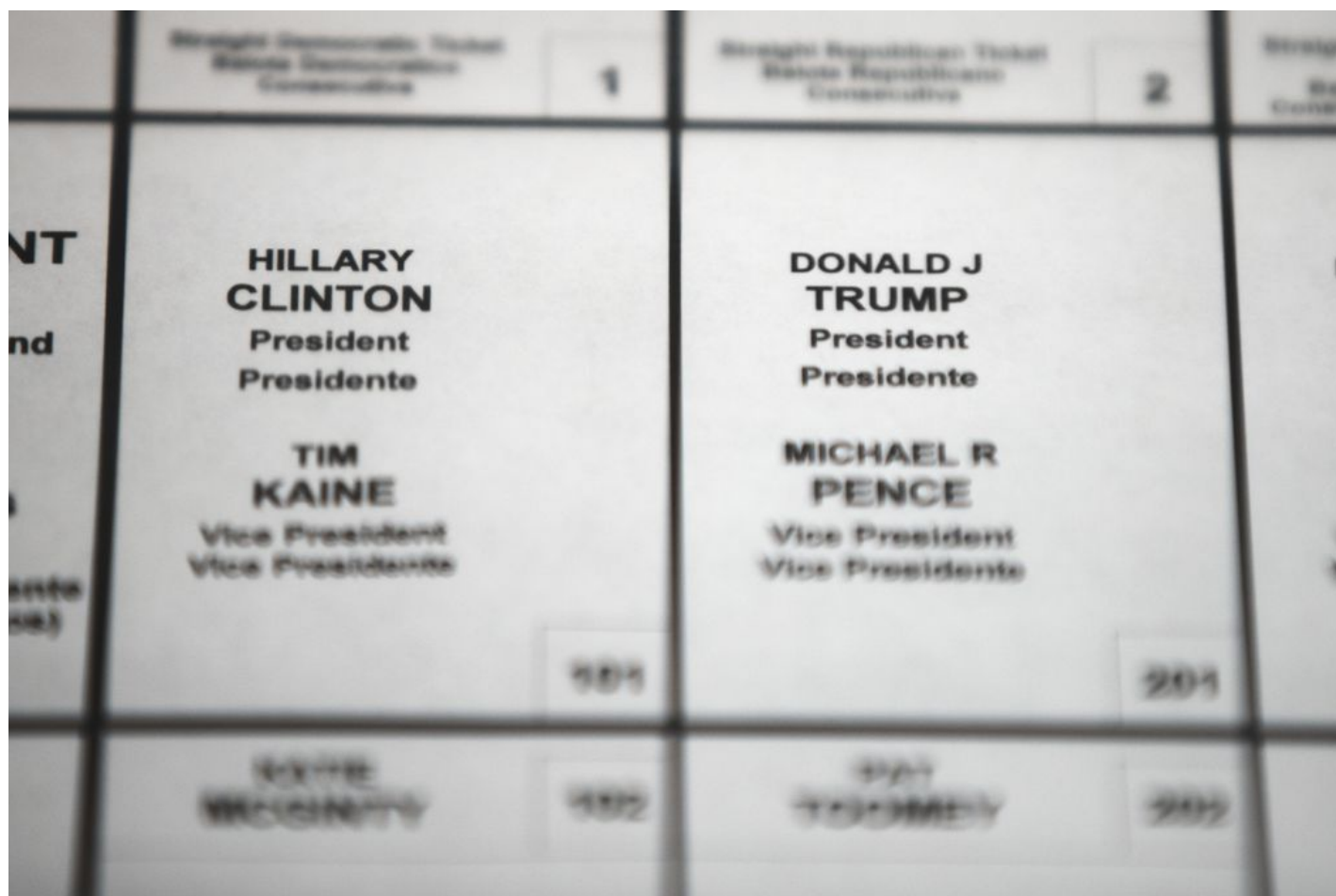


OPINION | LAURENCE H. TRIBE AND RON FEIN

How Massachusetts can fight foreign influence in our elections

By Laurence H. Tribe and Ron Fein , September 26, 2017, 2:07 p.m.



The ballot on a voting machine used in Philadelphia in the 2016 election. The federal government has told election officials in 21 states that hackers targeted their systems before last year's presidential election. ASSOCIATED PRESS/MATT ROURKE, FILE

Can Massachusetts take a stand against foreign influence in our elections? On Wednesday, a legislative committee held a hearing on a bill to plug a loophole that the federal government has left wide open for foreign influence.

There are many ways for foreign interests to influence US elections. We saw several of them in 2016, like the Russian government's sophisticated [computer hacking attacks](#) on state election systems, or its intelligence operatives' [high stakes meeting](#) with Trump

state election systems, or its intelligence operatives [high-stakes meeting](#) with Trump campaign officials on the promise of sharing potentially compromising information. But these are exotic. If foreign governments, businesses, or wealthy individuals want to influence US voters' perceptions and preferences, it's much simpler just to do it the way Americans do: on social media.

We've recently learned how [a shadowy Russian company](#) placed over 3,000 political ads on Facebook during the 2016 national election. And even shadier Russian entities ran an extensive [social media campaign](#) through fake accounts on both Facebook and Twitter.

Yet Facebook and Twitter aren't the only ways that foreign interests can use American companies to influence US elections. While [federal law prohibits "foreign nationals"](#) (governments, businesses, and individuals) from contributing or spending money in federal, state, or local elections, a loophole allows them to leverage their investments in US corporations for political spending.

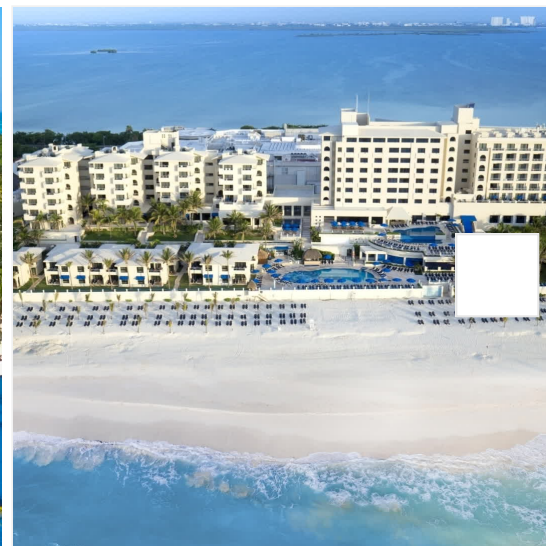
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A corporation registered in the United States, but with significant foreign ownership, can spend money, or launder the money through a super PAC, to influence American politics.

Even if the company isn't 100 percent foreign-owned, a significant foreign interest can influence how a company spends money to influence elections. In other words, [a foreign entity with a significant interest in an American company](#) can leverage that company's corporate resources for political purposes.

Until recently, all corporations were banned from spending money to influence elections in federal elections and in many states, [including Massachusetts](#). In 2010, the Supreme Court's [Citizens United decision](#) struck down laws prohibiting independent spending by corporations. And while the Supreme Court was careful to note that its decision would not foreclose limits that apply specifically to corporations with significant foreign influence, Congress hasn't updated the law since the Citizens United decision. Meanwhile, the Federal Election Commission, the agency in charge of interpreting and applying the law, has been stuck in stalemate.

That's why state and local governments are stepping up. [The Massachusetts bill](#), filed in January and now having its first hearing, bans political spending in Massachusetts elections from a foreign-influenced corporation — a company of which 5 percent is owned by a single foreign national, or 20 percent is owned by a group of foreign nationals. It also imposes a disclosure requirement on outside spending groups that take corporate money: Either get a certification from the corporation that it is not foreign influenced, or disclose to the public that it may be.

In the face of federal inaction, other states and localities are also considering steps to protect their elections from foreign influence. Some might argue that foreign-influenced political spending isn't yet a problem in state or local elections. That's not entirely true — [there are some well-documented examples](#) — but it also misses the larger point. In 2016, foreign political spending wasn't yet a major phenomenon in federal elections — until it was. And it wasn't all national: Russian operatives used Facebook to organize local political rallies in places like Fort Lauderdale, Fla., and Twin Falls, Idaho.

Nearly a year after the 2016 election, we're still learning about the extent of foreign influence. But we need to plug the loophole that allows foreign governments and

influence. But we need to plug the loophole that allows foreign governments and oligarchs to leverage the assets of American corporations to spend money to influence our elections. If the federal government isn't up to the task, then states and cities must take the lead in protecting our elections from foreign influence. The Massachusetts bill is an important first step.

Laurence H. Tribe is university professor and professor of constitutional law at Harvard Law School. Ron Fein is the legal director of Free Speech For People.

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Charlene Cummings
Phippsburg

Testimony regarding the combined bills LD 194, 479 and 641

Senator Luchini, Representative Caiazzo, and members of the Committee:

My name is Charlene Cummings, and I live in Phippsburg, Maine. I am here to speak on behalf of myself, as well as the many other Maine people who believe as I do that our elections and referenda should be decided by those who vote and are closest to the issues to be decided.

In researching this bill, I have learned that Federal law prohibits foreign nationals from contributing to candidates in State and federal elections, national political parties, and outside political groups, and to spend money expressly advocating for or against the election of candidates in U.S. elections. This prohibition has been clearly upheld by the Federal Courts (see *Bluman v Federal Election Commission*, 800 F. Supp. 2d 281, submitted as an attachment to this testimony).

The first amendment arguments made against this bill are as spurious as those the District Court dismissed in the *Bluman* decision. The compelling need for regulation to limit foreign interference in our democratic processes is overwhelming; one need only look at recent election cycles in Maine and nationally to see that foreign governments and foreign corporation have sought to find all the possible loopholes they can in their efforts to manipulate Mainers and all the American people.

If federal law clearly prohibits individual foreign nationals from putting their thumbs on the scales of our democracy, then foreign nationals should also be prohibited from acting through corporate entities to accomplish the same end.

Supreme Court decisions have held that money is a form of speech, and that corporations in our democracy are a form of people. I don't agree with all the implications of those decisions, but one outcome is resoundingly clear. If it is not a violation of free speech rights to prohibit individuals who are foreign nationals from spending money to influence a Maine voter, then it is not a violation of free speech rights to prohibit foreign corporations from doing the same. Our decisions are ours to make, whether it is who we elect to office or the policies we want to implement in our State. I urge the legislature to be sure the final bill closes the loopholes foreign corporations find (such as establishing an American address, or a subsidiary company that is controlled by foreign interests). I believe this bill closes that loophole, but I urge the committee to make sure.

Thank you for your time.

Charlene Cummings
616 Main Road
Phippsburg, ME 04562
207-844-4382

Note: I have also submitted an additional article explaining the urgency of States acting to prohibit foreign corporations from influencing our elections. See: "How Massachusetts can fight foreign influence in our elections" by Laurence H Tribe and Ron Fein, published in the *Boston Globe*, 26 Sep 2017.