



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember Cohen
Councilmember Arenas
Councilmember Foley
Councilmember Jimenez

SUBJECT: SEE BELOW

DATE: March 18, 2022

Approved  

Date: 3/18/2022

 

SUBJECT: CAMPAIGN FINANCE REFORM

RECOMMENDATION

1. Direct staff to return to Council with a draft ordinance requiring that corporations certify that they are not foreign-influenced before making independent expenditures or contributing to campaigns and independent expenditure committees.
 - a. Amend the municipal code to define foreign-influenced corporations as any corporation—as defined by the California Political Reform Act—in which at least one of the following conditions is true:
 - i. 1% or more of the total ownership interests of the corporation are held by a single foreign entity
 - ii. 5% or more of the total ownership interests of the corporation are held by two or more foreign entities in aggregate
 - iii. The corporation is owned by a foreign entity that directly or indirectly participates in decisions on the corporation’s political activities in the United States.

BACKGROUND

The most fundamental principle of our electoral system is that elections should reflect the will of voters. It is in recognition of this principle that federal law prohibits foreign-registered corporations from getting involved in and spending money on American elections— but those

same laws leave loopholes through which foreign money continues to flow into our elections. If we are to ensure that elections are accountable to the voters and that they are conducted without foreign influence, these loopholes must be closed.

To do so, at the November 16, 2021 Council meeting, we proposed, among other recommendations, that staff draft an ordinance prohibiting foreign-influenced corporations from spending money on local elections. After much discussion and deliberation, Council voted to adopt other recommendations in the memorandum while deferring consideration of this one to a later date. As the item returns to Council, we propose that the Council revisit the policy using the same 1% threshold that was recommended previously.

We recognize that 1% may seem to be a very low threshold, but it was not arrived at arbitrarily. Owning 1% of shares under SEC guidance entitles a shareholder to make proposals to the board, and there is a broad consensus among corporate law experts, investors, and campaign finance authorities that 1% ownership accords an investor significant influence over corporate political spending. Indeed, in the case of large multinational corporations, investors holding 1% of shares are generally among those corporations' largest stockholders, and that comes with substantial official and unofficial sway over corporate decision-making. For these reasons, virtually every piece of legislation that seeks to prevent foreign-influenced corporations from getting involved in US elections has used the 1% threshold.

There is a solid constitutional and judicial basis for the policy we are proposing. The legitimacy of legislation at the local level to protect our elections was affirmed in 2019 by the U.S. Court of Appeals for the Ninth Circuit, which has appellate jurisdiction over California's district courts, in its decision in *United States v. Singh*.¹ The U.S. District Court for the District of Columbia's decision in *Bluman v. Federal Elections Commission*, upheld upon review by the Supreme Court, recognized that prohibiting contributions from foreign-owned corporations is consistent with the First Amendment and with the Supreme Court's landmark ruling in *Citizens United v. Federal Elections Commission*.² These decisions have laid a sound foundation for the validity of laws along the lines we are proposing. Moreover, there is a substantial body of evidence testifying to the necessity of such laws, not merely their constitutionality. Former Federal Elections Commission Chair Ellen Weintraub has testified before state legislatures and Congress, as well as in correspondence with city councils considering such legislation, that there is a clear and present need for policies to stem the influx of foreign money into local elections.^{3 4} So too has leading constitutional law scholar Laurence Tribe, who has endorsed measures of the kind we are recommending here as "valuable tool[s] for protecting and preserving the integrity of local elections."⁵

¹ *United States v. Singh*, 924 F. 3d (2019)

² *Bluman v. Federal Elections Commission*, 800 F. Supp. 2d (2011)

³ HB 34: Hearings before the Ways and Means Committee of the Maryland House of Delegates. 2020. (Testimony of Ellen Weintraub)

⁴ Ellen Weintraub. Letter to the St. Petersburg City Council on the proposed "Defend our Democracy Ordinance." October 25, 2016

⁵ Laurence Tribe. Letter to the St. Petersburg City Council on the proposed "Defend our Democracy Ordinance." October 25, 2016

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Our current laws leave loopholes that expose our elections to significant foreign influence. The ordinance we are recommending would close those loopholes and bring our laws in closer accordance with the simple truth that elections should be decided, as much as possible, by the voters themselves.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.