**Constitutional Limits to Regulations on Foreign-Influenced Corporate Contributions**

*John Cooper*[[1]](#footnote-1)

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Campaign contributions by corporations with foreign influences are an issue of growing magnitude and concern to U.S. voters. One [study](https://perma.cc/JD9L-SDJ8) of six states found that, between the 2018 and 2022 election cycles, foreign-influenced corporations contributed $163 million to state-level candidates, party committees, and ballot measure committees. A recent [survey](https://perma.cc/QUJ7-3BLH) found that 82% of likely voters agree with the statement that there should be limits on corporate campaign spending by companies with foreign ownership.

By the spring of 2024, [twelve states](https://perma.cc/ZV2U-WJPV) were at various stages of attempting to limit campaign contributions by corporations subject to foreign influence. [Georgia](https://perma.cc/A454-QDDK) and [Minnesota](https://perma.cc/5SZT-5MV2) have passed laws in their respective state legislatures, and Maine has done the same through an [overwhelmingly popular](https://perma.cc/LKQ8-L822) ballot initiative. Governor Brian Kemp [vetoed](https://perma.cc/6L83-MRNJ) Georgia’s law, while federal judges in [Maine](https://perma.cc/GYP4-G275) and [Minnesota](https://perma.cc/P38T-A7H4) have preliminarily enjoined those states’ statutes from taking effect based on successful [First Amendment](https://constitution.congress.gov/constitution/amendment-1/) challenges.

The legal battles over Maine’s and Minnesota’s laws are of particular interest given a renewed federal push to prohibit campaign spending by corporations under foreign influence. Representative Jamie Raskin and Senator Sheldon Whitehouse introduced [legislation](https://perma.cc/G6ET-4NFZ) in July 2024 that would impose restrictions that mirror key aspects of the constraints put in place by Maine and Minnesota.

This initial round of litigation may provide important information for advocates at the state and federal levels as policymakers seek to craft corporate contribution laws without running afoul of the First Amendment.

This Case Note will start by summarizing current federal law and the existing litigation over state legislation. It will then turn to the parallels between state and federal proposals and conclude with potential avenues policymakers may use to avoid future constitutional challenges.

# I. Existing Law and New Efforts at Regulation

Federal law governs spending by foreign nationals in candidate elections at all levels of government. New efforts at state regulation seek to build on this body of law by extending the prohibition to (1) corporations under some measure of foreign influence and (2) issue advocacy and referenda. This Part will step through the landscape of existing federal and proposed state regulations before discussing the strong legal headwinds faced by state efforts at regulation.

## *A. Existing Federal Law*

[Federal law](https://perma.cc/V3RK-MA3Z) currently prohibits contributions by foreign nationals to party committees and in connection with federal, state, or local candidate elections. The Supreme Court has found existing law does not cover donations to [referenda elections](https://perma.cc/4UB6-7T2M), while the D.C. Circuit has remarked that it does not prohibit [issue advocacy](https://perma.cc/7FGK-FYYT) by foreign principals. The existing definition of “[foreign principals](https://perma.cc/A8QB-NW9M)” used in the law encompasses foreign governments, political parties, persons outside of the United States (excluding U.S. citizens and U.S. corporations over which the United States has jurisdiction), and foreign entities organized under the laws of or principally operating in another country. U.S. subsidiaries of foreign entities are allowed to donate through a “[separate segregated fund](https://perma.cc/X8HR-W3E3)” on the condition that (1) foreign parent entities are not the primary financers, and (2) decisions about the fund are made by U.S. citizens or permanent residents.

## *B. Key Provisions in Attempted State Laws*

In response to a Canadian corporation’s [$22.3 million expenditure](https://perma.cc/VL3X-6F9F) on a 2021 ballot initiative, voters in Maine passed Ballot Question 2 in 2023. The central thrust of the law is to prohibit “[foreign government-influenced entities](https://perma.cc/X8H3-28XS)” from contributing to both candidate and ballot campaigns. The law defines foreign government-influenced entities to include foreign governments and entities in which a foreign government or government-owned entity either holds 5% of the ownership interest or “[directs, dictates, controls, or indirectly participates](https://perma.cc/X8H3-28XS)” in the decisions relating to election expenditures.

Paralleling federal law, Maine’s law penalizes solicitations and acceptance of proscribed contributions as well as substantial assistance or structuring of solicitation. Maine’s effort also requires foreign-influenced entities to disclose their participation in influence campaigns that are not prohibited by the act. And the statute further requires due diligence by media outlets to guarantee that they are not distributing foreign government-influenced communications. Violations of the contribution and solicitation provisions are a [Class C crime](https://perma.cc/A83F-XG4R), which is punishable by up to five years in prison and a $5,000 fine. All violators can be penalized with a fine of up to $5,000 or double the value of the illegal contribution.

Earlier in 2023, Governor Tim Walz of Minnesota [signed](https://perma.cc/5SZT-5MV2) the Democracy for the People Act, which contained a suite of election-related provisions, including automatic registration and a permanent absentee ballot option for voters. Significantly, it also introduced measures aimed at campaign expenditures by “[foreign-influenced corporations](https://perma.cc/XY5L-LA34),” defined as a corporation in which a single foreign investor holds or controls over 1% ownership interest, two or more foreign investors in the aggregate hold or control over 5% ownership interest, or a foreign investor participates in decisions related to U.S. political activities. For all individual violators, up to $10,000 in civil penalties may be assessed; however, knowing violators may be fined up to $20,000 and sentenced to up to five years in prison. All corporate violators face up to $20,000 in civil penalties, while knowing corporate violators may be fined up to $40,000, dissolved, or stripped of their right to do business in Minnesota.

Under the law, foreign-influenced corporations cannot contribute to efforts to promote or defeat candidates, to ballot initiatives, to candidates directly, or to political committees, funds, or parties. The law also requires corporate donors to submit certifications to Minnesota’s Campaign Finance and Public Disclosure Board, certifying that the corporation was not foreign-influenced at the time of the expenditure.

## *C. Legal Challenges*

The First Amendment challenges to state election laws arise in a gray area between two propositions in existing law. First, [*Citizens United v. Federal Election Commission*](https://perma.cc/3EGP-QZQE)(2010) conclusively established that the government could not prohibit political speech based on a speaker’s corporate identity. Put differently, corporations have a First Amendment right to engage in certain types of campaign spending as a form of protected political speech. Second, some decisions have suggested that the U.S. government can exclude foreign citizens “[from [ ] activities of democratic self-government](https://perma.cc/PXV4-WHNK),” justifying certain contribution restrictions. A passing line in [*Citizens United*](https://perma.cc/6G9K-KVCN) suggests that this same premise would apply to corporations “funded predominantly by foreign shareholders.” Justice Amy Coney Barrett’s concurrence in a recent case addressing the constitutionality of content moderation restrictions continued along similar lines. Drawing on precedent holding that “[foreign persons and corporations located abroad do not](https://perma.cc/C7BN-83R9)” themselves possess First Amendment rights, Justice Barrett suggested that the extent of “[foreign ownership and control](https://perma.cc/C7BN-83R9)” might determine whether laws restricting content modification decisions are constitutionally permissible.

Against this backdrop, Maine and Minnesota’s laws test the limits of what degree of foreign influence justifies government regulation of corporate speech rights. In legal challenges so far, neither state has found itself on the right side of that limit.

In [*Central Maine Power Co. v. Maine Commission on Governmental Ethics and Election Practices*](https://perma.cc/N3J3-D9HP) (D. Me. 2024), a district judge enjoined enforcement of Maine’s foreign contributions law. Citing the reasoning in [*Bluman v. Federal Election Commission*](https://perma.cc/9R9V-29R2) (D.C. Cir. 2011), which the Supreme Court summarily affirmed, the district was highly receptive to the state’s arguments of a compelling government interest in limiting foreign government influence in candidate and referenda elections. By contrast, it [did not find](https://perma.cc/V8QW-BQGZ) a compelling interest in preventing the mere appearance of influence.

The court next turned to whether the government had narrowly tailored its law in light of its interests. [Finding little issue](https://perma.cc/6LK3-SL9Q) with a prohibition on spending directly by foreign governments to influence state ballot initiatives, the court instead [focused its attention](https://perma.cc/Z3H7-2YTW) on Maine’s 5% threshold and the “indirectly participate” language.

The court found that *Citizens United* [could not be squared](https://perma.cc/F2PY-JG8B) with a statutory threshold that might apply to companies that—like litigant Central Maine Power—are incorporated in the United States and governed by a board of U.S. citizens. Although the court was open to the [proposition](https://perma.cc/F5FF-BJXR) from *Citizens United* that a primarily foreign-funded corporation could be subject to restrictions, it remained unconvinced by the state’s invocation of 5% as a meaningful threshold in securities regulation. Similarly, the court found the participation language to be overly broad, possibly barring domestic corporations from engaging in protected speech based on unsolicited communications from a foreign entity. The ambiguity of the rule would likely “[stifle the speech of domestic corporations](https://perma.cc/2PFS-3P2Y),” regardless of the actual degree of influence exerted by foreign government-owned entities. The court [declined to sever](https://perma.cc/EJZ2-8QRP) the unconstitutional provisions and enjoined enforcement of the act in its entirety.

In [oral arguments](https://perma.cc/37YA-883Q) before the First Circuit, the panel seemed to have similar concerns about the 5% threshold. One judge worried that the 5% threshold would prove to be a moving target, rendering a contribution illegal or not based on its timing. The panel also expressed concern with the definition of “foreign government,” which under the text of the law may include political parties or insurgent groups. The First Circuit has not issued its decision in this appeal.

In [*Minnesota Chamber of Commerce v. Choi*](https://perma.cc/7HN5-KQFP) (D. Minn. 2025), a district judge came to similar conclusions with respect to Minnesota’s effort at regulation. [Citing](https://perma.cc/X8AD-WWU2) much of the same reasoning from *Bluman* and *Citizens United*, the court explained that “[no case holds that a corporation ceases to be ‘American’ by virtue of any quantum of foreign ownership](https://perma.cc/FD7R-HVF4).”

The court in *Choi* found both that the government [lacked](https://perma.cc/5X4B-LVH7) a compelling interest in preventing the exercise of political speech by corporations with foreign minority shareholders and that the statute [was not narrowly tailored](https://perma.cc/2LGD-WNPS). The court [explained](https://perma.cc/KRT3-2BRH) that its 1% and 5% thresholds are not meaningfully linked to the harm the statute targets. Moreover, the court found the statute to be both [over-](https://perma.cc/F6F3-XSCD) and [underinclusive](https://perma.cc/F6F3-XSCD), with provisions that sweep in corporations with limited foreign control and provisions that exclude entities, such as nonprofits and labor unions, that may be subject to similar foreign influence. The court also [took issue](https://perma.cc/XBU6-VGV8) with the statute’s phrasing, which suggested that whether a foreign-owned company is allowed to make a contribution may change moment-to-moment based on the owner’s physical location. In short, a company could contribute to Minnesota campaigns while its foreign owner “[vacationed in the United States but not while that foreign citizen resided abroad](https://perma.cc/5722-Z34T).” However, as in *Central Maine Power*, the court in *Choi* remained open to the possibility that the state may have a compelling interest in regulating companies “[funded predominantly by foreign shareholders](https://perma.cc/5722-Z34T).”

# II. The Raskin-Whitehouse Proposal

These state court cases take on new relevance in the context of developing federal efforts to regulate foreign influence in U.S. elections. How courts have viewed the arguments at the state level could help federal drafters avoid similar constitutional challenges.

The [Raskin-Whitehouse proposal](https://perma.cc/G6ET-4NFZ) would expand the definition of “foreign national” in the Federal Election Campaign Act to include two new categories of business entities. First, the act would cover businesses in which foreign nationals, as presently defined, directly or indirectly control 50% or more of the relevant ownership interest. Second, the act would cover business entities that fall outside of the current definition of “foreign principal” but meet one of the following four criteria: (1) foreign nationals control 1% or greater of the relevant ownership interest; (2) two or more foreign nationals in the aggregate control 5% or greater ownership interest; (3) one or more foreign nationals can direct U.S. decision-making for the entity; or (4) one or more foreign nationals can direct decision making of the entity regarding election-related activities.

The proposed bill uses similar thresholds as Minnesota’s law and, like Minnesota’s, does not restrict its definition of foreign influence to ownership or influence by foreign *governments*, unlike Maine’s law. Like the laws in both states, it puts in place provisions meant to capture more indirect forms of influence that are not covered by corporate ownership. Paralleling the decisions in *Maine Central Power* and *Choi*, these elements of the bill seem unlikely to survive constitutional scrutiny if passed.

The proposal’s 50% threshold appears to be the most constitutionally defensible under the case law referenced in *Choi* and *Maine Central Power*, but it is still far from certain that a company under 50% foreign ownership would be considered predominantly funded by foreign shareholders.

# III. Crafting Limitations within Constitutional Bounds

This first round of state-level legislation suffers from at least three major flaws in the eyes of courts.

First, the laws are overinclusive. The 5% threshold is too low for courts to feel confident that the laws will not sweep in the political speech of other U.S. shareholders or of corporations themselves that are still fundamentally U.S. corporations despite some quantum of foreign ownership. The 1% threshold seen in Minnesota’s law and the Raskin-Whitehouse proposal compounds these fears further.

Second, the laws are simultaneously underinclusive, like Minnesota’s, leaving the door open for foreign influence through clever use of an entity’s form to circumvent the act’s plain language.

And finally, the laws present moving targets—a 5% threshold, or any vague test for control, might leave corporations on the right side of the law one day and the wrong side the next.

There remains an open question of what regulation on campaign spending by foreign corporations would be permissible under these constitutional principles. This Part offers some avenues that may be available to legislatures against this uncertain backdrop.

## *Embracing Corporate Disclosure or Predominance Requirements Under* Citizens United

One obvious possibility would be to take seriously the words of *Citizens United* and lean into disclaimer and disclosure requirements for corporate speech, which “[do not prevent anyone from speaking](https://perma.cc/8JG8-B2DP).” However, this mechanism could face its own challenges, as it would have to survive “[exacting scrutiny](https://perma.cc/K22K-CX5T)” by the courts. If it were determined that disclosing an American speaker’s foreign-influenced identity [imposed special burdens](https://perma.cc/EYF9-5F2G) on their ability to effectively communicate their message, these laws may fail (although this Court may be [increasingly receptive](https://perma.cc/SX7U-4QNZ) to the notion that foreign influence is not a viewpoint, much less a viewpoint worthy of protection). This approach may also disappoint voters in Maine and Minnesota who are, in fact, hoping to burden foreign speech. Arguably, these states are making demands for less foreign involvement, not merely more transparent involvement.

Legislators in these states could also choose to take up the dicta on foreign speech in *Citizens United* and target spending by corporations using a far higher foreign shareholder threshold meant to reflect predominance. Legislators may determine that a foreign entity with 51%, 75%, or 90% ownership predominates other shareholders and base statutory prohibitions on one of these thresholds. This approach may resolve concerns that the statute covers corporations that cannot truly be understood to be under foreign control.

However, this approach still faces significant obstacles. It may be underinclusive in two ways. First, such a law may fail to target the full range of relevant foreign actors, including foreign-influenced nonprofits or labor unions, a concern raised by the court in *Choi*. Second, [control is not dispositively determined by majority ownership](https://perma.cc/4DJ4-95A3), and the court in *Choi* also suggested that there is no strict numerical threshold past which an American company ceases to be American.

Further, such a law would still present a moving target for publicly traded corporations whose ownership composition can shift day-to-day. The uncertainty for corporate donors identified in the Maine and Minnesota cases could still exist, depending on the threshold chosen and the scale of variation. One solution could be to build in a margin of safety for companies, but that may replicate the constitutional error. If, for instance, laws build in a buffer of plus-or-minus 1% foreign ownership, but a company’s shares traded at such a volume that a 2% shift in ownership happens with regularity, a buffer would be of little comfort.

## *Turning to State Corporate Law*

A second set of options is available within state corporate law. While more onerous on corporations from a financial and operational perspective (and thus, possibly more politically costly), this approach may best strike a balance between avoiding direct regulation of speech and satisfying popular demand to bar foreign electoral contributions. To the extent that the First Amendment safeguards access to information for listeners and resists efforts to predetermine what information is relevant for participants in a democracy, this heightened political cost may be salutary.

One path would be to borrow other [indicia of control](https://perma.cc/C7BN-83R9) from corporate law, such as the relationship between the foreign shareholder and other board members, or founder status. More stringently still, states could require indexing the test for foreign control to veil-piercing within their respective states. For instance, Minnesota could prohibit corporate donations in situations where an American corporation has acted as an [“alter ego” or “instrumentality”](https://perma.cc/Q2HM-2ULR) of a foreign national or corporation. Such an approach would be narrowly tailored in the sense that it would, by definition, only target corporations that are truly subject to foreign control. Under the *Bluman* court’s logic, such an approach is desirable. And Justice Barrett’s concurrence in *Moody* suggests the Court may be receptive to this claim. However, this approach may go too far in chilling corporate speech, given the difficulty any actor might face in determining in advance whether they meet a multifactor test for corporate control.

A final option could be to borrow further concepts from corporate law to inform the certifications that corporations must make when they donate to campaigns. For instance, [cleansing procedures](https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1085&context=faculty_articles) exist in corporate law to escape harsh judicial scrutiny of transactions between the corporation and interested parties. [Common state-law cleansing procedures](https://perma.cc/6D7V-85L2) require corporations to approve major decisions involving interested parties by a majority of *noninterested* shareholders. Analogously, state law could require a majority of nonforeign shareholders to approve spending on state campaigns.

Even if imposing a board or shareholder vote requirement on corporate campaign contributions proves too onerous, the concept could inform the language used in certification requirements. Such certifications could aim to ensure that only *domestic* decision-makers are influencing contribution decisions. Such a procedure could be based on the “separate segregated fund” model that already exists under current Federal Election Commission [guidance for U.S.-based subsidiaries](https://perma.cc/W8J2-5EA9).

Encouragingly for corporate law approaches, the Supreme Court’s recent [decision](https://perma.cc/SX7U-4QNZ) on the TikTok ban suggests a high degree of willingness from the Court to sanction regulations that target corporate structure. The Court noted its hesitance to “break new ground” by treating regulations of corporate control as direct regulations of speech. It went on to determine that a prohibition on “a foreign adversary’s control” is facially content-neutral.

On the question of motivation, the Court expressed wariness of “parsing Congress’s motives . . . with regard to an Act passed with striking bipartisan support.” While this observation may be troubling to those familiar with the First Amendment’s strong [countermajoritarian history](https://perma.cc/D63C-XNQ8), it certainly bodes well for lawmakers in Minnesota and Maine seeking to ride the winds of public sentiment.

# IV. Conclusion

This Case Note offers a survey of key doctrinal barriers that existing state efforts at regulating foreign campaign spending have faced and discusses a range of legislative options that may be more sustainable under existing rules. It leaves unexplored the normative stakes of these policies; future work could fruitfully engage with implications of a doctrine that appears increasingly receptive to restrictions on foreign speech, even (or perhaps especially) where it significantly alters the balance of views heard by American voters.

What’s clear is that the current slate of proposals has failed to account for the status of First Amendment doctrine following *Citizens United*. Regardless of the wisdom of regulating contributions by foreign-influenced companies, it is an incredibly popular goal. Any effort to cater to this public sentiment will have to account creatively for the demands of current corporate speech doctrine.

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John Cooper is a J.D. candidate at the University of Chicago Law School, Class of 2026.

1. John Cooper is a J.D. candidate at the University of Chicago Law School, Class of 2026. He thanks Professor Genevieve Lakier, Elizabeth Walsh, and the entire *UCLR Online* team for their suggestions. [↑](#footnote-ref-1)