



TO: The Honorable Louis Luchini
The Honorable Chris Caiazzo, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: March 15, 2021

RE: Foreign Contributions in Maine Campaigns

LD 194 – An Act To Prohibit Contributions, Expenditures and Participation by Foreign Government-owned Entities To Influence Referenda (emergency) -Sen. Richard Bennett of Oxford

LD 479 – An Act To Ban Foreign Campaign Contributions and Expenditures in Maine Elections - Rep. Kyle Bailey of Gorham

LD 641 – An Act To Prohibit Contributions, Expenditures and Participation by Foreign Nationals To Influence Referenda (emergency) - Rep. Walter Riseman of Harrison

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Good morning Senator Luchini and Representative Caiazzo and honorable members of the Joint Standing Committee on Legal and Veterans Affairs.

My name is John Brautigam. I'm a resident of Falmouth, and I am here today as legal counsel to Maine Citizens for Clean Elections. I am testifying in favor of these bills.

Maine Citizens for Clean Elections has been the leading campaign finance organization in Maine for over twenty years and one of the nation's most respected state-based organizations advocating for democratically funded elections. We are proud of our national reputation. But our nonpartisan mission has always been with and for the people of this state.

We believe that when policymakers consider how well our democracy is functioning, they should assess whether the will of the voters is being heard. Too often, there are interests that try to use money to drown out the voice of the voters. When the money comes from unaccountable sources, or when the amount of money from one source is so large that it warps the campaign dialogue, it has an undemocratic effect that needs to be corrected by policymakers. That is the case with campaign spending by sources that are foreign to Maine and

the United States.

As Professor Coates wrote in a letter you received,¹ you don't have to believe that foreign interests are pernicious or hostile to our government. The simple fact is that they are not part of our population or "polity," and they have a different set of interests. To the extent that they can harness corporate funds to influence and intervene in our elections, their participation is "inconsistent with democratic self-government," or at least "out of alignment with the interests" of our people. Their interests and loyalties are to their foreign owners and multinational markets, not to Maine people.

The recent trend toward globalism in recent decades has accentuated this issue, but concerns about foreign involvement in our democracy have a history as long as the country itself. In 1787 the authors of the constitution included the emoluments clause for the specific purpose of curtailing foreign influence over the executive branch.² The Federalist Papers discussed the dangers of foreign entanglement in elections, and George Washington's Farewell Address famously warned to be vigilant against the interference of foreign powers in our political life.

This concern is based on the belief that our system of self-government should place political control in the hands of the sovereign people. We know that foreign interests will meddle with that process to leverage their influence or achieve results they cannot win through diplomatic give-and-take or through market competition.

As the U.S. has grown in size and clout, the stakes have risen, and the importance of insulating our elections from foreign interests has increased. In the 20th century, Congress gradually extended the constitutional prohibition on foreign emoluments to the campaign finance realm. Originally federal law focused exclusively on "foreign agents," who were required to register with the federal government starting in 1938. In 1966 Congress prohibited foreign agents from making campaign contributions and strengthened that rule a few years later in the Watergate-era amendments to the Federal Campaign Finance Act.

Federal law now prohibits any foreign national from making contributions or expenditures in connection with an election. 52 U.S. Code § 30121. Importantly, this federal statute also bans contributions in state and local candidate elections in addition to those in congressional and presidential races.

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<https://freespeechforpeople.org/wp-content/uploads/2020/01/signed-letter-1-3-20-Coates-Seattle-FIC-Jan-2020.pdf>

² U.S. Const. art. I, § 9, cl. 8. "No Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

Foreign interference in U.S. politics emerged as a prominent issue in the presidential campaign of 2020. Consequently, many legislative bodies are now considering a range of measures to fortify the barrier against undue foreign influence. Proposals now under consideration center around two weaknesses in the current regime. First, state and federal rules focus on *candidate* campaigns, leaving *issue* campaigns vulnerable to foreign meddling. Second, the current federal ban is limited to “foreign nationals” and therefore allows a variety of entities that are heavily influenced by foreign interests to continue to make contributions and influence our elections in other ways.

All of the bills before you reflect a consensus that we need some level of restriction on issue campaigns, such as state citizen initiatives. We anticipate that most of the Committee’s deliberation will relate to the second loophole, where the question arises just “how foreign” would an interest have to be to merit regulation.

To truly address foreign influence, people who have studied corporate governance recommend banning contributions from any corporation where one foreign owner holds one percent of the equity (or more), or where a combination of foreign owners holds five percent of the equity (or more). By comparison, the thresholds in LD 479 are five percent and twenty percent.

On first blush, a threshold as low as one percent might seem to be too restrictive. We would like to squarely address why a low threshold is justified, and why “controlling” or “majority” ownership of stock in a corporation is not the right standard.

One percent ownership gives a shareholder “significant skin in the game.” *Coates letter*, page 7. That is why federal law sets 1% as the threshold for presenting a shareholder proposal in proceedings involving a publicly traded company. The Business Roundtable group argues that ownership levels even lower – as low as 0.15% – have “significant influence over corporate decision making.” *Coates letter*, page 8.

This is illustrated by a well-known corporation such as AT&T, a company with a market capitalization of \$211 billion. A one percent shareholder in AT&T holds an investment worth over \$2 billion. That amounts to over 70 million shares, or about twice the total daily trading volume in this equity. Corporate governance experts would agree that such a shareholder has sufficient clout to influence the share price of the corporation and the decisions of corporate management. If this shareholder is a foreign interest, they can push corporate management into at least considering taking a position on a state political issue. It is important to note that a corporation’s decision to get involved in political campaigns is a decision of the corporate management and ordinarily is not subject to a vote of all the shareholders.

You will also hear testimony today about the multinational firm Uber and its ally Lyft spending a mind boggling \$205 million to influence a California citizen initiative.³ Saudia Arabia reportedly has a ten percent ownership interest in Uber.

³ <https://www.latimes.com/business/story/2020-11-04/uber-lyft-proposition-22>

Without question, legislation is needed to patch the holes in current law protecting against undue influence of foreign interests. But it is important not to inadvertently squelch the voices of individuals who are not U.S. citizens but are living in this country or have other fundamental human interests affected by government policy.

Of course, those people have rights and interests, pay taxes, contribute to our society, share our neighborhoods, and engage in civic life in various ways. They should be able to volunteer, distribute literature, and support candidates and issues with activities that do not involve financial contributions. Our consideration of new restrictions on foreign campaign contributions should focus on the financial power of foreign governments and wealthy foreign nationals, as well as corporations that are under the influence of either of these groups.

It has been my privilege to testify on these bills. I would be happy to take questions from the Committee.