
RECENT LEGISLATION

ELECTION LAW — LIMITS ON POLITICAL SPENDING BY FOREIGN ENTITIES — ALASKA PROHIBITS SPENDING ON LOCAL ELECTIONS BY FOREIGN-INFLUENCED CORPORATIONS. — ALASKA STAT. § 15.13.068 (2018).

Less than a week after the U.S. Supreme Court's 2010 holding in *Citizens United v. FEC*¹ that the government cannot ban corporate political spending,² President Obama warned in his State of the Union address that the Court's decision would "open the floodgates for special interests — including foreign corporations — to spend without limit in our elections."³ From the audience, Justice Alito famously seemed to mouth "not true" in response.⁴ Two years later, in *Bluman v. FEC*,⁵ the Court summarily affirmed a decision by the federal district court in Washington, D.C., upholding federal statutes barring foreign nationals from making political contributions or expenditures.⁶ According to the *Bluman* district court, "the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government."⁷ Although the Supreme Court "essentially ducked the issue" in *Bluman* by not issuing a ruling of its own,⁸ states and localities have begun to assert that interest by introducing legislation further limiting foreign spending in their elections. In 2018, the Alaska legislature barred "foreign-influenced corporations" from spending money to support or oppose candidates in local elections.⁹ This law relies on the compelling interest recognized by the district court in *Bluman*, but in considering challenges to the law, and others like it, the Court will need to reconcile persisting debates about *Bluman*'s inconsistency with *Citizens United*. The Court should officially recognize a compelling state interest in excluding foreign spending from American elections, and Congress, the Federal Election Commission (FEC), states, and municipalities should take action to assert that interest.

Before turning to the Alaska law, it is helpful to briefly explore the national conversation that partly motivated it. In 2016, FEC Commissioner Ellen Weintraub wrote in the *New York Times* that although *Citizens*

¹ 558 U.S. 310 (2010).

² *Id.* at 319.

³ Jeffrey Toobin, *Alito's Face*, NEW YORKER (Jan. 28, 2010), <https://www.newyorker.com/news/news-desk/alitos-face> [<https://perma.cc/G2XJ-8F5W>].

⁴ *Id.*

⁵ 565 U.S. 1104 (2012) (mem.).

⁶ *Id.* at 1104; *see* *Bluman v. FEC*, 800 F. Supp. 2d 281, 283 (D.D.C. 2011), *aff'd*, 565 U.S. 1104.

⁷ *Bluman*, 800 F. Supp. 2d at 288.

⁸ LAURENCE TRIBE & JOSHUA MATZ, UNCERTAIN JUSTICE 118 (2014); *see id.* at 118–19.

⁹ ALASKA STAT. § 15.13.068 (2018).

United held that “when it comes to . . . political contributions and expenditures, the rights that citizens hold are not lost when they gather in corporate form,” “[f]oreign nationals are another matter.”¹⁰ Foreign nationals are still legally barred “from directly or indirectly making political contributions or financing certain election-related advertising known as independent expenditures and electioneering communications.”¹¹ “But,” Weintraub wrote, “many American corporations have shareholders who are foreigners These corporations are not associations of citizens who are allowed to contribute. They are an inseparable mix of citizens and noncitizens”¹² As Justice Stevens noted in his partial concurrence and partial dissent in *Citizens United*: “Unlike voters in U.S. elections, corporations may be foreign controlled.”¹³ Weintraub called on policymakers to take action on this issue by clarifying that corporations with a certain percentage of foreign ownership cannot spend in American elections.¹⁴ Later in 2016, FEC Commissioner Ann Ravel called for the FEC to change its rules to restrict domestic subsidiaries of foreign corporations from making contributions connected to local, state, or federal elections.¹⁵ The FEC ultimately stalemated on the proposal.¹⁶ Noting the FEC’s “perpetual[] deadlock[],” Commissioner Weintraub called on states to take action.¹⁷

States and municipalities heeded this call. In 2017, St. Petersburg, Florida, passed an ordinance requiring any corporation spending over \$5000 in a local election to certify that it is not a “foreign-influenced business entity.”¹⁸ Similar legislation has been proposed in New York City,

¹⁰ Ellen L. Weintraub, Opinion, *Taking On Citizens United*, N.Y. TIMES (Mar. 30, 2016), <https://nyti.ms/1qhmpKB> [<https://perma.cc/FJ9R-LK4Y>].

¹¹ *Id.*

¹² *Id.*

¹³ *Citizens United v. FEC*, 558 U.S. 310, 465 (2010) (Stevens, J., concurring in part and dissenting in part); see also IAN VANDEWALKER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUSTICE, *GETTING FOREIGN FUNDS OUT OF AMERICA’S ELECTIONS* 18 (2018), https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final_April9_0.pdf [<https://perma.cc/6X72-CZEB>] (noting that in 2012, “[c]orporations with majority ownership by foreigners controlled more than \$12 trillion in assets”).

¹⁴ Weintraub, *supra* note 10.

¹⁵ Memorandum from Ann C. Ravel, Comm’r, FEC, to the Commission 2 (Aug. 9, 2016), https://www.fec.gov/agenda/2016/documents/mtgdoc_16-32-a.pdf [<https://perma.cc/D7FB-HPQ5>] (“The *Citizens United* decision and its progeny in the lower federal courts have transformed the American campaign finance system by opening up new avenues for outside and corporate spending in our elections.”).

¹⁶ Ashley Balcerzak, *FEC Stalemates on How to Deal with Foreign-Owned Companies Spending in Elections*, OPENSECRETS (Sept. 15, 2016), <https://www.opensecrets.org/news/2016/09/fec-stalemates-on-how-to-deal-with-foreign-owned-companies-spending-in-elections/> [<https://perma.cc/2GPF-HDLJ>] (“In the last few minutes of a nearly four hour long meeting, the commissioners eventually agreed to prioritize cases dealing with foreign nationals. That’s what counts as an accomplishment at the FEC these days.”).

¹⁷ Weintraub, *supra* note 10.

¹⁸ ST. PETERSBURG, FLA., CODE § 10-62 (2019).

Connecticut, and Massachusetts.¹⁹ And in Alaska, an effort to pass a good-government initiative ultimately resulted in the enactment of a similar law.

In 2017, three Alaskans filed an initiative petition for the Alaska Government Accountability Act with the state Division of Elections.²⁰ The initiative barred “foreign-influenced corporation[s]” from spending money to either support or oppose candidates for local or state election.²¹ It defined such corporations as any in which: (1) “a foreign national or foreign owner holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares in an amount equal to or greater than 5 percent of total equity or outstanding voting shares”; (2) multiple foreign nationals “hold, own, or control” at least twenty percent of the company; or (3) a foreign national either directly or indirectly makes decisions regarding covered expenditures.²² The initiative also included restrictions on state legislators’ ability to vote despite conflicts of interest, accept alcoholic beverages or more than “de minimis food” from lobbyists, receive per diem payments despite failing to pass a budget, and use state money for foreign travel.²³ The initiative’s supporters collected over 45,000 signatures, far more than the number required to get on the ballot.²⁴

This public support motivated the State Senate to take action on a similar House bill²⁵ in an effort to invoke a provision of the Alaska Constitution allowing the legislature to remove an initiative from the ballot by passing a law that is “substantially the same.”²⁶ The Senate

¹⁹ See H.R. 5589, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017); S. 1331, 191st Gen. Court, 2017–2018 Sess. (Mass. 2017); Letitia James et al., Opinion, *Closing the Door on Foreign Money in New York City Elections*, GOTHAM GAZETTE (Oct. 4, 2018), <http://www.gothamgazette.com/opinion/7972-closing-the-door-on-foreign-money-in-new-york-city-elections> [<https://perma.cc/2FVK-58FB>].

²⁰ See Letter from Byron Mallott, Lieutenant Governor, State of Alaska, to Jason Grenn, Representative, Alaska State House 1 (Oct. 6, 2017) [hereinafter Mallott Letter], <http://www.elections.alaska.gov/petitions/17AKGA/17AKGA%20Application%20Cert%20Letter.pdf> [<https://perma.cc/767A-ZQU5>]; see also Nathaniel Herz, *Alaska Ethics Initiative Targets Legislators’ Travel, Per Diem and Lobbyist-Paid Meals*, ANCHORAGE DAILY NEWS (Aug. 29, 2017), <https://www.adn.com/politics/alaska-legislature/2017/08/29/alaska-ethics-initiative-targets-legislators-travel-per-diem-and-lobbyist-paid-meals/> [<https://perma.cc/58NW-DY7L>].

²¹ ALASKA DIV. OF ELECTIONS, 17AKGA, ALASKA GOVERNMENT ACCOUNTABILITY ACT: A BILL BY INITIATIVE § 9, at 3 (2018), <http://www.elections.alaska.gov/petitions/17AKGA/Bill.pdf> [<https://perma.cc/F9RX-WM8H>]. The initiative did not apply to spending on ballot propositions. *Id.*

²² *Id.* § 9, at 5. These restrictions would likely cover some oil and gas companies active in Alaska.

²³ *Id.* §§ 2–8, at 1–3.

²⁴ Richard Mauer, *Petitions Filed on Accountability Initiative in Alaska*, KTUU (Jan. 12, 2018, 5:28 PM), <http://www.ktuu.com/content/news/Petitions-filed-on-accountability-initiative-469068053.html> [<https://perma.cc/Z8FJ-HXRH>]; Mallott Letter, *supra* note 20, at 2 (requiring 32,127 signatures).

²⁵ H.R. 44, 30th Leg., 2d Sess. (Alaska 2018) (proposing new standards for legislative ethics and financial conflicts); see S. 30-2018-03-23, 2d Sess., at 2367 (Alaska 2018) (documenting the Senate’s decision to refer H.B. 44 to various committees for further debate).

²⁶ ALASKA CONST. art. XI, § 4. The Alaska Supreme Court has held that “the legislature’s discretion in this matter is reasonably broad.” *Warren v. Boucher*, 543 P.2d 731, 736 (Alaska 1975). “If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act

added text to the bill that incorporated much of the initiative's language, including its proposed corporate spending regulations.²⁷ However, the drafters included a caveat stating that the bill's campaign finance provisions only applied "to the extent . . . federal law prohibits the foreign-influenced corporation . . . from making a contribution or expenditure in connection with a state election; and [only to the extent] permitted by federal law,"²⁸ a change ostensibly motivated by constitutional concerns.²⁹ Given that federal law does not explicitly regulate the political spending of "foreign-influenced corporations" (a term of art not used at the federal level), this addition seems to negate the rest of H.B. 44's campaign finance language.³⁰ The bill passed both houses of the legislature,³¹ and, in July 2018, Alaska's governor signed H.B. 44 into law.³²

Despite the bill's differences from the initiative, the Department of Law concluded the two were substantially similar³³ and therefore that the initiative was "void."³⁴ The Department did observe that the bill "significantly narrows — and even largely eliminates — the initiative's prohibition on campaign contributions and expenditures by foreign-influenced corporations."³⁵ However, "[n]othing appears to prohibit the legislature from addressing potential constitutional infirmities or resolving discrete legal issues presented in an initiative bill."³⁶ The Department concluded: "While the foreign-influenced-corporation provision is one

accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists." *Id.* The "broader" an initiative's subject matter, "the more latitude must be allowed [to] the legislature to vary from the particular features of the initiative." *Id.*

²⁷ See 2018 Alaska Sess. Laws ch. 61, §§ 1–2 (codified at ALASKA STAT. § 15.13.068 (2018)).

²⁸ *Id.* § 1(b)(1)–(2).

²⁹ Memorandum from Daniel C. Wayne, Legislative Counsel, Legislative Affairs Agency, State of Alaska, to Kevin Meyer, Senator, Alaska State Legislature 6–7 (Mar. 21, 2018) [hereinafter Legislative Memorandum] (on file with the Harvard Law School Library).

³⁰ Letter from Jahna Lindemuth, Attorney Gen., State of Alaska, to Byron Mallott, Lieutenant Governor, State of Alaska 3 (May 25, 2018) [hereinafter Lindemuth Letter], http://law.alaska.gov/pdf/opinions/opinions_2018/18-002_JU2017200579.pdf [https://perma.cc/VKC7-H7SB].

³¹ Joe Viechnicki, *Legislative Ethics Bill Will Keep Issue Off Fall Ballot*, ALASKA PUB. MEDIA (June 6, 2018), <https://www.alaskapublic.org/2018/06/06/legislative-ethics-bill-will-keep-issue-off-fall-ballot/> [https://perma.cc/4CQN-WXF7].

³² Press Release, Office of the Governor, Governor Walker Signs Legislative Ethics Reform into Law (July 20, 2018), <https://wayback.archive-it.org/1200/20181130015823/https://gov.alaska.gov/newsroom/2018/07/governor-walker-signs-legislative-ethics-reform-into-law/> [https://perma.cc/DU6M-Y8HZ]. As of April 2019, there is a legislative effort to scale back some of the law's conflict-of-interest restrictions. See Steve Quinn, *State Senators Seek Rollback of 2018 Ethics Bill*, KTVA (Mar. 13, 2019, 10:43 PM), <https://www.ktva.com/story/40123063/senate-seeks-roll-back-of-ethics-bill-provisions> [https://perma.cc/ATS7-BJBY].

³³ Lindemuth Letter, *supra* note 30, at 1.

³⁴ Letter from Byron Mallott, Lieutenant Governor, State of Alaska, to Jason Grenn, Representative, Alaska State House 1 (June 1, 2018), <http://www.elections.alaska.gov/petitions/17AKGA/17AKGA%20HB44%20SubstantialSimilarityDetermination.pdf> [https://perma.cc/4D7T-2A9K]. The initiative's sponsors did not challenge the decision.

³⁵ Lindemuth Letter, *supra* note 30, at 7–8.

³⁶ *Id.* at 8.

feature of the initiative, the fact that the act takes a different approach to this one feature . . . does not ‘vitiat[e] the aims of the initiative.’³⁷

Though the initiative’s sponsors apparently assumed that the bill effectively nullified their campaign finance provisions,³⁸ a closer look suggests the law does significantly restrict political spending by foreign-influenced corporations. It defines an election as “any state or local election”³⁹ and bars foreign-influenced corporations from making political contributions or expenditures “directly or indirectly, in connection with an election under this chapter.”⁴⁰ However, the limiting clause that follows, which restricts the law’s prohibitions on corporate spending to mirror those already in place under federal law, explicitly applies “in connection with a state election.”⁴¹ No such limitation is placed on the restriction on spending in *local* elections. Thus, the Alaska legislature has, perhaps inadvertently, passed a bill barring foreign-influenced corporations from making political expenditures or contributions related to a candidate for local office.

Although there are other possible constitutional attacks on H.B. 44,⁴² the most salient constitutional concern is a First Amendment claim. Determining the law’s ability to survive a First Amendment challenge requires revisiting the incongruence between *Bluman* and *Citizens United*. A necessary — but not sufficient — factor for the law to withstand strict scrutiny is that the law must have been passed to further a compelling government interest.⁴³ The state could argue that, under *Bluman*, prohibiting

³⁷ *Id.* at 9 (alteration in original) (quoting *State v. Trust the People*, 113 P.3d 613, 621 (Alaska 2005)).

³⁸ Jason Grenn & Jonathan Kreiss-Tomkins, Opinion, *Alaskans Deserve Credit for Their Part in Legislative Ethics Reform*, ANCHORAGE DAILY NEWS (July 17, 2018), <https://www.adn.com/opinions/2018/07/17/alaskans-deserve-credit-for-their-part-in-legislative-ethics-reform/> [<https://perma.cc/Y5XD-GTNT>] (describing the achievements of the bill and not mentioning campaign finance reform); cf. Lindemuth Letter, *supra* note 30, at 7–8.

³⁹ ALASKA STAT. § 15.13.068(e)(3) (2018).

⁴⁰ *Id.* § 15.13.068(a).

⁴¹ *Id.* § 15.13.068(b).

⁴² Other constitutional concerns involve equal protection and federal preemption. Legislative Memorandum, *supra* note 29, at 4–7. Under equal protection analysis, limits on fundamental rights receive strict scrutiny. *Id.* at 8. However, some courts are reluctant to allow plaintiffs to reframe First Amendment challenges as equal protection claims “to effect an end run around the Supreme Court’s well-established distinction between independent expenditure limits, which trigger strict scrutiny, and contribution limits, which do not.” *1A Auto, Inc. v. Dir. of the Office of Campaign & Political Fin.*, 105 N.E.3d 1175, 1191 (Mass. 2018); see also *Wagner v. FEC*, 793 F.3d 1, 32 (D.C. Cir. 2015) (rejecting a similar “doctrinal gambit”). Under the federal preemption theory, state restrictions on foreign spending in local and state elections may be preempted by the Federal Election Campaign Act (FECA), which already prohibits foreign nationals from donating, contributing, or spending money in connection with any federal, state, or local election. See 22 U.S.C. § 611(b) (2012); 52 U.S.C. § 30121 (2012).

⁴³ Restrictions on independent political expenditures receive strict scrutiny; they must be narrowly tailored to serve a compelling state interest. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464 (2007). Contribution restrictions, on the other hand, are subject to “less rigorous scrutiny.” *McCConnell v. FEC*, 540 U.S. 93, 136 n.39 (2003). They must be closely drawn to serve a “sufficiently important interest.” *Id.* at 136 (quoting *FEC v. Beaumont*, 539 U.S. 146, 162 (2003)).

foreign spending in American elections is a compelling interest. And yet, as Justice Stevens noted, the majority in *Citizens United* emphasized “the listener’s interest in hearing what every possible speaker may have to say”⁴⁴ and was wary of any restrictions based on a speaker’s identity.⁴⁵ As Professors Laurence Tribe and Joshua Matz write, “if [this argument is] taken seriously, it suggests that we should not deny citizens access to political ideas that happen to be expressed by noncitizens.”⁴⁶ Ultimately, the Court will need to clarify this conflict in order to rule on the constitutionality of H.B. 44 and other efforts to limit foreign money in American elections.

In *Citizens United*, the Court held that restrictions on political expenditures by corporations violated the First Amendment.⁴⁷ Writing for the majority, Justice Kennedy explicitly declined to “reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.”⁴⁸ However, Justice Stevens, writing in dissent on the issue of expenditure limits, argued that the majority’s “categorical approach to speaker identity is untenable [given its acknowledgement] that Congress might be allowed to take measures aimed at” eliminating foreign political spending.⁴⁹ The majority had emphasized that “[p]olitical speech is ‘indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.’”⁵⁰ And furthermore, “the worth of speech ‘does not depend upon the identity of its source, whether corporation, association, union, or individual.’”⁵¹ Given this emphasis on *listeners’* rights to hear political speech of all types, scholars have argued that it is unclear why listeners would not have the right to hear the political speech of noncitizens as well as that of American citizens, regardless of whether the foreign speakers themselves have a constitutional right at stake.⁵²

Bluman offered the Court a chance to firmly resolve this question. Writing for a three-judge district court panel, then-Judge Kavanaugh found a compelling governmental interest in “limiting the participation of foreign citizens in activities of American democratic self-government,

⁴⁴ *Citizens United v. FEC*, 558 U.S. 310, 469 (2010) (Stevens, J., concurring in part and dissenting in part).

⁴⁵ *Id.* at 394.

⁴⁶ TRIBE & MATZ, *supra* note 8, at 118.

⁴⁷ *Citizens United*, 558 U.S. at 319, 365.

⁴⁸ *Id.* at 362.

⁴⁹ *Id.* at 424 n.51 (Stevens, J., concurring in part and dissenting in part).

⁵⁰ *Id.* at 349 (majority opinion) (quoting *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 777 (1978)).

⁵¹ *Id.* (quoting *Bellotti*, 435 U.S. at 777).

⁵² See, e.g., Toni M. Massaro, *Foreign Nationals, Electoral Spending, and the First Amendment*, 34 HARV. J.L. & PUB. POL’Y 663, 666 (2011) (arguing that under *Citizens United* “campaign spending restrictions based on the citizenship status of the political speaker cannot survive the exacting scrutiny that the Court now imposes on such legislation”).

and in thereby preventing foreign influence over the U.S. political process.”⁵³ This interest extends to “the power to bar foreign nationals from making campaign contributions and expenditures.”⁵⁴ Judge Kavanaugh wrote, “[i]t is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government.”⁵⁵ He further concluded that “in our view, the majority opinion in *Citizens United* is entirely consistent with a ban on foreign contributions and expenditures.”⁵⁶ Judge Kavanaugh applied the same logic to foreign corporations, writing that “of course, . . . [they] are likewise barred from making contributions and expenditures.”⁵⁷ Under this decision’s logic, Alaska has a compelling government interest in restricting political spending by foreign entities.⁵⁸

However, instead of clearly acknowledging such an interest, the Supreme Court declined to resolve the perceived conflict between *Bluman* and *Citizens United* and “essentially ducked the issue” by merely issuing a summary affirmance in *Bluman*.⁵⁹ Although summary dispositions are decisions “on the merits, entitled to precedential weight,”⁶⁰ they do not receive the same deference as cases in which the Court issues a full decision and they only affirm the lower court’s judgment — as opposed to its reasoning.⁶¹ In order to consider the constitutionality of laws

⁵³ *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011).

⁵⁴ *Id.* at 289.

⁵⁵ *Id.* at 288.

⁵⁶ *Id.* at 289.

⁵⁷ *Id.* at 292 n.4. Because the *Bluman* plaintiffs were individuals, the court had “no occasion to analyze the circumstances under which a corporation may be considered a *foreign* corporation for purposes of First Amendment analysis.” *Id.*

⁵⁸ The law’s tailoring, or lack thereof, is largely beyond the scope of this piece. Briefly, although the five-percent threshold may seem arbitrary, purchasing a five-percent share in a company can come with a seat on the board of directors and the ability to steer political spending. See Laurence H. Tribe & Scott Greytak, *Get Foreign Political Money Out of U.S. Elections*, BOS. GLOBE (June 22, 2016), <https://www.bostonglobe.com/opinion/2016/06/22/get-foreign-political-money-out-elections/qEkLmpfA23BIwxw815RJML/story.html?event=event25> [<https://perma.cc/WB4B-WHXX>]; see also Letter from Charles Fried, Professor, Harvard Law Sch., to Chairman John Mahoney & Chairwoman Anne Gobi, Joint Comm. on Election Laws, Mass. State House 2 (Sept. 27, 2017), <https://freespeechforpeople.org/wp-content/uploads/2017/09/Fried-Joint-Committee-Election-Laws.pdf> [<https://perma.cc/YVR9-4GVX>] (“As it is well known that a relatively small percentage of shareholders acting in concert can dominate a corporation and determine the choice of its directors and officers, it is not surprising that such a threshold might be at a level that, in other contexts, would seem to be de minimis.”). The Securities and Exchange Commission requires that companies report all owners with at least a five-percent share and provide those owners’ citizenship. See 17 C.F.R. § 240.13d-101 (2018).

⁵⁹ TRIBE & MATZ, *supra* note 8, at 118; see *Bluman v. FEC*, 565 U.S. 1104 (2012) (mem.).

⁶⁰ *Meek v. Pittenger*, 421 U.S. 349, 366 n.16 (1975).

⁶¹ *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983) (noting that the “precedential effect of a summary affirmance extends no further than the precise issues presented and necessarily decided by those actions” (internal quotation marks omitted)); see also Joshua A. Douglas & Michael E. Solimine, *Prec-*

limiting political spending by foreign corporations, the Supreme Court must bring *Bluman* and *Citizens United* into alignment in a full decision.⁶²

The Court ought to recognize protecting American self-governance as a compelling state interest under First Amendment law for three reasons. First, the Constitution itself expresses concerns about foreign influence on American politics.⁶³ Second, as Justice Stevens noted in *Citizens United*, “[t]he notion that Congress might lack the authority to distinguish foreigners from citizens in the regulation of electioneering would certainly have surprised the Framers, whose ‘obsession with foreign influence derived from a fear that foreign powers and individuals had no basic investment in the well-being of the country.’”⁶⁴ And third, limiting foreign spending, particularly in local elections, is a normatively desirable goal.⁶⁵ Lower levels of spending in state and local elections, particularly in states with small populations like Alaska, mean that an influx of money can have an outsized influence, especially in nonpartisan, low-information races.⁶⁶ In the meantime, states and municipalities should continue their attempts to limit foreign spending in American elections, particularly given the limited inroads that both Congress and the FEC have made in closing the hole left by *Citizens United*.⁶⁷

edent, Three-Judge District Courts, and the Law of Democracy, 107 GEO. L.J. 413, 418–19 (2019) (arguing that summary dispositions of decisions by three-judge district court panels that the Court is obliged to hear on appeal — such as the *Bluman* decision — should have little to no precedential value).

⁶² This concern is not specific to Alaska’s H.B. 44. See Rebecca Beitsch, *Lawmakers Look to Curb Foreign Influence in State Elections*, PEW STATELINE (Mar. 10, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/10/lawmakers-look-to-curb-foreign-influence-in-state-elections> [<https://perma.cc/4Q86-MYR7>].

⁶³ See Letter from Laurence H. Tribe, Professor, Harvard Law Sch., to Chairman John Mahoney and Chairwoman Anne Gobi, Joint Comm. on Election Laws, Mass. State House 5 (Sept. 27, 2017), https://freespeechforpeople.org/wp-content/uploads/2017/09/Tribe-letter-to-MA-legislature-re_super-PACs-and-foreign-corp-bills.pdf [<https://perma.cc/A9G3-Y7KS>] (citing U.S. CONST. art. I, § 9, cl. 8, known as the Foreign Emoluments Clause of the Constitution).

⁶⁴ *Citizens United v. FEC*, 558 U.S. 310, 424 n.51 (2010) (Stevens, J., concurring in part and dissenting in part) (quoting Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 393 n.245 (2009)).

⁶⁵ Such an interest might be limited specifically to interference from foreign entities, as opposed to interference from residents of other states. See *Thompson v. Hebdon*, 909 F.3d 1027, 1043 (9th Cir. 2018) (ruling against Alaska’s aggregate limit on contributions from nonresidents on First Amendment grounds and distinguishing that case from *Bluman* on the grounds that the distinction between U.S. citizens and foreign nationals “was the very basis for the *Bluman* court’s holding,” *id.* at 1044 n.11).

⁶⁶ See CHISUN LEE ET AL., BRENNAN CTR. FOR JUSTICE, SECRET SPENDING IN THE STATES 3–4 (2016) https://www.brennancenter.org/sites/default/files/Secret_Spending_in_the_States.pdf [<https://perma.cc/G86W-PABU>].

⁶⁷ H.R. 1615, 115th Cong. (2017) (proposing amendments to FECA to bar “contributions and expenditures by . . . foreign-controlled, foreign-influenced, and foreign-owned domestic corporations”); Jordan Muller, *FEC Rejects Proposal to Consider New Rules on Foreign Spending in U.S. Elections*, OPENSECRETS (May 25, 2018), <https://www.opensecrets.org/news/2018/05/fec-rejects-proposal-to-consider-new-rules-on-foreign-spending-in-us-elections/> [<https://perma.cc/6TE5-LNDK>]; see also VANDEWALKER & NORDEN, *supra* note 13, at 18–19 (suggesting other policy solutions).