Public Comment for April 2023 Meeting
(Conner Edwards)

Commissioners:

This past Sunday, the Legislature adjourned without passing SB 5284, the PDC's omnibus agency request legislation. While the bill had passed both the House (97-0) and the Senate (29-19), the two chambers were unable to agree on an acceptable version of the bill.

Both the House and the Senate rejected a last-minute effort by the PDC to remove positive provisions from the bill that would have addressed the frustrating foreign contribution certification requirements that have plagued members of the agency's regulated community for the last 3 years.

While the other changes made in SB 5284 are positive, the agency was wrong to believe that the passage of those changes should take precedence over reforming the foreign contribution certification requirement. This is especially true in light of: a) the significant pain that this requirement has inflicted on the regulated community, b) the substantial progress the Legislature has made on addressing this issue over the last 3 months, and c) the fact that the other relevant provisions of SB 5284 would not take effect until 2024 anyways.

If there had been an opportunity to discuss making changes to this requirement earlier in the year, this current predicament could have been avoided. Repeatedly over the last year, there have been a number of campaign treasurers from both sides of the political divide that have reached out to the Commission asking for greater involvement from the agency on this issue, specifically to help us find a viable alternative to the current requirement. I personally gave written and oral testimony for five straight monthly Commission meetings in a row about the hardships imposed by the foreign contribution certification requirement, the fact that this requirement (while well intentioned) accomplishes nothing, and the need to find a viable alternative to the current requirement. The agency refused to engage with us.

I hope that the events surrounding SB 5284 have conveyed a clear message to the PDC: the pain surrounding the foreign contribution certification requirement is significant and the desire for a fix is high amongst not only stakeholders but also decision makers. The agency cannot continue to bury its head in the sand and refuse to engage with its regulated community on this critical issue.

Instead, the agency should partner with treasurers and other stakeholders to find a viable way forward on this issue. To accomplish this, I am urging the agency to act **this Thursday** to form a workgroup of stakeholders that will meet regularly over the next 8 months to find a viable alternative to the current foreign contribution certification requirement in advance of the 2024 session.

Best,

Conner Edwards
Professional Campaign Treasurer
(425) 533-1677 cell

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To assist the Commission in deliberations on this issue, the Commission should instruct agency staff to engage in research that would help answer the following questions:

1) Have there been any documented instances of foreign nationals being involved in WA state elections, campaign financing, or decision making? If so, what was the effect of this involvement?

2) How do other state campaign finance authorities deal with foreign national involvement in state elections and campaign financing?

3) How does the FEC deal with foreign national involvement in federal elections and campaign financing?

4) If the Senate version of SB 5284 were passed into law, would the substantive provisions likely be able to withstand a legal challenge?[1]

5) What agency stakeholders would it be helpful to include in discussions to find a viable alternative to the current foreign contribution certification requirement in advance of the 2024 session?

[1] Kevin Hamilton, attorney for the Washington State Democratic Party, and one of the country's leading campaign finance attorneys says "no". See Perkins Coie memo: https://www.documentcloud.org/documents/6631508-Seattle-Elections-Proposals-Memo.html?fbclid=IwAR35szDEPtVoczGjraf9ZGcWNyxyhO3p8tofzzFiJbTfO6ERft3Va9JhJ9g

Is The Washington State Legislature About to Declare Microsoft a "Foreign-Influenced" Company?

Image by Tawanda Razika from Pixabay

By **Bruce Ramsey** March 27, 2023 7

A bill now moving through the legislature would brand Microsoft a foreign-influenced corporation. It would forbid the "foreign-influenced" company from contributing money to influence any state or local election in Washington.

The foreign influence? The Norwegians.

The government of Norway invests billions in oil revenues in a fund for the future. Its fund owns stocks in hundreds of companies around the world — including a 1.13-percent stake in Microsoft. This triggers a definition in Engrossed Substitute Senate Bill 5284, now pending in the House State Government and Tribal Relations Committee. The bill would label as a "foreign-influenced corporation" any company in which a foreigner or foreign institution owns 1 percent or more of the stock. All companies with that much alien ownership would be forbidden from spending money to help any state or local political candidate.

In the public hearing on the bill, nobody mentioned the Norwegians. People here don't worry much about Norwegians, but if the bill passes the House — it has already passed the Senate — the Norwegian connection will snuff out the political rights of Microsoft.

And not only Microsoft. The Norwegians own one-percent-plus shares in scores of companies. Locally, the list includes Weyerhaeuser, T-Mobile, Zillow, and Starbucks. Regionally it includes Umpqua Bank and Micron Technology. Nationally it includes Bank of America, General Motors, Procter & Gamble, Pfizer, Lowe's, Home Depot, Apple, Adobe, Meta (Facebook), Netflix, Comcast, Verizon, and Paypal. Also McDonald's, Coca-Cola, Marriott, Caesar's Palace and News Corp., which owns the *Wall Street Journal* and Fox News.

And that's just the Norwegians. Many other foreign investors own 1 percent-plus stakes in U.S. companies, and some own a lot more. A German company owns almost half of T-Mobile, and Canadian and Dutch investment funds own all of Puget Sound Energy.

Business together own 5 percent of a company's stock, it is declared to be foreign-influenced and out of electoral politics. The 5-percent standard probably takes out all the larger companies with publicly traded stock. Most of them have at least 5 percent foreign ownership, or the CEO cannot be sure they don't. If Bill 5284 passes, a company that crosses either the 1-percent or 5-percent line will be forbidden to support any candidate, either through independent expenditure, or direct contribution.

"A company founded in Washington, that operates in Washington, pays taxes in Washington, whose officers and employees are in Washington, can be branded a 'foreign entity' and banned from political involvement," said Dave Mastin, who testified against Bill 5284 for the Association of Washington Business.

As originally written, the bill didn't do any of this. The bill began as a bag of technical reforms requested by the Public Disclosure Commission. The language on foreign-influenced corporations was added Feb. 15 by Sen. Joe Nguyen, the progressive Democrat who represents West Seattle, White Center, and Vashon Island. Nguyen is the assistant majority floor leader for the Democratic caucus.

The legislature is not the first to pass such a law. St. Petersburg, Florida, passed a similar law in 2017 with a 5-percent, 20-percent standard. The first jurisdiction to impose a 1-percent, 5-percent standard was Seattle.

Seattle's action came shortly after October 2019, when Amazon contributed a million dollars to defeat the council members who had passed, then repealed, the infamous "head tax." A million dollars is a huge amount for council races, and when Amazon's act was disclosed, as was required, it backfired. Amazon was accused of trying to buy the election. Seattle voters responded by keeping Amazon's adversaries in office.

In January 2020, Councilwoman Lorena González proposed the 1-percent, 5-percent bill defining "foreign-influenced corporations." Councilwoman Lisa Herbold read a prepared statement. "Foreign interests can easily diverge from U.S. interests. That is true nationally and can be certainly true locally." She went on, "Corporate governance experts and regulators agree that these thresholds as proposed in this bill capture the level of ownership necessary to influence corporate decisions." Even the Business Roundtable, the national organization of big corporations, she said, has agreed "that 1 percent is a threshold at which a single shareholder is able to influence corporate decisions."

Not really. Herbold was reading verbatim from a political argument posted by the Center for American Progress, the progressive group that had been promoting the 1-percent, 5-percent rule. The Center's memo footnotes the statement from the Business Roundtable, so you can see what the group actually said. The 1 percent was a reference to gadflies who have *no* influence on corporate decisions.

To declare that a 1 percent owner poisons the pool is unfair on its face to the other 99 percent — or it would be, if corporations worked that way. But they don't. Companies don't make political decisions by consulting public shareholders. How much actual power, for example, does Norges Bank Investment Management have over Microsoft's involvement in public questions in Washington? It is safe to say, none. And why would they want such a power?

The activists who support the 1-percent, 5-percent definition of a "foreign-influenced corporation" rarely argue that it makes sense. They just *say* it does. For Seattle's famously progressive City Council, the anti-foreign rhetoric sounds oddly right-wing. Their supporters sound the same way. In public comment at the January 2020 meeting, Cindy Black, executive director of a progressive group called Fix Democracy First, said, "Foreign money in elections is a real issue."

For the city council the real issue was getting back at Amazon. Beyond that, its purpose was to knock out all the big companies by labeling them as un-American. At Seattle's version of the Business Roundtable, the Washington Roundtable, President Steve Mullin said, "It was the perception of the business community that it was an effort by

incumbents to eliminate labor unions.

The Seattle ordinance requires that any company contributing to Seattle election campaigns certify, under threat of punishment, that it is not "foreign-influenced." I asked Wayne Barnett, executive director of the Seattle Ethics and Elections Commission, what effect the rule has had. "It's a hard thing to say," he said. "We haven't seen much in the way of people filing certificates of non-foreign influence."

The ordinance is doing what was intended. In a broader sense, the purpose of the 1-percent, 5-percent rule in Seattle, and now for the state, is to make an end run around *Citizens United v. Federal Elections Commission.* That's the U.S. Supreme Court decision that recognizes a First Amendment right of private organizations to engage in "electioneering communications." Repeal of *Citizens United* is a key objective of the Center for American Progress, which sent senior fellow Michael Sozan to Olympia to testify for bill 5284. Repeal is also part of the state platform and the national platform of the Democratic Party.

The progressive left argues that *Citizens United* was a bad decision because it unleashed corporate power; and that corporations, not being "natural persons," should not be protected by the First Amendment. People who support this position almost never mention that *Citizens United* also applies to labor unions and advocacy groups, which are also not natural persons. The focus is exclusively on corporations, which are only one class of donors.

You can see a similar focus in press coverage. On November 6, the *Seattle Times* ran a story by business reporter Renata Geraldo about contributions from Amazon, Microsoft, T-Mobile, and Boeing: "Four Big Companies Pour Money into Washington's Elections."

"These giant companies have combined annual revenues of more than $841 billion as of October," Geraldo wrote. Well, yes; and in 2022 they spent one *millionth* of that sum on electioneering communications in Washington. The amount, $823,075, was hardly enough to buy one house in Seattle. Furthermore, the part that went directly to individual campaigns — about half — was evenly split ($210,450 to $210,525) between Democrats and Republicans.

The story doesn't ask how much the big labor contributors spent last year. Had it asked, it would have found that the Service Employees International Union contributed $2.3 million to the New Direction PAC, which almost exclusively backs Democrats. Would any legislator propose a law to ban a union from electioneering communications if 1 percent, or 5 percent, of its members were not American citizens? It's doubtful; a law like that would be denounced as anti-worker. Probably it also would be unconstitutional.

In January 2020, the Seattle attorneys Kevin Hamilton, Brian Svoboda and Shanna Reulbach of Perkins Coie issued a memo arguing that the Seattle's ordinance was "too broad to withstand First Amendment scrutiny" and would likely be struck down if anyone wanted to bring a lawsuit. So far, nobody has sued, and the ordinance stands.

Former state Attorney General Rob McKenna, now an attorney at Orrick, Herrington & Sutcliffe, says about the Bill 5284 in Olympia. "It's clearly unconstitutional because it violates the First Amendment," McKenna said. "I hope that an effective company will choose to challenge it."

Bill 5284 hasn't passed yet, and there is still a chance that it won't. State Rep. Peter Abbarno of Centralia, member of the State Government and Tribal Affairs Committee, is offering an amendment to strip out the language on "foreign-influenced" corporations, but he's in the minority party.

PERKINSCOIE

January 8, 2020

TO: Washington State Democratic Central Committee

FROM: Kevin J. Hamilton
Brian G. Svoboda
Shanna M. Reulbach

RE: **The Seattle City Council's Proposed Campaign Finance Ordinance**

You have asked us to analyze a proposed ordinance, now being considered by the Seattle City Council, that, in certain municipal elections, would place limits on contributions to political committees which make independent expenditures or contribute to other committees making independent expenditures, and ban "foreign-influenced corporations" altogether from making independent expenditures or contributing to independent expenditure committees. Because the proposed ordinance would burden core First Amendment rights to make independent expenditures, it would almost certainly face constitutional challenge, and such a challenge would have a strong likelihood of success on the merits. We discuss these matters further below.

I. The Proposed Ordinance

The proposed ordinance's first main provision limits what a political committee may receive if it finances independent expenditures. The proposed ordinance defines an "independent expenditure committee" to include any political committee which either makes independent expenditures, or contributes to other political committees making independent expenditures, in amounts aggregating $1,000 or more in a city election.[1] It then places a general limit of $5,000 on contributions to independent expenditure committees which convey, "implicitly or explicitly," that the funds may be used in elections for or against Mayor, City Council or City Attorney candidates.[2] The lone exception from the $5,000 limit is for contributions made by "limited contributor committees"—i.e., political committees that have existed for at least nine months, receive contributions from a number of people ranging from 150 to 600 (depending on the elections in which they spend) and receive contributions only in amounts less than $500 or from other limited contributor committees.[3]

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1 Seattle City Council, Council Bill 119701, § 2.04.010 (intro. Nov. 5, 2019), https://seattle.legistar.com/LegislationDetail.aspx?ID=4225595&GUID=B8D94167-D14C-4A40-BF30-2212C88E38D7&Options=ID%7CText%7C&Search=foreign&FullText=1.

2 *Id.* § 2.04.400.

3 *Id.* § 2.04.010.

The proposed ordinance's second main provision curtails contributions and expenditures made by "foreign-influenced corporations." The proposed ordinance states:

> No foreign-influenced corporation shall make an independent expenditure in elections for or against candidates for the offices of Mayor, City Council, or City Attorney of the City of Seattle, or a contribution to an independent expenditure committee that has conveyed, implicitly or explicitly, that contributions to the committee may be used in elections for or against candidates for the offices of Mayor, City Council, or City Attorney of [t]he City of Seattle.[4]

The ordinance defines "corporation" broadly to include "a corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity."[5] A "corporation" is "foreign-influenced" if any one of the three conditions below is met:

1. A single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of one percent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; OR

2. Two or more foreign owners, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of five percent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; OR

3. A foreign owner participates directly or indirectly in the corporation's decision-making process with respect to the corporation's political activities in the United States.[6]

A "foreign owner" is a "foreign investor" or "a corporation wherein a foreign investor holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than 50 percent of the total equity or outstanding voting shares."[7] A "foreign investor" is a person or entity that that "[h]olds, owns, controls, or otherwise has direct or indirect beneficial ownership of equity, outstanding voting shares, membership units, or other applicable ownership interests of a corporation" and is a foreign government, foreign political party, a

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[4] *Id.* § 2.04.400(B). Further, when a corporation makes an independent expenditure, it must file a statement with the City Clerk certifying that it is not a foreign-influenced corporation. *Id.* § 2.04.270(D). It must also provide a copy of that statement to any independent expenditure committee to which it makes a contribution, and the independent expenditure committee must file the statement along with its campaign finance report. *Id.* §§ 2.04.260(2)(d), 2.04.270(D).

[5] *Id.* § 2.04.010.

[6] *Id.*

[7] *Id.*

combination of persons organized under the laws of another country or having its principal place of business in a foreign country, or an individual who is not a U.S. citizen or green-card holder.[8]

Thus, if U.S. Company A owns 1% of U.S. Company B, and if a foreign individual has 50% of the voting shares of U.S. Company A, then U.S. Company B would be prohibited from making independent expenditures in the specified elections, and from giving to independent expenditure committees active in these same elections, regardless of whether any foreign individual or entity actually participates in U.S. Company B's electoral decisions.

II. First Amendment Scrutiny

The Supreme Court has held that First Amendment protections extend to corporations.[9] Whenever a regulation burdens a speaker's core political speech, including the ability to make independent expenditures, the regulation is subject to strict scrutiny, which requires the government to prove that the regulation furthers a compelling government interest and is narrowly tailored to achieve that interest.[10] The First Amendment likewise protects the ability of persons and entities to contribute towards independent expenditures, subjecting government restrictions on independent-expenditure financing to heightened scrutiny.[11]

A. Contribution Limits

In *Citizens United v. Federal Election Commission*, the Supreme Court struck down the federal prohibition on corporations making independent expenditures, reasoning that *quid pro quo* corruption (or its appearance) is the only government interest capable of justifying contribution and expenditure limits, and independent expenditures—which by definition are made independent of candidates—cannot corrupt.[12] Less than three months later, the U.S. Court of Appeals for the District of Columbia Circuit, applying *Citizens United*, ruled

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[8] *Id.*

[9] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 342 (2010); *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 657 (1990), *overruled on other grounds by Citizens United*, 558 U.S. 310; *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251-56 (1986); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n.14, 784-85 (1978).

[10] *Citizens United*, 558 U.S. at 340; *see Austin*, 494 U.S. at 657; *Mass. Citizens for Life*, 479 U.S. at 251-52; *Bellotti*, 435 U.S. at 786; *Buckley v. Valeo*, 424 U.S. 1, 44-45 (1976).

[11] *See Citizens United*, 558 U.S. at 340 (invalidating federal ban on corporate independent expenditures); *see also Long Beach Area Chamber of Com. v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010); (invalidating city ordinance placing contribution limits on entities making independent expenditures); *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011) (affirming injunction against limits on financing independent expenditures); *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012) (enjoining enforcement of contribution limits against recall committees, citing *Long Beach Area Chamber of Commerce*); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (invalidating federal limits on contributions to political committees which solely make independent expenditures)

[12] *See generally Citizens United*, 558 U.S. 310.

that it is unconstitutional to limit how much people can contribute to groups that only make independent expenditures.[13] The D.C. Court stated: "In light of the [Supreme] Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. . . . Given this analysis from *Citizens United*, we must conclude that the government has no anti-corruption interest in limiting contributions to an independent expenditure group."[14]

The U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction over the State of Washington, has adopted the same reasoning. It struck down a City of Long Beach, California ordinance, which prohibited groups that accepted contributions above certain monetary thresholds from making independent expenditures.[15] It also upheld an injunction prohibiting the City of San Diego from enforcing an ordinance that operated to bar political committees making only independent expenditures from accepting more than $1,000 a year from any single source.[16]

Seattle's proposed ordinance limiting how much money independent expenditure-only political committees may accept from a single source each year is materially indistinguishable from the invalidated San Diego and Long Beach ordinances. As in the cases discussed above, because independent expenditures have been found to present an insufficient risk of corruption as a matter of law, Seattle can point to no government interest to justify a contribution limit to committees that make only independent expenditures. It is almost certain that a court operating in Washington, applying *Citizens United* and Ninth Circuit precedent, would hold this provision of the Seattle ordinance to be unconstitutional.

B. Foreign-Influenced Corporations

The Supreme Court has not said "whether the government has a compelling government interest in preventing foreign individuals or associations from influencing our Nation's political process."[17] In *Citizens United*, the Court explicitly avoided that issue, stating that it was unnecessary to consider the question when the law at issue—the federal corporate independent expenditure ban—was "not limited to corporations or associations that were created in foreign countries or funded *predominately* by foreign shareholders."[18]

While the Supreme Court has not spoken directly on the issue of foreign election financing, it affirmed without opinion a federal three-judge panel decision in *Bluman v. Federal Election Commission*.[19] There, the lower court upheld the federal law prohibiting foreign

[13] *SpeechNow.org*, 599 F.3d at 696.
[14] *Id.* at 695.
[15] *Long Beach Area Chamber of Com.*, 603 F.3d at 687, 699.
[16] *Thalheimer*, 645 F.3d at 1113, 1115, 1129.
[17] *Citizens United*, 558 U.S. at 362.
[18] *Id.* (emphasis added).
[19] *See Bluman v. Fed. Election Comm'n*, 565 U.S. 1104 (2012).

nationals from making contributions and expenditures in connection with any federal, state, or local election.[20] The *Bluman* court said that, because "it is fundamental to the definition of our national political community" that only citizens or lawful permanent residents be able to participate in "activities of democratic self-governance," the government has a compelling interest in "limiting the participation of foreign citizens in activities of American democratic self-governance, and in thereby preventing foreign influence over the U.S. political process."[21] The federal government's exclusion of foreign nationals from political spending, the court concluded, "is therefore tailored to achieve that compelling interest."[22]

However, *Bluman,* a federal district court decision, does not clearly support an extension of the current federal foreign national ban on the scale now contemplated by Seattle. The federal statute at issue in *Bluman* restricted the political spending of foreign individuals and business entities organized under the laws of another country or with a principal place of business in another country; the statute did not prevent domestic corporations with nominal foreign ownership or control from engaging in political speech, regardless of whether a foreign person or entity is actually involved in the speech.[23]

Moreover, *Bluman* suggests that the tailoring of Seattle's proposed ordinance is too broad to withstand First Amendment scrutiny. The *Bluman* court concluded that the federal ban on foreign-national spending was appropriately tailored to prevent foreign influence, whereas Seattle's ban is much broader and would prevent domestic corporations from spending in connection with U.S. elections, ostensibly to prevent foreign influence. The *Citizens United* Court's brief statement about foreign-national spending would appear to weigh against a regulation as broad as Seattle's proposal—the Supreme Court hypothesized only about foreign corporations or corporations "funded *predominately* by foreign shareholders."[24] Regulating a domestic corporation in which a foreign owner (which may itself not even be a foreign company) has as little as a 1% interest is a far cry from regulating a predominately foreign-funded or -owned entity.

The State of Alaska, in an enacting a similar ban on foreign-influenced corporations making contributions or expenditures in connection with elections, seemingly recognized these concerns.[25] To shield its ban from constitutional challenge, it included language saying that the ban applies "only to the extent (1) federal law prohibits the foreign-

[20] *See Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011).
[21] *Id.* at 288.
[22] *Id.* at 290.
[23] *See* 52 U.S.C. § 30121.
[24] *See Citizens United*, 558 U.S. at 362 (emphasis added).
[25] *See* Letter, Jahna Lindemuth, Alaska Att'y Gen., to Bill Walker, Alaska Gov. at 4-5 (June 22, 2018) (providing a legislative review of HB 44, which amended Alaska's election laws to include the foreign-influenced corporation prohibition) ("Alaska Letter"). The Alaska statute also has higher thresholds for foreign ownership before a corporation is considered "foreign influenced." *See* Alaska Stat. § 15.13.068(c)(5).

influenced corporation . . . from making a contribution or expenditure in connection with a state election; and (2) permitted by federal law."[26] Because federal law does not categorically prohibit the full range of corporations covered by the Alaska law from undertaking election spending, that law would allow such corporations to engage in some political activity, and thus has a greater chance of satisfying the First Amendment's exacting standard.[27]

Thus, Seattle's proposed ordinance barring foreign-influenced corporations from making independent expenditures and contributions in furtherance of independent expenditures will be subject to strict scrutiny because it burdens core First Amendment speech. The City's proposal is unlikely to survive such scrutiny, as federal courts have not recognized a compelling interest in restricting the speech of "foreign-influenced" individuals or entities, nor in regulating U.S. companies with a nominal amount of foreign ownership. When those owners could just as easily be isolated from decisions concerning electoral spending, the law is not narrowly tailored to serve the broader interest of keeping U.S. elections free from foreign influence.

III. Conclusion

Both major provisions of Seattle's proposed campaign-finance ordinance have serious constitutional flaws. And the passage of a law vulnerable to judicial challenge could have unintended consequences for Seattle's otherwise vibrant campaign finance limits.[28] *Citizens United* provides an example. That case began as a challenge to a prohibition on the use of corporate treasury funds to sponsor so-called "electioneering communications," or broadcast, cable or satellite communications that refer to federal candidates before their voters during the thirty or sixty days before an election, from a professed media entity that wanted to distribute a movie criticizing then-candidate Hillary Clinton through video on

[26] Alaska Stat. § 15.13.068(b); *see* Alaska Letter at 4-5.

[27] Another reason the Seattle ordinance may be unconstitutional is that Congress has preempted the City from regulating foreign spending in elections. The Federal Election Campaign Act of 1971, as amended, prohibits foreign nationals, directly or indirectly, from making contributions "in connection with a Federal, state, or local election." 52 U.S.C. § 30121(a)(1). Therefore, Congress has already regulated foreign spending in connection with local elections. And where Congress has created a regulatory framework "so pervasive" that it has left no room for other levels of government to regulate the subject matter, or where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," then Congress has preempted the entire field; no other jurisdiction may regulate it, and any attempts will give way to federal law. *Arizona v. United States*, 567 U.S. 387, 399 (2012) (internal quotation marks omitted). Particularly here, where Congress rather than any state or local government typically oversees matters of citizenship, foreign relations, and national security, and Congress has already enacted a law reaching state and local elections, there is a fair argument that the federal government has evidenced an intent to occupy the field.

[28] *See, e.g.*, Seattle, Wash. Mun. Code § 2.04.730(B) (2019) (placing a mandatory limit of $500 on contributions from any person to candidates for Mayor, City Council or City Attorney). After losing its ability to make independent expenditures, a foreign-influenced corporation might well challenge both the new foreign-influenced corporation restriction, and the existing monetary limit for direct contributions, asserting that those laws together deprive it of any meaningful ability to engage in political speech.

demand.[29] On a 5-4 decision, through a majority consisting of Justice Kennedy, Chief Justice Roberts, Justice Scalia, Justice Alito and Justice Thomas, the Court not only struck down the electioneering communications ban, but the Federal Election Campaign Act of 1971's longstanding ban on corporate express advocacy expenditures.[30] Thus, a plaintiff which objected to the ordinance, and which otherwise opposed the campaign finance laws now in place, might seek not simply to challenge the new ordinance, but to challenge other aspects of current law also, and ultimately invite Supreme Court review of provisions that might not otherwise come before a Court that is increasingly skeptical of campaign finance regulation.

We are glad to provide further information on these matters at your convenience.

[29] 558 U.S. 310.
[30] *Id.*