

March 13, 2019

Co-Chair Flexer, Co-Chair Fox and Members of the Government Administration & Elections Committee:

On behalf of the Organization for International Investment (OFII), I urge the committee to support the enclosed amendment to S.B. 1043 and H.B. 7329. This amendment would strike the definition of “foreign-influenced entity” while not undermining the bill’s goal of preventing foreign influence over Connecticut’s political process. Most importantly, this amendment would uphold the First Amendment rights of hundreds of Connecticut employers and prevent the enactment of discriminatory legislation.

OFII is a business association representing the U.S. subsidiaries of international companies (“U.S. subsidiaries”), including over 65 Connecticut employers. OFII’s membership list is enclosed. OFII advocates for non-discriminatory treatment for U.S. subsidiaries and promotes policies that will encourage them to invest and create jobs in the United States.

OFII agrees that foreign influence must be barred from the U.S. political process, but this bill’s definition of “foreign-influenced entity” would affect hundreds of Connecticut employers that have no foreign-influence over their political activities.<sup>1</sup> Therefore, the committee should support the enclosed amendment for these reasons:

**Federal Law Prevents Foreign Influence Over State and Local Political Activities:** Federal law prohibits foreign influence over the same state and local activities targeted by these bills. For example, “foreign nationals” are unable to make independent expenditures to federal, state, or local elections and contribute, donate or spend money in connection to any federal, state or local election. Federal law also bans foreign national decision-making in any political activity at the federal, state and local levels. Federal law also prevents foreign nationals from making contributions or donations to a committee of a political party and from making electioneering communications.<sup>2</sup>

**Hundreds of Connecticut Employers would be “Foreign-Influenced Entities”:** The bills would redefine hundreds of Connecticut employers as “foreign-influenced entities.” This includes all 730 U.S. subsidiaries of international companies that together employ 105,300 Connecticut workers. U.S. subsidiaries are legally-recognized domestic entities under federal law. Furthermore, the Federal Election Commission has provided decades of guidance to completely prohibit any individual foreign nationals from participating in the decision-making process of a U.S. subsidiary’s local, state and federal political

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<sup>1</sup> The bills define “foreign-influenced entities” as entities with at least 5 percent ownership by a “foreign owner,” or 20 percent ownership by “foreign owners,” or that have “foreign owner” participation in political activity decision-making. “Foreign-influenced entities” making political contributions as defined in [section 9-601a](#) or political expenditures as defined in [section 9-601b](#). This definition would impact all U.S. subsidiaries, which are all majority-owned by foreign shareholders.

<sup>2</sup> See [11 CFR § 110.20](#) to see a list of prohibited political activities by “foreign nationals” at local, state and federal levels. These include: “A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election.” “A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of...in connection with any Federal, State, or local election.” “A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities.” “A foreign national shall not, directly or indirectly, make a contribution or donation to a political committee of a political party...or a State, district or local party committee.” “A foreign national shall not directly, or indirectly, make any disbursement for an electioneering communication.”

activities.<sup>3</sup> Consequently, U.S. courts and congress have long upheld the rights of U.S. subsidiaries to engage in all political activities available to corporations so long as this mandatory segregation of foreign national participation is respected.

**This Legislation Discriminates Against U.S. Subsidiaries:** Connecticut benefits from foreign direct investment (FDI). The 105,300 jobs from FDI represents 7.2 percent of the state's total workforce, ranking Connecticut fifth in the nation in its share of workforce from FDI. Nationwide, U.S. subsidiaries provide 26 percent higher compensation compared to economy-wide averages, produce 25 percent of U.S. exports, fund 16 percent of U.S. research and development efforts and created 62 percent of new U.S. manufacturing jobs over the past five years. Through these valued economic contributions, U.S. subsidiaries have earned both the right and the duty to fully engage in the political process alongside their domestic counterparts.

However, S.B. 1043 and H.B. 7329 would prohibit these companies from engaging in many political activities by re-categorizing them as "foreign-influenced entities," disadvantaging them compared to other business entities that do not fall within the new definition of "foreign-influenced entity." For example, consider a referendum that directly impacts a company's core business. Under this bill, a U.S. subsidiary would be unable to educate the public about the referendum's impact to its business because it would be a "foreign-influenced entity." This amendment would ensure that U.S. subsidiaries can participate in referendums and every other state and local political activity available to them.

**Maryland Considered Similar Legislation but Rejected the Approach:** Maryland looked at a similar bill ([H.B. 981](#)) last year that defined "foreign-influenced corporations" with a similar shareholder test to how "foreign-influenced entities" are defined in S.B. 1043 and H.B. 7329. For the above reasons, the legislature amended the bill by removing the term "foreign-influenced corporations."

Thank you for considering the enclosed amendment.

Sincerely,



Evan Hoffman

Director of State Government Affairs at the Organization for International Investment

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<sup>3</sup> There are dozens of FEC rulings affirming that U.S. subsidiaries are not "foreign nationals," and which set-up rules to ensure no foreign influence over their domestic political activities. For example, this [FEC Statement of Policy](#) affirms that U.S. subsidiaries are not foreign nationals even though they have majority foreign-ownership. Also, the FEC found in [TransCanada Advisory Opinion 2006-15](#) that a U.S. subsidiary is able to make corporate donations and disbursements at the state and local level so long as these donations are made from U.S. generated funds and the donations themselves are made by U.S. citizens. In [Daimler/MBUSA Advisory Opinion 2009-14](#), the FEC affirmed that U.S. subsidiaries do not qualify as "foreign nationals" if organized in and having its principle place of business in the United States and if foreign nationals are not making decisions regarding separate segregated fund disbursements. Other cases that affirmed foreign national rules are [Budd Citizenship Committee Advisory Opinion 1978-21](#), [Revere Sugar Advisory Opinion 1980-100](#) and [CIT Advisory Opinion 1990-08](#).

## **S.B. 1043: Suggested Amendment to Minimize Unintended Consequences and Prevent Foreign Political Influence**

S.B. 1043 would define “foreign-influenced entities” as entities with at least 5 percent ownership by a foreign owner or 20 percent ownership by foreign owners or that have foreign owner participation in political activity decision-making. These entities would be unable to make political contribution as defined in [section 9-601a](#) or political expenditures as defined in [section 9-601b](#). This restriction would adversely impact the free speech of U.S. subsidiaries of international companies, which employ 105,300 Connecticut citizens. The suggested language below would prevent foreign influence in state elections while not targeting U.S. subsidiaries of international companies.

OFII is a trade association representing the U.S. subsidiaries of international companies, including over [65 Connecticut employers](#). OFII ensures that policymakers understand the critical role that foreign direct investment (FDI) plays in America’s economy. OFII advocates for fair, non-discriminatory treatment of international companies and promotes policies that will encourage them to grow in the United States.

### **Summary of suggested amendment:**

- **On pages 1 and 2, strike Section 1 subdivisions (34) and (35).**
  - This amendment would strike the definition of “foreign owner” and “foreign-influenced entity,” both of which are unnecessary because federal law already prevents “foreign nationals” from engaging in targeted state and local political and election activities.<sup>1</sup>
- **On page 5, replace “foreign-influenced entity” in Section 3(c)(8) with “foreign national”.**
  - This amendment would replace “foreign-influenced entity” with “foreign national,” establishing a contributor statement process for independent expenditures for foreign nationals.
- **On pages 31 and 32, replace “foreign-influenced entity” in Section 19 (a) and (b) with “foreign national”.**
  - This amendment would delete “foreign-influenced entities” from Section 19 and clarify that “foreign nationals” may not directly or indirectly make contributions as defined in section 9-601a by conforming to federal law.
- **On page 40, strike “foreign-influenced entity” from the substitution of Section 22 Subdivision (1) of subsection (g) of section 9-7a of the 1248 general statutes in (g)(1)(d)(iv)(II).**

### **Suggested amendment language changes highlighted in S.B. 1043 bill text:**

#### **Pages 1 and 2: Strike Section 1 subdivisions (34) and (35)**

Section 1. Section 9-601 of the general statutes is amended by adding subdivisions (32) to (35~~3~~), inclusive, as follows (Effective from passage):

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<sup>1</sup> Federal law prohibits “foreign nationals” from making independent expenditures to federal, state, or local elections, from contributing, donating or spending money in connection to any federal, state or local election, or from making a contribution or donation to a political party’s political committee, or a state, district or local party committee. Federal law also bans foreign national decision-making in political activity at the federal, state and local levels. See the full list of banned activities here <https://www.law.cornell.edu/cfr/text/11/110.20>.

(NEW) (34) "Foreign owner" means (A) a foreign national, or (B) an entity of which a foreign national 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 fifty per cent of total equity or outstanding shares of voting stock.

(NEW) (35) "Foreign-influenced entity" means any entity of which (A) one 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 five per cent of total equity or outstanding shares of voting stock, (B) multiple foreign owners hold, own, control or otherwise have directly or indirectly acquired beneficial ownership of equity or voting shares in an amount equal to or greater than twenty per cent of total equity or outstanding shares of voting stock, or (C) any foreign owner participates in any way, directly or indirectly, in the process of making decisions with regard to the making of expenditures or contributions by such entity.

**Page 5: Replace "foreign-influenced entity" in Section 3(c)(8) with "foreign national"**

Sec. 3. Section 9-601d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) The independent expenditure long-form report shall identify: (1) The name of the person making or obligating to make such independent expenditure or expenditures and, in the case of a person other than an individual, the name of a human being who had direct, extensive and substantive decision-making authority over such independent expenditure or expenditures; (2) the tax exempt status of such person and, if [applicable] such person files a report with the Federal Election Commission, the Internal Revenue Service or any similar out-of-state agency, identifying information under which any such filings are made; (3) the mailing address, and street address if different, of such person; (4) the principal business address of the person, if different from either the mailing address or street address; (5) the mailing address, and street address if different, telephone number and electronic mail address of the agent for service of process in this state of such person and for the individual described in subdivision (1) of this subsection as having direct, extensive and substantive decision-making authority over such independent expenditure or expenditures; (6) the date of the primary, [or] election or referendum for which [the] such independent expenditure or expenditures were made or obligated to be made; (7) (A) the name of any candidate who, or the text of any referendum question that, was the subject of [any] such independent expenditure or expenditures, [and whether the] (B) whether such independent expenditure or expenditures were in support of or in opposition to such candidate [; and (8)] or referendum question, and (C) any other information required under subsection (d) of this section; (8) whether such person is a foreign-influenced entity foreign national, and a description of the facts establishing such person as such an entity if so; and (9) the name, telephone number and electronic mail address for the individual filing such report. Such individual filing such report shall, under penalty of false statement, affirm that the expenditure reported is an independent expenditure [under penalty of false statement] and certify that due inquiry has been made by the chief executive or chief financial officer, or equivalent, of such person to determine that such person is not a foreign national on the date such independent expenditure was made or obligated to be made.

**Pages 31 and 32: Replace "foreign-influenced entity" in Section 19 (a) and (b) with "foreign national"**

Sec. 19. (NEW) (Effective from passage) (a) A foreign-influenced entity foreign national, as defined in section 9-601 of the general statutes, as amended by this act, shall not make, directly or indirectly, (1) any contribution, as defined in section 9-601a of the general statutes, or any express or implied promise to make any such contribution, or (2) any expenditure, as defined in section 9-601b of the general statutes.

(b) A person shall not solicit, accept or receive a contribution from a ~~foreign-influenced entity~~ foreign national.

**Page 40: Strike “foreign-influenced entity” from the substitution of Section 22 Subdivision (1) of subsection (g) of section 9-7a of the 1248 general statutes in (g)(1)(d)(iv)(II).**

Sec. 22. Subdivision (1) of subsection (g) of section 9-7a of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

(g) (1) In the case of a written complaint filed with the commission pursuant to section 9-7b, commission staff shall conduct and complete a preliminary examination of such complaint by the fourteenth day following its receipt, at which time such staff shall, at its discretion, (A) dismiss the complaint for failure to allege any substantial violation of state election law supported by evidence, (B) engage the respondent in discussions in an effort to speedily resolve any matter pertaining to a de minimis violation, or (C) investigate and docket the complaint for a determination by the commission that probable cause or no probable cause exists for any such violation. If commission staff dismisses a complaint pursuant to subparagraph (A) of this subdivision, such staff shall provide a brief written statement concisely setting forth the reasons for such dismissal. If commission staff engages a respondent pursuant to subparagraph (B) of this subdivision but is unable to speedily resolve any such matter described in said subparagraph by the forty-fifth day following receipt of the complaint, such staff shall docket such complaint for a determination by the commission that probable cause or no probable cause exists for any violation of state election law. If the commission does not, by the sixtieth day following receipt of the complaint, either issue a decision or render its determination that probable cause or no probable cause exists for any violation of state election laws, the complainant or respondent may apply to the superior court for the judicial district of Hartford for an order to show cause why the commission has not acted upon the complaint and to provide evidence that the commission has unreasonably delayed action. For any complaint received on or after January 1, 2018, if the commission does not, by one year following receipt of such complaint, [issue a decision thereon] find reason to believe, pursuant to subsection (d) of section 4-181 and section 9-7b-35 of the regulations of Connecticut state agencies, that a violation of state election law has been committed, the commission shall dismiss such complaint, provided the length of time of any delay caused by (i) the commission or commission staff granting any extension or continuance to a respondent prior to the issuance of any such decision, (ii) any subpoena issued in connection with such complaint, (iii) any litigation in state or federal court related to such complaint, [or] (iv) any investigation by the commission or commission staff (I) involving a potential violation of section 9-601c or 9-601d, as amended by this act, or (II) involving a potential violation of state election law by any foreign national or foreign-influenced entity. or (v) any investigation by, or consultation of the commission or commission staff with, the Chief State's Attorney, the Attorney General, the United States Department of Justice or the United States Attorney for Connecticut related to such complaint, shall be added to such one year.

# 2019 OFII Membership List

**ABOUT OFII** The Organization for International Investment is a not-for-profit business association in Washington, D.C., representing the U.S. operations of many of the world's leading international companies. OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, increase American employment and boost economic growth to ensure the United States remains the top location for global investment. For more information, please visit [www.OFII.org](http://www.OFII.org).

## A

ABB Inc.  
Ahold Delhaize  
Airbus Group, Inc.  
Air Liquide USA  
Akzo Nobel Inc.  
Alfa Laval, Inc. (USA)  
Alibaba Group  
Allianz of North America  
Anheuser-Busch  
APG  
APL Limited  
Aptiv  
Arca Continental  
Astellas Pharma US, Inc.  
AstraZeneca Pharmaceuticals  
AVANGRID

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Balfour Beatty  
Barrick Gold Corp. of North America  
Barry Callebaut  
BASF Corporation  
Bayer Corp.  
BBA Aviation  
B. Braun Medical, Inc.  
BHP Billiton  
BIC Corp.  
Bimbo Bakeries  
bioMérieux  
BlueScope Steel North America  
BNP Paribas  
Boehringer Ingelheim Corp.  
Bombardier Inc.  
Bosch  
BP  
Bridgestone Americas Holding  
Brookfield Asset Management  
BT  
Bunge Ltd.  
Bunzl USA, Inc.

## C

Capri Holdings  
CEMEX USA  
CGI Group  
Chubb  
CN  
CNH Industrial  
Compass Group USA  
Continental Corporation  
Cosentino Group  
CSL Behring  
Credit Suisse Securities (USA)  
CRH Americas, Inc.

## D

Daikin North America  
Daimler  
Danfoss  
Danone  
Dassault Falcon Jet Corp.  
Dassault Systemes  
DENSO  
Deutsche Telekom  
DHL  
Diageo, Inc.  
Direct Energy  
DLI North America  
DSM North America

## E

Electrolux North America  
EMD Holding  
Emera, Inc.  
Enel Green Power North America  
ENGIE  
E.ON North America  
Ericsson  
Essilor USA  
Experian

## F

Ferguson Enterprises, Inc.  
Fresenius Kabi USA, LLC.

Fresenius Medical Care  
FUJIFILM Holdings America

## G

G4S  
Garmin International, Inc.  
GE Appliances, a Haier Company  
Getinge Group  
GlaxoSmithKline  
Global Atlantic Financial Company  
Grifols  
Grundfos

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Heineken USA  
Henkel Corporation  
Hitachi, Ltd.  
Honda North America  
HSBC Bank North America  
Huhtamaki  
Hyundai Motor America

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IKEA North America Services, LLC.  
Imerys  
Infineon Technologies Americas Corp.  
InterContinental Hotels Group  
Indivior PLC  
Ipsen Biopharmaceuticals, Inc.

## J

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Johnson Controls  
Johnson Matthey

## K

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Kerry  
Kudelski Group

## L



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The LEGO Group  
Lehigh Hanson  
Liberty Utilities  
L'Oréal USA, Inc.  
Louisville Corporate Services, Inc.  
LVMH Moët Hennessy Louis Vuitton  
LyondellBasell

## M

Maersk Inc  
Mahindra  
MAHLE Industries  
Magna International  
Mallinckrodt  
Marvell Semiconductor  
Mazda  
McCain Foods USA  
Medtronic, Inc.  
Michelin North America, Inc.  
Mitsubishi Electric US, Inc.  
Mizuho Bank, Ltd.

## N

National Grid  
NEC Corporation of America  
Nestlé USA, Inc.  
Nissan  
Nokia  
Nomura Holding America, Inc.  
Novartis Corporation  
Novo Nordisk

## O

Ørsted North America Inc.

## P

Panasonic Corp. of North America  
Pearson Inc.  
Pernobil  
Pernod Ricard USA  
Philips North America LLC  
Pirelli  
POSCO

## Q

QBE the Americas

## R

Randstad North America  
Rassini International Inc.  
RELX Group  
Restaurant Brands International  
Rio Tinto America  
Roche Holdings, Inc.  
Rolls-Royce North America Inc.  
Royal Bank of Canada

## S

SABIC  
Safran USA  
Samsung  
Sanofi US  
Santander Bank  
SAP America  
Sasol Chemicals (USA) LLC  
Schindler Elevator Corporation  
Schlumberger  
Schneider Electric USA  
Schott North America  
Shell Oil Company  
Shire Pharmaceuticals  
Sibelco Group  
Siemens Corporation  
Signify  
Smith & Nephew, Inc.  
Smithfield  
Smiths Group  
Sodexo  
SoftBank Group  
Solvay America  
Sony Corporation of America  
Spotify  
SSAB Americas  
Standard Chartered Bank  
Sumitomo Corp. of America  
Swiss Re  
Syngenta Corporation

## T

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The Tata Group  
Tate & Lyle  
TE Connectivity  
Teva Pharmaceuticals USA  
Thales USA, Inc.  
Thomson Reuters

TOTAL Holdings USA, Inc.  
Toyota Motor North America  
Trafigura  
Transamerica

## U

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UCB  
Umicore  
Unilever

## V

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Volkswagen of America, Inc.  
Volvo Group North America

## W

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White Mountains, Inc.  
Willis Towers Watson  
Wipro Inc.  
Wolters Kluwer U.S. Corporation  
WPP Group USA, Inc.

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