

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 319 (Valladares) – As Amended March 11, 2021

SUBJECT: Political Reform Act of 1974: contributions: foreign governments or principals.

SUMMARY: Prohibits, under state law, contributions, expenditures, and independent expenditures (IEs) by foreign governments and foreign principals in connection with candidate elections. Specifically, **this bill:**

- 1) Prohibits a foreign government or foreign principal, as defined, from making, directly or through any other person, a contribution, expenditure, or IE in connection with the election of a candidate to state or local office.
- 2) Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal, as defined, in connection with the election of a candidate to state or local office.
- 3) 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).
- 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. 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.
 - 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) Permits the FPPC to impose administrative penalties of up to \$5,000 per violation of the PRA, except as specified, and provides for specified civil penalties for violations of the PRA. Provides that any person who violates any provision of the PRA for which no specific civil penalty is provided, shall be liable in a civil action brought by the FPPC or the district attorney or the elected city attorney for an amount up to \$5,000 per violation.

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:

Recent elections have demonstrated the necessity of ensuring that California preserves and improves the integrity of its elections. Currently, the [FEC] inefficiently addresses and adjudicates violations of election law and possesses an overwhelming backlog of hundreds of cases. Because the FEC often deadlocks or is exceptionally slow to hear cases involving foreign interference and contributions from foreign principals, violations involving California elections remain unresolved. To address this, I have introduced AB 319, which will provide California's non-partisan [FPPC] concurrent jurisdiction over issues involving foreign contributions in our state and local elections. This measure will allow California to better protect the integrity of its elections by empowering the FPPC to prosecute violations of existing law.

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. 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.

Aside from the fact that state law is limited to foreign spending made in connection with ballot measures, state and federal law differ in one other important respect. 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.

- 3) **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.

- 4) **Federal Election Commission:** As noted above, federal law already prohibits foreign governments and foreign principals from making campaign contributions and expenditures in connection with candidate elections, including state and local elections. Notwithstanding that fact, the author of this bill argues that such conduct should be prohibited under state law, with the FPPC having the ability to enforce that law. The author argues that this expansion of

the FPPC's jurisdiction is appropriate because the FEC, which is responsible for enforcing the relevant provisions of federal law, often has a significant backlog and has been known to deadlock on enforcement matters. Similar concerns about the FEC's ability or willingness to enforce the federal law have also been cited as the motivation behind previous legislation that was similar to this bill, as described below.

Concerns about a backlog of cases at the FEC appear to be well-founded. Last December, the United States Senate voted to confirm three new commissioners to the FEC. After that confirmation, a sitting FEC Commissioner issued a statement noting that the confirmation of the three new commissioners marked the first time since March 1, 2017, that there were no vacancies on the six-member commission. The statement also indicated that the FEC had enough commissioners to vote on enforcement matters for only 28 days since September 2019. Finally, the statement reported that there were 446 matters pending before the FEC, including 275 staff reports awaiting decisions from the commissioners. Of those 275 reports, 21 were matters related to foreign-nationals.

- 5) **Arguments in Support:** In support of this bill, Election Integrity Project California, Inc. writes:

Currently, existing federal law prohibits foreign entities from making campaign contributions in connection with federal, state, and local elections. Because of this, the FEC is solely responsible for adjudicating these violations. However, the FEC is grossly unequipped to sufficiently handle the prosecution of these violations, suffering from a significant backlog in cases and a flawed structure that leads to frequent deadlocks.

With AB 319, the Legislature has the opportunity to strengthen California's response to foreign election interference by empowering the FPPC to enforce existing prohibitions on foreign campaign contributions. In doing so, this bill will help ensure California's elections are safer and more secure.

- 6) **Previous Legislation:** SB 109 (Kopp), Chapter 67, Statutes of 1997, prohibited foreign governments and foreign principals from making contributions, expenditures, or IEs in connection with state or local ballot measures.

AB 2250 (Ridley-Thomas) of 2016 was substantially similar to this bill. The Assembly Elections & Redistricting Committee approved AB 2250 on a 5-1 vote, but it ultimately failed passage on the Assembly Floor on a 51-0 vote. (Because AB 2250 proposed to amend the PRA without being submitted to voters for their approval, it required a two-thirds vote of each house of the Legislature for passage, or 54 votes in the case of the Assembly.)

AB 774 (Harper) of 2017, included provisions similar to those in this bill, and would have prohibited 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 on a 3-1 vote.

SB 300 (Umberg) of 2019, which was similar to this bill, was approved by the Senate on a 37-0 vote, but was amended and used for another purpose before being heard in any

committee in the Assembly.

- 7) **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

California Common Cause
Election Integrity Project California, Inc.

Opposition

None on file.

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094