Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1819 (Lee) – As Introduced February 7, 2022

SUBJECT: Political Reform Act of 1974: contributions and expenditures by foreign-influenced business entities.

SUMMARY: Prohibits campaign contributions and expenditures by business entities that have 1% or greater ownership by a single foreign principal, or 5% or greater collective ownership by multiple foreign principals, as specified. Specifically, **this bill**:

1) Defines a "foreign-influenced business entity" (FIBE), for the purposes of this bill, as a business entity in which any of the following occur:

    a) A single foreign principal holds, owns, controls, or otherwise has direct or indirect beneficial ownership of 1% or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the entity.

    b) Two or more foreign principals, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of equity or voting shares in an amount that is equal to or greater than 5% of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the entity.

    c) One or more foreign principals participate in any way, directly or indirectly, in the business entity's decisionmaking process with respect to contributions or expenditures of funds in connection with a ballot measure or election.

2) Prohibits a FIBE, 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, any state or local ballot measure or in connection with the election of a candidate to state or local office.

3) Requires a business entity, within seven days after making a contribution, expenditure, or IE, to file with the filing officer and the candidate or committee to which or for which the contribution or expenditure is made a statement of certification, signed by the chief executive officer of the business entity under penalty of perjury, avowing that, after due inquiry, the business entity was not a FIBE on the date the contribution or expenditure was made.

    a) Requires the business entity, for the purpose of this statement of certification, to ascertain beneficial ownership in a manner consistent with the requirements of the Corporations Code or, if the business entity is registered on a national securities exchange, as set forth by specified provisions of federal law.

    b) Requires a business entity to provide a copy of the statement of certification to any other candidate or committee to which the business entity provides a contribution upon receipt of a request for such a copy.

4) Prohibits a person or committee from soliciting or accepting a contribution from a FIBE.

5) Prohibits a person who receives a contribution or donation from a business entity from using that contribution or donation, directly or indirectly, to make a contribution, expenditure, or IE in connection with a ballot measure or election, or to contribute, donate, transfer, or convey funds to another person for purposes of making a contribution, expenditure, or IE in connection with a ballot measure or election, unless the person also receives from the business entity a copy of the statement of certification that the business entity is not a FIBE. Requires a person who uses a contribution or donation from a business entity for these purposes to separately designate, record, and account for the funds and ensure that disbursements for these purposes are made only from funds that comply with the requirements of this bill.

6) Provides that a person or committee may rely in good faith on a statement of certification by the business entity that it is not a FIBE for the purposes of this bill, as specified.

7) Provides that the term "foreign principal," for the purposes of existing state law that prohibits foreign principals from making contributions, expenditures, and IEs in connection with a ballot measure or candidate election, includes a business entity in which a foreign principal, as specified, or a foreign government holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than 50 percent of the total equity or outstanding voting shares.

8) Specifies that the provisions of this bill do not prohibit a business entity from sponsoring a sponsored committee, as specified, nor does it require a statement of certification from the sponsor of a committee solely due to specified activities relating to sponsoring the committee.

9) Makes various findings and declarations.

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).

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 United States (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.

3) Defines “business entity,” for the purposes of the PRA, as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association.

EXISTING FEDERAL LAW:

1) Prohibits a foreign national, directly or indirectly, from doing any of the following:

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, in connection with a federal, state, or local election;

b) Making a contribution or donation to a committee of a political party; or,

c) Making an expenditure, IE, or disbursement for an electioneering communication, as defined.

2) Prohibits a person from soliciting, accepting, or receiving a contribution or donation made by a foreign national to a committee of a political party, or in connection with a federal, state, or local election.

3) Defines "foreign national," for the purposes of the prohibitions described above, to include 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, as defined.

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.

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

COMMENTS:

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

> In President George Washington's Farewell Address of 1796, he said, "The insidious wiles of foreign influence… prove [to be] one of the most baneful foes of [a] republican government." This founding philosophy of our nation laid the groundwork for many restrictions of foreign influence in politics we have today.
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> Investments in US companies have increased dramatically in recent years. In 1982, foreign investors owned about 5% of all US corporate equity (public and private). By 2019, foreign ownership jumped to an astonishing 40%. Since 2010, neither Congress nor the Federal Election Commission have taken action to resolve the issue of foreign-influenced corporations exerting influence in our elections.
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> AB 1819 would bar foreign-influenced corporations from contributing to candidates, parties, or committees (including Super PACs), or from engaging in their own direct election spending. By closing a loophole that allows corporations partly or wholly owned by foreign interests to spend money and influence political campaigns, AB 1819 is crucial to protecting the integrity of California's democratic self-government.

2) **Foreign Campaign Spending and Previous Legislation**: As detailed above, federal law prohibits foreign nationals from making contributions and expenditures in connection with federal, state, and local elections. 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 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. The legislative history suggests that SB 109 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. Last year, in response to concerns that the FEC may not be able to adequately enforce the federal prohibition against foreign principals making contributions and expenditures in candidate elections, the Legislature approved and Governor Newsom signed AB 319 (Valladares), Chapter 313, Statutes of 2021. AB 319 expanded the provisions of SB 109 to prohibit, under state law, foreign governments and foreign principals from making contributions or expenditures in connection with candidate elections, thereby giving the FPPC the authority to bring enforcement actions in situations where those entities make contributions or expenditures in connection with state or local elections in California.

There is one notable difference between the scope of the federal law and California law that restrict campaign contributions and expenditures by foreign entities. Federal law restricts contributions or expenditures by an individual who is not a citizen or a national of the US, and is not lawfully admitted for permanent residence in the US. California's law, on the other hand, 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.

With respect to business entities, however, state and federal law have similar tests for determining whether a business entity is a foreign principal, and thus subject to the restrictions on making contributions and expenditures. Specifically, a business entity is prohibited from making contributions and expenditures if it is organized under the laws of a foreign country or if its principal place of business is in a foreign country. Relatedly, both state and federal laws restrict individuals who are foreign nationals from participating in decisions to make campaign contributions or expenditures, including by business entities. In other words, for the purposes of the existing federal and state restrictions on contributions and expenditures by foreign principals, the determination of whether a business entity is permitted to make contributions or expenditures depends on where the business entity is organized, the location of its principal place of business, and the nationality of the individuals who are involved in making decisions regarding the business entity's contributions and expenditures. Additionally, both federal and state laws have protections that prevent a domestic business entity from simply serving as a pass-through for campaign spending that is funded by a foreign principal.

This bill additionally would restrict contributions and expenditures by a business entity if the percentage of equity in the business entity held by one or more foreign principals exceeds certain thresholds. In other words, a business entity that is organized under the laws of the US and has its principal place of business in the US, and where all individuals involved in the decisions regarding the business entity's contributions and expenditures are US citizens and legal permanent residents, could be prohibited by this bill from making contributions or

expenditures in state and local elections in California depending on the nationality of those that hold shares in the business entity.

3) **Corporate Campaign Spending and Potential Constitutional Issues**: Although federal courts have upheld the existing federal law that prohibits foreign nationals from making campaign contributions and expenditures, the constitutionality of this bill is less clear, and it could be susceptible to a challenge that its provisions violate the First Amendment to the US Constitution.

In January 2010, the US Supreme Court issued its ruling in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, a case involving a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. In its decision, the Supreme Court struck down the 63-year old law that prohibited corporations and unions from using their general treasury funds to make IEs in federal elections, finding that the law unconstitutionally abridged the freedom of speech.
In reaching its decision, the *Citizens United* court found that the "Government may not suppress political speech on the basis of the speaker's corporate identity," and that the court has "rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons.'" The court's decision in *Citizens United* avoided the issue of whether it would be permissible to restrict contributions and expenditures by foreign individuals and associations, noting that the law before the court "is not limited to corporations or associations that were created in foreign countries or funded predominately by foreign shareholders," and that the law "would be overbroad even if we assumed, arguendo, that the Government has a compelling interest in limiting foreign influence over our political process."

A little over a year and a half after the *Citizens United* decision, a federal three-judge panel upheld the federal law prohibiting foreign nationals from making campaign contributions and expenditures in *Bluman v. Federal Election Commission* (2011), 800 F. Supp. 2d 281. In upholding the law, the *Bluman* court stated that "[i]t 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," and that "the United States has a compelling interest for the 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." The court concluded that "[a] statute that excludes foreign nationals from political spending is therefore tailored to achieve that compelling interest." The US Supreme Court subsequently summarily affirmed the judgement of the District Court in *Bluman*.

Although the *Bluman* court upheld federal restrictions on campaign spending by foreign nationals, the plaintiffs in that case were two individuals who were lawfully in the US on temporary work visas. Accordingly, the court's analysis focused on the law as it applied to *individuals*. In a footnote in its opinion, the *Bluman* court acknowledged that its holding in

that case meant that foreign corporations were also prohibited from making campaign contributions and expenditures. The footnote also noted, however, that since the 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." To the knowledge of committee staff, no federal court has had the occasion to consider such a question.

Although it is not entirely without potential complications, there are relatively few variables to consider when establishing rules that govern the determination of whether an *individual* is a foreign national for the purposes of making campaign contributions and expenditures. By contrast, there are far more variables to consider when establishing rules to determine whether an *association of individuals* (including a business entity) is a foreign national. Should an association of individuals be considered a foreign national—and prohibited from making campaign contributions and expenditures—if even a single one of its members is a foreign national? Or if some specified percentage of its members are foreign nationals? Should the test be based on the source of the money used by the association of individuals to make contributions or expenditures? Based on the nationality of the individuals who make the decisions about making campaign contributions and expenditures? Or based on the jurisdiction where the association was formed or where it operates?

As explained in greater detail above, existing state and federal law consider a number of factors when determining whether an association of individuals that makes campaign contributions or expenditures is a foreign national. Those factors include the source of the funds used by the association for making those contributions or expenditures, the jurisdiction in which the association was organized and in which it operates, and the nationality of individuals who make the association's political spending decisions. State and federal laws do not, however, generally consider the nationality of individual members of an association of individuals for the purposes of determining whether the association is a foreign national, except to the extent that it is relevant for determining the source of funding used for political spending and the identity of the individuals who are making the association's political spending decisions.

This bill makes the nationality of individual constituent members of an association of individuals relevant for the purposes of determining whether that association is a foreign national. Specifically, this bill deems a business entity to be "foreign-influenced," and thus prohibited from making contributions and expenditures in California elections, if a single foreign principal owns 1% or more of the business' total equity, or if two or more foreign principals collectively own 5% or more of the business' total equity. An analysis prepared by the Center for American Progress (CAP)—one of the co-sponsors of this bill—suggests that this change would dramatically expand the scope of state law restricting campaign contributions and expenditures by foreign nationals. In particular, the CAP study suggests that almost all very large, publicly-traded corporations would be considered FIBEs under the provisions of this bill. Specifically, based on an analysis of 111 US-based publicly traded corporations in the S&P 500 stock index, the CAP study found that 74% of the studied corporations had a single foreign shareholder who owned 1% or more of the corporation's total equity, and that 98% of the studied corporations had multiple foreign shareholders who collectively held at least 5% of the corporation's total equity. The CAP report also suggests that smaller corporations are less likely to be considered FIBEs under this bill. Specifically, the report found that approximately 28% of smaller publicly-traded corporations met the 5%

aggregate foreign ownership threshold established by this bill based on a random sample of 10% of the corporations that are listed in the Russell Microcap Index (an index that is made up of smaller publicly traded corporations).

In their arguments supporting these thresholds, proponents of this bill point to testimony from corporate governance experts that makes a persuasive case that 1% ownership of a corporation confers substantial influence over corporate governance. Additionally, the bill's supporters argue that the shareholders of a corporation should be considered the *source* of the money in the corporation's treasury, since the shareholders own the corporation and are the residual claimants on the corporation's assets. Accordingly, this bill's supporters contend that campaign contributions and expenditures made by FIBEs as defined by this bill are being made with funds that are at least partially derived from foreign principals. By restricting the ability of FIBEs to make contributions and expenditures, then, the proponents maintain that this bill limits the ability of foreign principals to participate in activities of democratic self-government in a manner that is consistent with the court's decision in *Bluman*.

The proponents and author of this bill additionally provide evidence of significant campaign spending by corporations that would be classified as FIBEs under this bill. According to the same CAP report referenced above, for example, the 111 US-based publicly traded corporations in the S&P 500 stock index that were studied as part of that report disclosed making $443 million in federal and state elections from their corporate treasuries in 2015, 2016, and 2017.

Notwithstanding that evidence of significant campaign spending, the proponents of this bill have not provided information that demonstrates that foreign investors in US-based business entities actually are using or attempting to use their influence over corporate governance to affect the political spending decisions of those business entities. That information may be difficult to obtain, since there is no requirement for shareholders of a corporation to publicly disclose their attempts to influence corporate governance. Nonetheless, this bill would have the effect of banning certain business entities from making contributions and expenditures in California elections on the grounds that those business entities are foreign-influenced, even in situations where the foreign shareholders do not participate in or attempt to influence the campaign spending decisions of the business entity in any way.

Such a policy would significantly restrict the ability of a business entity to make contributions and expenditures that are in the interests of the business and its domestic shareholders. In fact, in some situations, this bill could result in a business entity being designated as a FIBE, and thus prohibited from making contributions and expenditures, even where the business entity has less than 1% foreign ownership. For example, if Company A is 50% American owned and 50% foreign owned, this bill defines that company as a "foreign principal." If Company A owns 1% of Company B, then this bill designates Company B as a FIBE, even if the remaining 99% of Company B is American owned. In this situation, Company B would be considered a FIBE even though just 0.5% of the company is foreign-owned.

There are other mechanisms, however, through which the constituent members of a FIBE could participate in elections. The provisions of this bill, for instance, make clear that FIBEs would be permitted to sponsor a committee that receives contributions from officers, employees, and shareholders (other than shareholders who are foreign principals). Relatedly,

nothing in this bill prevents an employee, officer, or individual shareholder of a FIBE from making campaign contributions or expenditures (provided that the individual is not a foreign principal).

Nonetheless, in light of the fact that this bill could restrict the ability of business entities to make contributions and expenditures in elections based on relatively low levels of foreign ownership, including in situations where the foreign shareholders had no involvement in influencing or attempting to influence the business entity's political decisions, it is unclear whether a court would uphold this bill against a challenge that its provisions violate the First Amendment to the US Constitution.

4) **Implications for Nonprofit Organizations**: As detailed above, the PRA defines the term "business entity," as any organization or enterprise operated *for profit*, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association. Accordingly, nonprofit organizations, which often are organized as corporations, would not be considered FIBEs for the purpose of this bill, and would not be required to certify that they are not "foreign-influenced" when making campaign contributions and expenditures.

   While federal tax laws limit the ability of certain types of nonprofit organizations to make contributions to candidates for elective office (notably, charitable organizations that are organized under Section 501(c)(3) of the Internal Revenue Code are prohibited from making contributions to candidates), other types of nonprofit organizations can and do make significant campaign contributions to candidates for elective office. For example, professional and trade associations, which often are organized as nonprofit corporations under Section 501(c)(6) of the Internal Revenue Code, often make campaign contributions to candidates for elective state or local office. Additionally, nonprofit organizations can and do make campaign expenditures in connection with ballot measures (including those organized under Section 501(c)(3) of the Internal Revenue Code, though certain limits do apply).

   Although this bill would *not* result in a nonprofit organization being classified as a FIBE, it nonetheless could have significant implications for the operations of nonprofit organizations that make campaign contributions or expenditures. As is the case with any other entity, this bill would prohibit a nonprofit organization from soliciting or accepting a contribution from a FIBE. Perhaps more significantly, however, this bill additionally prohibits a person who receives a *donation* from a business entity from using that donation, directly or indirectly, for campaign contributions or expenditures unless the person receives a certification that the business entity is not a FIBE. Additionally, this bill requires a person who uses a donation from a business entity for the purpose of making campaign contributions or expenditures to account for the funds used for those contributions or expenditures and to demonstrate that none of the funds used were from FIBEs.

   It is this restriction on donations that especially could affect nonprofit organizations. Under California law, when an entity receives money from another person *for the purposes of making campaign contributions or expenditures*, the money received itself is generally treated as a campaign contribution, subject to required reporting and other restrictions on contributions. Nonprofit organizations, however, often receive donations for purposes other than making campaign contributions and expenditures. Those donations may be designated for specific purposes, or they may be unrestricted donations that are not earmarked or

intended for a specific purpose. In some cases, nonprofit organizations may use some of those unrestricted funds to make contributions or expenditures to support or oppose candidates or ballot measures. Under certain circumstances, California law requires a nonprofit organization to identify certain donors if the organization uses funds received from unrestricted donations to make contributions and expenditures.

Because this bill imposes conditions on the use of a *donation* that is received from a business entity, regardless of whether that business entity is a FIBE, this bill could create new recordkeeping and compliance requirements for nonprofit organizations that make campaign contributions or expenditures. At a minimum, a nonprofit organization would need to be able to demonstrate that none of the funds used by the organization for making campaign contributions or expenditures were derived, directly or indirectly, from a FIBE. Additionally, to the extent that a nonprofit organization uses funds that are derived, directly or indirectly, from a donation from a business entity when making campaign contributions or expenditures, the nonprofit organization would need to maintain documentation that the business entity was not a FIBE on the date that the organization received the donation. It is unclear how burdensome the recordkeeping and compliance requirements of this bill would be for nonprofit organizations that make contributions and expenditures.

5) **Seattle Ordinance**: This bill is similar to an ordinance that the City of Seattle adopted in January 2020, and that was in effect for municipal elections held in Seattle in 2021. The Seattle ordinance, however, did not include the restrictions on donations by FIBEs that are included in this bill, as described in greater detail above. Committee staff is unaware of any legal challenge being brought to the Seattle ordinance.

6) **Suggested Amendments**: Among other provisions, this bill specifies that the prohibition on contributions by foreign principals, foreign governments, and FIBEs includes "a contribution to a committee." According to information from the author of this bill, that language regarding "a contribution to a committee" is intended to eliminate doubt about whether the prohibition applies to contributions to committees. The term "contribution," as it is used in the PRA, however, includes contributions that are made to committees. Accordingly, the inclusion of this language in this bill is unnecessary. Furthermore, the addition of the caveat that the term "contribution," as used in *this* provision of law includes "a contribution to a committee," could create an implication that the term contribution as used *elsewhere* in the PRA does not include a contribution to a committee – an implication that could have significant unintended consequences. In light of this fact, committee staff recommends the following amendment to this bill:

   On page 4, line 23, strike out "including a contribution to a committee,"

   Because the term contribution includes contributions made to committees, this amendment should not have a substantive effect on the operation of this bill, but should help avoid confusion about how the term "contribution" should be interpreted through the rest of the PRA.

   Additionally, committee staff recommends the following technical amendment to this bill:

   On page 3, line 15, strike out "State" and insert "States".

7) **Arguments in Support**: One of the co-sponsors of this bill, Free Speech for People, writes in support:

> Foreign investors are already prohibited by federal law from spending money directly or indirectly to influence U.S. elections, including state and local elections. However, big foreign investors are subverting that federal law through the corporate form when companies with significant foreign investment are allowed to spend unlimited corporate funds to influence our elections. Many corporations—particularly global multinational corporations such as Airbnb, Amazon, and Uber—are owned in substantial part by foreign investors, even sometimes including Russian oligarchs. An investor who owns 1% of stock in a major corporation (typically, hundreds of millions of dollars) is likely one of the company's top 10 investors, and can get the CEO on the phone within 24 hours. Furthermore, executives focus on the interests of the major investors of their companies. As the CEO of ExxonMobil once said, "I'm not a U.S. company and I don't make decisions based on what's good for the U.S." Decisions on California political spending should not be made by companies subject to appreciable foreign influence.
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> In January 2020, Seattle became the first jurisdiction to end foreign-influenced corporate spending in elections with unanimous passage by the Seattle City Council, after Amazon spent $1.5 million to influence local elections there. In addition to California, this model legislation is pending in several other states, and Congressman Jamie Raskin of Maryland has introduced it in the U.S. House of Representatives, with 21 original co-sponsors, with Sen. Elizabeth Warren of Massachusetts including it in her major anti-corruption package. Leading constitutional law and campaign finance experts have endorsed this legislation, including Harvard Law Professors Laurence Tribe and John Coates and Commissioner Ellen Weintraub of the Federal Election Commission.
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> California would be the first state in the country to pass this bold reform and close an enormous loophole for foreign influence in our elections.

8) **Arguments in Opposition**: In opposition to this bill, the California Chamber of Commerce writes:

> AB 1819 is redundant as 'foreign influence' is already prohibited by state and federal law. In this case the proposal is preempted by the Federal Election Campaign Act of 1971, which as amended, prohibits foreign nationals, directly or indirectly, from making contributions 'in connection with a Federal, state, or local election.' Therefore, Congress has already regulated foreign spending in connection with local elections. And where Congress has created a regulatory framework 'so pervasive' that it has left no room for other levels of government to regulate the subject matter, or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' then Congress has preempted the entire field; no other jurisdiction may regulate it, and any attempts will give way to federal law…
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> According to a 2020 memo by Perkins Coie – while the Supreme Court has not

spoken directly on the issue of foreign election financing, it affirmed without opinion a federal three-judge panel decision in *Bluman v. Federal Election Commission*. There, the lower court upheld the federal law prohibiting foreign nationals from making contributions and expenditures in connection with any federal, state, or local election…

The *Bluman* court concluded that the federal ban on foreign-national spending was appropriately tailored to prevent foreign influence, whereas AB 1819 is much broader and would prevent domestic corporations from spending in connection with U.S. elections, ostensibly to prevent foreign influence. The Citizens United Court's brief statement about foreign-national spending would appear to weigh against a regulation as broad as AB 1819 —the Supreme Court hypothesized only about foreign corporations or corporations "funded predominately by foreign shareholders."

Thus, AB 1819's proposal to bar foreign-influenced corporations from making independent expenditures and contributions in furtherance of independent expenditures will be subject to strict scrutiny because it burdens core First Amendment speech. AB 1819 is unlikely to survive such scrutiny, as federal courts have not recognized a compelling interest in restricting the speech of 'foreign-influenced' individuals or entities, nor in regulating U.S. companies with a nominal amount of foreign ownership. When those owners could just as easily be isolated from decisions concerning electoral spending, the law is not narrowly tailored to serve the broader interest of keeping U.S. elections free from foreign influence.

9) **Previous Legislation**: AB 20 (Lee) of 2021 would have prohibited contributions from business entities to candidates for elective office, as specified. AB 20 was heard in this committee on April 29, 2021, and was held in committee without recommendation.

10) **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

Center for American Progress (Co-Sponsor)
Free Speech for People (Co-Sponsor)
Money Out Voters in (Co-Sponsor)
The 5 Gyres Institute
California Environmental Voters
California Federation of Teachers AFL-CIO
California Interfaith Power & Light
Center for Oceanic Awareness, Research, & Education
Council on American-Islamic Relations, California

Courage California
Culver City Democratic Club
Democracy Policy Network
Election Integrity Project California
End Citizens United Action Fund
Fix Democracy First
Groundswell Collective Action
Indivisible CA Statestrong
LA for Democracy Vouchers
League of Women Voters of California
Los Angeles County Democratic Party
Move to Amend
Northern California Recycling Association
Pay 2 Play: Democracy's High Stakes
Plastic Oceans International
Plastic Pollution Coalition
Represent.us, Los Angeles-San Gabriel Valley Chapter
San Mateo County Democratic Party
Sierra Club California
Wishtoyo Chumash Foundation
Working Partnerships USA
Approximately 1,000 individuals indicating support via various petitions and letters

Opposition

California Chamber of Commerce

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