

Trending in State Law: California & Maine Target Foreign-Influenced Entities

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California and Maine have introduced legislation that intends to prohibit foreign-influenced entities from making political contributions and expenditures. If passed, these initiatives would broaden existing federal and state bans on foreign national political spending and may affect American companies with foreign shareholders.

The California state legislature recently introduced a bill to extend the state's current ban on contributions and expenditures by a foreign government or foreign principal to include any "foreign-influenced business entity." The "Get Foreign Money Out of California Elections Act" defines a foreign-influenced business entity as an entity where:

- A single foreign principal has a 1% ownership, direct or indirect, of total equity;
- Two or more foreign principles hold voting shares of 5% or more of total equity; or
- One or more foreign principals partake in the entities decision-making process with respect to political contributions or expenditures.

The bill would also require any business entity that makes a contribution or expenditure to file a statement of certification disavowing itself as a foreign-influenced entity. The state legislature reconvened on January 4, 2023, but has not yet considered this bill.

Similarly, in San Jose, California, the City Council voted in April of 2022 to approve a memorandum to initiate legislation to prohibit foreign-influenced corporations from spending money in local elections. The recommended legislation includes the same thresholds as the aforementioned state bill when defining a foreign-influenced

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

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corporation: a 1% ownership by a foreign principal, or a 5% ownership by two or more foreign principals, and requires entities to file a certification statement that disavows foreign influence prior to engaging in political spending. The approved memorandum calls for final ordinance language to be drafted and presented to the San Jose City Council for a final vote, which has yet to occur.

In Maine, the Secretary of State's Office validated an initiative put forward by Protect Maine Elections to prohibit foreign government-influenced entities from engaging in campaign spending in the state. The initiative defines a foreign government-influenced entity as any entity in which 5% or more of total equity is held by a foreign government or foreign government-owned entity. If found in violation, the initiative grants the Maine Ethics Commission the authority to apply a maximum penalty of \$5,000 or double the amount of the prohibited contribution. In addition, the initiative requires a "clear and conspicuous" disclosure of any public communication made by a foreign government-influenced entity that is seeking to "influence the public or government officials on issues of state or local policy or foreign relations." The initiative will now go to the Legislature for consideration and enactment or send it for a vote in November 2023. The Maine Legislature convened on December 7, 2022, but has yet to consider this matter.

Finally, in Portland, Maine, a referendum passed in November that would, among other things, ban corporate contributions to candidates and ballot question committees from foreign donors. Unlike the foreign ownership threshold defined in the state initiatives, the Clean Elections Fund Amendment broadly defines a foreign-influenced entity as "any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership." The new law is set to take effect beginning FY 2023-2024, but the Portland City Council has yet to pass a local ordinance on the matter.

Maddie Van Aken, a Legislative and Reporting Coordinator at Wiley Rein LLP, contributed to this alert.