upon which this bill is based. These decisions, too, significantly misapprehend Supreme Court precedent and corporate governance. The injunction is temporary, while Maine continues to vigorously defend its law.

These rulings are not binding on courts with jurisdiction over Illinois. And not all laws prohibiting foreign-influenced political spending have faced legal challenges. Seattle prohibited FIC political spending in January 2020 and San Jose, California did the same in January 2024; both laws are uncontested.

Unless and until the Supreme Court considers this issue again, courts are bound by the premise of *Bluman*: that states have a compelling interest to preserve their democratic self-government from the encroachment of foreign money and influence.

Do corporations know who their shareholders are?

Managers of privately-held corporations know or can immediately obtain the identity of all shareholders at all times. Managers of publicly-traded corporations easily can obtain a complete list of 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. They could easily do the same on

[37] Our further analysis of this ruling and a link to the court's decision is available at https://freespeechforpeople.org/free-speech-for-people-statement-on-the-federal-district-court-ruling-in-minnesota-chamber-of-commerce-v-choi/.

the dates that they wish to make political contributions or expenditures. 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.[38]

How many companies would be covered by this 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."[39] By 2019, that figure had increased to 40%.[40] 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.[41] It is much more difficult to obtain data regarding ownership of privately-held companies, but generally most small local businesses have zero foreign ownership and would not be subject to this law's political spending prohibition.

Does this bill create a compliance burden for small businesses?

As noted above, most small local businesses have zero foreign ownership, and they know it. In that case, they can easily provide a statement certifying that, after due inquiry, the company was not a foreign-influenced company (as defined by the law) on the date the independent expenditure or contribution was made.

For those few small businesses that do have a foreign investor, they typically know exactly who it is and how much the foreign investor owns. Thus, they can easily determine whether the foreign investment exceeds the thresholds (in which case they are prohibited from using corporate money for political spending) or not (in which case they can confidently provide the statement). Finally, the statement of certification explicitly only requires a reasonable inquiry. In most cases, this will be

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

resolved by the address—an address in a foreign country establishes that the investor is foreign unless the investor is known to be a U.S. citizen residing abroad, and an address in the U.S. establishes a presumption that the investor is domestic.

Does this bill violate the rights of U.S. investors?

No. Individual U.S. investors may spend unlimited amounts of their *own* money on elections. Nor does the bill restrict the ability of U.S. investors to spend their money through the vehicle of a corporation in which they share ownership in association with other U.S. citizens. It only limits their ability to spent money through the vehicle of a corporation that is at best an association of citizens and non-citizens.

Their right to invest in a corporation with that expectation is limited by valid restrictions imposed on the hybrid corporate association of citizens and non-citizens. 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. And a recent U.S. Supreme Court decision, written by Justice Kavanaugh, made it clear that U.S. citizens "cannot export their own First Amendment rights" to the foreign entities with which they associate.[42] 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 with non-citizens.

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

[42] Agency for Int'l Devel. V. Alliance For Open Society Int'l, 591 U.S. 430, 437-38 (2020) (upholding law that placed speech restrictions on foreign organizations that receive U.S. government funding).

> 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.[43]

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.[44] 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. 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.[45] 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 corporation's speech rights derive from its shareholders. The corporation speaks for and acts in the interests of its shareholders. 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 directly and indirectly: they can submit shareholder resolutions; they can wage proxy battles; they can wield their control over the selection and dismissal of directors on the board; they can dump or threaten to dump their shares to pressure the corporation to take actions; and they can simply pick up the phone and call the corporate executives. And much of its influence will not leave a paper trail.

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[43] Coates et al., *supra* note 39, at 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957.
[44] *See* 47 U.S.C. § 310(b).
[45] *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).

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.[46]

Does this bill apply to non-profits?

The bill applies only to for-profit entities. It does not regulate non-profit organizations, including trade associations. Federal law already substantially addresses non-profit organizations that receive a contribution directly from a foreign national.[47] This bill pertains to foreign owners of U.S. corporations, for which there is no analogy in a non-profit, which has no owners.

What about trade associations with members that are foreign-influenced companies?

If a trade association establishes or qualifies as a political committee or incidental committee stating that money contributed to it will be used in candidate elections, this bill specifically provides that the committee may dedicate any contributions that do *not* satisfy the law for other lawful purposes. For example, a trade association might set aside funds received from businesses that did not submit a statement of certification and use those funds for activities *other than* spending them on candidate elections.

Does this bill apply to labor unions?

No. We are unaware of evidence that any money whatsoever from foreign members' dues is ever spent by unions in U.S. elections. As for noncitizen, non-permanent resident workers who may be members of U.S. labor unions, they 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, this law would apply only to foreign

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[46] *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).

[47] *See* 52 U.S.C. § 30121(a)(2).

investors who are physically located abroad.[48] Under the Supreme Court's 2020 decision in *Agency for International Development,* foreign entities located abroad have no rights under the U.S. Constitution.[49]

What compliance obligations does this bill impose on candidates and committees?

None. The compliance mechanism built into the bill is simple and effective; it requires only that, within seven days after making a political contribution or expenditure, that the CEO of the contributing corporation provide a statement of certification that the corporation is not a foreign-influenced corporation. This bill does not impose any obligations or requirements on candidates or committees, and the obligation on the corporate contribution is minimal, efficient, and effective.

IV. Conclusion

We urge you to support HB 3071 to prohibit foreign-influenced business entity election spending in Illinois.

Sincerely,

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Ben Clements, Board Chair and Senior Legal Advisor
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[48] 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 presumably not be a foreign national "outside the United States."

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