

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 953 (Pacheco) – As Amended March 24, 2025

SUBJECT: Political Reform Act of 1974: contributions and expenditures by foreign nationals.

SUMMARY: Prohibits foreign nationals, except for Deferred Action for Childhood Arrivals (DACA) recipients, from making contributions or expenditures in connection with state and local elections. Specifically, **this bill**:

- 1) Expands a provision of law that prohibits foreign governments and foreign principals, as defined, from making, directly or through any other person, a contribution, expenditure, or independent expenditure (IE) in connection with the qualification or support of, or opposition to, a state or local ballot measure, or in connection with the election of a candidate to state or local office, such that the prohibition also applies to foreign nationals, as defined.
- 2) Defines "foreign national," for the purposes of this bill, as a person who is not a citizen of the United States (US) and who is not lawfully admitted for permanent residence, but provides that the term "foreign national," does not include a person who has been granted deferred action, and whose deferred action has not expired, under the federal DACA program, as described in guidelines issued by the US Department of Homeland Security.
- 3) Makes various findings and declarations, and makes corresponding and technical changes.

EXISTING STATE LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 2) Prohibits a foreign government or foreign principal from making, directly or through any other person, a contribution, expenditure, or IE in connection with the qualification or support of, or opposition to, a state or local ballot measure, or in connection with the election of a candidate to state or local office. Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure, or in connection with the election of a candidate to state or local office.
 - a) Defines "foreign principal," for the purposes of these restrictions, to include the following:
 - i) A foreign political party;
 - ii) A person outside the US, unless either of the following is established:
 - (1) The person is an individual and a citizen of the US; or,

- (2) The person is not an individual, and is organized under or created by the laws of the US or of any state or other place subject to the jurisdiction of the US and has its principal place of business within the US;
 - iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
 - iv) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the US nor a lawfully admitted permanent resident of the US.
- b) Provides that these restrictions do not prohibit a contribution, expenditure, or IE made by a lawfully admitted permanent resident.
 - c) Provides that a person who violates these provisions is guilty of a misdemeanor and shall be fined an amount equal to the amount contributed or expended. (Government Code §85320)
- 3) Permits the FPPC to impose administrative penalties of up to \$5,000 per violation of the PRA. (Government Code §83116)

EXISTING FEDERAL LAW:

- 1) Prohibits a foreign national, directly or indirectly, from doing either of the following in connection with a federal, state, or local election:
 - a) Making a contribution or donation of money or other thing of value, or an express or implied promise to make a contribution or donation; or,
 - b) Making an expenditure, IE, or disbursement for an electioneering communication. (52 USC §30121(a)(1))
- 2) Prohibits a person from soliciting, accepting, or receiving a contribution or donation made by a foreign national in connection with a federal, state, or local election. (52 USC §30121(a)(2))
- 3) Defines "foreign national," for the purposes of the prohibitions described above, as either of the following:
 - a) A government of a foreign country; a foreign political party; or a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
 - b) An individual who is not a citizen or a national of the US and who is not lawfully admitted for permanent residence in the US. (52 USC §30121(b))

- 4) Establishes the Federal Election Commission (FEC), and makes it responsible for the administration and enforcement of the Federal Election Campaign Act (FECA), including the restrictions on contributions and expenditures by foreign nationals described above. (52 USC §30106)

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Now more than ever, our democracy is facing significant challenges, including threats from foreign influence in our elections – undermining our ability to govern ourselves and make independent decisions. Under current law, there are no restrictions prohibiting foreign nationals from making monetary contributions or expenditures to support or oppose ballot measures in California.

Because the definition of “foreign principal” in state law is based on the location of the individual (outside the United States), state law would permit a foreign national to enter the country and make a contribution, expenditure, or independent expenditure in connection with a ballot measure, even though that person would be prohibited from making the contribution or expenditure if they were located outside of the United States.

AB 953 closes this critical gap by prohibiting foreign nationals from making contributions or expenditures related to state and local ballot measures, regardless of their physical location.

- 2) **Foreign Campaign Spending, Federal Law, and Previous Legislation:** As detailed above, federal law prohibits foreign nationals from making contributions in connection with federal, state, and local elections. Under this federal law, the term “foreign national” is defined to include not only individuals who are not citizens or nationals of the US and who are not lawfully admitted for permanent residence in the US, but also to include foreign governments, foreign political parties, and certain associations of individuals that are organized under the laws of or that have their principal place of business in a foreign country. According to information from the FEC, “[t]he ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the Foreign Agents Registration Act (FARA), an ‘internal security’ statute. The goal of the FARA was to minimize foreign intervention in US elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign nationals. In 1974, the prohibition was incorporated into [FECA], giving the [FEC] jurisdiction over its enforcement and interpretation.”

Until 2002, the restriction on contributions by foreign nationals specifically applied to contributions made “in connection with an election to any political office.” Because that

language was limited to elections for *office*, it was the position of the FEC that contributions from foreign nationals relating exclusively to ballot measures were not restricted by federal law. In 2002, the restriction on foreign contributions was amended to make it applicable to any contribution made "in connection with a Federal, State, or local election," though it is unclear whether that change was intended to cover ballot measure elections. In a 2024 advisory opinion, the FEC concluded that ballot initiatives and referenda are not "Federal, State, or local election[s]" for the purpose of the federal prohibition on campaign contributions by foreign nationals.

In 1997, the Legislature approved and Governor Wilson signed SB 109 (Kopp), Chapter 67, Statutes of 1997, to prohibit foreign governments or foreign principals from making contributions, expenditures, or IEs in connection with state or local ballot measures. While SB 109 was modeled after the federal restrictions on campaign contributions and expenditures, it did not seek to regulate foreign contributions made in connection with elections for *office* because such contributions were already restricted by federal law. Instead, SB 109 was limited to foreign spending in connection with ballot measure elections, thereby restricting foreign spending that was not covered by federal law.

More recently, AB 319 (Valladares), Chapter 313, Statutes of 2021, amended state law to prohibit contributions, expenditures, and IEs by foreign governments and foreign principals in connection with *candidate* elections. Even though such contributions and expenditures were already prohibited under federal law, AB 319 imposed similar restrictions under state law due to concerns about the FEC's willingness and ability to bring prompt enforcement actions under federal law for violations related to campaign contributions and expenditures by foreign governments and foreign principals.

- 3) **Contributions and Expenditures by Individual Foreign Nationals and Previous Legislation:** While state and federal law similarly restrict foreign spending made in connection with candidate elections, those laws differ slightly with respect to the individuals covered. Specifically, while federal law restricts contributions and expenditures by individuals who are not citizens or nationals of the US and who are not lawfully admitted for permanent residence in the US, state law does not restrict contributions or expenditures by individuals who are legally present in the US, even if those individuals are not legal permanent residents. The initial version of SB 109 (and an unsuccessful bill from the preceding legislative session) would have restricted contributions by foreign nationals who were legally present in the US but who did not have legal permanent residency. That restriction was amended out of the bill to address opposition: specifically, the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union of California (ACLU-California) alleged that the restriction on contributions by foreign nationals who were legally admitted into the US was an unconstitutional limitation on the rights of free speech of those individuals. In their opposition letters, MALDEF and ACLU-California both noted that courts had held that foreign nationals who were legally admitted into the US had the same First Amendment Rights as citizens in *Rafedie v. INS* (1992), 795 F.Supp. 13.

As a result, certain foreign nationals who are legally present in the US—including people in the US temporarily on work and student visas, and certain refugees and asylees—are not

prohibited by *state law* from making campaign contributions or expenditures in connection with candidate elections, even though such contributions and expenditures are prohibited under *federal law*. Relatedly, state law does not restrict those individuals from making contributions or expenditures in connection with ballot measure elections.

AB 774 (Harper) of 2017, sought to prohibit foreign nationals who are legally present in the US, but who are not legal permanent residents, from making contributions, expenditures, or IEs in connection with state or local candidates and ballot measures. AB 774 failed passage in the Assembly Elections & Redistricting Committee (the predecessor to this committee) on a 3-1 vote.

- 4) **Potential Constitutional Issues:** As detailed above, prior efforts to restrict the ability of foreign nationals who are legally present in the US to make contributions and expenditures in connection with *ballot measures* were unsuccessful due in part to concerns that such restrictions were unconstitutional. While federal courts upheld the federal restrictions that prohibit foreign nationals who are not legal permanent residents from making contributions in connection with candidate races in *Bluman v. Federal Election Commission* (2011), 800 F. Supp. 2d 281, it appears that federal courts have not had the opportunity to determine whether similar limitations on contributions and expenditures in connection with *ballot measure* races would be permissible.

The distinction between contributions and expenditures made in connection with candidate races and those made in connection with ballot measures is not inconsequential, as courts have been willing to uphold restrictions on contributions to candidates while striking down similar restrictions on contributions in connection with ballot measures. For instance, courts have upheld the constitutionality of monetary limits on contributions to candidates (*Buckely v. Valeo* (1976), 424 US 1), but found similar monetary limits on contributions to ballot measure campaigns to be unconstitutional (*Citizens Against Rent Control v. Berkeley* (1981), 454 U.S. 290). In fact, when upholding the restriction on foreign nationals making candidate contributions in *Bluman*, the court rejected the argument that its ruling necessarily meant that bans on issue advocacy by foreign nationals would be upheld against a constitutional challenge.

In light of the court's ruling in *Bluman*, it appears likely that this bill's restrictions on campaign spending by foreign nationals in connection with candidate elections would be safe from a federal constitutional challenge. It is less clear, however, whether the restrictions on campaign spending in connection with ballot measure elections would be upheld if challenged. While this bill includes findings noting that federal law prohibits foreign nationals from making contributions and expenditures in connection with federal, state, and local elections, those findings do not address the distinction between spending in connection with candidate elections (which are covered by federal law) and spending in connection with ballot measure elections (which, based on the FEC's advisory opinion discussed above, are not covered by federal law).

The author notes that an Appellate Court opinion in Washington State upheld a similar Washington law that restricts campaign contributions and expenditures by foreign nationals both in connection with candidate elections and ballot measure elections. While the decision

did uphold the law, finding that it serves a compelling government interest of excluding non-citizens from participating in the state's political processes, the opinion did not distinguish between contribution and expenditures made in connection with *candidate* elections and those made in connection with *ballot measure* elections.

- 5) **Is There a Problem?** Notwithstanding the author's concern about the possibility that state law could allow a foreign national to enter the country and make a contribution, expenditure, or IE in connection with a ballot measure, it is unclear whether such activity is actually occurring. Committee staff is unaware of evidence that ballot measure campaigns in California are being legally funded by foreign nationals who are temporarily legally present in the country.
- 6) **FPPC Enforcement Action Related to Foreign Contributions:** In 2015, the FPPC brought an enforcement action for the first time in a case involving foreign contributions made in connection with a ballot measure. That enforcement action was initiated after the FEC considered an enforcement action of its own, and declined to take action in that case.

Measure B was a Los Angeles County initiative dealing with adult film production that appeared on the ballot at the November 2012 general election. In October 2012, one of the proponents of Measure B filed a complaint with the FEC alleging that the committee opposing Measure B had received contributions made by a foreign national, and further alleging that those contributions violated the FECA. In August 2014, the Associate General Counsel of the FEC recommended dismissing the complaint due in part to a "lack of clear legal guidance" on whether federal law restricts contributions made by foreign nationals in connection with ballot measures. The FEC was equally divided on whether to dismiss the complaint, and in March 2015, it ultimately closed the file on the complaint without taking further action.

In July 2015, after the FEC's action to close its file, the FPPC received a sworn complaint in connection with the same matter. In December 2015, the FPPC reached a stipulated settlement in that case. As detailed in that settlement, Manwin USA, a Delaware-based subsidiary of Manwin International, a Luxembourg-based corporation, made contributions totaling more than \$268,000 to the committee opposing Measure B. In addition, Froytal, a Cyprus-based subsidiary of Manwin International, made a contribution of \$75,000 to the committee opposing Measure B, although that contribution subsequently was returned by the committee. Even though Manwin USA was incorporated under Delaware-law, its contributions violated California law because it was a subsidiary of a foreign corporation and the decision to contribute funds was made by an officer of the foreign corporation who was neither a US citizen nor a lawfully admitted permanent resident of the US.

The FPPC fined Manwin USA a total of \$20,000 for the unlawful contributions that it made, fined Froytal \$5,000 for the unlawful contribution that it made, and fined the committee opposing Measure B and its treasurer a total of \$20,000 for accepting unlawful contributions made by foreign principals. The FPPC also imposed an additional \$16,500 in fines for violations of reporting and disclosure laws that occurred in connection with the unlawful foreign contributions. This case remains the only enforcement action that the FPPC has

brought for a violation of the provision of state law that prohibits foreign contributions and expenditures in connection with a ballot measure.

- 7) **Arguments in Support:** The sponsor of this bill, the Fair Political Practices Commission, writes in support:

Under current law, there is no prohibition on foreign nationals making monetary contributions or expenditures to support or oppose ballot measures in California.

Because the definition of “foreign principal” in state law is centered on the location of the individual (outside the United States), state law permits a foreign national to enter the country and make a contribution, expenditure, or independent expenditure in connection with a ballot measure, even though that person would be prohibited from making the contribution or expenditure if they were located outside of the United States.

Ballot measures can add to, significantly change, or repeal the very laws that govern Californians. Foreign interference in state and local laws poses a threat to our stability and democracy.

AB 953 would close this gap in state law to prohibit a foreign national from making a contribution, expenditure, or independent expenditure in connection with a state or local ballot measure, consistent with state and federal law that prohibits foreign nationals from making contributions or expenditures in connection with candidates.

- 8) **Suggested Amendment:** The existing state law that limits campaign contributions and expenditures by foreign governments and foreign principals not only prohibits those entities from *making* such contributions and expenditures, but it also prohibits a person or committee from *soliciting or accepting* a contribution from those entities. While this bill similarly would prohibit foreign nationals from making campaign contributions and expenditures, it would not prohibit a person or committee from soliciting or accepting a contribution from foreign nationals. The reason for this distinction is unclear.

Accordingly, to ensure consistency in state law related to campaign contributions from foreign entities, committee staff recommends that this bill be amended to prohibit a person or committee from soliciting or accepting a contribution from a foreign national in connection with a state or local ballot measure or in connection with the election of a candidate to state or local office.

- 9) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

Fair Political Practices Commission (Sponsor)

Opposition

None on file.

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