



P.O. Box 5374  
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[www.lwvsjsc.org](http://www.lwvsjsc.org)  
November 15, 2021

To: Mayor Liccardo, Vice Mayor Jones, and Councilmembers Jimenez, Peralez, Cohen, Carrasco, Davis, Esparza, Arenas, Foley, and Mahan

cc: San Jose City Clerk

**Subject:** Options for Campaign Finance Regulations Related to Public Financing, Foreign Influence in Elections, and Other Limits on Corporations and Other Entities

**Item:** 3.6, November 16 Council Agenda

Dear Mayor Liccardo and City Councilmembers:

The League of Women Voters of San Jose/Santa Clara urges you to support the recommendations in the memo authored by Councilmembers Cohen, Jimenez, and Foley. We thank the City Attorney for a comprehensive review of options for local campaign finance reform.

We firmly believe that elections, and our political system overall, should prioritize ordinary voters, not big money or special interests. Representative democracy is damaged when there are secret donors, Super PACs, and an emphasis on raising large amounts of campaign cash. Our campaign finance system should maximize people's participation in the political process, promote transparency about the sources of money, combat corruption, and level the playing field so the competition is more equitable.

### **Foreign Influence in Elections**

**We support the definition of foreign-influenced corporations as stated in the Cohen, Jimenez, and Foley memorandum** to help close a loophole which could allow citizens of other countries to influence elections by investing in US companies. We advocate for the lower threshold as an effective way to reduce the impact of large contributions to independent PACs and to accomplish the goal of political equality for all citizens. The Supreme Court ruling in *Citizens United v. F.E.C.* allowed corporations to spend freely in politics equating corporations to citizens with First Amendment rights. Seattle adopted an ordinance in reaction to a \$1.5 million contribution by Amazon to a local PAC for use in Seattle Council elections in 2019. While we do not presume to offer legal advice, we note the zero standard alluded to by Justice Brett Kavanaugh while a judge on the DC Court of Appeals. He wrote in *Bluman v. F.E.C.*, "Foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government..."

### **Public Financing Program**

The League supports public financing of elections in which candidates must abide by reasonable spending limits and enhanced enforcement of campaign finance laws. The *We The People Act* (HR 1) was strongly supported by the League. If passed, it would have established public financing powered by small donations of \$200 or less with a 6:1 match. Council should move expeditiously to bring forward a public campaign financing program. We look forward to reviewing the ordinance in depth and advocate in advance for extensive public outreach and for the new program to be fully funded.

The City of St. Petersburg, FL made history on October 6, 2017 by becoming the first municipality after the *Citizens United* decision to abolish Super PACs and limit foreign corporate spending in local

elections. The League of Women Voters of the St. Petersburg Area worked with a coalition for two years to encourage the City Council to pass the ordinance. Its president Dr. Julie Kessel stated, *"We believe that big money in politics is a root cause of a compromised democracy, every bit as corrosive as gerrymandering, governmental abuse of power and voter suppression. When money is as important to a candidate or an elected official as a citizen's vote, the sovereign power of the people to elect officials to represent their interests has been corrupted."*

**We request that you vote YES to approve the recommendations in the Cohen, Jimenez and Foley memo, and continue to research options to limit the influence of money in politics.**

Regards,

*Carol M. Watts*

Carol Watts

President, League of Women Voters of San Jose/Santa Clara

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**FW: Item 3.6: Support Cohen, Foley, Jimenez Memo**

City Clerk &lt;city.clerk@sanjoseca.gov&gt;

Tue 11/16/2021 1:33 PM

To: Agendadesk &lt;Agendadesk@sanjoseca.gov&gt;

**From:** Jeffrey Buchanan <jeffrey@wpusa.org>  
**Sent:** Tuesday, November 16, 2021 12:55 PM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** FW: Item 3.6: Support Cohen, Foley, Jimenez Memo

[External Email]

**From:** Jeffrey Buchanan [mailto:jeffrey@wpusa.org]  
**Sent:** Tuesday, November 16, 2021 12:30 PM  
**To:** 'mayoremail@sanjoseca.gov' <mayoremail@sanjoseca.gov>; 'Charles Chappie Jones' <chappie.jones@sanjoseca.gov>; 'Jimenez, Sergio' <sergio.jimenez@sanjoseca.gov>; 'raul.peralez@sanjoseca.gov' <raul.peralez@sanjoseca.gov>; 'david.cohen@sanjoseca.gov' <david.cohen@sanjoseca.gov>; 'Carrasco, Magdalena' <magdalena.carrasco@sanjoseca.gov>; 'Davis, Dev' <dev.davis@sanjoseca.gov>; 'Esparza, Maya' <maya.esparza@sanjoseca.gov>; 'Arenas, Sylvia' <sylvia.arenas@sanjoseca.gov>; 'Foley, Pam' <pam.foley@sanjoseca.gov>; 'Mahan, Matt' <matt.mahan@sanjoseca.gov>  
**Subject:** Item 3.6: Support Cohen, Foley, Jimenez Memo

Dear Mayor Liccardo and Members of the City Council:

On behalf of Working Partnerships USA I would like to strongly encourage your support for the memo by Councilmember Cohen, Jimenez and Foley.

While San Jose residents would benefit from each of the policies examined by the City Attorney's Office, we believe the most important policy to implement is the ban foreign influenced business entities from engaging in our local elections. The City of San Jose welcomes immigrants, visitors, and investors from around the world. However, its elections should be decided by the people of San Jose and not by foreign investors or the business entities over which they exert influence. For this reason, and due to the importance of the public having faith in the 2022 elections, we believe the City Attorney's office should work to quickly bring back an ordinance for consideration as soon as possible, in addition to continuing work on public campaign financing and conflicts of interest.

In addition to moving this proposal quickly to ensure it is in place before electioneering begins in 2022, we would encourage the City Council and the City Attorney to look to the example of Seattle's [ordinance](#) in drafting our ordinance, and specifically utilize its definitions within their ordinance, which we believe answers questions raised previously by members of the Council on what types of entities to cover, namely that:

*"Corporation" means a corporation, company, limited liability company, limited partnership, business trust, business association or other similar entity."*

As a City, we need to urgently address this policy loophole. Foreign nationals have used and may continue to use U.S. business entities to funnel funds into U.S. elections, in violation of federal laws prohibiting foreign spending in U.S. elections. Recent examples include in San Diego, where in 2017, a businessman was convicted in federal court of illegally funneling foreign dollars into local elections through shell corporations to support politicians who

might support his real estate development. Similarly, in New York in 2019, four individuals were indicted on charges of laundered foreign money into U.S. elections via shell corporations and straw donors.

The U.S. Court of Appeals for the Ninth Circuit has acknowledged the validity of legislation "to protect the country's political processes after recognizing the susceptibility of the elections process to foreign interference," including in municipal elections. (United States v. Singh).

The FBI has concluded that foreign influenced operations include "criminal efforts to suppress voting and provide illegal campaign financing," as set forth in FBI Director Christopher Wray's press briefing on election security on August 2, 2018.

The United States Congress and the U.S. Supreme Court have recognized the need to protect U.S. elections (including local elections) from foreign influence through the ban on contributions and expenditures by foreign nationals imposed by 52 U.S.C. 30121 and upheld by the Supreme Court in Bluman v. Federal Election Commission.

The Supreme Court in *Bluman v. Federal Election Commission* affirmed "the United States has a compelling interest...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."

Current US law does not adequately protect against foreign interference through corporate political spending by U.S. corporations with significant foreign ownership.

The City of San Jose has an opportunity to adopt policy to prevent this kind of interference in our local democracy. We have a strong, well thought model to base our policy on: the City of Seattle's Clean Campaigns Ordinance.

There is no universally accepted, unambiguous definition of how much ownership is necessary to qualify as a "large" or "significant" shareholder in a corporation—sometimes known as a "blockholder." (Christopher Small, "Blockholders and Corporate Governance") But corporate governance experts, stakeholders, and even Republican members of Congress agree that a 1 percent stockholder can wield influence in the decision-making of corporate managers. According to corporate governance expert John Coates, "virtually no one questions that owning 1 percent of voting shares" gives such shareholder the ability to influence corporate decision-making. Robert Jackson, now a commissioner at the U.S. Securities and Exchange Commission (SEC) has agreed, stating, "in the case of a 1% shareholder of a very large public company ... they will be given a fair amount of attention."

The City of Seattle utilizes this threshold for individual foreign investors, and it has been endorsed by leaders in the field of campaign finance, including FEC Commissioner Ellen Weintraub to constitutional scholars like Lawrence Tribe. Its notable, Commissioner Weintraub's support of the Clean Campaigns ordinance is more recent, and references more recent scholarship than the 2016 op-ed referenced in the City Attorney's Office memo, where she first suggested a higher threshold. Here August 2019 letter to the Seattle City Council argued that their ordinance's lower thresholds were supported by legal theory and policy examples.

Indeed, there is further support for this one percent threshold under current SEC regulations, where the threshold for presenting a shareholder proposal at a publicly traded corporation is that the shareholder must own at least 1 percent of voting shares or \$2,000 of the corporation's market value. In November 2019, as the SEC proposed eliminating 1 percent threshold, finding that the vast majority of investors that submit shareholder proposals do not even have that level of equity ownership and that institutional investors below the 1 percent single owner threshold can, in fact, exercise substantial influence on a corporation's decisions. Moreover, the SEC found that investors who meet the 1 percent threshold are easily able to communicate with corporate managers.

In terms of aggregate foreign ownerships, although a dispersed class of foreign investors may not all be perfectly aligned on all issues, they do share common interests that deviate from the interests of American shareholders. John Coates has written, "corporations may have foreign ownership at substantial levels that would make unaffiliated foreign investors theoretically capable of exerting influence on the corporate political spending, even at levels below five percent of total stock."

One avenue for small foreign shareholders to exert this influence is during "proxy season," when they can threaten to—or can actually—band together to force votes on proposals that affect corporate managers.<sup>[1]</sup> Other experts agree with Coates that a 5 percent aggregate ownership threshold is appropriate. For example, Harvard Law School professor Laurence Tribe has concluded that "the same Supreme Court that decided *Citizens United* would probably have upheld a law limiting political advertising by corporations with five percent of equity held by

foreign nationals. Indeed, the reasoning behind the *Bluman* decision suggests this limit could apply to corporations with any equity held by foreign nationals.”<sup>[2]</sup>

Corporations with foreign ownership have been increasingly politically active in recent years, including in local elections in San Jose and around the country.

In California, take for example companies like Uber, which approximately 10 percent of its shares are owned by the Saudi Arabian government. These shares lead to the Saudi government controlling one of Uber’s nine board seats. As a company, Uber recently spent tens of millions of dollars on the 2020 elections, including supporting independent expenditures in the City of San Jose.

Major real estate investment trusts like Essex Property Trust and Equity Residential have invested millions of dollars opposing statewide ballot measures in addition to local spending on political races in places like San Jose. Reviewing their financial data shows foreign financial firms, including foreign government sovereign wealth funds, control significant parts of these funds.

Business entities have a fiduciary duty to their shareholders, including shareholders around the world, and generally prioritize the interests of such shareholders, which may diverge substantially from the interests of the citizens of San Jose and of citizens of the United States.

Political spending by foreign-influenced business entities, even when they are simply acting in the perceived interests of their investors rather than being purposefully used to funnel foreign money into local elections, can weaken, interfere with, or disrupt San Jose’s democratic self-government and the faith that the electorate has in its elected officials.

To protect the integrity of San Jose’s democratic self-government, it is necessary to prevent foreign-influenced business entities from influencing San Jose’s elections by spending money in local candidate elections, contributing to independent expenditure committees or ballot measure committees.

We encourage the City Council to direct the City Attorney to move quickly on bringing back an ordinance to protect San Jose voters.

Best,  
Jeffrey

Jeffrey Buchanan  
Director of Public Policy  
Working Partnership USA  
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<sup>[1]</sup> Ibid.

<sup>[2]</sup> Laurence H. Tribe, Statement in support of St. Petersburg, Florida legislation, October 25, 2016, p. 4, available at <https://freespeechforpeople.org/wp-content/uploads/2016/10/7.Prof.-Laurence-Tribe-Letter-of-Support.pdf>.