



January 28, 2022

The Honorable Karl Rhoads
Chair, Senate Committee on Judiciary
Hawaii State Legislature

The Honorable Jarrett Keohokaloe
Vice Chair, Senate Committee on Judiciary
Hawaii State Legislature

Re: Statement in Support of S.B. 166

Dear Chair Rhoads, Vice Chair Keohokaloe, and Members of the Committee on Judiciary,

The Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of S.B. 166. CLC also provides three recommendations for strengthening S.B. 166. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American's right to participate in the democratic process.

Senate Bill 166 takes important steps to safeguard the right of Americans to democratic self-governance by prohibiting foreign nationals from making independent expenditures and expanding the definition of foreign national to include corporations with significant foreign influence. Despite a federal ban on foreign interference, foreign interests have spent substantial sums to influence recent U.S. elections. Following *Citizens United v. FEC*, 558 U.S. 310 (2010), federal law has failed to address campaign spending by corporations with significant foreign influence. In light of federal inaction, several jurisdictions have passed reforms similar to S.B. 166 to ban campaign spending by foreign-influenced corporations.¹

In addition to supporting the bill's provisions regarding foreign corporations and independent expenditures, CLC recommends the following amendments:

¹ See Alaska Stat. § 15.13.068(a); St. Petersburg, Florida Municipal Code § 10-51(m); Seattle, Washington Municipal Code § 2.04.400. The Alaska and St. Petersburg laws apply to corporations owned 5% or more by a single foreign owner and 20% or more by multiple foreign owners, and the Seattle law applies to corporations owned 1% or more by a single foreign owner and 5% or more by multiple foreign owners.

Expand the prohibition to include electioneering communications. The bill expands Hawaii’s ban on foreign spending in elections to include independent expenditures. To ensure that the ban applies to all election-related advertisements, CLC recommends including electioneering communications in the ban. Other states, including Alaska, Colorado, Maryland, Montana, and Washington, as well as federal law, also prohibit foreign nationals from making electioneering communications.²

Ban 501(c)(4) organizations that receive 20% or more of their funds from foreign sources from spending in elections. The bill expands Hawaii’s ban to corporations with certain amounts of foreign ownership or that are formed under the laws of a foreign jurisdiction. CLC recommends including 501(c)(4) organizations that receive 20% or more of their funds from foreign nationals or other foreign corporations. Including these groups in the ban will prevent foreign interests from laundering large amounts of money through non-profit organizations to influence Hawaii elections.³

Require foreign nationals who run issue ads to include a “paid for by a foreign national” disclaimer on the ads. When foreign nationals run ads that attempt to influence government action or policy, like the approval of an environmental permit or the passage of a bill, those ads should clearly and conspicuously identify the foreign national responsible for the ad, including a disclaimer that the person is a foreign national. Requiring this kind of disclosure is similar to the disclaimer requirements under the federal Foreign Agents Registration Act.⁴

CLC respectfully urges the Committee to support updating Hawaii’s ban on foreign interference in elections with our recommendations and taking favorable action on S.B. 166. Thank you for the opportunity to submit this statement in support of this important legislation. If you have further questions, please do not hesitate to contact us.

Respectfully submitted,

/s/

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² Alaska Stat. § 15.13.068(a); Colo. Rev. Stat. § 1-45-103.7(5.5); Md. Code, Elections § 13-236.1(b)(2); Mont. Code Ann. § 13-37-502(1); Wash. Rev. Code § 42.17A.417; 52 U.S.C. § 30121(a)(1)(c).

³ See, e.g., Investigations team & Ruth Sherlock, *Exclusive: Pro-Trump campaign group should face inquiry over ‘foreign donor’, leading election lawyer states*, THE TELEGRAPH (Oct. 25, 2016), <http://www.telegraph.co.uk/news/2016/10/25/exclusive-pro-trump-campaign-group-should-face-inquiry-over-fore/>.

⁴ 22 U.S.C. § 611, *et seq.*