

New Minnesota Law Targets Citizens United; Other States Planning Similar Move

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On May 5, Minnesota became the first state to enact legislation prohibiting “foreign-influenced” corporations from making political contributions and expenditures. But while supporters heralded the measure, critics charged that the law does little to combat true foreign influence and instead appears intended to deter corporations from exercising their First Amendment rights pursuant to the Supreme Court’s landmark *Citizens United* decision.

After the Democratic Party took full control of state government in the 2022 election, legislators immediately prioritized comprehensive revisions to the state’s electoral and campaign finance laws. Ultimately, this led to passage of the so-called Democracy for the People Act, which Minnesota Governor Tim Walz signed into law earlier this month. Under the law, which takes effect on January 1, 2024, foreign-influenced corporations are prohibited from making

- Campaign expenditures advocating for/against state and local candidates;
- Contributions/expenditures to support/oppose a ballot question, or to even get such a question on the ballot; and
- Contributions to candidates, political committees, political funds, or political party units.

Importantly, the Minnesota law defines a foreign-influenced business entity as an entity where:

- A single foreign principal has a 1% ownership, direct or indirect, of total equity;

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- Two or more foreign principals hold voting shares of 5% or more of total equity; or
- One or more foreign principals partake in the entity's decision-making process with respect to political contributions or expenditures.

Corporations that are not "foreign-influenced" are allowed to make contributions/expenditures – to the extent not otherwise prohibited by other provisions of state/local law – but must provide a certification of their ownership structure within seven days of the contribution or expenditure. The certification must be signed by the corporation's CEO under penalty of perjury, which the law's opponents have charged is unlikely to occur given that publicly-traded companies have ever-changing shareholders.

While Minnesota is the first state to enact such legislation, the Seattle City Council passed an ordinance in 2020 that bans political spending by foreign-influenced corporations. The local ordinance defines foreign-influenced entities in the same manner as the Minnesota law and has served as a model for a number of pending bills.

There are several states and localities that have introduced similar legislation to Minnesota and Seattle. Additional legislation has been proposed this year at the federal level and in California, Hawaii, Maine, Massachusetts, New York, Virginia, and Washington State, as well as San Jose, California, and Portland, Maine. In several of these jurisdictions, that law has passed at least one house of the state legislature.

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