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The Democratic Value of Transnational Campaign Finance

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Democratic decision-making in the United States does not solely affect U.S. citizens. Indeed, many such decisions impact people living in other countries, as well as noncitizens residing within the United States. Decisions on U.S. policies regarding climate change, immigration, trade, and military aid—to name a few—can have major implications for the lives of many non-Americans. Yet, in being noncitizens, such people effectively have zero representation within the democratic process that results in these decisions. This phenomenon illustrates what has become known as the problem of "democratic externalities."

Theorists have proffered multiple democratic frameworks to resolve this problem—e.g., democratic cosmopolitanism, deliberative democracy, and epistemic aggregative democracy. Ultimately, though, none have managed to adequately mitigate the issue of underrepresentation that democratic externalities produce. Accordingly, this Article considers an alternative, albeit imperfect, route to addressing democratic externalities: transnational campaign finance. Specifically, this Article argues that by permitting foreign nationals to monetarily contribute to, or expend money in support of, political campaigns, a polity can better account for impacted noncitizens in its lawmaking and electoral decisions.

Over the past few decades, however, numerous U.S. states and countries have passed laws outright prohibiting transnational campaign finance. While there are certainly legitimate reasons to regulate the practice—e.g., corruption, distortion, misalignment, and national security—this Article contends that these measures have been too drastic in light of the democratic externalities problem. Thus, the latter portion of this Article provides guidance on how to best regulate transnational campaign finance in a way that mitigates its negative consequences without entirely impeding its pro-democratic value.

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INTRODUCTION

The United States accounts for approximately 13% of CO2 emissions worldwide.[1] Its legislative and executive action in response to the ongoing climate crisis has a major impact on not only Americans, but all people living on our planet.[2] Yet, only a small fraction of the global population has any real influence over the direction of U.S. climate policy: voting-age Americans. This phenomenon is unique

1. *CO2 Emissions by Country*, WORLDOMETER, https://www.worldometers.info/co2-emissions/co2-emissions-by-country [perma.cc/KL9A-AB7Q] (last visited Nov. 1, 2023).

2. *See* Camilla Getz, Note, *NEPA's Teeth: How to Challenge Chemical and Fossil Fuel Complexes Using a Climate and Environmental Justice Argument*, 27 HASTINGS ENVTL. L.J. 145, 155–56 (2021) ("There is a current climate inaction at the executive, legislative, and judicial level in the United States.").

to neither the climate field nor the United States, of course. Each year, various democratic polities enact or fail to enact thousands of laws whose ultimate effects reach noncitizens within and beyond their territorial boundaries—laws focused on issues ranging from trade to immigration to military aid, to name a few.[3] In such situations, democratic polities are effectively governing people who fall outside their defined "demos."[4] Such an outcome seemingly undermines the driving principle behind democracy: that the "ruled" should rule themselves.[5] This tension in democratic decision-making within our globalized society has become known in the literature as the problem of "democratic externalities."[6]

Democratic theory offers multiple potential avenues for resolving this tension. Some theorists have supported changing our very understanding of the bounds of democracy, such as expanding our definition of the demos or making structural changes to democratic governance. Cosmopolitans, for instance, have contended that a demos should include all people whose interests are affected by a democratic polity's decisions.[7] In turn, many have endorsed either expanding voting rights to include all such affected people or creating some variation of a supranational government.[8]

Meanwhile, deliberative democrats have argued that a demos should include all people *coerced* by a democratic polity's decisions, i.e., the "moral constituency."[9] Unlike cosmopolitans, deliberative democrats do not propose large structural changes, but rather emphasize the importance of reciprocal deliberation between government leaders, voters, and moral constituents before and after a decision is made.[10] Such deliberation legitimizes democratic decisions because those making the decisions must justify them to all moral constituents, whether domestic citizen or foreign national.[11]

Finally, there are theorists who do not call for modifying how we define democracy, but instead advocate for the epistemic function that traditional aggregative democracy can serve.[12] According to such theorists, so long as voters have a competent understanding of the state of the world, they will vote for the best

3. *See infra* notes 47–51 and accompanying text.

4. The "demos" is the populace of a democratic society. *See Demos*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/demos [perma.cc/8CGL-E296] (last visited Jan. 17, 2024).

5. *See infra* notes 52–54 and accompanying text.

6. *See, e.g.*, Richard Bellamy, *Globalization and Representative Democracy: Normative Challenges*, *in* THE OXFORD HANDBOOK OF POLITICAL REPRESENTATION IN LIBERAL DEMOCRACIES 655, 663 (Robert Rohrschneider & Jacques Thomassen eds., 2020); Giacomo Tagiuri, *Can Supranational Law Enhance Democracy? EU Economic Law as a Market-Democratizing Project*, 32 EUR. J. INT'L L. 57, 83 n.121 (2021); Alexander Somek, *The Argument from Transnational Effects II: Establishing Transnational Democracy*, 16 EUR. L.J. 375, 377 (2010).

7. *See* Robert E. Goodin, *Enfranchising All Affected Interests, and Its Alternatives*, 35 PHIL. & PUB. AFFS. 40, 64–65 (2007).

8. *See infra* notes 60–66 and accompanying text.

9. Dennis F. Thompson, *Democratic Theory and Global Society*, 7 J. POL. PHIL. 111, 120 (1999).

10. *See id.*; AMY GUTMANN & DENNIS THOMPSON, WHY DELIBERATIVE DEMOCRACY? 3–7 (2004).

11. This Article defines "foreign national" to mean any individual/entity who is not a citizen or national of a given country. *Cf. Foreign Nationals*, FEC, https://www.fec.gov/help-candidates-and-committees/foreign-nationals [perma.cc/G9TV-ALEG] (last visited Jan. 27, 2024).

12. *See, e.g.*, ROBERT E. GOODIN & KAI SPIEKERMANN, AN EPISTEMIC THEORY OF DEMOCRACY 321 (2018).

decisions that account for, among other things, how such decisions will impact people living abroad.[13]

In theory, each of these frameworks should help, to some varying degree, resolve the problem of democratic externalities. In practice, however, this has not transpired. Supranational governments are a far cry from reality for most of the world,[14] and few if any polities extend voting rights to anyone beyond permanent residents.[15] Deliberative decision-making is meanwhile scarcely practiced worldwide, and if so, typically only on the local level.[16] And while aggregative democracy is the status quo framework for most democratic polities, metrics indicate that voters are too often unaware of issues faced by foreign nationals, thus making them less competent than ideal for epistemic decision-making.[17] Relatedly, many polities currently place restrictions on foreign nationals that prevent them from engaging in widespread advocacy about political issues.[18] Overall, the democratic externalities problem very much persists.

In light of this reality, this Article considers a potential alternative path to addressing the continued underrepresentation of impacted foreign nationals in democratic decision-making. Specifically, this Article explores whether transnational campaign finance can act as a means through which foreign nationals can influence a polity's decision-making process to better account for democratic externalities. For this Article's purpose, "transnational campaign finance" means one of two things: (1) a foreign national directly contributing money to a candidate, political party, political action committee (PAC), or other group that engages in political spending; or (2) a foreign national making direct political expenditures to fund communications advocating for or against a candidate, political party, or political issue, within a democratic country (or polity therein) of which they are not a citizen.

To conduct this analysis, this Article first considers how transnational campaign finance might complement each of the three frameworks mentioned above. Starting with aggregative democracy, it reasons that foreign nationals may use direct political expenditures or donations to political expenditure groups (e.g., PACs) to spread their perspectives on how a polity's electoral and lawmaking outcomes might affect them, thereby enhancing the polity's voters' knowledge of the state of the world.[19] In doing this, the Article discusses how such spending might interplay with the democratic right to receive speech in the United States and other democratic societies.[20]

Next, from a deliberative democratic perspective, the Article contemplates how transnational campaign finance might facilitate a sort of quasi-deliberation

13. *See id.* at 77–79.

14. *See infra* note 89 and accompanying text. The closest supranational government today is the European Union, which comes with its own democratic externality issues. *See* Philippe Van Parijs, *Demos-cracy for the European Union: Why and How*, *in* INSTITUTIONAL COSMOPOLITANISM 216, 221 (Luis Cabrera ed., 2018).

15. *See infra* note 92 and accompanying text.

16. *See infra* notes 93–95 and accompanying text.

17. *See infra* notes 96–97 and accompanying text.

18. *See infra* Section III.B.

19. *See infra* Section II.A.2.

20. *See infra* Section II.A.1.

between a polity's decision-makers and its noncitizen moral constituents.[21] In particular, in the context of legislative and executive decision-making, noncitizen moral constituents could use direct contributions to candidates and political parties to signal support for them or opposition against their rivals. Moreover, in the context of elections and ballots measures, noncitizen moral constituents could communicate with voters by making political expenditures to advocate for or against certain candidates or initiatives. While neither instance of political spending is guaranteed to spark actual deliberation, they could potentially inspire government leaders and voters to engage with noncitizen moral constituents on certain democratic decisions.

Lastly, from a cosmopolitan perspective, the ability to provide monetary support to a candidate or political party allows foreign nationals with interests affected by a polity's decisions to tangibly influence that polity's governance, even if lacking voting rights within said polity.[22] Transnational campaign finance is, of course, far from a perfect means of fully attaining cosmopolitanism. Nor can it alone achieve deliberative democracy or epistemic democracy. That, this Article concedes. Nevertheless, transnational campaign finance may yet offer *some* pro-democratic value within each such framework by, at the very least, alleviating the problem of democratic externalities.

Despite this value, lawmakers and campaign finance reform advocates alike have recently pushed for severe legal restrictions on, if not outright prohibitions of, transnational campaign finance. Inspired by rising concerns over foreign election interference (e.g., the Kremlin's attempt to disinform American voters),[23] numerous U.S. states and countries have implemented "anti–foreign interference" (AFI) laws over the past decade in an attempt to curb transnational campaign finance. Indeed, as of today, at least twenty-three states have some variation of an AFI law in place,[24] as well as the majority of democratic countries.[25] Some of these laws still permit foreign nationals to partake in political spending to a limited degree,[26] whereas many more entirely ban the practice.[27] Overall, the modern AFI movement has achieved widespread adoption in the law.

To be sure, there are legitimate reasons for caution when it comes to transnational campaign finance. When underregulated, private campaign finance in general can implicate several issues for democratic society, such as increased quid pro quo corruption,[28] distortion of electoral outcomes,[29] and misalignment between

21. *See infra* Section II.B.
22. *See infra* Section II.C.
23. *See infra* notes 178–179 and accompanying text.
24. *See infra* Figures 1 & 2.
25. *See infra* Figure 3.
26. *See, e.g.*, Electoral Act 1993, § 207K (N.Z.) (NZ$50 contribution limit for overseas persons); Parteiengesetz [PartG] [Political Parties Act], July 24, 1967, BGBL I at 3436, § 25(3) (Ger.) (allowing foreigners to contribute at least €1,000 to political parties).
27. *See, e.g.*, 52 U.S.C. § 30121(a) (2024); Lei n.º19/2003 de 20 de Junho [Law no. 19/2003 of 30 June], arts. 8.1, 8.3(c), https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2003-66960263 [perma.cc/PQ9W-VG46] (Port.); Jeongchijageumbeob [Political Funds Act] art. 31 (S. Kor.).
28. *See* Richard L. Hasen, Citizens United *and the Illusion of Coherence*, 109 MICH. L. REV. 581, 606 (2011).
29. *See* Anne Harvey, *Is Campaign Spending a Cause or an Effect? Reexamining the Empirical Foundations of* Buckley v. Valeo *(1976)*, 27 SUP. CT. ECON. REV. 67, 98 (2019).

public preferences and policy decisions.[30] Moreover, transnational campaign finance itself presents unique problems regarding national security and enforcement.[31] Certainly, these concerns justify *some* level of regulation over transnational campaign finance—perhaps even a high degree of regulation. Yet, when the practice is wholly prohibited, millions of foreign nationals lose their only viable means of influencing the democratic decision-making of polities whose decisions significantly impact them.

Accordingly, the latter half of this Article focuses on how polities can properly manage transnational campaign finance without entirely barring the practice. To begin, the Article presumes that most regulations of transnational campaign finance can pass constitutional muster under the United States' otherwise unforgiving campaign finance jurisprudence (and consequently anywhere else in the world), as federal courts have already held that the most restrictive of AFI laws can survive strict scrutiny.[32] With that said, the Article broadly makes four recommendations: First, prohibit foreign governments and their agents, as well as state-affiliated corporate entities, from being able to engage in any political spending.[33] Second, set limits on political spending that are low enough to help alleviate the corrupting, distorting, and misaligning effects of private campaign finance yet high enough to not render foreign nationals' ability to spend virtually meaningless.[34] Third, set robust disclosure requirements that ensure no major instances of transnational campaign finance evade detection by voters and regulators, including mandated disclaimers that reveal when a political communication is funded by a foreign individual, a foreign-funded PAC, or group that does not disclose donors (i.e., dark money groups).[35] Finally, put in place proper enforcement mechanisms that minimize illicit forms of transnational campaign finance.[36]

Even with such regulations in place, lingering doubts about transnational campaign finance may still exist. The final Part of this Article therefore addresses a few potential overarching criticisms. To start, it confronts the notion that allowing foreign nationals to partake in private campaign financing will exacerbate the

30. *See* Nicholas O. Stephanopoulos, *Aligning Campaign Finance Law*, 101 VA. L. REV. 1425, 1428 (2015).

31. *See infra* notes 191–194 and accompanying text (overviewing national security concerns); Lori A. Ringhand, *Contextualizing Corruption: Foreign Financing Bans and Campaign Finance Law*, 44 CARDOZO L. REV. 873, 927–30 (2023) (discussing enforceability concerns). Proponents of AFI laws also frequently assert that transnational campaign finance undermines the principle of democratic self-governance. *See infra* notes 195–198 and accompanying text. Indeed, preserving American democratic self-governance has become the primary rationalization for upholding AFI laws in the United States. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012). Yet, as the preceding paragraphs of this introduction—as well as Part II of this Article—contend, this concern is debatable.

32. *See Bluman*, 800 F. Supp. 2d at 288. I say "most" because this assumption breaks down when regulating certain domestic entities with foreign ownership—e.g., domestic corporations with some percent of foreign shareholders—who are entitled to full First Amendment protection. *See, e.g.*, Minn. Chamber of Com. v. Choi, 765 F. Supp. 3d 821, 858 (D. Minn. 2025) (striking down as both overinclusive and underinclusive a Minnesota law that prohibited from engaging in political spending any domestic corporation where foreign nationals in aggregate owned more than 5% of shares or any single foreign national owned more than 1%); *see also infra* notes 238–240 and accompanying text.

33. *See infra* notes 260–264, 278–279 and accompanying text.

34. *See infra* Section IV.B.

35. *See infra* Section IV.C.

36. *See infra* Section IV.D.

inequality that is inherent in the practice.[37] Next, it considers transnational campaign finance's potential role in furthering the spread of misinformation/ disinformation.[38] It then confronts the question of whether transnational campaign finance is preferable to simply affording foreign nationals the right to vote.[39] Finally, in the U.S. context, the Article briefly contemplates how transnational campaign finance might clash with Founding-era concerns over foreign interference.[40]

This Article contributes to the existing literature in three ways. Most importantly, it provides the most in-depth analysis to date of how campaign finance law intersects with democratic theory in a transnational context. More broadly, it contributes to a growing literature critiquing the major policy reforms currently being pushed by campaign finance reform advocates in the United States. While much of this literature has focused on programs such as small-donor multi-matching funds,[41] little has been written that critically evaluates the merits and pitfalls of AFI laws and transnational campaign finance. Lastly, this Article offers what appears to be the first in-depth survey of AFI laws among both the U.S. states and worldwide.

This Article proceeds as follows: Part I overviews the democratic externalities problem and how the three aforementioned democratic frameworks address it. Part II then considers how transnational campaign finance might fit within and complement each of these three frameworks. After this, Part III discusses the modern anti–foreign interference movement in campaign finance law and surveys the prevalence and variation of AFI laws both in the United States and globally. Next, Part IV provides guidance on how to best regulate transnational campaign finance in a manner that mitigates many of the underlying concerns regarding transnational campaign finance without entirely shutting out the pro-democratic value that can come from it. Finally, Part V addresses some potential overarching criticisms of transnational campaign finance.

I. THE DEMOCRATIC EXTERNALITIES PROBLEM IN GLOBAL SOCIETY

Our increasingly interconnected world has presented liberal democratic societies with myriad new challenges. The rising influence of international organizations and agencies, multinational corporations, and non-governmental organizations (NGOs) has, for instance, dispersed democratic decision-making authority away from the state, making it difficult for any single authority to make exclusive claims to democratic legitimacy.[42] There is, furthermore, growing concerns over the scope of rights in a more globalized society, namely "what their content should be and . . . who should enforce them."[43] Finally, and most importantly for this Article's purpose, there is the problem of transnational

37. *See infra* Section V.A.
38. *See infra* Section V.B.
39. *See infra* Section V.C.
40. *See infra* Section V.D.
41. *See, e.g.*, Richard H. Pildes, *Participation and Polarization*, 22 U. PA. J. CONST. L. 341, 400–01 (2020); Alex Keena & Misty Knight-Finley, *Are Small Donors Polarizing? A Longitudinal Study of the Senate*, 18 ELECTION L.J. 132, 141–42 (2019).
42. Thompson, *supra* note 9, at 112.
43. *Id.* at 113.

democratic externalities, i.e., when the enacted laws of a democratic polity[44] (or lack thereof) impact foreign nationals who have no representation within the polity's decision-making processes.[45] The remainder of this Article will refer to this phenomenon simply as "democratic externalities."[46]

Democratic externalities can take many forms. Some types of laws may indirectly affect foreign nationals. Changes in the tax and trade policies of one country could, for instance, benefit or hurt a corporation, and in turn its employees, based in another country.[47] Domestic business regulations may have a similar effect as well.[48] On a more far-reaching and existential level, there is climate policy: How one polity decides to tackle climate change ultimately matters for any person living within Earth's atmosphere. This rings especially true for countries like the United States, China, and India, which combined account for approximately half of global carbon dioxide (CO2) emissions.[49] Someone living in Fiji is arguably more impacted by the climate policies of Washington, Beijing, and New Delhi than those of Suva. And as Americans learned from the Canadian wildfires over the past few summers, more immediate environmental concerns such as air quality can quickly become a cross-border issue.[50]

Other laws have more direct effects on foreign nationals. Any changes in a country's immigration laws can, for example, make or break a prospective immigrant's decision to move there or a current noncitizen resident's ability to continue living there. Moreover, a country's foreign policies regarding issues like

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44. While most prominent examples of democratic externalities may stem from laws enacted at the countrywide level, regional and local laws can also impact foreign nationals. This is why a more general term like "polity" is more appropriate than, say, "country" or "nation."

45. I am not the first to use the term "democratic externalities." *See, e.g.*, Bellamy, *supra* note 6, at 663. Others may refer to this phenomenon as the "spillover effect," particularly in an economic context. *See* Will Kenton, *What Is the Spillover Effect and How Does It Effect Economies?*, INVESTOPEDIA (May 29, 2024), https://www.investopedia.com/terms/s/spillover-effect.asp [perma.cc/XP6V-D7C8].

46. Democratic externalities can, of course, happen *intra*nationally. A common example is the imposition of tolls. *See, e.g.*, Colleen Wilson, *Drivers May Have to Pay $15 to Enter Midtown Manhattan Under NYC Congestion Pricing Plan*, NORTHJERSEY, https://www.northjersey.com/story/news/new-york/2023/11/29/nyc-congestion-pricing-mta-wants-15-dollars-to-enter-midtown-manhattan/71748561007 [perma.cc/DDM5-F8BP] (Dec. 1, 2023). Such democratic externalities, nevertheless, present different dynamics than those of the transnational variety. For one, citizens of one region or locality within a country are not often restricted from partaking in campaign finance within the elections of another region or locality. New Jerseyans can, for example, donate to the campaigns of New York gubernatorial candidates. *See* Eugene D. Mazo, *Our Campaign Finance Nationalism*, 46 PEPP. L. REV. 759, 797–808 (2019). Moreover, few countries, and seemingly none which are democratic, place any restrictions on citizens moving from one region or locality to another, meaning a resident of New Jersey could freely move to New York if they felt strong enough about gaining voting rights there. Accordingly, this Article concerns itself specifically with the unique challenges raised by transnational democratic externalities.

47. *See* Jeffrey K. Powell, *Prohibitions on Campaign Contributions from Foreign Sources: Questioning Their Justification in a Global Interdependent Economy*, 17 U. PA. J. INT'L ECON. L. 957, 985–86 (1996).

48. Such regulations have been the driving force behind much of the foreign political spending in state ballot measures in the United States. *See infra* note 214 and accompanying text.

49. *See CO2 Emissions by Country*, *supra* note 1.

50. *See* Yan Zhuang, *Smoke from Canadian Wildfires Wafts over New York City*, N.Y. TIMES (July 27, 2025), https://www.nytimes.com/2025/07/27/nyregion/new-york-air-quality-canada-wildfires.html [perma.cc/69N8-P8K9]; Emma Newburger, *New York City Tops World's Worst Air Pollution List from Canada Wildfire Smoke*, CNBC (June 7, 2023), https://www.cnbc.com/2023/06/07/canadian-wildfire-smoke-nyc-residents-urged-to-stay-inside.html [perma.cc/EW2L-7X6E].

war, diplomacy, and aid can strongly influence, for better or worse, the lives of many people in other countries. Such people, in fact, may often have more of a vested interest in the outcomes of said policies than the country's own citizens.[51] The citizens of Ukraine and Israel, for instance, are far more immediately impacted by Congress's and the President's decision to send or not send military aid to their respective war efforts than I am as an American.

These examples, while non-exhaustive, showcase how democratic externalities undermine one of the central normative tenets of democracy: that all individuals should have a say in the laws that govern them.[52] While theorists may disagree over the precise bounds, characteristics, and goals of democratic society, few would dispute that, at its core, "democracy" acts as a means of legitimizing government by providing the power (krátos) of governance to the people (dêmos) subjected to it.[53] Democratic externalities therefore call into question the legitimacy of the democratic decision-making process of a given polity, in that many people impacted by the consequences of said process ultimately have no power within it.[54] And with the impact of democratic externalities being increasingly felt year over year, this problem of legitimacy will only persist in the future.

In light of this challenge, theorists have pointed to a variety of democratic frameworks as potential means of resolution. Some focus on expanding the definition of the demos to go beyond citizenship or territory.[55] Others focus on enhancing democratic decision-making in ways that better account for the effects of democratic externalities on others.[56] The remainder of this Part will focus on these frameworks. The first section overviews three of the most predominate ones found in democratic theory literature. The next section then assesses the extent to which these frameworks have actually born out in practice, at least insofar as alleviating the democratic externalities problem. Ultimately, these discussions foreshadow the Article's core argument presented in Part II: that transnational campaign finance can complement these frameworks by providing foreign nationals a tangible means of influencing democratic processes outside their own borders.

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51. *See, e.g.*, Sarah Song, *The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State*, 4 INT'L THEORY 39, 50 (2012) ("For instance, consider US trade decisions that affect the basic interests of many Latin Americans while affecting much less important interests of many US citizens.").

52. *See* Colleen Murphy, *The Rule of Law, Democracy, and Obedience to Law*, 62 ST. LOUIS U. L.J. 293, 297 (2018) (citing Thomas Christiano, *The Authority of Democracy*, 12 J. POL. PHIL. 266, 274 (2004)); Michael J. Teter, *Recusal Legislating: Congress's Answer to Institutional Stalemate*, 48 HARV. J. ON LEGIS. 1, 43 (2011); Robert Post, *Participatory Democracy and Free Speech*, 97 VA. L. REV. 477, 482 (2011) ("Democracy is achieved when those who are subject to law believe that they are also potential authors of law.").

53. Daniel E. Walters, *The Administrative Agon: A Democratic Theory for a Conflictual Regulatory State*, 132 YALE L.J. 1, 8 (2022).

54. *See* Saul Levmore, Cross-Border Influencers: Democracy and Externalities 4–7 (July 12, 2023) (unpublished manuscript), https://ssrn.com/abstract=4685370 [perma.cc/62LB-QF8M] ("[T]he faith-in-democracy approach—which would seem to favor restricting cross-border political influences—runs up against the concern about externalities affecting cross-border jurisdictions.").

55. *See* Song, *supra* note 51, at 48–54 (discussing theories that expand the demos beyond national principles).

56. *See, e.g.*, Thompson, *supra* note 9, at 121–22 (discussing how a state could incorporate more deliberation within its decision-making processes).

A. Three Frameworks of Democracy

Theorists have advanced numerous democratic frameworks to address democratic externalities, among other concerns. This Section covers three prevailing ones—democratic cosmopolitanism, deliberative democracy, and epistemic aggregative democracy.

1. Democratic Cosmopolitanism

Cosmopolitan theory proposes that all persons belong to a single world community and that each one's life is of equal value within said community.[57] Accordingly, cosmopolitans believe that people must be mindful about the impact of their actions beyond the borders of the communities in which they live.[58] Some theorists have advocated for the incorporation of cosmopolitan values into democratic society, a proposal that this Article shall call "democratic cosmopolitanism," one of the main goals of which is to ensure people affected by democratic decisions do not go unrepresented within the decision-making process. While cosmopolitan theorists have differed over how precisely to attain this goal, most share two objectives: expanding the demos and overhauling the system of governance to account for said demos.

Beginning with the demos, proponents of democratic cosmopolitanism generally subscribe to the "affected interests principle," which defines the demos to include anyone who may be affected by a polity's decisions. As Robert Dahl[59] summarized it, "[e]veryone who is affected by the decisions of a government should have the right to participate in that government."[60] The principle itself stems from the idea of legitimacy: collective decision-making cannot be legitimate unless all those with affected interests can have a say in it.[61] Ultimately, the principle constructs a demos that expands well beyond the bounds of the traditional electoral constituency.

How would governance work? Perhaps the simplest proposed system of cosmopolitan governance, at least conceptually, is supranational democracy—i.e., a "world government."[62] Under such a system, there would be a supranational legislature with representatives elected directly by the people of current democratic nations, a world court whose jurisdiction extends over all such people, and possibly even direct ballot measures to enact laws binding upon all those living under the government.[63] While countries could still retain control over purely domestic issues,

57. Jack Goldsmith, *Liberal Democracy and Cosmopolitan Duty*, 55 STAN. L. REV. 1667, 1670 (2003).

58. GILLIAN BROCK, COSMOPOLITANISM VERSUS NON-COSMOPOLITANISM: CRITIQUES, DEFENSES, AND RECONCEPTUALIZATIONS 1 (2013).

59. The author notes that Dahl himself was not a cosmopolitan.

60. ROBERT A. DAHL, AFTER THE REVOLUTION?: AUTHORITY IN A GOOD SOCIETY 64 (1970); *see also* IAN SHAPIRO, DEMOCRATIC JUSTICE 37 (1999) ("[E]veryone affected by the operation of a particular domain of civil society should be presumed to have a say in its governance. This follows from the root democratic idea that the people appropriately rule over themselves."); Goodin, *supra* note 7, at 55 (arguing that the affected interests principle covers "anyone who might possibly be affected by any possible outcome of any possible question that might possibly appear on any possible ballot").

61. *See* Song, *supra* note 51, at 48.

62. *See* Bellamy, *supra* note 6, at 664.

63. *See* DAVID HELD, DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE 267–74 (1995).

the world government would enact supranational laws pertaining to issues that transcend borders—e.g., climate change—thus greatly reducing democratic externalities.[64] Other theorists have advocated for similar, yet more tempered supranational regimes as well, such as regional governments or transnational organizations, e.g., the Universal Postal Union.[65]

Others have meanwhile focused less on creating new systems of governance and more on expanding voting rights in existing polities to include those who fall within the affected interests principle. Harry Brighouse and Marc Fleurbaey have, for example, argued for a voting method in which one's vote would be proportionally weighed based on one's stake in a polity's decision-making.[66] Ian Shapiro has likewise supported a focus on proportionality, stating that "those whose basic interests are most vitally affected by a particular decision have the strongest claim to a say in its making."[67] Realistic application of this method would, of course, likely require weighing certain groups of people—e.g., those in bordering countries—over others, rather than weighing stakes on an individual basis.[68]

2. Deliberative Democracy

Deliberative democracy focuses not so much on a widespread overhaul of democratic institutions as it does on transforming how democratic decision-making occurs. As Amy Gutmann and Dennis Thompson—two of the leading proponents of deliberate democracy—explain, a deliberative democratic society is one governed by:

> [A] form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future.[69]

In other words, government decisions are only justified if made after sufficient deliberation among constituents and representatives, and only remain justified if deliberation continues after said decision.[70] This deliberative model of decision-making rests upon three assumptions: (1) that people can be motivated to pursue the common good, (2) that the common good is not necessarily reflected in people's perceived private interests or preferences, and (3) that the common good can be

64. *See id.* at 268.

65. *See, e.g.*, Erik O. Eriksen, *Banishing Dominance in Europe: The Case for Regional Cosmopolitanism*, 26 EUR. J. INT'L RELS. 742, 756–60 (2019); Bellamy, *supra* note 6, at 666–67. Even those advocating for a world government have recognized the role that regional governments could play in democratic cosmopolitanism. *See* HELD, *supra* note 63, at 272–73.

66. *See* Harry Brighouse & Marc Fleurbaey, *Democracy and Proportionality*, 18 J. POL. PHIL. 137, 142–46, 155 (2010).

67. SHAPIRO, *supra* note 60, at 37.

68. As Part IV discusses, some countries have adopted this sort of tiered system in the context of campaign finance. *See, e.g.*, Parteiengesetz [PartG] [Political Parties Act], July 24, 1967, BGBL I at 3436, § 25(3) (Ger.) (permitting EU citizens and parties of national minorities in bordering countries to make unlimited donations to German political parties while capping all other foreign donations to a €1,000 limit).

69. GUTMANN & THOMPSON, *supra* note 10, at 7.

70. *See* Thompson, *supra* note 9, at 120.

realized through deliberative practices and institutions.[71] Voting and legislative representation still exist within a deliberative democratic society.[72] Nevertheless, deliberative democrats seek to discover the common good *before* voting rather than assuming that the outcome of a vote itself reflects what is best for society.[73]

When it comes to solving democratic externalities, deliberative democracy's strength is in its conceptualization of the demos. Just as democratic cosmopolitans have adopted the affected interests principle, deliberative democrats believe in the "coercion principle." Under this principle, anyone bound to the decisions of a polity is entitled to have a say in making its decisions.[74] Thompson refers to this group as the "moral constituency," whose reach extends beyond the traditional electoral constituency of a polity "but stops short of a[n] . . . inclusion of everyone in the world who might be affected by [its] decision."[75] The primary concern for deliberative democrats in defining the demos in this manner is personal autonomy, which they contend is invaded whenever someone is controlled by a decision-making process over which they have zero influence.[76]

Deliberative democrats in turn believe that "public officials must consider not only their electoral constituents but also . . . their moral constituents, all those individuals who are bound by the decisions they make, whether de jure or de facto."[77] Thus, under deliberative democracy, a polity's legislature could not, say, implement a law restricting immigration without first engaging in meaningful deliberation with noncitizens who would be coerced by said law; at the very least, the law would not be legitimate without such deliberation. Decision-makers—be they legislators, executive officials, or the citizenry at large in instances of direct democracy—must justify their proposed decisions to the moral constituency as a whole, all while moral constituents provide their thoughts on the proposed decisions to those decision-makers. Through this reciprocal process, decision-makers gain a better understanding of how their decisions affect the common good, and can in turn better justify their ultimate decisions to moral constituents.[78]

How this deliberative process should bear out in real life remains subject to debate. The most popular method seems to be that of representation, where a polity's moral constituents select representatives to speak on their behalf to the polity's decision-makers. Thomspon has, for instance, suggested that "a state could

71. Clarissa Rile Hayward, *What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance*, 39 POL. THEORY 468, 471–73 (2011).

72. Song, *supra* note 51, at 45.

73. *See* Thompson, *supra* note 9, at 120.

74. *Id.*

75. *Id.*

76. *See* Song, *supra* note 51, at 51.

77. *See* Thompson, *supra* note 9, at 120; *see also* Song, *supra* note 51, at 50 (noting ties between deliberative democracy and the coercion principle).

78. Some may question whether the moral constituency is truly part of the demos if they cannot vote. Nevertheless, being part of the demos is not synonymous with having the right to vote. For example, many would consider children as being part of a demos despite lacking the right to vote. *See, e.g.*, Stefan Olsson, *Children's Suffrage: A Critique of the Importance of Voters' Knowledge for the Well-Being of Democracy*, 16 INT'L J. CHILDREN'S RTS. 55, 59 (2008) (considering children as "part of the demos" while acknowledging a legitimacy in excluding them from suffrage due to age-related competency); *see also* Joseph Fishkin, *Taking Virtual Representation Seriously*, 59 WM. & MARY L. REV. 1681, 1686–87 (2018) (noting how children, immigrants, the mentally incapacitated, and the incarcerated are all "virtually represented" in the United States despite lacking the right to vote).

establish forums in which representatives could speak for the ordinary citizens of foreign states, presenting their claims and responding to counter-claims of representatives of the host state."[79] David Miller has similarly proposed for democratic states to "invite representatives of a second state that will feel the impact of a decision it is about to take to put their case to its legislature before the decision is finally taken."[80] Whatever the chosen method, the ultimate goal is to help a democratic polity's decision-makers gain a better understanding of how their decisions might impact noncitizen moral constituents via democratic externalities.

3. Epistemic Aggregative Democracy

Deliberative democracy stands in contrast with what theorists call "aggregative democracy," which places its emphasis on the act of voting.[81] For most of us, aggregative democracy best reflects our personal understanding of how democratic decision-making operates. Specifically, the aggregative model of decision-making assumes that private interests and preferences matter more to people than the common good.[82] Furthermore, it assumes that democracy's greatest value rests in its ability to track the interests of a traditionally defined demos.[83] In turn, its proponents assert that free and fair elections—paired with political rights and the rule of law—provide the best method of decision-making via the aggregation of society's private interests and preferences.[84] In other words, to achieve optimal decisions, we must focus on electoral outcomes, e.g., a chosen legislative representative or a "yes" or "no" on a ballot measure.

While aggregative democratic decision-making places more stock in voting outcomes themselves rather than a pre-voting deliberative process, this does not necessarily mean aggregative democracy results in less "good" or "correct" decisions than deliberative democracy. To the contrary, many theorists recognize the aggregation of votes as a mechanism through which democracy can achieve epistemic ends—i.e., make the right decisions—more often than any other form of governance.[85] The idea is simple: A greater number of voters creates a higher

79. Thompson, *supra* note 9, at 121–22.

80. David Miller, *Democracy's Domain*, 37 PHIL. & PUB. AFFS. 201, 223 (2009). Scholars have identified many other legitimate means through which noncitizens can still influence a democratic process despite lacking the right to vote. Daniel Kanstroom, for instance, has highlighted the important function that "alien litigation" can play in shaping a democratic society. *See* Daniel Kanstroom, *"Alien" Litigation as Polity Participation: The Positive Power of a "Voteless Class of Litigants*,*"* 21 WM. & MARY BILL RTS. J. 399, 411–13 (2012). And, of course, this Article notes how transnational campaign finance can play such a function too. *See infra* Part II.

81. James A. Gardner, *Election Law and Democratic Theory* 6 (Univ. of Buffalo Sch. of L. Legal Stud. Rsch. Paper Series, Paper No. 2022-001, 2022); Juan Perote-Peña & Ashley Piggins, *A Model of Deliberative and Aggregative Democracy*, 31 ECON. & PHIL. 93, 93 (2015).

82. *See* Hayward, *supra* note 71, at 471–72.

83. *See id.* at 472.

84. *See id.* at 472–73.

85. *See, e.g.*, GOODIN & SPIEKERMANN, *supra* note 12, at 321. It is true that some theorists define democracy purely as procedure, rather than through any substantive goals such as epistemic decision-making *See, e.g.*, JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 219–20 (Routledge Classic 2010) (1942); Frederick G. Whelan, *Prologue: Democratic Theory and the Boundary Problem*, 25 NOMOS 13, 40 (1983) (referring to democracy as "a method for group decision-making or self-governance"). Other scholars have, nevertheless, highlighted the absurd results that can follow from this purely procedural approach. *See, e.g.*, ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 121

likelihood of a majority reaching a "correct" decision.[86] This premise crucially rests on the assumption that voters are "competent,"—i.e., are individually correct more than 50% of the time—which itself requires awareness of the "state of the world."[87] Under such circumstances, democracy's reliance on wide-scale voting should theoretically lead to more correct decision-making than, say, an autocracy's reliance on the choices of a few individuals.[88]

Where do democratic externalities fit into all of this? Simply put, how a polity's decisions may impact foreign nationals is information that falls within the "state of the world." Certainly, for instance, the extent to which Maine voters understand how a given referendum might affect Canadians would factor into the calculation of Maine voters' competency.[89] Thus, insofar as voters *do* have a competent understanding of the state of the world, aggregative democratic decision-making is more likely to result in the correct choice regarding decisions that create democratic externalities.[90] This does not necessarily mean that all foreign nationals may end up happy with the ultimate decision rendered, of course. Rather, it means that democratic externalities were duly accounted for and factored into the decision.[91]

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While these frameworks may address the democratic externalities problem in *theory*, the big question is whether they have actually done so in *practice*. The next

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(1989) (noting how societies with formal racial hierarchies could be described as democratic from a proceduralist approach so long as voting procedures are in place).

86. *Jury Theorems*, STANFORD ENCYCLOPEDIA OF PHIL. (Nov. 17, 2021), https://plato.stanford.edu/entries/jury-theorems/#CondJuryTheo [perma.cc/T7XE-EVLY].

87. *Id.*

88. Epistemic democratic theorists will recognize this premise as the "jury theorem," the most famous of which being Condorcet's Jury Theorem ("CJT"). *See id.* Critics may criticize how this theory bears out in practice because the CJT requires unconditional independence, meaning people's voters cannot be influenced by any cause common to other voters (e.g., sharing information). Yet, to become competent will often require learning from others. Nevertheless, the CJT is but one jury theorem. Indeed, many others have been proffered to relieve this tension between independence and competence. *See id.* ("But deliberation does not undermine the Conditional Independence axiom of the Conditional and the Competence-Sensitive Jury Theorem, provided one conditionalises on common causes."). Goodin and Spiekermann have, for instance, recently put forth a modified CJT called the "best responder corollary," under which a higher number of voters will lead to a greater likelihood of a correct majority vote so long as (1) the most well-educated individual in society—i.e., the "best responder"—is more likely than not to vote correctly based on the information available to her, and (2) the average voter is more likely than not to follow the vote of the best responder. GOODIN & SPIEKERMANN, *supra* note 12, at 78–79.

89. *See Maine Voters Reject Quebec Hydropower Transmission Line*, REUTERS (Nov. 3, 2021), https://www.reuters.com/world/americas/maine-voters-reject-quebec-hydropower-transmission-line-2021-11-03 [web.archive.org/web/20211103200512/https://www.reuters.com/world/americas/maine-voters-reject-quebec-hydropower-transmission-line-2021-11-03/]. Or, at the very least, the extent to which Maine's best responder understands. *See supra* note 85.

90. Most votes, of course, are cast for elected representatives, rather than direct ballot measures. Nevertheless, the former can still qualify as epistemic decision-making insofar as voters' understandings of the state of the world lead them to pick the best person running for a given office. When it comes to democratic externalities, voters would consider how the potential officeholder's anticipated decisions could impact foreign nationals.

91. Other scholars have similarly discussed this phenomenon, even if not in terms of jury theorems. Alexander Somek, for example, has discussed how the principle of universalization can alleviate the democratic externalities problem. The principle, put plainly, requires "that in whatever one does one needs to examine one's acts and forbearances from the perspective of the person affected by it." Somek, *supra* note 6, at 379.

section considers this question. Before getting there though, it is important to revisit what resolving the democratic externalities problem looks like. To start, it is *not* the total elimination of democratic externalities. Indeed, it is nigh impossible for a polity's laws, policies, or other decisions to never have any impact on foreign nationals; to avoid that would require avoiding any decision-making in the first place. Rather, the democratic externalities problem is a problem of *representation*: Too often, countries, regions, or localities make decisions to which foreign nationals are subject, if not bound, without such effects having been given due consideration by decision-makers. Thus, to solve the democratic externalities problem would be to ensure that such effects are properly taken into account during the democratic decision-making process.

B. A Persistent Problem

Despite their goals, none of the aforementioned frameworks have ultimately born out in a manner that has adequately addressed democratic externalities in the real world. For one, democratic cosmopolitanism remains mostly unattained. To be sure, there exist some supranational legislatures on the regional level, though most either do not have directly elected officials or have no binding lawmaking authority.[92] The one exception is the European Union (EU), which scholars commonly laud as the "most successful supranational entity" in human history.[93] Yet, the EU's magnitude itself creates new democratic externality concerns, namely that those living outside the EU have no say in its often immensely consequential decisions—e.g., the adoption of a common currency.[94] Meanwhile, when it comes to the right to vote, no polity in the world has expanded such rights to cover all those affected by its decisions. Certainly, some countries and localities have afforded such rights to noncitizen permanent residents,[95] but that is as "cosmopolitan" as any have gotten.

Turning next to deliberative democracy, there are presently few opportunities worldwide for deliberation between government leaders and their full moral constituency. Some may point to the United Nations General Assembly as a deliberative body for its member states.[96] Yet, this deliberation between unelected

92. *See, e.g.*, ARAB PARLIAMENT, http://www.ar-pr.org [perma.cc/QUE4-4687] (last visited Dec. 8, 2023); *About the Pan-African Parliament*, PAN-AFRICAN PARLIAMENT, https://pap.au.int/en/about [perma.cc/N8E3-EWXD] (last visited Nov. 25, 2024); MERCOSUR, https://www.mercosur.int/en [perma.cc/8592-KHKF] (last visited Dec. 8, 2023). Beyond supranational legislatures, international courts remain limited in scope, with, for instance, the International Court of Justice only having jurisdiction over cases between countries and the International Criminal Court having not been ratified by many powerful countries. *See* Statute of the International Court of Justice art. 34(1), June 26, 1945, 59 Stat. 1055; *The State Parties to the Rome Statute*, INT'L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx [perma.cc/J3AF-C6Z5] (last visited Dec. 8, 2023).

93. Van Parijs, *supra* note 14, at 216.

94. *Id.* at 221.

95. *See* David C. Earnest, Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm 5 (Aug. 29, 2003) (unpublished manuscript), http://citizenshiprightsafrica.org/wp-content/uploads/2016/01/Earnest_APSA_non-citizen-voting_2003.pdf [perma.cc/77MK-WVYW]; *Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEDIA, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States [perma.cc/B9XU-67QT] (last visited Oct. 31, 2023).

96. *See Functions and Powers of the General Assembly*, UNITED NATIONS, https://www.un.org/en/ga/about/background.shtml [perma.cc/UWT6-5DXD] (last visited Dec. 8, 2023).

ambassadors on international issues is not the reciprocal deliberation between democratic decision-makers and moral constituents (or representatives thereof) envisioned by deliberative democrats.[97] On a local level, deliberative democracy has admittedly made some notable strides. For example, a recent study published by the Organization for Economic Cooperation and Development (OECD) identified nearly three hundred instances of use of the representative deliberative process for public decision-making between 1986 and 2019, the vast majority of which occurred post-2010.[98] Nevertheless, these numbers are still too small to consider deliberative democracy a widely adopted practice.

Finally, there is the question of whether aggregative modes of democracy have manifested in epistemic decision-making that accounts for democratic externalities. While voters' knowledge of the state of the world is tough to quantify, there are indications that voters are generally underinformed about problems faced by foreign nationals. Take, for instance, the United States, where voters have routinely demonstrated a lack of understanding of international issues.[99] Likewise, the majority of voters in numerous European countries have demonstrated a lack of concern for issues faced by people in other countries.[100] These polls, of course, are only proxy measurements for voter competency. Nevertheless, they signal that there is plenty of room for growth in voters' knowledge on how their polity's decisions may impact foreign nationals.

At bottom, the democratic externalities problem persists. Each year, thousands upon thousands of laws, regulations, and policies are enacted and thousands of electoral decisions are made by democratic polities with insufficient consideration of how they will affect those with no representation in the decision-making process. And while the various frameworks discussed perhaps offer promising means of resolving this issue, each has fallen short in practice. Accordingly, the remainder of this Article focuses on how we could realistically

97. *See* Thompson, *supra* note 9, at 120–22. For similar reasons, discussions between the leaders of one country and the diplomats of another cannot be regarded as democratic deliberation, as unelected diplomats represent a regime rather than a people.

98. *See* ORG. FOR ECON. COOP. & DEV., INNOVATIVE CITIZEN PARTICIPATION AND NEW DEMOCRATIC INSTITUTIONS: CATCHING THE DELIBERATIVE WAVE 69 (2020), https://www.oecd-ilibrary.org/docserver/339306da-en.pdf [perma.cc/4TC3-XJ6T]. There are also the occasional instances of deliberative democracy on a national scale. For instance, in the 1980s, when considering amending Section 2 of the Voting Rights Act, the House Judiciary Subcommittee on Civil and Constitutional Rights held hearings in Montgomery, Alabama and Austin, Texas to connect with minority communities affected by voter suppression. *See* Thomas M. Boyd & Stephen J. Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 WASH. & LEE L. REV. 1347, 1360–61 (1983).

99. *See, e.g.*, *Americans Lack Knowledge of International Issues Yet Consider Them Important, Finds New Survey*, COUNCIL ON FOREIGN RELS. (Dec. 5, 2019), https://www.cfr.org/news-releases/americans-lack-knowledge-international-issues-yet-consider-them-important-finds-new [perma.cc/W9LG-5FVH] ("Respondents answered just over half of the knowledge questions correctly, and only 6 percent got at least 80 percent of the questions right."); Laura Silver, Christine Huang, Laura Clancy, Aidan Connaughton & Sneha Gubbala, *What Do Americans Know About International Affairs?*, PEW RSCH. CTR. (May 25, 2022), https://www.pewresearch.org/global/2022/05/25/what-do-americans-know-about-international-affairs [perma.cc/A4CM-55AA] (finding majority of Americans to be unfamiliar with certain international topics).

100. *See* Bruce Stokes, *Key Findings on How Europeans See Their Place in the World*, PEW RSCH. CTR. (June 13, 2016), https://www.pewresearch.org/short-reads/2016/06/13/key-findings-europe [perma.cc/F2DN-PHHZ].

tackle the democratic externalities problem going forward. Specifically, the Article suggests one particular, albeit imperfect mechanism that could potentially advance the above frameworks and thereby help resolve the problem: transnational campaign finance. Part II elaborates further.

II. THE DEMOCRATIC VALUE OF TRANSNATIONAL CAMPAIGN FINANCE

This Part presents the Article's primary thesis: that transnational campaign finance can help global society better address democratic externalities.[101] To begin, it is necessary to define "transnational campaign finance." For this Article's sake, it means an act of a foreign national either (1) directly contributing money to a candidate, political party, political action committee (PAC), or other group that engages in political spending; or (2) expending money on communications advocating for or against a candidate, political party, or political issue, within a democratic country (or polity therein) of which they are not a citizen.[102] Put more plainly, transnational campaign finance is when foreign nationals use money to influence domestic political outcomes.

Before proceeding with this Part, a few caveats need addressing. For one, it is important to note that many theorists have argued that private campaign financing of any kind is wholly incompatible with democracy.[103] I am, for the most part, sympathetic to this argument,[104] though would not go so far as to say private campaign finance is irreconcilable with democracy as much as it is an unideal feature. Nevertheless, for this Article's sake, private campaign finance is treated as a given within democratic society. Indeed, out of all countries presently operating free and fair elections, only one—Bhutan—appears to have entirely banned the use of private funds to finance and support electoral campaigns.[105] Thus, when this Article states that transnational campaign finance can further democratic ends, it is

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101. While this Article is the first in the literature to extensively explore this relationship, other pieces have touched upon the argument to a more limited degree. Saul Levmore, for example, briefly wrote on the subject of transnational campaign finance and democratic externalities in a recent essay. *See* Levmore, *supra* note 54, at 1–2.

102. Some may take issue with including the expenditure of money advocating for or against a political issue under the umbrella of "campaign finance." Indeed, in the United States, courts treat this "issue advocacy" as distinct from "express advocacy" for or against a candidate, and therefore subject laws regulating them to different standards of review. Nevertheless, as scholars have noted, issue advocacy is very often deliberately used to influence voter behavior. *See, e.g.*, Nicholas O. Stephanopoulos, *Quasi Campaign Finance*, 70 DUKE L.J. 333, 341–69 (2020) (referring to this phenomenon as "quasi campaign finance," i.e., "funding for communications with voters that are nonelectoral yet rely on an electoral mechanism to be effective").

103. *See, e.g.*, Sarah Birch, *Private Electoral Finance and Democratic Theory*, 29 CONSTELLATIONS 492, 493–98 (2022) (arguing that private campaign finance results in political inequality among citizens and threatens the judgmental autonomy of officeholders/seekers); John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 772 (1997) ("Public deliberation must be made possible, recognized as a basic feature of democracy, and set free from the curse of money."). Many others have at least recognized the undemocratic nature of unfettered campaign finance. *See, e.g.*, Cass Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1392 (1994) ("The 'one person-one vote' rule exemplifies the commitment to political equality. Limits on campaign expenditures are continuous with that rule.")

104. *See infra* Section V.A.

105. *See infra* note 241 and accompanying text.

doing so under the presumption that private campaign finance will, to some extent, exist within democracy.[106]

Additionally, this Article treats as fact the notion that money influences voters and officeholders/seekers in myriad ways. There is, of course, quid pro quo activity, such as the buying of votes from voters or political favors from officeholders/seekers.[107] Most monetary influence, nevertheless, manifests in less direct or illicit forms. Officeholders may, for instance, cast certain votes or make certain decisions with monetary considerations in mind, e.g., wanting to attract contributions from donors or support from political expenditure groups.[108] Even more indirectly, political expenditures can influence how voters think about politics via funded communications (e.g., ads),[109] which can in turn affect electoral outcomes.[110] Overall, campaign finance impacts how people think about and react to politics in society.

Finally, while transnational campaign finance is a global phenomenon, much of the remainder of this Article will be largely U.S.-focused. There are a few reasons for this. For one, I am an American scholar who focuses on U.S. election law, and therefore do not wish to overstate my expertise in the laws of other countries. Furthermore, the United States' campaign finance jurisprudence is perhaps the most hostile in the world toward campaign finance regulation.[111] Thus, when proposing any potential regulation of transnational campaign finance—as Part IV does below—U.S. campaign finance jurisprudence acts as a useful baseline; if the regulation can pass constitutional muster in the United States, it likely can do so in any democratic polity. Lastly, U.S. laws and policies affect noncitizens arguably more so than those of any other democratic country, making the United States' treatment of transnational campaign finance especially consequential.

With all that said, this Part explores how transnational campaign finance can potentially complement all the frameworks covered in Part I, at least insofar as they

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106. In other words, the Article's comparison is between private campaign financing only from domestic sources versus private campaign financing from domestic and foreign sources, rather than between private campaign finance and public election funding more broadly.

107. *See* Birch, *supra* note 103, at 496; *infra* notes 180–186 and accompanying text.

108. Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT. 127, 131 (1997). The pre-*Citizens United* Court would call this "undue influence," as would many scholars then and now. *See* McConnell v. FEC, 540 U.S. 93, 143 (2003) (quoting FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 441 (2001)); Birch, *supra* note 103, at 497 (calling this phenomenon the "representative behavior effect"); Burke, *supra*, at 131 ("The influence of money is corrupting under this standard even if no explicit deal is made."). Today's Court has since then adopted a more sanguine view, referring to such influence as "a central feature of democracy." McCutcheon v. FEC, 572 U.S. 185, 192 (2014) (plurality opinion) ("[C]onstituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns.").

109. *See* Michael M. Franz & Travis N. Ridout, *Does Political Advertising Persuade?*, 29 POL. BEHAV. 465, 475–85 (2007) ("The evidence strongly supports the hypothesis that ads persuade.").

110. This phenomenon is what critics refer to as distortion, where "wealthy entities spend heavily during a campaign and thus induce some number of voters to cast their ballots differently than they would have under conditions of more even outlays." Stephanopoulos, *supra* note 30, at 1460; *see also* Birch, *supra* note 103, at 497; Burke, *supra* note 108, at 131; *infra* notes 188–189 and accompanying text.

111. Indeed, the Roberts Court has to date issued seven decisions invalidating various federal and state campaign finance laws. John J. Martin, *The Unique Appearance of Corruption in Personal Loan Repayment Limits*, 108 CORNELL L. REV. 1443, 1452–53 (2023).

help resolve the democratic externalities problem. Beginning with epistemic aggregative democracy, this Part argues that transnational campaign finance—particularly the funding of political advocacy—can help expose voters to foreign perspectives on their polity's lawmaking or electoral decisions, in turn making them better able to make decisions that take into account democratic externalities. Turning then to deliberative democracy, this Part contends that, while not true deliberation, foreign-sourced contributions to candidates and political parties can play a quasi-deliberative function by signaling support for or against certain candidates/parties from moral constituents. Furthermore, political communications funded by moral constituents can force voters to engage with, to some degree, foreign perspectives on upcoming elections and ballot measures. Finally, regarding democratic cosmopolitanism, this Part reasons that, while transnational campaign finance may not create any structural changes at the supranational level, contributions to candidates can act as a proxy for voting that allows foreign nationals with affected interests to influence electoral outcomes in another polity.

A. . . . in Epistemic Aggregative Democracy

This Section's core argument is simple: Transnational campaign finance can benefit aggregative democracy by facilitating the inflow of foreign speech or the spread of speech endorsed by foreign nationals, thereby exposing voters to unique perspectives on political matters—in other words, it can expand voters' view of the state of the world. The Section begins by overviewing how the ability to freely receive speech plays a vital epistemic role in a democratic society, with a particular focus on the right to receive speech in the United States. The following section then examines how transnational campaign finance can bolster voters' receipt of speech and, in turn, enhance their competency.

1. The Epistemic Right to Receive Speech

Voters are the ultimate deciders in aggregative democracy. They choose their lawmakers and, often, law enforcers and law interpreters. They sometimes get to directly approve or reject a proposed law. And their choices are influenced by thoughts they have heard in the years, months, days, and even hours leading up to an election. Thoughts about specific candidates. Thoughts about specific issues. Thoughts about abstract concepts. They hear these thoughts through a variety of mediums—one-on-one conversations, group discussions, books, radio, television, websites, billboards, and so on—and from a diverse range of people—friends, families, teachers, candidates, and advocates, to name a few. And most democratic theorists would regard this phenomenon as a good thing.

Many in fact believe that the free exchange of ideas is not only valuable to democracy, but a *necessary* component of it. From an epistemic angle, Goodin and Spiekermann have underscored how "freedom of speech and opinion . . . contribute to collective correctness."[112] Other theorists have shared similar thoughts outside of epistemic literature. In writing on political equality, for instance, Dahl stated quite plainly that the "freedom of speech . . . is necessary if a democratic

112. GOODIN & SPIEKERMANN, *supra* note 12, at 61–62.

system is to exist."[113] There is, of course, disagreement over precisely what kind of speech should fall under the umbrella of protected speech. Must hate speech be covered for a society to be properly democratic?[114] Or how about speech on purely private matters?[115] At a minimum, though, there appears to be near consensus that democracy requires the free flow of speech on matters political in nature.

Indeed, in the United States, scholars and jurists alike have recognized the facilitation of epistemic democratic decision-making as one of the primary functions of the First Amendment. Zechariah Chafee, for example, identified two interests protected by the First Amendment, one of which being "a social interest in the attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the wisest way."[116] Other scholars have even contended that epistemic self-governance is the *only* interest served by the First Amendment. Alexander Meiklejohn famously asserted that the First Amendment provides absolute protection only for speech on public matters, so that voters may reach "wise decisions," whereas speech on private matters receives lesser protection under the Fifth Amendment's due process clause.[117] Robert Bork arrived at similar conclusions, finding "discovery and spread of political truth" to be the only purpose of the First Amendment that courts could defend on neutral grounds.[118] More recent scholarship has continued to support the notion that, at the very least, the First Amendment exists to advance democratic purposes.[119] As have multiple opinions penned under the Roberts Court.[120]

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113. ROBERT A. DAHL, ON POLITICAL EQUALITY 17 (2006); *see also* CASS R. SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH 121–65 (1993) (contending that free speech is a "precondition" for democracy).

114. *Compare* Andrew Reid, *Does Regulating Hate Speech Undermine Democratic Legitimacy? A Cautious 'No,'* 26 RES PUBLICA 181, 197–98 (2020) (arguing that the harmful effects of hate speech on the democratic process sometimes outweigh the harmful effects of restricting such speech), *with* Ronald Dworkin, *Foreword*, *in* EXTREME SPEECH AND DEMOCRACY vi–vii (Ivan Hare & James Weinstein eds., 2009) ("[I]f free speech really is as fundamental as many of its defenders have supposed in the past, we must protect it even if it does have bad consequences . . . .").

115. *Compare* Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government*, *in* POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE 3, 37 (1960) ("Individuals have, then, a private right of speech which may on occasion be denied or limited . . . ."), *with* Eugene Volokh, *The Trouble with "Public Discourse" as a Limitation on Free Speech Rights*, 97 VA. L. REV. 567, 584–94 (2011) (defending an "all-inclusive" approach to free speech doctrine).

116. ZECHARIAH CHAFEE JR., FREE SPEECH IN THE UNITED STATES 33 (1941). The other interest was "an individual interest, the need of many men to express their opinions on matters vital to them if life is to be worth living." *Id.*

117. *See* Meiklejohn, *supra* note 115, at 26, 37.

118. See Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 20–35 (1971).

119. *See, e.g.*, Tabatha Abu El-Haj, *How the Liberal First Amendment Under-Protects Democracy*, 107 MINN. L. REV. 529, 543–45 (2022) ("[I]t is clear that the Amendment's primary purpose is to underwrite the foundational commitment to a republican form of government."); Ashutosh Bhagwat, *The Democratic First Amendment*, 110 NW. U. L. REV. 1097, 1100–11 (2016) (arguing that all components of the First Amendment, including the freedoms of the press, assembly, and petition, exist primarily to advance democratic self-governance); Post, *supra* note 52, at 482 ("[T]he best possible explanation of the shape of First Amendment doctrine is the value of democratic self-governance."). *But see* T.M. Scanlon, *Why Not Base Free Speech on Autonomy or Democracy?*, 97 VA. L. REV. 541, 544–45 (2011) (arguing that "it is a mistake to look for any one phrase to sum up" all the interests advanced by the First Amendment, such as democratic self-governance).

120. *See, e.g.*, Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 207 (2015) ("[T]he Free Speech Clause helps produce informed opinions among members of the public, who are

Notably, these assertions all seem to suggest that the epistemic value of speech resides in, at least in part, the insight it imparts upon the listener. This makes sense. Consider, for instance, what value speech would bring to democracy if nobody could actually hear or read it. I would say very little, if not zero.[121] Even advocates of more speaker-oriented approaches to speech rights have, in fact, conceded that the listener's interest is a significant secondary interest under the First Amendment.[122] At a minimum, the listener appears crucial to the epistemic democratic function of speech rights in the United States.

Further support for this inference abounds in both First Amendment theory and jurisprudence. Vincent Blasi, for example, famously identified the "checking value" of the First Amendment; that is, "the value that free speech, a free press, and free assembly can serve in checking the abuse of power by public officials."[123] In other words, when our elected officials engage in misconduct, the First Amendment helps ensure that voters can effectively "check" the actions of said officials by permitting the free flow of discussion about their misconduct. The checking value therefore concerns itself more with "the importance of communications for readers and listeners" than "the benefits writers and speakers may derive from engaging in the act of self-expression."[124] The benefits of communications about government misconduct, from a democratic perspective, are only realized if people can actually hear and learn from them.

In a similar vein, and as alluded to above, Meiklejohn was a major proponent of the "informed-voter value" of the First Amendment.[125] For Meiklejohn, "[t]he primary purpose of the First Amendment is . . . that all the citizens shall, so far as possible, understand the issues which bear upon our common life."[126] This theory itself is premised upon the notion that the final aim of democratic self-governance is "the voting of wise decisions,"[127] i.e., epistemic decision-making. Thus, when it comes to the First Amendment, "the point of ultimate interest is not the words of the speakers, but the minds of the hearers."[128] For voters to be fully informed about

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then able to influence the choices of a government that, through words and deeds, will reflect its electoral mandate."); McCutcheon v. FEC, 572 U.S. 185, 191 (2014) (plurality opinion) (recognizing a "right to participate in democracy" under the First Amendment).

121. Perhaps the best argument from a speaker-oriented perspective is that the ability to speak freely makes one feel like a true participant within the democratic process. As Robert Post states, "Democracy is achieved when those who are subject to law believe that they are also potential authors of law." Post, *supra* note 52, at 482. Thus, when speakers feel free to speak openly on matters of public concern, a form of democratic legitimization occurs.

122. *See, e.g.*, *id.* at 488–89; James Weinstein, *Participatory Democracy as the Central Value of American Free Speech Doctrine*, 97 VA. L. REV. 491, 501 (2011).

123. Vincent Blasi, *The Checking Value in First Amendment Theory*, 2 AM. BAR FOUND. RSCH. J. 521, 527 (1977). Blasi cites an array of historical support for the checking value in his paper, including James Madison's long-held belief that "the freedom to criticize government officials is essential to the process by which the electorate turns out of office those who fail to discharge their trusts." *Id.* at 536.

124. *Id.* at 558.

125. I am not the first to use this terminology. *See* Vincent Blasi, *Democratic Participation and the Freedom of Speech: A Response to Post and Weinstein*, 97 VA. L. REV. 531, 536 (2011). Nevertheless, it is important to note that Meiklejohn himself never referred to this value by such terms in his writing.

126. Meiklejohn, *supra* note 115, at 75.

127. *Id.* at 26.

128. *Id.*

what they are voting on, they must be exposed to the unhindered expression of "all facts and interests relevant to the problem."[129]

When it comes to jurisprudence, the Supreme Court has routinely recognized what one may call a right to receive speech. In *Lamont v. Postmaster General*, for example, the Court struck down a law requiring the government to detain any "communist political propaganda" originating from a foreign country.[130] Specifically, the Court found this law to be "a limitation on the unfettered exercise of the *addressee's* First Amendment rights,"[131] the addressee being the American *recipient* of the propaganda. In *Griswold v. Connecticut*, the Court spelled it out in clearer terms, stating that "[t]he right of freedom of speech . . . includes not only the right to utter" but also "the right to receive, the right to read."[132] In *Red Lion Broadcasting Co. v. FCC*, the Court again invoked the First Amendment "right of . . . listeners," this time in terms of radio communication.[133] And, in striking down a Massachusetts law prohibiting the press and general public from entering the courtroom during the testimony of certain witnesses, the Court recognized a "right of access . . . embodied in the First Amendment."[134] Courts today continue to reference listener-oriented speech rights in a variety of cases.[135]

Some may question whether this right extends to receiving foreign speech. Certainly, foreign nationals residing outside the United States lack First Amendment rights as *speakers*.[136] But do I as an American have a right to *listen* to their speech? Many scholars would say so. Meiklejohn, for example, stated that "unhindered expression must be open to non-citizens, to resident aliens, to writers and speakers of other nations, to anyone, past or present, who has something to say which may have significance for a citizen who is thinking of the welfare of this nation."[137] And

129. *Id.* While the checking and informed-voter values share many similarities, they are not one and the same. As Blasi explains, the checking value is focused narrowly on speech relating to government misconduct, whereas the informed-voter value has a broader focus. *See* Blasi, *supra* note 123, at 558–59. Furthermore, the checking value is only concerned with protecting speech when "the good consequences of the speech outweigh the bad," whereas Meiklejohn adopts a more absolute interpretation of the First Amendment. *See id.* at 559–60.

130. *See* Lamont v. Postmaster Gen. of U.S., 381 U.S. 301, 302, 307 (1965).

131. *Id.* at 305 (emphasis added). Justice Brennan stated even more clearly in a concurrence that "the right to receive publications is . . . a fundamental right." *Id.* at 308 (Brennan, J., concurring).

132. Griswold v. Connecticut, 381 U.S. 479, 482 (1965).

133. Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969).

134. Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty., 457 U.S. 596, 603–06 (1982). For a more in-depth discussion on the right to receive speech, see Joseph Thai, *The Right to Receive Foreign Speech*, 71 OKLA. L. REV. 269, 278–309 (2018); John J. Martin, *Regulating Foreign Political Advocacy*, 104 N.C. L. REV. (forthcoming 2026) (manuscript at 24–34), https://ssrn.com/abstract=5167136.

135. *See, e.g.*, TikTok Inc. v. Garland, 145 S. Ct. 57, 66 (2025) ("The right of freedom of speech and press . . . embraces the right to distribute literature and necessarily protects the right to receive it." (alteration in original) (quoting Martin v. City of Struthers, 319 U.S. 141, 143 (1943)); Daywitt v. Harpstead, No. 20-CV-1743, 2023 WL 6366610, at *5 (D. Minn. Sept. 29, 2023) ("The First Amendment includes 'the right to receive, the right to read and freedom of inquiry . . . .'" (quoting *Griswold*, 381 U.S. at 482)); Turner v. Lieutenant Driver, 848 F.3d 678, 688–89 (5th Cir. 2017) (invoking the "First Amendment right to receive information and ideas" (internal quotation marks and citation omitted)); ACLU of Ill. v. Alvarez, 679 F.3d 583, 592 (7th Cir. 2012) ("It is well established that [w]hen one person has a right to speak, others hold a reciprocal right to receive the speech." (internal quotation marks and citation omitted)).

136. *See* Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 591 U.S. 430, 433–34 (2020).

137. Alexander Meiklejohn, *The Freedom of the Electorate*, *in* POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE 93, 119 (1960).

while the Court has not directly addressed the issue,[138] *Citizens United v. FEC* held that "the First Amendment generally prohibits the suppression of political speech based on the speaker's identity."[139] Taking this statement at face value, it would seem that any law prohibiting U.S. residents from listening to speech simply because it derives from foreign sources would strongly implicate recipients' First Amendment interests.[140] Whether this was the Court's intent, however, remains to be seen.

In any event, the ability to receive speech is clearly protected and valued by scholars and jurists alike due to, at least in part, its critical role in epistemic democratic decision-making. The next section now explains where transnational campaign finance plays into all of this.

2. Receiving Speech via Transnational Campaign Finance

A natural question that arises when once discusses campaign finance in the context of speech is whether spending money actually constitutes speech. This is a topic that has been covered at length in the literature,[141] and need not be retreaded in this Article. Instead, for this Article's purpose, one need only accept the fact that spending money can facilitate the expression of beliefs and ideas.[142] When somebody donates to a candidate or political party, this signals that the donor supports the candidate or party to some degree. When somebody donates to a PAC or other political expenditure group, that donor helps to spread certain messages to a wider audience. And when somebody makes such expenditures themselves, they are directly spreading their own thoughts to others.

Accordingly, by exposing voters to foreign perspectives on their polity's decisions, transnational campaign finance can ultimately help expand voters' knowledge of the state of the world. In turn, voters may vote more "correctly" in future elections, taking into account how the outcome of their vote may affect people living abroad. One can imagine this in terms of the checking value: Transnational campaign finance can help voters better "check" governmental abuses of power the brunt of which are felt most by those living in other countries. Blasi himself spoke about the U.S. government's engagement in oppressive foreign wars, stating that but for the "check" of antiwar protesting, "the Johnson administration might very well have escalated the war in Vietnam."[143]

Since then, the U.S. military has engaged in dozens more military interventions worldwide.[144] While people can disagree over the rationality of each intervention, it is indisputable that these interventions affect the lives of those living in the targeted

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138. *Lamont* may have been the closest the Court has gotten to doing so. *See supra* notes 127–128 and accompanying text.

139. Citizens United v. FEC, 558 U.S. 310, 350 (2010).

140. *See* Thai, *supra* note 134, at 297–98.

141. *See, e.g.*, Deborah Hellman, *Money Talks But It Isn't Speech*, 95 MINN. L. REV. 953 (2011) (concluding that "spending money in connection with elections need not always be considered a part of the freedom of speech protected by the First Amendment").

142. *Cf.* Abu El-Haj, *supra* note 119, at 573 ("The *Buckley* Court was correct to recognize, therefore, that campaign finance laws implicate the First Amendment.").

143. Blasi, *supra* note 123, at 527.

144. *See* ZOLTÁN GROSSMAN, U.S. MILITARY INTERVENTIONS SINCE 1890: FROM WOUNDED KNEE TO SYRIA 3–5 (2019), https://sites.evergreen.edu/zoltan/wp-content/uploads/sites/358/2019/11/InterventionsList2019.pdf [perma.cc/HH4E-ML26].

countries—often existentially—more so than the lives of many Americans. Yet, these interventions often escape the attention of the average American voter.[145] Picture, then, a scenario in which the United States is supplying weapons in a military conflict abroad. This particular conflict has resulted in the deaths of thousands of civilians. Now imagine that a foreign group representing those civilians' interests funds an ad campaign covering the negative effects of the U.S. government's involvement, perhaps even referencing specific elected officials. Or maybe the group indirectly funds such a campaign by donating money to a domestic PAC or other entity that spreads ads focusing on such issues. Would the information that U.S. citizens learn via these acts of transnational campaign finance not help them better "check" the U.S. government and its current officials backing the intervention?

Transnational campaign finance need not only originate from abroad, of course. Millions of foreign nationals, for instance, currently reside in the United States for temporary work or education opportunities.[146] These are individuals who, while lacking any voting power, are arguably more impacted by U.S. laws and policies on a day-to-day basis than any other foreign national. Through transnational campaign finance, these temporary residents could disseminate to voters their thoughts on issues important to them, such as immigration policy.[147]

Some forms of transnational campaign finance will naturally be more conducive to advancing foreign speech than others. Direct expenditures, for example, provide foreign nationals with the most control over distributing a particular message to voters.[148] Moving a step down, monetary contributions to political expenditure groups, such as PACs and 501(c)(4) organizations (or equivalents), may allow foreign nationals to indirectly spread messages they support to voters. It is, of course, very well possible that their contributions go toward certain advocacy on which they have no opinion, or with which they may even disagree. At the same time, if you are donating $50 to, say, a PAC called "Immigrants

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145. *See, e.g.*, Matt Taibbi, *Why We Know So Little About the U.S.–Backed War in Yemen*, ROLLING STONE (July 27, 2018), https://www.rollingstone.com/politics/politics-news/yemen-war-united-states-704187 [perma.cc/CCZ8-8GGK].

146. Nicole Ward & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Mar. 14, 2023), https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states [web.archive.org/web/20230314222648/https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states] (noting in Table 4 that, in 2021, there were 1,844,000 admissions of nonimmigrants for temporary workers and families and 799,000 admissions for students and families).

147. Indeed, during my time working on campaign finance reform advocacy, I was privy to multiple conversations with immigrant advocacy groups that expressed disdain toward laws prohibiting transnational campaign finance precisely because they took away one of the few ways noncitizen residents could actively influence the democratic process in light of their inability to vote. The weight of this inability to influence U.S. politics feels perhaps all the more heavier under the present administration's immigration policies. *See* Maanvi Singh et al., *How Trump Has Supercharged the Immigration Crackdown—in Data*, THE GUARDIAN (July 23, 2025), https://www.theguardian.com/us-news/ng-interactive/2025/jul/23/trump-ice-data-deportations-detention.

148. *Cf.* Raymond J. La Raja, *Why Super PACs: How the American Party System Outgrew the Campaign Finance System*, 10 FORUM 91, 101 (2012) (explaining how candidates' best strategy is to have direct control over their money rather than relying on independent spenders).

United," you can be pretty certain that your money will go toward pro-immigrant advocacy.[149]

Finally, at the bottom of this chain are contributions to candidates and political parties. If a foreign national were to donate $50 to a Democratic candidate or the Democratic Party, for example, they would have little clue how that money will be spent, given that candidates and parties have much broader priorities than those of political expenditure groups focusing on specific issues. Certainly, a foreign national who supports more immigrant-friendly policies could be more confident in their money going toward pro-immigrant advocacy if they were to donate to the Democratic Party over the Republican Party.[150] Yet, that money may very well go toward reproductive rights advocacy instead. Not to mention the fact that a large fraction of candidate and party spending goes toward operation costs rather than advocacy.[151] Accordingly, the epistemic value potentially derivable from transnational campaign finance may stop short at contributions to candidates and parties.[152]

One might criticize the hypotheticals provided within this Section as being overly charitable and unreflective of the types of spending that would actually occur in a system that accepted transnational campaign finance. After all, the vast majority of political expenditures made in connection with U.S. elections are not made by individuals, but rather entities such as PACs, 501(c)(4) organizations, labor organizations, and, of course, political parties and candidates.[153] Legitimate concerns may arise that transnational campaign finance will mainly lead to a massive inflow of political spending from such entities that wield a disproportionate amount of monetary power while representing the desires of only a few individuals.[154] Can transnational campaign finance provide epistemic value if foreign political spending ends up representing only moneyed interests? I share these concerns and provide a more in-depth treatment of this question in Part IV. For now, it suffices to say that many of these concerns can be quelled through proper regulation of transnational campaign finance.[155]

On a final note, one might question the value of transnational campaign finance when many of the thoughts and opinions shared through it would, in all likelihood, already be held by at least some domestic citizens of a polity. For

149. For this Article's purpose, "contribution" and "donation" are used interchangeably.

150. *See* J. Baxter Oliphant & Andy Cerda, *Republicans and Democrats Have Different Top Priorities for U.S. Immigration Policy*, PEW RSCH. CTR. (Sept. 8, 2022), https://www.pewresearch.org/short-reads/2022/09/08/republicans-and-democrats-have-different-top-priorities-for-u-s-immigration-policy [perma.cc/HKF3-DPSG].

151. *See, e.g.*, David Pecar, David Wood, Xuan Li & Shakara Williams, *Big Spenders: What Do Candidates Do with All That Money?*, IND. UNIV. BLOOMINGTON (Dec. 7, 2016), https://mediaschool.indiana.edu/news-events/news/item.html?n=big-spenders-what-do-candidates-do-with-all-that-money [perma.cc/5CHE-Q5AY].

152. This difference reflects why the Supreme Court has continually treated contribution limits as less burdensome on speech than independent expenditure limits. *See* Buckley v. Valeo, 424 U.S. 1, 25, 44 (1976).

153. *See* Douglas M. Spencer & Abby K. Wood, Citizens United, *States Divided: An Empirical Analysis of Independent Political Spending*, 89 IND. L.J. 315, 346 (2014).

154. *See* Garrick B. Pursley, *The Campaign Finance Safeguards of Federalism*, 63 EMORY L.J. 781, 812–13 (2014) (overviewing concerns over the distorting effects this spending of aggregative wealth can have in democracy).

155. *See infra* Part IV.

example, if 10% of Americans believe that the President is mishandling a certain foreign policy issue, how would hearing foreign nationals' similar thoughts on the topic benefit voters' understanding of the state of the world if those 10% of Americans can already share them? Nevertheless, one's understanding of the state of the world is informed not only by hearing a thought, but also by *who* is saying the thought and *how many* times it is said.[156] In this hypothetical, then, American voters may take information they receive on the foreign policy issue more seriously if it comes directly from affected foreign nationals. At a minimum, additional voices coming out against the President's actions might influence how the general American public judges them.

Overall, it is difficult to quantify the precise extent to which transnational campaign finance might boost voter competency. Certainly, foreign nationals have alternative means of raising awareness about democratic externalities to a given polity's voters. Yet, getting political speech to reach a large audience will almost always require the use of money.[157] In that way, transnational campaign finance may be the most effective way for foreign nationals to make a meaningful impact on voters' understanding of the state of the world in an aggregative democratic framework. The next section will now discuss how transnational campaign finance can potentially be used to address democratic externalities in a deliberative democratic framework.

B. . . . in Deliberative Democracy

The most fundamental component of a deliberative democracy is reciprocal reason-giving between decision-makers and their moral constituents.[158] Decision-makers must listen to reasons for or against a decision provided by their moral constituents, and vice versa, both before and after the decision is made.[159] Such deliberation, of course, necessitates the free flow of political speech between the two groups.[160] Accordingly, just as transnational campaign finance could facilitate the inflow of foreign speech to voters in aggregative democracy, so too can it help moral constituents—many of whom would be foreign nationals impacted by a polity's decisions—communicate thoughts on decisions to decision-makers (and potentially even trigger a response from them in return).[161]

The value of transnational campaign finance in deliberative democracy would be context specific. Take, for instance, direct political expenditures. Such spending would be of most value to deliberative democratic decision-making in instances where voters themselves are making the decisions—i.e., in elections or ballot measures. Say a state's electorate is considering a referendum that, if passed, would

156. *Cf.* John T. Cacioppo & Richard E. Petty, *Effects of Message Repetition on Argument Processing, Recall, and Persuasion*, 10 BASIC & APPLIED SOC. PSYCH. 3, 5 (1989) ("[M]oderate repetition of the same communication leads to more thought about and understanding of the message arguments.").

157. *See* Jessica A. Levinson, *The Original Sin of Campaign Finance Law: Why* Buckley v. Valeo *Is Wrong*, 47 U. RICH. L. REV. 881, 935 n.349 (2013).

158. GUTMANN & THOMPSON, *supra* note 10, at 3.

159. *See id.* at 3–7.

160. *See* James E. Fleming, *Securing Deliberative Democracy*, 72 FORDHAM L. REV. 1435, 1439–40 (2004).

161. Research indeed indicates that officeholders will adjust their behavior to attract support from political spenders. *See* Stephanopoulos, *supra* note 30, at 1474–79.

negatively affect industry in a bordering Canadian province. Impacted Canadians' most effective means of providing reasoning against the referendum to the electorate may be through the funding of political communications.[162] Indeed, perhaps ads funded by affected Canadians convince some of the electorate to vote against the referendum. Or perhaps such ads inspire members of the electorate who support the referendum to run their own counter-ads to respond to what was stated in the Canadian-funded ones, creating a sort of quasi-deliberation via mass media platforms. And once the referendum has passed, Canadians could continue this quasi-deliberation about the topic of the referendum through issue advocacy, with the nature of the advocacy differing depending on the referendum's outcome, of course.[163]

When it comes to legislative votes or executive decision-making, however, campaigns contributions may play a bigger deliberative role. Specifically, foreign nationals could contribute money to the electoral campaign of an officeholder or challenger to signal support for the decisions they have made or plan to make. Admittedly, the deliberative value of this exchange may, on its own, be extraordinarily limited. While candidates can track their donors, the donation itself says nothing about what the donor likes about you. On the other hand, if a candidate were to notice a particularly large donation from a foreign national or a clustered grouping of small donations from foreign nationals from the same country, that candidate may feel more inclined to look into current issues faced by the people within said country to see what may have inspired the donation(s). Perhaps the timing of the donation(s) makes the reason obvious: If, for instance, a member of Congress votes to provide aid to Israel and soon thereafter receive campaign contributions from a number of Israelis, those contributions may act as a signal to the member that part of her moral constituency living in Israel supported that decision. Or vice versa, maybe the member voted or plans to vote against providing such aid and her electoral opponent suddenly receives many contributions from Israelis, thus signaling disapproval of the member's decision.

Perhaps such scenarios still rely too much on guesswork on the candidate's part. Nevertheless, the act of contributing may, in some instances, become a catalyst for *actual* deliberation. For better or worse, officeholders are more likely to meet with campaign donors than nondonors.[164] In the United States, for example, scholars have found that members of Congress and their top staffers are more likely to meet with donors than their own electoral constituents.[165] Consequently, foreign nationals who donate to an officeholder's campaign may find success in procuring meetings with them, at which time face-to-face deliberation about issues affecting said foreign nationals may occur.

162. *Cf.* Adrian Morrow, *Hydro-Québec Spends Millions to Influence Maine Referendum, Sparking Questions of Election Interference*, GLOBE & MAIL (Oct. 12, 2020), https://www.theglobeandmail.com/world/us-politics/article-hydro-quebecs-high-stakes-campaign-to-bring-energy-to-maine-raises [perma.cc/KW8T-HRWH].

163. *See* GUTMANN & THOMPSON, *supra* note 10, at 6 (noting the importance of "continuing dialogue" in deliberative democracy).

164. *See* Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 AM. J. POL. SCI. 545, 552–54 (2016).

165. *See id.*

As these hypotheticals have illustrated, transnational campaign finance is a useful tool for moral constituents only insofar as it allows them to get a message across to decision-makers. Thus, the least valuable form of transnational campaign finance for deliberative democratic purposes would be donations to political expenditure groups. In such circumstances, the political spending by a foreign national does not manifest as an act of expression by the donor, but rather facilitates expression by others. If, for instance, a Canadian from the above hypothetical were to donate to a super PAC that opposed the referendum, the super PAC is ultimately the one controlling the contents of any sponsored ads, not the Canadian. Perhaps one exception to this would be instances in which a group of foreign nationals formed their own PAC that they ultimately funded and operated.[166] Candidates may also take notice of who is donating to friendly super PACs just as they may track their own donors.[167] On the whole, though, direct political expenditures or contributions to candidates yield greater potential for achieving some semblance of deliberation between moral constituents and decision-makers.[168]

None of this, of course, resembles an ideal deliberative democratic process. For one, it is tough to predict how many instances of foreign political spending would actually result in the sort of reciprocity discussed in the above hypotheticals. Furthermore, transnational campaign finance comes at odds with one of deliberative democracy's most important characteristics: accessibility.[169] Money is, after all, not a great equalizer. With half the global population living on less than $7 per day,[170] the total percentage of people able to afford to make political expenditures or donate money to campaigns is likely very small.[171] Such people, moreover, are more likely to be concentrated in wealthier countries, meaning certain portions of a moral constituency would be more represented within this transnational campaign finance system than others. In this regard, transnational campaign finance can enable, at best, an imperfect form of deliberative democracy. Yet, for deliberative democrats, the question is whether providing foreign moral constituents with *some* limited means of communicating with decision-makers is worth the negative aspects that come with it. The alternative is, after all, the status quo, essentially meaning no deliberative process whatsoever.[172] From this

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166. Indeed, in the United States, it is common for PACs to receive funding from only one donor. *See* Robert Faturechi, *Rapid Rise in Super PACs Dominated by Single Donors*, PROPUBLICA (Apr. 20, 2015), https://www.propublica.org/article/rapid-rise-in-super-pacs-dominated-by-single-donors [perma.cc/6WXS-Q6HJ].

167. *See, e.g.*, Karl Evers-Hillstrom & Tatyana Monnay, *Super PAC Donors Got Special Access to President Trump, Recording Shows*, OPENSECRETS (Jan. 30, 2020), https://www.opensecrets.org/news/2020/01/super-pac-donors-got-special-access-to-president-trump-recording-shows [perma.cc/YQL4-FKZP].

168. This argument itself presupposes the existence of robust disclosure requirements. *See infra* Section IV.C.

169. GUTMANN & THOMPSON, *supra* note 10, at 4.

170. *See* Marta Schoch, Samuel Kofi Tetteh Baah, Christoph Lakner & Jed Friedman, *Half of the Global Population Lives on Less than US$6.85 per Person per Day*, WORLD BANK (Dec. 8, 2022), https://blogs.worldbank.org/developmenttalk/half-global-population-lives-less-us685-person-day [perma.cc/UWX5-URX3].

171. Even in the United States, only a little over one in ten Americans report having donated to an individual running for office. *See* Pildes, *supra* note 41, at 357.

172. *See supra* notes 93–95 and accompanying text.

perspective, it seems that transnational campaign finance could do more to resolve the democratic externalities problem than is currently being done.

On a final note, while transnational campaign finance may not be wholly accessible, there are certain regulations that could be put in place to at least alleviate some of said inaccessibility. One could place limits, for instance, on the dollar amount that a foreign national can spend on contributions or expenditures. One could also use small-donor multi-matching funds to boost the impact of low-dollar contributions. These suggestions and more are discussed later on.[173]

C. . . . in Democratic Cosmopolitanism

Transnational campaign finance's role in advancing democratic cosmopolitanism is perhaps the most straightforward. To recall, an essential element of a cosmopolitan society is that all those affected by a polity's decisions should have direct influence over them.[174] And while transnational campaign finance may not create a supranational government or afford the right to vote to a broader demos defined by affected interests, scholarship has shown that campaign finance generally has a strong effect on electoral outcomes.[175] Certainly, voters are still the ultimate deciders; yet, raising proper monetary support is often the threshold determinant for the viability of a candidate's or ballot measure's electoral success. Accordingly, when foreign nationals are given the ability to partake in political spending within another polity, they are quite literally granted the power to impact its electoral outcomes. Foreign nationals can then use this power to influence that polity's governance if they feel affected by its past, present, or future decisions.

When it comes to influencing the elections of officeholders, the campaign contribution would be the most powerful tool. As I have explained elsewhere, "direct contributions are fundamentally more valuable to candidates than indirect donations via [political expenditure groups] because they afford candidates the greatest level of control over campaign resources and advocacy."[176] When a foreign national donates $100 to a candidate, they are directly helping her campaign survive another day.[177] This is not to say that making political expenditures or donating money to political expenditure groups cannot also influence electoral outcomes, especially if the expenditures are used to advance express advocacy in favor of or against a candidate. In cases of ballot measures, in fact, such spending is the only way to influence the result, as there are no candidates to whom to donate.

173. *See infra* Sections IV.B, V.A.

174. *See* Goodin, *supra* note 7, at 55; Thompson, *supra* note 9, at 120.

175. *See* Steven Sprick Schuster, *Does Campaign Spending Affect Election Outcomes? New Evidence from Transaction-Level Disbursement Data*, 82 J. POL. 1502, 1509–11 (2020); Eric Avis, Claudio Ferraz, Frederico Finan & Carlos Varjão, *Money and Politics: The Effects of Campaign Spending Limits on Political Entry and Competition*, 14 AM. ECON. J.: APPLIED ECONS. 167, 185 (2022); Clemence Tricaud, Vestal McIntyre, Vincent Pons & Nikolaj Broberg, *Campaign Finance Rules and Their Effects on Election Outcomes*, VOXEU (May 8, 2022), https://cepr.org/voxeu/columns/campaign-finance-rules-and-their-effects-election-outcomes [perma.cc/2S7R-68JB].

176. John J. Martin, *Danger Signs in State and Local Campaign Finance*, 74 ALA. L. REV. 415, 446 (2022); *see also* La Raja, *supra* note 148, at 101.

177. The Supreme Court has recognized this essential role that contributions play in candidate viability and has cited it in striking down limits on campaign contributions that it deems too low. *See* Randall v. Sorrell, 548 U.S. 230, 247 (2006) (plurality opinion) ("[C]ontribution restrictions could have a severe impact on . . . amassing the resources necessary for effective advocacy." (quoting Buckley v. Valeo, 424 U.S. 1, 21 (1976)).

Contributions to political parties can also play a significant role, especially in systems that use proportional representation.[178] If a foreign national, for instance, has many grievances with the decisions of the governing party of a given polity, contributions to an opposing party may offer a shorthand means of influencing future elections rather than trying to target individual candidates. Overall, transnational campaign finance offers foreign nationals affected by a polity's decisions *some* degree of say over the polity's governance going forward.

Just like with deliberative democracy, however, the interplay of democratic cosmopolitanism and private campaign finance is tricky. Certainly, one could design campaign finance regulations in a way that permits all foreign nationals to participate within it. Yet, that does not mean all will have the actual ability to participate, especially given the realities of global poverty and economic inequality discussed in the previous section.[179] Indeed, within a system that permits transnational campaign finance, only some of those falling within the "affected interests" camp would actually gain influence over decision-making. And again, just like with deliberative democracy, this becomes a judgment call for cosmopolitans: Is the ability to gain some modicum of democratic cosmopolitanism worth these imperfect features? As mentioned earlier, Parts IV and V will discuss how campaign finance regulation can be used to quell some of these fears over inequality.

Before getting there though, it is necessary to address the current reality of transnational campaign finance: it is severely restricted, if not outright prohibited, in many democracies around the world. Fueled by concerns ranging from corruption to the erosion of democratic self-governance, many democracies have implemented "anti–foreign interference" laws (AFI laws) to combat transnational campaign finance in their elections. Part III overviews this modern movement in campaign finance law, both in the United States and abroad.

III. THE MODERN ANTI–FOREIGN INTERFERENCE MOVEMENT IN CAMPAIGN FINANCE

Since 2016, lawmakers and advocates both in the United States and abroad have pushed heavily for policies aimed at combatting "foreign interference" in elections.[180] Made largely in response to growing reports of foreign election

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178. Under proportional representation, constituents vote for parties rather than individual candidates. Many countries operate under this system. *See* Thea Ridley-Castle, *How Many Countries Around the World Use Proportional Representation?*, ELECTION REFORM SOC'Y (Mar. 20, 2023), https://www.electoral-reform.org.uk/how-many-countries-around-the-world-use-proportional-representation [perma.cc/TU7N-QG2V] (identifying over 100 countries with either proportional representation or mixed system). Nevertheless, even in countries that use first-past-the-post, such as the United States, political parties still play a crucial role in campaign finance. *See* DIANA DWYRE, POLITICAL PARTIES AND CAMPAIGN FINANCE: WHAT ROLE DO THE NATIONAL PARTIES PLAY? 33–38 (2017), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/05/Political-Parties-and-Campaign-Finance-What-Role-Do-the-National-Parties-Play.-Diana-Dwyre.-Diana-Dwyre.pdf [perma.cc/7DSF-8D3T].

179. *See supra* notes 170–171 and accompanying text.

180. *See, e.g.*, Press Release, Sen. Jon Tester, Tester Fighting Foreign Interference in U.S. Elections (May 22, 2019), https://www.legistorm.com/stormfeed/view_rss/1304048/member/818/title/tester-fighting-foreign-interference-in-us-elections.html [perma.cc/6QYB-HWFB]; *Combatting Foreign Interference*, CAMPAIGN LEGAL CTR., https://campaignlegal.org/democracyu/transparency/combatting-foreign-interference [perma.cc/G554-XCFE] (last visited Oct. 3, 2023); *Limiting Foreign Meddling in U.S. Campaigns*, BRENNAN CTR. FOR JUST. (Aug. 14, 2019), https://www.brennancenter.org/our-work/analysis-opinion/limiting-foreign-meddling-us-campaigns [perma.cc/9NPL-R59X];

interference—e.g., Russia's attempts to influence the outcome of the 2016 U.S. presidential election[181]—these efforts have focused much attention on, among other things, reforming campaign finance law.[182] Indeed, over the past decade, numerous AFI laws targeting transnational campaign finance have been implemented across the United States at the state and local levels, as well as at the national level in many other countries. Understanding these laws and the concerns driving them is crucial to ascertaining how to best regulate transnational campaign finance in a manner that maintains the pro-democratic values considered above while simultaneously managing the negative repercussions that unfettered foreign political spending can inflict upon a democratic society.

With that in mind, this Part overviews the modern anti–foreign interference movement that seeks to reduce or eliminate transnational campaign finance. The first section addresses the variety of concerns that lawmakers and advocates have expressed about transnational campaign finance. Specifically, the Section covers five such concerns: the corruption of elected officials and political parties, the distortion of campaign messaging, the misalignment of public preferences and policy outcomes, the erosion of national security, and the undermining of democratic self-governance. As the Section argues, some of these concerns are more well founded than others. The next Section then explores how lawmakers in the United States and other countries have responded to these concerns thus far, examining both the scope and range of existing AFI laws worldwide. In the context of the United States, the Section also discusses how courts have reviewed the constitutionality of such laws.

A. The Concerns

Transnational campaign finance invokes several flavors of anxiety within lawmakers, attorneys, advocates, judges, and the general public. The reasons for this are numerous yet overlapping. Many are rooted in concerns about private campaign finance more broadly. Several commentators have, for instance, opposed transnational campaign finance for its potential corrupting effects.[183] The idea is

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KATE JONES, EUR. PARLIAMENT, LEGAL LOOPHOLES AND THE RISK OF FOREIGN INTERFERENCE 18–20 (2023), https://www.europarl.europa.eu/RegData/etudes/IDAN/2 023/702575/EXPO_IDA(2023)702575_EN.pdf [perma.cc/NG9M-B354].

181. *See* 1 ROBERT S. MUELLER, III, DOJ, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 14–173 (2019), https://www.justice.gov/archives/sco/file/1373816/dl?inline= [perma.cc/M3XU-K3W6] (detailing Russia's social media campaigns, hacking and dumping efforts, and government links with the Trump campaign).

182. Another area of focus, arguably of much greater importance, has been securing election infrastructure. *See, e.g.*, LAWRENCE NORDEN & IAN VANDEWALKER, SECURING ELECTIONS FROM FOREIGN INTERFERENCE 3 (2017), https://www.brennancenter.org/media/243/download [perma.cc/9BBQ-KJ2T].

183. *See, e.g.*, Hasen, *supra* note 28, at 607 ("Foreign spending could lead to corruption of elected officials."); Deborah Samuel Sills, *The Foreign Emoluments Clause: Protecting Our National Security Interests*, 26 J.L. & POL'Y 63, 105 (2018) ("Similar to the influence of foreign campaign contributions, foreign governments may attempt to influence or corrupt federal officials in positions of power with monetary means."); Matt A. Vega, *The First Amendment Lost in Translation: Preventing Foreign Influence in U.S. Elections After* Citizens United v. FEC, 44 LOY. L.A. L. REV. 951, 996 (2011); MICHAEL SOZAN, CTR. FOR AM. PROGRESS, ENDING FOREIGN-INFLUENCED CORPORATE SPENDING IN U.S. ELECTIONS 46 (2019), https://www.americanprogress.org/wp-content/uploads/sites/2/2019/11/ForeignSpending-report.pdf [perma.cc/55R2-XT3Q].

simple: a foreign national could donate money to a political candidate/party or an entity supporting said candidate/party (e.g., super PAC) in exchange for political favors.[184] These fears are not unfounded. Many studies have, for example, observed a relationship between giving campaign contributions and receiving government contracts.[185] It is only natural then to presume that some elected officials may engage in quid quo pro with foreign nationals should the latter be permitted to make political contributions to, or expend in support of, the former.[186] And though this concern may not be exclusive to foreign money,[187] the transnational nature of such illicit exchanges raises unique questions about the enforceability of anticorruption measures:[188] How do we track the ultimate source of the money? How do we locate and interrogate the foreign national partaking in the quid pro quo? In a world where bribery of elected officials is already severely under-prosecuted,[189] transnational campaign finance would only seem to complicate the issue.[190]

Other concerns about the corrupting effects of transnational campaign finance extend beyond explicit quid pro quo, looking instead to the broader corruption of the democratic process. Some believe, for instance, that transnational campaign finance—particularly political spending by foreign corporations—may distort electoral outcomes via the aggregation of big money behind certain candidates or ballot measures that may not have otherwise won.[191] Such a scenario recently came into fruition in Maine when a Québecois corporation spent millions of dollars to oppose a state referendum.[192] Likewise, there is the possibility that transnational campaign finance could contribute to "misalignment," a phenomenon under which a "government's policy outputs" do not match up with its "voters'

184. According to the U.S. judiciary, the latter situation cannot lead to corruption when the PAC is not formally affiliated with a candidate or party. *See* SpeechNow.org v. FEC, 599 F.3d 686, 694–95 (D.C. Cir. 2010). This is, of course, a highly dubious claim.

185. *See, e.g.*, Daniel Bromberg, *Can Vendors Buy Influence? The Relationship Between Campaign Contributions and Government Contracts*, 37 INT'L J. PUB. ADMIN. 556, 564 (2014); Saad Gulzar, Miguel R. Rueda & Nelson A. Ruiz, Do Campaign Contribution Limits Curb the Influence of Money in Politics? 2 (Sept. 1, 2020) (unpublished manuscript), http://miguelrueda.net/documents/limits_sent.pdf [perma.cc/9HSG-AQBE]; Christopher Witko, *Campaign Contributions, Access, and Government Contracting*, 21 J. PUB. ADMIN. RSCH. & THEORY 761, 761, 772–74 (2011).

186. *See, e.g.*, Greg B. Smith, *Feds Highlight Alleged Quid Pro Quo in Eric Adams Indictment*, THE CITY (Oct. 18, 2024), https://www.thecity.nyc/2024/10/18/eric-adams-damian-williams-sdny [perma.cc/7NQ9-47VC] (discussing alleged quid pro quo between NYC major Eric Adams and Turkish government). On the other hand, studies seem to suggest that permitting transnational campaign finance might not necessarily raise the *appearance* of corruption among the public. *Cf.* Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance of Corruption": Linking Public Opinion and Campaign Finance Reform*, 19 ELECTION L.J. 510, 521 (2020) (showing that out-of-state contributions do not raise perceptions of corruption significantly beyond such perceptions for in-state contributions).

187. *See* James Ianelli, *Noncitizens and* Citizens United, 56 LOY. L. REV. 869, 887–88 (2011) ("[F]oreign independent expenditures do not resemble political quid pro quo any more than the domestic version.").

188. *See* Ringhand, *supra* note 31, at 927–30 (arguing that the corruptible nature of foreign money is unique because its source is often more difficult to track, thus raising special national security concerns).

189. *See* Mark Hand, Campaign Contribution Limits and Corruption: Evidence from the 50 States 8 (May 23, 2018) (unpublished manuscript) (on file with author).

190. *But see* Section IV.D (discussing enforceability in transnational campaign finance).

191. The late Justice John Paul Stevens warned of this phenomenon in his *Citizens United* dissent. *See* Citizens United v. FEC, 558 U.S. 310, 465 (2010) (Stevens, J., concurring in part and dissenting in part).

192. *See* Morrow, *supra* note 162.

policy preferences."[193] Say, for instance, that an elected official's voting record is highly influenced by the preferences of a few big-spending foreign donors, to the point that they vote for policies that reflect the majority will of neither their electoral constituents nor the majority of foreign nationals. That would be considered misalignment.

The next concern—national security—is more unique to transnational campaign finance. Specifically, there is a prevailing fear that foreign governments, as well as government-like entities and terrorist organizations, could engage in malicious political spending to destabilize another country's government or help elect a regime-friendly leader. An oft-cited example by proponents of AFI laws is the support that Donald Trump received via political ads in 2016 from Kremlin-linked companies.[194] In another recent instance, Turkish-affiliated "trolls" attempted to sow discord in France by launching an online campaign criticizing the principles of secularism and freedom of expression.[195] Such occurrences certainly create a justifiable rationale for limiting transnational campaign finance, at least in the context of state-sponsored spending. As history has shown, foreign governments *can* alter electoral outcomes if given the opportunity to pump enough money into an election. Consider, for example, the U.S. government's direct funding of anti-left parties in Chile in the 1970s, which helped produce the rise of pro-Western dictator Augusto Pinochet.[196] Unfettered state-sponsored transnational campaign finance leaves the door open for, as George Washington forewarned in his farewell address, "the policy and the will of one country [to be] subjected to the policy and will of another."[197]

A final concern about transnational campaign finance, and perhaps the most cited one by proponents of AFI laws, is that it could undermine democratic self-governance. Indeed, advocacy groups pushing for restrictions on transnational campaign finance often lead their messaging on the topic with statements along the lines of "we must protect our right to self-govern."[198] Many scholars have also

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193. Stephanopoulos, *supra* note 30, at 1428.

194. *See, e.g.*, Victoria Smith Ekstrand & Ashley Fox, *Regulating the Political Wild West: State Efforts to Disclose Sources of Online Political Advertising*, 47 J. LEGIS. 81, 83 (2021). The Kremlin has continued to exert influence over U.S. elections. *See* Huo Jingnan, *Foreign Influence Efforts Reached a Fever Pitch During the 2024 Elections*, NPR, https://www.npr.org/2024/11/09/nx-s1-5181965/2024-election-foreign-influence-russia-china-iran [perma.cc/Y8ZL-CTFK] (last updated Nov. 12, 2024) ("Russia used intermediaries to hire American right-wing influencers to spread Kremlin talking points. It created networks of websites that resembled trusted U.S. news outlets, along with fictitious sites, to spread polarizing content.").

195. *See* Arthur P.B. Laudrain, *France Doubles Down on Countering Foreign Interference Ahead of Key Elections*, LAWFARE (Nov. 22, 2021), https://www.lawfareblog.com/france-doubles-down-countering-foreign-interference-ahead-key-elections-0 [web.archive.org/web/20211122191243/https://www.lawfareblog.com/france-doubles-down-countering-foreign-interference-ahead-key-elections-0].

196. *See* Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs*, 83 AM. J. INT'L L. 1, 14 (1989).

197. *Farewell Address (1796)*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/historic-document-library/detail/george-washington-farewell-address-1796 [perma.cc/6NGB-DS2Q] (last visited Oct. 4, 2023).

198. *See, e.g.*, SOZAN, *supra* note 183, at 1 ("[B]old policy solutions are needed to help ensure that no foreign government, business, or person can unduly affect the nation's democratic self-governance."); JONES, *supra* note 180, at 18 ("[A]ny restrictions on foreign power involvement in election campaigning . . . should be necessary and proportionate to the purpose of supporting democratic self-government free of interference."); *Combatting Foreign Interference*, *supra* note 180 ("The

latched onto this justification,[199] as have some government officials. U.S. Federal Election Commission (FEC) Commissioner Ellen L. Weintraub, for example, stated the following in an adjudicatory matter dealing with foreign spending in state-level ballot measure campaigns: "[T]he process by which voters consider adopting laws via ballot measure goes to the very heart of democratic self-government and should be protected from foreign intervention, and specifically from foreign spending to influence the outcome."[200] Lastly, U.S. federal courts have cited "limiting the participation of foreign citizens in activities of American democratic self-government" as the primary rationalization for upholding AFI laws in the face of constitutional challenges.[201]

This particular concern may be, to some degree, overblown. Indeed, even if one were to define a demos by territorial boundaries, it does not seem right to say that transnational campaign finance wholly subverts democratic self-governance when it can arguably lead to a more knowledgeable electorate.[202] Nevertheless, democratic self-governance is surely weakened when it is a *government* using campaign finance to influence the leadership and actions of another. At that point, it is one sovereign attempting to manipulate another, rather than a member of a "people" trying to have some say in a process that impacts them. There may, of course, be times where it is difficult, if not impossible, to actually distinguish a private person or entity from a government or its agents.[203] The big question then for a society that allows transnational campaign finance is to figure out how to best prevent such instances of indirect state-sponsored election spending from occurring.[204]

The above-mentioned concerns are certainly not exhaustive. There are, for instance, uncertainties about the legality of state-sponsored transnational campaign finance under international law.[205] Furthermore, while not a concern about political spending in particular, many commentators have raised worries about the misinformation and disinformation that could accompany foreign-sponsored

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laws governing our campaign finance system have failed . . . to protect our democracy and the right of American citizens to democratic self-governance.").

199. *See, e.g.*, Courtney Hostetler, *Corporations, Foreign Investments, and U.S. Elections*, 19 U. ST. THOMAS L.J. 155, 155–56 (2023); Anthony J. Gaughan, *Putin's Revenge: The Foreign Threat to American Campaign Finance Law*, 62 HOW. L.J. 855, 905 (2019); Vega, *supra* note 183, at 992–93.

200. *In re MindGeek U.S.A., Inc.*, MUR 6678 (FEC Aug. 15, 2014) (statement of reasons of Comm'r Ellen L. Weintraub at 4), https://www.fec.gov/files/legal/murs/6678/15044372958.pdf [perma.cc/9VFF-64LB].

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

202. *See supra* Section II.A.2; *see also* Martin, *supra* note 134, at 45–53 (demonstrating that voting-age Americans value information they receive from foreign-funded political communications).

203. *See* Ringhand, *supra* note 31, at 927–30.

204. *See infra* notes 278–279 and accompanying text.

205. Specifically, there are concerns over whether it counts as coercive interference in the internal affairs of another country, which is prohibited under customary international law. Marko Milanovic, *Revisiting Coercion as an Element of Prohibited Intervention in International Law*, 117 AM. J. INT'L L. 601, 602 (2023). Multiple scholars have concluded that transnational campaign finance only does so when a targeted country has explicitly implemented AFI laws meant to prevent foreign governments from partaking in political spending. *See, e.g.*, Damrosch, *supra* note 196, at 44–45; Patrick C. R. Terry, *Voting by Proxy—Meddling in Foreign Elections and Public International Law*, 29 IND. J. GLOBAL LEGAL STUD. 67, 72 (2022).

advocacy campaigns, especially online.[206] This issue is addressed toward the end of this Article.[207] For now, the overall takeaway should be that lawmakers and advocates currently have numerous reasons to feel apprehensive about permitting transnational campaign finance. As the next Section examines, this has resulted in the implementation of AFI laws in the majority of democratic countries and nearly half of U.S. states (as well as many localities). While these AFI laws vary in their severity, their ultimate goal is shared: reduce the prevalence of transnational campaign finance.

B. The Responses

Over the past few decades, and especially since 2016, AFI laws have become pervasive not only in the United States, but worldwide. By surveying the various campaign finance regimes of each state and country, this Section lays out where such AFI laws have been adopted and what they look like.

1. In the United States

Congress has, in many respects, federalized the regulation of transnational campaign finance. Beginning with the Foreign Agents Registration Act in the 1960s, Congress has routinely passed AFI laws that have come to cover elections at the federal, state, and local levels.[208] The most recent—and most encompassing—one was implemented in 2002 as part of the Bipartisan Campaign Reform Act (BCRA). Under BCRA, it is unlawful for:

> (1) a foreign national, directly or indirectly, to make:
>
> > (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;
> >
> > (B) a contribution or donation to a committee of a political party; or
> >
> > (C) an expenditure, independent expenditure, or disbursement for an electioneering communication . . . ; or
>
> (2) a person to solicit, accept, or receive a contribution or donation . . . from a foreign national.[209]

The law defines "foreign national" to include foreign governments, foreign corporations/organizations, and noncitizens who are not permanent residents of the United States.[210]

BCRA's AFI provision is arguably one of the strictest in the world. Not only does it prevent foreign nationals from contributing to electoral campaigns, political

206. *See, e.g.*, Naomi Nix & Cat Zakrzewski, *U.S. Stops Helping Big Tech Spot Foreign Meddling amid GOP Legal Threats*, WASH. POST (Nov. 30, 2023), https://www.washingtonpost.com/technology/2023/11/30/biden-foreign-disinformation-social-media-election-interference [web.archive.org/web/20231130155040/https://www.washingtonpost.com/technology/2023/11/30/biden-foreign-disinformation-social-media-election-interference].

207. *See infra* Section V.B.

208. For an overview of the development of federal AFI laws in the United States, see Mazo, *supra* note 46, at 776–83; Powell, *supra* note 47, at 960–64.

209. 52 U.S.C. § 30121(a) (2024).

210. *Id.* § 30121(b); 22 U.S.C. § 611(b) (2024).

parties, and PACs, but it also precludes them from independently spending money to advocate for or against candidates. Furthermore, whereas many other federalist countries leave the regulation of transnational campaign finance in regional elections to the regional governments,[211] Congress has afforded state and local governments no such deference.

Still, BCRA's AFI provision is not without its limits. For one, it applies only to "express advocacy" rather than "issue advocacy."[212] In other words, the statute's prohibition on political expenditures made by foreign nationals[213] extends only to spending in connection with "advocacy of the election or defeat of candidates."[214] Moreover, the statute does not fully prohibit domestic subsidiaries of foreign corporations or domestic corporations, LLCs, and partnerships with significant foreign ownership from engaging in political spending.[215] Finally, due to multiple FEC decisions, BCRA's AFI provision does not apply to state or local ballot measures.[216] This has effectively legalized the use of transnational campaign finance to influence the results of ballots measures in any state, city, or other locality that has not itself banned the practice. Examples abound of such spending.[217]

In light of these "gaps" in BCRA, many states and localities have adopted their own AFI laws. As Figures 1 and 2 show, twenty-seven states currently have some form of AFI law in place.[218] This number represents an approximate 200% increase in states with AFI laws since 2016. Of these twenty-seven states, eight have AFI laws comparable to BCRA's.[219] The other nineteen have implemented AFI laws that go beyond BCRA. These laws can be divided into two categories: ones that cover "foreign-influenced corporations"—i.e., domestic subsidiaries of foreign corporations or domestic corporations with foreign shareholders—and ones that cover ballot measures.

211. For example, Australia's AFI law passed by the Australian Parliament applies only to candidates for the House of Representatives or Senate, rather than candidates for the governments of Australia's states and territories. *See Commonwealth Electoral Act 1918* (Cth) § 302D.

212. Mazo, *supra* note 46, at 787; *see also* Bluman v. FEC, 800 F. Supp. 2d 281, 285 (D.D.C. 2011) (applying BCRA's AFI provision only to express advocacy).

213. *See* 52 U.S.C. § 30121(a)(1)(C).

214. Buckley v. Valeo, 424 U.S. 1, 48 (1976). While this may seem like a distinction without a difference, express advocacy is still the clearest way for a speaker to signal how they want their audience to vote in a given election.

215. Ianelli, *supra* note 187, at 888–89.

216. *See, e.g.*, *In re Yes for Responsible Mining*, MUR 7523, at MUR752300062–63 (FEC Nov. 1, 2021), https://eqs.fec.gov/eqsdocsMUR/7523_17.pdf [perma.cc/R3HJ-N2UP].

217. *See, e.g.*, Ringhand, *supra* note 31, at 898 (Australian company/Montana referendum); Morrow, *supra* note 162 (Québecois corporation/Maine referendum); Ciara Torres-Spelliscy, *How a Foreign Pornographer Tried to Win a U.S. Election*, BRENNAN CTR. FOR JUST. (Nov. 6, 2015), https://www.brennancenter.org/our-work/analysis-opinion/how-foreign-pornographer-tried-win-us-election [perma.cc/4TG3-WBH8] (Luxembourgish company/Los Angeles ballot initiative).

218. This statistic does not include any states that have solely implemented disclosure laws with a goal of detecting transnational campaign finance, as such laws on their own do not prevent foreign spending.

219. Many, in fact, adopt the federal definition of "foreign national." *See, e.g.*, IND. CODE ANN. § 3-9-2-11 (2023); MD. ELEC. LAW § 13-236.1(a) (2023); NEV. REV. STAT. § 294A.325(6)(a) (2023); N.H. REV. STAT. ANN. § 664:5(VI) (2023).

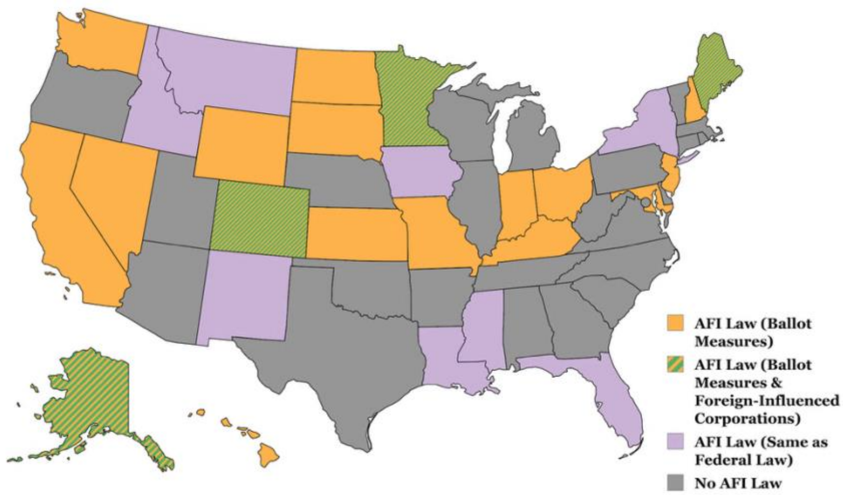

Figure 1: Types of AFI Laws in U.S. States[220]

Beginning with the former, four states thus far—Alaska, Colorado, Maine, and Minnesota—have adopted laws prohibiting, to varying degrees, foreign-influenced corporations from engaging in political spending.[221] Specifically, Alaska's prohibition applies to corporations in which one foreign national has at least 5% ownership or multiple foreign nationals combined have at least 20% ownership.[222] Maine's prohibition adopts the same percentage thresholds, but only applies to shareholding by foreign governments.[223] Minnesota's prohibition is meanwhile drafted with stricter percentage thresholds—1% and 5%, respectively—and applies to all instances of foreign-national ownership.[224] Lastly, Colorado's prohibition only touches corporations in which 50% of aggregate shares are owned by foreign nationals.[225] At the same time, it also extends to all domestic subsidiaries of foreign corporations.[226]

220. Data on file with author.

221. Hawaii also implemented a law against foreign-influenced corporate political spending in 2010, but its law exempts foreign-owned domestic corporations so long as foreign nationals do not participate in election-related activities and contributions are domestically driven, essentially rendering the law no stricter than BCRA. *See* HAW. REV. STAT. § 11-356(b) (2024).

222. ALASKA STAT. § 15.13.068(e)(5) (2024). In practice, this restriction only applies to local elections, as the statute contains a provision stating that foreign-influenced corporations are only prohibited from making contributions or expenditures in state elections to the same extent they would be prohibited under federal law. *See id.* § 15.13.068(b)(1).

223. ME. STAT. tit. 21-a, § 1064(1)(E) (2024).

224. MINN. STAT. § 211B.15(d) (2024). A district court recent held that the law violated the First Amendment, though how the federal appellate court reacts to this holding remains to be seen. *See infra* note 239 and accompanying text.

225. COLO. REV. STAT. § 1-45-103(10.5)(b) (2024).

226. *Id.* § 1-45-103(10.5)(a).

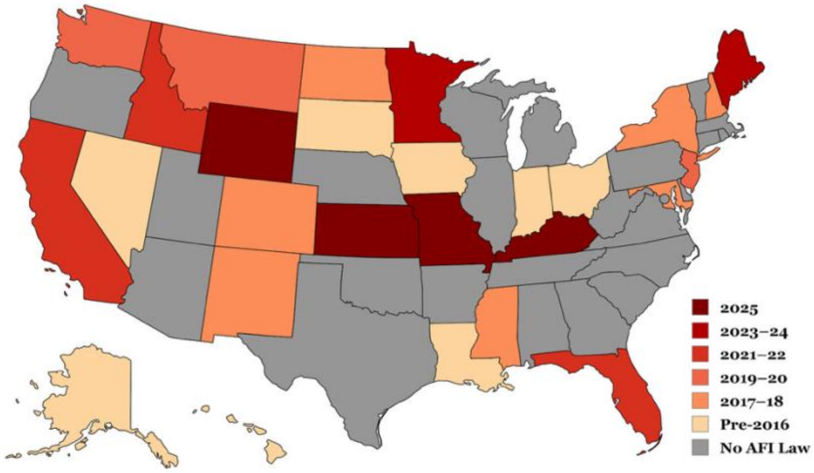

Figure 2: Year of Enactment of AFI Laws in U.S. States[227]

Turning to ballot measures, nineteen states have adopted AFI laws restricting the use of foreign spending to influence them. Some states, such as Washington, have all-encompassing statutes that prohibit any foreign national from donating money to a ballot measure committee or making expenditures in relation to a ballot measure.[228] Other states, such as South Dakota, only extend this prohibition to foreign governments.[229]

The expansion of AFI laws in the United States is not, of course, happening only at the state level. Indeed, many localities have enacted laws similar to those described above. Seattle, St. Petersburg, and San Jose have, for example, all recently implemented laws targeting foreign-influenced corporate political spending.[230] Furthermore, numerous other state and local legislatures are actively considering passing AFI bills into law.[231] Overall, the AFI movement in the United States has proven to be a major success policy-wise since the 2016 presidential election.

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227. The author notes that this map reflects the year of enactment of the first AFI law in a given state. Some states—such as Alaska—implemented AFI laws pre-2016 but amended them post-2016 to strengthen them.

228. *See* WASH. REV. CODE ANN. § 42.17A.417 (2024).

229. S.D. CODIFIED LAWS § 12-27-21 (2024); *see also* ME. STAT. tit. 21-a, § 1064(2) (2024) (applying only to foreign government-influenced entities).

230. *See* Jack V. Hoover, Note, *Foreign-Influence Laws: The Constitutionality of Restrictions on Independent Expenditures by Corporations with Foreign Shareholders*, 107 VA. L. REV. 1305, 1312–13 (2021); *San Jose Bars Multinational Corporations from Spending Money to Influence City Elections*, FREE SPEECH FOR PEOPLE (Jan. 9, 2024), https://freespeechforpeople.org/san-jose-bars-multinational-corporations-from-spending-money-to-influence-city-elections [perma.cc/Y4CT-Z6EJ].

231. *See* Jason Abel, Adie J. Olson & Elizabeth Goodwin, *Growing List of States and Localities Prohibit Foreign Political Spending*, STEPTOE (Jan. 5, 2024), https://www.steptoe.com/en/news-publications/political-law-blog/growing-list-of-states-and-localities-prohibit-foreign-political-spending.html [perma.cc/5VVB-73XS].

In light of this trend, a natural question arises as to whether these AFI laws are constitutional. Under today's campaign finance jurisprudence, the answer is, for the most part, yes. As alluded to above, a federal three-judge panel largely settled the issue in the case of *Bluman v. FEC*, in which two temporary U.S. residents claimed that BCRA's AFI provision violated their First Amendment freedoms of political expression and association.[232] The court ultimately rejected this argument.

At the outset, the court reframed the case as being about not the First Amendment, but instead "the role of foreign citizens in the U.S. electoral process."[233] The court then cited to Supreme Court precedents supporting the notion that the government has "historical power to exclude aliens from participation in its democratic political institutions."[234] This led the court to conclude that "the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process."[235] Therefore, because the court identified "[p]olitical contributions and express-advocacy expenditures" as an "integral part" of said process, the court held that BCRA's AFI provision was constitutional.[236]

Problems with *Bluman*'s holding aside,[237] the case settled for the most part the question of whether AFI laws are permissible in the United States. There are, nevertheless, still uncertainties about laws intended to fill in BCRA's gaps. Some commentators have argued, for example, that existing laws targeting foreign-influenced corporations are not narrowly tailored enough to pass strict scrutiny.[238] Indeed, in February 2025, the U.S. District Court for the District of Minnesota invalidated Minnesota's 1-5 law as being both underinclusive and overinclusive in scope.[239] Likewise, the U.S. Court of Appeals for the First Circuit recently upheld a district court decision placing a preliminary injunction on Maine's law targeting foreign government-influenced entities, citing similar reasons as that in the

232. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 285 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).

233. *Id.* at 286.

234. *Id.* at 287–88 (quoting Foley v. Connelie, 435 U.S. 291, 295–96 (1978)). The court ignored, however, that these cases were specifically about foreign nationals holding positions of power within our government, rather than their ability to influence our institutions from the outside. *See, e.g.*, *Foley*, 435 U.S. at 292 (state trooper); Bernal v. Fainter, 467 U.S. 216, 218 (1984) (notary public).

235. *Id.* at 288.

236. *Id.*

237. Indeed, scholars have criticized *Bluman* from many angles. *See, e.g.*, Hasen, *supra* note 28, at 607 (noting how upholding a ban on foreign political spending contradicts *Citizens United*'s identity-based discrimination holding); Ringhand, *supra* note 31, at 896–97 (disapproving of court's lack of focus on public official corruption); Martin, *supra* note 134, at 17–23 (critiquing *Bluman*'s lack of treatment of issue advocacy); Mazo, *supra* note 46, at 789 (discussing *Bluman*'s negative impact on federalism); Anthony Johnstone, *Outside Influence*, 13 ELECTION L.J. 117, 119 (2014) (noting a contradiction between principles discussed in *Bluman* and laws that permit citizens in one state to influence elections in another state via campaign finance).

238. *See, e.g.*, Hoover, *supra* note 230, at 1331–37 (noting that the 1-5 law would bar 74% of publicly traded U.S. corporations from engaging in political spending).

239. Minn. Chamber of Com. v. Choi, 765 F. Supp. 3d 821, 858 (D. Minn. 2025). The law was deemed overinclusive because it does not solely target corporations that are "funded predominately by foreign shareholders." *Id.* at 853 (quoting Citizens United v. FEC, 558 U.S. 310, 362 (2010)). A law only targeted corporations with 50% or greater foreign ownership—such as Colorado's—may have thus fared better. Regarding underinclusivity, the court took specific issue with the fact that the law only targeted corporations, rather than other nonnatural entities like nonprofits and partnerships. *Id.* at 854–55.

Minnesota decision.[240] How these cases ultimately pan out remains to be seen. In time, courts will hopefully provide further clarity as to how these laws fit within U.S. campaign finance jurisprudence.

2. Worldwide

The AFI movement is not solely American, of course, but has instead manifested in laws around the world aimed at limiting or prohibiting transnational campaign finance. As Figure 3 shows, out of 112 identified countries that currently hold free and fair elections,[241] seventy-seven have some form of an AFI law in place.[242] These laws are too varied to properly differentiate on a map: Some totally ban foreign nationals from partaking in any political spending.[243] Others place special limits on foreign political spending while not outright barring it.[244] Finally, some apply limits that differ depending on who the spender is, e.g., natural persons versus corporations/governments.[245] There are also six countries that, despite having no AFI law, indirectly prohibit or limit transnational campaign finance. For instance, Bhutan bans all private funding of elections, including that from foreign nationals.[246]

The remaining twenty-nine countries have zero laws regulating transnational campaign finance (sixteen of which do not regulate campaign finance whatsoever). This number is likely to drop in the coming years, however. Just like the U.S. states, many countries have only implemented their first AFI law within the past decade due to growing concerns over foreign interference.[247] More widespread adoption in the future is a strong possibility. Just two years ago, in fact, the Directorate-General for External Policies of the European Union recommended that "[t]he EU and/or

240. Cent. Maine Power Co. v. Maine Comm'n on Governmental Ethics & Election Pracs., 144 F.4th 9, 33 (2025).

241. The author labeled a country as having free and fair elections if it scored 0.50 or higher on the 2024 Free and Fair Elections Index. *See Free and Fair Elections Index, 2024*, OUR WORLD DATA, https://ourworldindata.org/grapher/free-and-fair-elections-index [perma.cc/SHU2-NZXV] (last visited Mar. 19, 2025). For any country not included in the index, the author looked to the U.S. Department of State's Country Reports on Human Rights Practices. *See 2023 Country Reports on Human Rights Practices*, U.S. DEP'T STATE (Apr. 22, 2024), https://www.state.gov/reports/2023-country-reports-on-human-rights-practices [perma.cc/4YA8-4D47].

242. The author gathered information on each country's AFI laws through his own research and with the help of the International IDEA's Political Finance Database. *See Political Finance Database*, INT'L IDEA, https://www.idea.int/data-tools/data/political-finance-database [perma.cc/35YK-CURF] (last visited Mar. 19, 2025). The author focused exclusively on national laws, rather than regional- or local-level laws.

243. *See, e.g.*, Lei n.º19/2003 de 20 de Junho [Law no. 19/2003 of 30 June], arts. 8.1, 8.3(c), https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2003-66960263 [perma.cc/W5WV-QGLV] (Port.).

244. *See, e.g.*, Electoral Act 1993, § 207K (N.Z.) (imposing NZ$50 contribution limit on contributions from overseas persons).

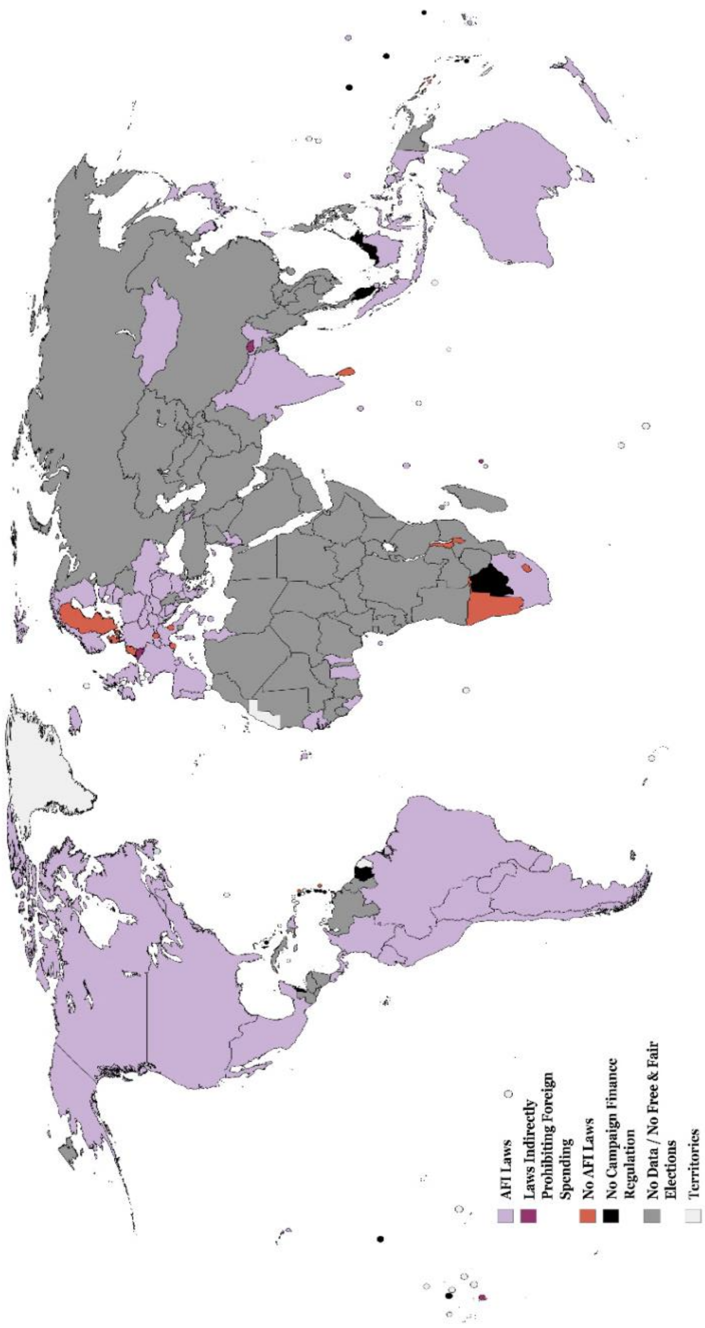
245. *See, e.g.*, Parteiengesetz [PartG] [Political Parties Act], June 24, 1967, BGBL I at 3436, § 25(3) (Ger.) (permitting citizens of the EU and parties of national minorities in bordering countries to make unlimited donations while capping all other foreign donations to a €1,000 limit); Law on Financing of Political Parties art. 7 (B.O.E. 2007, 8) (Spain) (prohibiting parties from receiving financing from foreign governments and corporations but not foreign individuals).

246. *See* Public Election Fund Act of the Kingdom of Bhutan, 2008, § 41, https://www.ecb.bt/wp-content/uploads/2013/04/PublicElectionFundActEnglish.pdf [perma.cc/68NE-KEAL].

247. *See supra* note 241.

Member States should ban foreign and foreign-funded third-party election campaigning."[248] Such maximalist proposals are not out of the ordinary.

Figure 3: Anti-Foreign Interference Laws Worldwide



248. JONES, *supra* note 180, at 20.

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AFI laws are on the rise and are, to some degree, justified. Many of the aforementioned concerns about transnational campaign finance present very real threats to the health of a democratic system. Yet, as Part II demonstrated, transnational campaign finance can also play a role in alleviating the issue of representation caused by democratic externalities. Where, then, is the balance? How can a society extract the pro-democratic benefits of transnational campaign finance while at the same time avoiding, at least to some acceptable degree, the negative repercussions that come with it? Part IV envisions what such a system may look like.

IV. MANAGING TRANSNATIONAL CAMPAIGN FINANCE

How should a society manage transnational campaign finance to mitigate problems such as corruption and national security threats without outright banning the practice? The answer, very broadly, is proper regulation. That, of course, then begs the question of what types of regulation. This will depend in part on the society's priorities. One must ask, for instance, precisely which foreign nationals should be permitted to participate in political spending. Should geography be a restricting factor? Should foreign governments, corporations, or other entities be afforded the same ability to partake in transnational campaign finance as individuals? Or should all foreign nationals simply be allowed to participate? Beyond this question of participation, there is also the matter of imposing dollar limits on contributions and expenditures. Surely, *some* limits are necessary to curb the corrupting elements of big money in politics. In fact, it may make sense to entirely prohibit certain types of spending, depending on the ultimate goal one assigns to transnational campaign finance—e.g., improving aggregative decision-making versus facilitating deliberation. At the same time, the limits must not be too low as to render any political spending by foreign nationals meaningless. Finally, and perhaps most importantly, robust disclosure requirements and enforcement mechanisms must be established to ensure that the only forms of transnational campaign finance taking place within a democratic polity are those that the polity has deemed legitimate.[249]

A. Who Gets to Participate?

The first step to managing transnational campaign finance is to decide who should be allowed to participate. This will depend greatly on the democratic framework under which one operates. For cosmopolitanism, the answer may be everyone. For most others, conceptualizations of legitimate participation will be more complex. At bottom, determining who can participate will essentially come down to two factors: location and identity. The former ties closely to the question of who is impacted enough to participate. Meanwhile, the latter goes to the question of what types of participants should be included in the democratic process, e.g., individuals versus corporate and governmental entities. Ultimately, certain

249. Some may question the constitutionality of some of the regulations proposed in this Section, at least in the United States. Nonetheless, post-*Bluman*, the sky appears to be the limit for regulating transnational campaign finance, barring the few uncertainties left in the caselaw. *See supra* notes 237–238 and accompanying text.

boundaries must be put in place to ensure that only more justifiable instances of transnational campaign finance can occur. This Section grapples with how to work through such boundaries.

1. The Geography of Participation

Unless you are an unwavering cosmopolitan, the thought of permitting *all* foreign nationals to participate in transnational campaign finance will likely seem antithetical to how you believe democracy should function.[250] Deliberative democrats will want participation to go no further than the moral constituency. Those with a more territorial approach to the demos may only wish to extend political spending rights to foreign nationals residing within a given polity. Even for those who subscribe to epistemic democratic theory, certain foreign nationals will inevitably have more worthwhile things to say about a polity's decisions than others. Overall, delineating legitimate participation in transnational campaign finance will come down to a determination of which foreign nationals are impacted enough by your polity's democratic process. And given that weighing each foreign national's stake on an individual basis is an impossible task,[251] this judgment call will—for practical purposes—rely heavily upon geography.

The logic behind using geography is straightforward: the degree to which a polity's decisions affect foreign nationals is often tied to where that foreign national lives. For example, foreign nationals living *within* a polity as permanent or temporary residents are, for the most part, more impacted by the polity's decisions than those residing outside it. Furthermore, foreign nationals living in bordering or nearby countries may, on average, feel greater effects from a polity's decisions than those living farther away. Immigrants are, for example, often disproportionately composed of people from neighboring countries.[252] Moreover, countries' largest trade partners typically include those that are within closest proximity.[253] Consequently, if a polity is to draw lines on which foreign nationals should be able to participate in transnational campaign finance, geography seems among the most feasible means of doing so.[254]

Numerous countries, in fact, already use geography to determine who may or may not engage in political spending, to varying degrees. At the barest minimum, many—including the United States—allow noncitizen permanent residents to make political expenditures or donate money.[255] Meanwhile, Romania permits any citizen

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250. Even then, not all cosmopolitans support granting perfectly equal democratic rights to all people.

251. *See supra* notes 64–66 and accompanying text.

252. In the United States, for instance, five of the top ten countries of origin for immigrants in the 2010s were in Central America and the Caribbean. *See US Immigration by Country 2024*, WORLD POPULATION REV., https://worldpopulationreview.com/country-rankings/us-immigration-by-country (last visited Jan. 2, 2024).

253. *See, e.g.*, *Direction of Trade Statistics*, IMF DATA, https://data.imf.org/?sk=9d6028d4f14a464ca2f259b2cd424b85&sid=1514498277103 (last updated Dec. 22, 2023) (showing Taiwan as greatest importer to China, China as greatest importer to India, Russia as greatest importer to Kazakhstan, United States as greatest importer to Nicaragua, etc.).

254. In the U.S. context, treating people of certain nationalities differently than others may raise equal protection concerns for some. Yet, equal protection ultimately does not cover foreign nationals outside the United States. *See* Gomez v. Trump, 485 F. Supp. 3d 145, 188 (D.D.C. 2020).

255. *See, e.g.*, 52 U.S.C. § 30121(b)(2) (2024); Law on Funding of Political Campaigns and Control of Funding Thereof, No. IX-2428, art. 13.1(2)–(3) (Lith.) (granting ability to permanent

of an EU member state who is domiciled within the country to contribute money to political parties and campaigns.[256]

Perhaps the most interesting use of geography as a determinant belongs to Germany, which has a sort of tiered system. Specifically, at a national level, German citizens can donate an unlimited amount of money to political parties.[257] Citizens of EU member states share this ability as well, putting them on the same level as German citizens.[258] One tier down, members of ethnic groups living in bordering countries may donate money to "parties of national minorities" that represent their ethnicity.[259] While this provision has been effectively rendered obsolete (as most of Germany's bordering countries are now EU member states), it is still an interesting illustration of a country granting limited rights to nearby foreign nationals to engage in transnational campaign finance with political groups with which they may have the greatest interest in associating. Lastly, on the bottom tier, Germany permits all other foreign nationals to donate up to €1,000 to political parties.[260] Thus, while non-EU foreign nationals may still engage in political spending in Germany, the influence of this spending is capped. In a sense, then, Germany's laws governing transnational campaign finance roughly mirror a proportionality approach to democratic participation supported by certain theorists.[261]

Of course, a major factor in these calculations is the nature of the polity itself, namely where it stands in its relation to the broader global community. More powerful and hegemonic polities like the United States, for instance, may be more justified in opening transnational campaign finance to a greater number of foreign nationals than, say, a small island nation. Indeed, American decisions on issues like climate and trade have major effects not only on bordering countries, but the world population at large.[262] The same cannot be said of laws passed by the Tuvaluan

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residents for European Parliament and municipal elections); Law No. 85 on Political Parties and Movements § 24(1) (Slovk.) (permitting permanent residents to donate to political parties). In the case of the United States, prohibiting permanent residents from engaging in political spending would likely be founded violative of the First Amendment. *See, e.g.*, OPAWL—Bldg. AAP Feminist Leadership v. Yost, 747 F. Supp. 3d 1065, 1092 (S.D. Ohio 2024) (enjoining Ohio government from enforcing AFI law against lawful permanent residents).

256. *See* Law No. 334/2006, On Financing the Activity of Political Parties and Electoral Campaigns art. 32(1).

257. *See* Nette Nöstlinger & Cornelius Hirsch, *Political Party Funding in Germany Explained*, POLITICO (July 29, 2021), https://www.politico.eu/article/political-party-funding-in-germany-explained [perma.cc/34XL-S2ZC]. Germany uses a mixed-member proportional representation system, so political party funding is the most paramount form of political funding. *See* Ridley-Castle, *supra* note 178.

258. *See* Parteiengesetz [PartG] [Political Parties Act], June 24, 1967, BGBL I at 3436, § 25(3)(a).

259. *Id.* § 25(3)(b).

260. *Id.* § 25(3)(c).

261. *See, e.g.*, Brighouse & Fleurbaey, *supra* note 66, at 142–46, 155 (2010); SHAPIRO, *supra* note 60, at 37. Another interesting case is that of Fiji, which permit not only Fijian citizens from donating to political parties and candidates, but also *former* Fijian citizens. *See* Political Parties (Registration, Conduct, Funding and Disclosures) Act, No. 4 of 2013, § 22(3), https://www.feo.org.fj/storage/2020/10/Political-Parties-Registration-ConductFunding-and-Disclosures-Act-2013-No-4-of-2013.pdf [perma.cc/32SM-LHKH]. While not entirely based on geography, as former citizens may live anywhere in the world, such a law places special weight on the unique ties that former citizens may have with Fiji.

262. *See* Osmond Chia, *Trump's Sweeping New Tariffs Take Effect Against Dozens of Countries*, BBC (Aug. 6, 2025), https://www.bbc.com/news/articles/cx23jmvn5yzo ("Trump's trade policies have been broadly aimed at reshaping the global trading system . . . .") [perma.cc/4SPX-XMRW]; *Which Countries Are Most Threatened by and Vulnerable to Climate Change?*, IBERDROLA, https://www.iberdrola.com/sustainability/top-countries-most-affected-by-climate-change [web.archive.org/web/20

government.[263] This principle applies to regions and localities as well: Because California is the fifth-largest economy in the world and harbors millions of immigrants,[264] the case for opening transnational campaign finance to a wider range of participants is greater than that of a state like Iowa, whose international presence is less strong. Ultimately, there is no one-size-fits-all solution to defining the geographic boundaries of transnational campaign finance.

2. The Question of Government Actors & Nonnatural Persons

There is then the question of identity. Should certain types of foreign nationals be barred from—or more greatly restricted from—partaking in transnational campaign finance? Recall that "foreign national" means not only foreign individuals, but governments, corporations, and other entities as well. As this Section discusses, there are many compelling reasons to treat nonnatural foreign nationals differently from foreign individuals in practice.

To start, should foreign governments and those acting on their behalf be able to donate money to a campaign or spend money advocating for candidates or issues in another polity? Probably not. For one, the national security risk is high. Governmental regimes are often at odds with one another, competing over military or economic dominance in myriad ways.[265] Some regimes even perceive others as adversaries. Individuals may share similar sentiments about certain foreign governments too, of course.[266] Yet, governments wield far more monetary power than individuals. Accordingly, if governments were able to engage in transnational campaign finance, the door would open for certain hostile regimes to use political spending to harm a polity. Some of the most notable instances of nefarious foreign political spending have, in fact, been conducted by governments or government agents.[267] Overall, such spending presents too much of a threat to democratic society to permit it.

Furthermore, governments cannot reasonably claim to be part of an affected "people." Indeed, they are *not* the people, but rather oversee the people. Thus, the democratic value derivable from state-sponsored transnational campaign finance seems thin. One may perhaps argue that, when it comes to democratic polities, governments represent at least a majority of their citizens and could therefore engage in political spending that channels how their citizens feel about the effects

240124110116/https://www.iberdrola.com/sustainability/top-countries-most-affected-by-climate-change] (last visited Jan. 2, 2024) (showing that countries most vulnerable to climate change are spread throughout the globe).

263. Levmore has reached a similar conclusion, stating that "the case for allowing the smaller country to influence the larger country's politics might be stronger than the other way around." Levmore, *supra* note 54, at 11.

264. *See* Press Release, Gov. Gavin Newsom, California Remains the World's 5th Largest Economy (Apr. 16, 2024), https://www.gov.ca.gov/2024/04/16/california-remains-the-worlds-5th-largest-economy [perma.cc/Z8M3-H2TH].

265. *See, e.g.*, WYATT SCOTT ET AL., GREAT POWER RESOURCE COMPETITION IN A CHANGING CLIMATE 19–25 (2019), https://d1y8sb8igg2f8e.cloudfront.net/documents/Great_Power_Resource_Competition_in_a_Changing_Climate_2019-10-25_131307.pdf [perma.cc/Q2W6-BTD5] (highlighting country competition over resources).

266. *See, e.g.*, Richard Wike et al., *Seven-in-Ten Americans Now See Russia as an Enemy*, PEW RSCH. CTR. (Apr. 6, 2022), https://www.pewresearch.org/global/2022/04/06/seven-in-ten-americans-now-see-russia-as-an-enemy [perma.cc/2N5P-6LH6].

267. *See, e.g.*, *supra* notes 194–196 and accompanying text.

of certain democratic externalities. Yet, as the phenomenon of misalignment demonstrates, the actions of democratic governments do not always necessarily reflect the preferences of their citizens.[268] Even if we were to assume that they do, though, governments already have a formal means through which they can air grievances to other governments: diplomacy. Transnational campaign finance therefore seems like a needlessly indirect manner for governments to influence other governments' decision-making when more direct routes exist. At the very minimum, if governments are given the ability to partake in transnational campaign finance, the ability should be limited only to governments that can be described as truly democratic and, in turn, representative of their citizens' desires.[269]

A more complicated question is to what degree private, nonnatural entities should be allowed to participate in this system. The role of corporations in campaign finance, for instance, has been highly debated among jurists and scholars. Critics of corporate political spending have attacked the phenomenon on multiple fronts. Many have argued that because corporations' actions do not necessarily reflect shareholder beliefs or desires, their "speech" activities are not properly representative of any portion of the people.[270] Others have, furthermore, contended that corporations' mass concentrations of wealth provide them with especially troubling influence over policy outcomes at the expense of individual preferences.[271] As Dorothy Lund and Leo Strine have noted, between 2010 and 2020 in the United States, corporations donated nearly ten times more to Republican than Democratic candidates, a ratio that greatly departs from the actual partisan makeup of the country.[272] Finally, foreign governments have increasingly become major investors in corporations,[273] and can therefore potentially use such entities as conduits to funnel money into elections.[274]

These considerations suggest that any polity permitting transnational campaign finance may wish to impose particularly strict limits on, if not an outright ban on, foreign corporate political spending. Indeed, numerous countries currently take this approach. Some, such as Belgium, do so indirectly by prohibiting all

268. *See* Stephanopoulos, *supra* note 30, at 1428; Susanne Lohmann, *Representative Government and Special Interest Politics (We Have Met the Enemy and He Is Us)*, 15 J. THEORETICAL POL. 299, 299–301 (2003).

269. How exactly one measures this is, of course, up to debate. *See* Bastian Herre, *Democracy Data: How Sources Differ and When to Use Which One*, OUR WORLD DATA (June 17, 2022), https://ourworldindata.org/democracies-measurement [perma.cc/WRY6-UJJM].

270. *See, e.g.*, Morgan N. Weiland, *Expanding the Periphery and Threatening the Core: The Ascendant Libertarian Speech Tradition*, 69 STAN. L. REV. 1389, 1443–44 (2017); Dorothy S. Lund & Leo E. Strine, Jr., *Corporate Political Spending Is Bad Business*, HARV. BUS. REV. (Jan.–Feb. 2022), https://hbr.org/2022/01/corporate-political-spending-is-bad-business [perma.cc/QU94-2UFJ].

271. *See, e.g.*, TIM WU, THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE 55 (2018) ("Increased industrial concentration predictably yields increased influence over political outcomes for corporations and business interests.").

272. *See* Lund & Strine, *supra* note 270.

273. *See, e.g.*, Rohan Goswami, *Lucid, Activision, EA, Uber: Here's Where Saudi Arabia's Sovereign Wealth Fund Has Invested*, CNBC (July 11, 2023), https://www.cnbc.com/2023/07/11/activision-ea-uber-heres-where-saudi-arabias-pif-has-invested.html [perma.cc/P3UK-LD4D]; Ami Guluzade, *The Role of China's State-Owned Companies Explained*, WORLD ECON. F. (May 7, 2019), https://www.weforum.org/agenda/2019/05/why-chinas-state-owned-companies-still-have-a-key-role-to-play [web.archive.org/web/20190507191041/https://www.weforum.org/agenda/2019/05/why-chinas-state-owned-companies-still-have-a-key-role-to-play].

274. *See* SOZAN, *supra* note 183, at 4.

corporate political spending.[275] Others, such as Spain, specifically target foreign corporations while still seemingly allowing foreign individuals to contribute money to candidates, political parties, and other political groups.[276] Several U.S. states as well currently bar corporations from making political contributions.[277]

Despite the prevalence of these restrictions, as well as prevailing public sentiment against corporate involvement in elections,[278] the case against corporate-sponsored transnational campaign finance is not entirely open and shut. For one, from a cosmopolitan perspective, any polity permitting domestic corporations to engage in political spending should seemingly allow foreign corporations to do so just as well (though most cosmopolitans would probably disfavor corporate political spending altogether).[279] Moreover, there are certain issue areas where corporations are arguably the most directly affected entity—e.g., trade policies.[280] Accordingly, from an epistemic perspective, corporate-sponsored transnational campaign finance—particularly that which funds political communications—may provide the clearest insight into the overseas impact of certain lawmaking decisions. Then again, if shareholders and employees of foreign corporations, as well as any other individual tangentially affected by such policies, can already engage in political spending, then allowing corporate spending seems potentially redundant, if not distracting, since individuals do a much better job at expressing their preferences than corporations can do on their behalf.[281]

For those who *do* see some merit in corporate-sponsored transnational campaign finance, the proper regulatory response may instead reside within contribution and expenditure limits rather than outright preclusion. That is, they may wish to permit a "sweet spot" level of spending where corporations cannot dominate the campaign finance cycle but are still allowed to engage in spending that can have some degree of impact on political discourse or electoral outcomes.[282] It may, however, still be wise to prohibit political spending from corporations that have a certain percentage of state ownership or whose relationship with the state is unclear.[283] The latter phenomenon may be difficult to identify on a corporation-by-corporation basis, of course. Instead, it may be necessary to designate certain

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275. *See* Loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales [Election Expenses Act], M.B., July 20, 1989, art. 16bis, http://www.ejustice.just.fgov.be [perma .cc/JTK9-2Z4V].

276. *See* Law on Financing of Political Parties art. 7 (B.O.E. 2007, 13022).

277. *See, e.g.*, N.C. GEN. STAT. § 163-278.15 (2023); W. VA. CODE § 3-8-8 (2023); WIS. STAT. § 11.1112 (2023). The constitutionality of these laws remains uncertain post-*Citizens United*. *See* Richard Briffault, *The Uncertain Future of the Corporate Contribution Ban*, 49 VAL. U. L. REV. 397, 447–52 (2015).

278. *See, e.g.*, Sean Salai, *87% of American Voters Want Corporations Out of Politics, Poll Shows*, WASH. TIMES (May 16, 2022), https://www.washingtontimes.com/news/2022/may/16/87-american-voters-want-corporations-out-politics- [perma.cc/A4TB-GVGQ].

279. *See* José Jorge Mendoza, *Does Cosmopolitan Justice Ever Require Restrictions on Migration?*, 29 PUB. AFFS. Q. 175, 182 (2015) ("Cosmopolitanism requires that states not show favor for citizens over foreigners . . . .").

280. *See* Powell, *supra* note 47, at 989.

281. *See supra* note 270 and accompanying text.

282. For more on this "sweet spot," see *infra* Section IV.B.

283. *See supra* notes 265–269, 273–274 and accompanying text.

countries as having too much state involvement in corporations and prohibit political spending from any corporations headquartered within said countries.[284]

Governments and corporations are certainly not the only entities that can engage in transnational campaign finance. In the United States, for instance, there are "social welfare organizations," which are essentially nonprofits that can engage in some political activity so long as it is not their primary purpose.[285] For regulatory purposes, such organizations should likely be treated the same as corporations, in that both have substantial capacity to dominate political spending yet may not often represent the political views of a substantial number, if not a majority of, their donors/shareholders.[286] On the other hand, registered PACs, in having an express political purpose, may deserve more lenient treatment, as they have more legitimate grounds to claim that their activity aligns with the beliefs of their donors.[287] Ultimately, a polity's lawmakers will be in the best position to understand how the internal intricacies of their society should shape who may partake in transnational campaign finance. Once that question is decided, one must then decide *how much* foreign nationals may legally spend.

B. Setting the Limits

The crucial next step in managing transnational campaign finance is setting spending limits on both contributions and expenditures. Scholars have indeed identified multiple benefits of spending limits within a democratic society. For one, they help reduce both the actuality and appearance of quid pro quo corruption.[288] They also reduce misalignment by mitigating the disproportionate influence that big donors and spenders have over officeholders' decisions.[289] Similarly, spending limits prevent big donors and spenders from distorting electoral outcomes in favor

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284. *Cf. State Sponsors of Terrorism*, U.S. DEP'T OF STATE, https://www.state.gov/state-sponsors-of-terrorism [perma.cc/DWY5-YJ3B] (last visited Jan. 7, 2024).

285. *See* Jill Holtz, *Understanding 501(c)(4) Social Welfare Organizations*, BOARDEFFECT (July 13, 2023), https://www.boardeffect.com/blog/understanding-501c4-social-welfare-organizations [perma.cc/N8LG-JTEP].

286. *See* Anna Massoglia, *Record Contributions from Dark Money Groups and Shell Companies Flooded 2022 Midterm Elections*, OPENSECRETS (June 23, 2023), https://www.opensecrets.org/news/2023/06/record-contributions-dark-money-groups-shell-companies-flooded-midterm-elections-2022 [web.archive.org/web/20230624192958/https://www.opensecrets.org/news/2023/06/record-contributions-dark-money-groups-shell-companies-flooded-midterm-elections-2022]; Lund & Strine, *supra* note 270.

287. It should be noted that the United States is not the only country to have PACs (or comparable entities) involved in its political process. *See, e.g.*, *Commonwealth Electoral Act 1918* (Cth) s 302F(2)(c)(ii) (Austl.) (referencing "political campaigners").

288. *See* Martin, *supra* note 176, at 454–59. In the context of independent expenditures, U.S. courts have held that such spending raises no corruption concerns because the spenders are by definition not coordinating with candidates. *See* Buckley v. Valeo, 424 U.S. 1, 47 (1976). This claim is, to say the least, questionable. *See generally* Kaveri Sharma, Note, *Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections*, 130 YALE L.J. 1898 (2021) (detailing the phenomenon of "redboxing," through which candidates are able to secretly coordinate with super PACs engaging in independent expenditures).

289. *See* Laurent Bouton, Julia Cage, Edgard Dewitte & Vincent Pons, Small Campaign Donors 14 (May 9, 2022) (unpublished manuscript), https://ssrn.com/abstract=3978318 [perma.cc/5UC7-DBKS] (detailing how small donors are more representative of the general population than large donors); Stephanopoulos, *supra* note 30, at 1487–88 (noting how contribution limits can reduce the influence of the most ideologically extreme donors).

of their preferred candidates or parties,[290] perhaps a goal fresh in many of our minds in the wake of the world's wealthiest man having attempted to influence multiple overseas elections this past year.[291] All in all, spending limits play a vital role in maintaining a healthy democratic process within systems that allow private campaign financing.

How spending limits should precisely factor into transnational campaign finance depends in part on how one defines the goals and boundaries of democracy. As discussed earlier (and as Table 1 highlights), certain types of spending yield more democratic value than others depending on whether one strives to attain democratic cosmopolitanism, deliberative democracy, or epistemic aggregative democracy.[292] Accordingly, depending on the system, it could make sense to wholly prohibit certain forms of transnational campaign finance. For example, aggregative democracies may wish to ban foreign contributions to candidates and political parties, given that such spending does little to further epistemic ends. Likewise, deliberative democracies might ban foreign contributions to political expenditures groups—such as PACs—as the deliberative value of such spending is very little.

	Epistemic Aggregative Democracy	**Deliberative Democracy**	**Democratic Cosmopolitanism**
Contributions to Candidates/Parties	X	—	✓
Contributions to Expenditure Groups	—	X	—
Direct Expenditures	✓	✓	—

Table 1: Relative Value of Forms of Transnational Campaign Finance Within Different Democratic Systems[293]

When it comes to *permitted* forms of spending, the question becomes how exactly to limit it. The most common method of doing so involves placing dollar caps on the amount one may contribute or expend within a given year or election cycle—e.g., only allowing an individual to contribute up to $3,500 to a candidate

290. *See* Harvey, *supra* note 29, at 98.

291. *See, e.g.*, Matt Fitzpatrick, *The Far-Right Is Rising at a Crucial Time in Germany, Boosted by Elon Musk*, THE CONVERSATION (Jan. 31, 2025), https://theconversation.com/the-far-right-is-rising-at-a-crucial-time-in-germany-boosted-by-elon-musk-247895 [perma.cc/JUG9-7THS]; Gabriel Stargardter, *French Prime Minister Bayrou Says Elon Musk Threatens Democracies*, REUTERS (Jan. 27, 2025), https://www.reuters.com/world/europe/french-prime-minister-says-elon-musk-threatens-democracies-2025-01-27 [perma.cc/2WQH-JDH4].

292. *See supra* notes 148–152, 162–168, 176–178 and accompanying text.

293. Green checkmarks denote the most valuable forms of spending. Yellow dashes denote less valuable forms of spending. Red X's denote forms of spending that provide little value.

during an election cycle.[294] Under this approach, the objective is to set limits that accomplish the particular goal of the limit without being so restrictive as to eliminate the impact of such spending. For instance, if a polity were to set a limit on contributions to candidates with the hopes of preventing instances of quid pro quo corruption, the limit should be set at a dollar amount below the level needed to disrupt the quid pro quo marketplace yet above the level needed for contributions to have actual influence.[295] These levels will naturally vary depending on the polity. New Zealand, for instance, places a NZ$50 limit on contributions from foreign nationals,[296] which at first glance may seem extraordinarily low. Yet, when one considers the fact that political parties and candidates can only spend NZ$1,480,000 and NZ$34,800, respectively, on election advertising in a given cycle,[297] a NZ$50 contribution suddenly does not look so paltry.

Beyond dollar limits, there exist other methods through which one can regulate the amount of transnational campaign finance flowing into a polity. One could, for example, set a percent limit on the total amount of foreign contributions or expenditures made in an election cycle. This is how Benin regulates transnational campaign finance: under its political party laws, parties' donations from foreign sources cannot exceed one-third of their total resources.[298] Under this approach, the calculus becomes determining the extent to which a polity is comfortable with foreign nationals as a whole partaking in campaign finance, rather than focusing on the spending of each individual foreign national.[299]

Regardless of approach, setting proper limits on transnational campaign finance should be a priority for any democratic polity. This is especially true for limits on direct political expenditures, which the majority of countries currently do not have.[300] Even in the United States, which has particularly strict regulations over transnational campaign finance,[301] foreign nationals may spend an unlimited amount of money to advocate for or against political issues, meaning a foreign billionaire could absolutely inundate us with countless ads claiming that, say, climate change is a Democratic hoax. To reel in these negative consequences of unfettered transnational campaign finance, a polity must put in place effective spending limits.

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294. *See, e.g.*, *Contribution Limits for 2025–2026 Federal Elections*, FEC, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits [perma.cc/B8XJ-ENW2] (last visited Aug. 10, 2025); *see also supra* note 257 and accompanying text (discussing Germany's limits on foreign contributions).

295. *Cf.* Martin, *supra* note 176, at 471–75 (discussing how contribution limits must be between the levels at which they disrupt quid pro quo and at which they make it impossible for candidates to raise funds to properly campaign).

296. *See* Electoral Act 1993, § 207K.

297. *See* Electoral (Expenditure Limit) Order 2025, § 6 (May 26, 2025), https://www.nzlii.org/nz/legis/consol_reg/elo2025325.pdf .

298. *See* Law No. 2001-021, Charter of Political Parties art. 35. Hawaii has a similar law that limits the percent of contributions that candidates may receive from out-of-state residents to 30% of total contributions. *See* HAW. REV. STAT. § 11-362 (2024).

299. This approach is not, of course, mutually exclusive from that of setting dollar limits on individual instances of spending.

300. *See 43. Are There Limits on the Amount that Third Parties Can Spend on Election Campaign Activities?*, INT'L IDEA, https://www.idea.int/data-tools/data/question?question_id=9404&database_theme=302 [perma.cc/SUY9-Y6S8] (last visited Jan. 13, 2024).

301. *See supra* note 213 and accompanying text.

C. Disclosure Requirements

Managing transnational campaign finance also necessitates robust disclosure requirements. Campaign finance disclosure generally serves three purposes: (1) deterring corruption, (2) helping regulators enforce other campaign finance laws, and (3) providing information to voters.[302] The informational interest is particularly pertinent for transnational campaign finance, where the context of *who* is spending may be just as important to an observer as the contents of the message spread via the spending.[303] Indeed, imagine viewing a political ad discussing the potential repercussions of the United States cutting off funding to Ukraine's war effort—how one processes such an ad may very well differ depending on whether it was funded by Americans versus by Ukrainians (or by other foreign nationals living nearby the conflict).

So, what should a proper disclosure regime include? To start, the most basic requirement must be to mandate that candidates, political parties, and political expenditure groups publicly disclose the identities of their donors. The majority of U.S. states, as well as countries, already have such requirements in place.[304] Many do not force candidates or parties to disclose *every* donor, but instead any donor who gives over a certain dollar threshold. While polities must judge for themselves where to set their thresholds at, they should ideally be low enough to capture a significant amount of foreign contributions.[305]

Furthermore, any political communication funded either directly by foreign nationals or PACs receiving a certain percentage of contributions from foreign nationals should include some variation of a disclaimer informing audiences that foreign nationals helped pay for said communication. There are a couple ways to formulate such a disclaimer. It could, for instance, simply state broadly that foreign nationals were involved in the funding of the communication, akin to how some U.S. states require political ads to disclaim when a funding PAC has received donations from anonymous sources.[306] While the informational value of this

302. *See* Abby K. Wood, *Learning from Campaign Finance Information*, 70 EMORY L.J. 1091, 1102 (2021); Daniel R. Ortiz, *The Informational Interest*, 27 J.L. & POL. 663, 668 (2012).

303. In the context of U.S. elections, the informational interest has become the *sole* legally viable interest to justify disclosure requirements for independent expenditure groups, since limiting the independent expenditures of domestic individuals and entities has been deemed unconstitutional. *See* Ortiz, *supra* note 296, at 666. Nevertheless, because independent expenditures made by foreign nationals *can* be regulated, all three interests seem relevant.

304. *See Contribution Disclosure Requirements*, NAT'L CONF. OF STATE LEGISLATURES (July 22, 2022), https://www.ncsl.org/elections-and-campaigns/contribution-disclosure-requirements [web.archive.org/web/20250122002303/https://www.ncsl.org/elections-and-campaigns/contribution-disclosure-requirements]; *52. Must Reports from Political Parties and/or Candidates Reveal the Identity of Donors?*, INT'L IDEA, https://www.idea.int/data-tools/data/question?question_id=9233&database_theme=302 [perma.cc/47ZH-YRCG] (last visited Jan. 13, 2024).

305. Some countries' thresholds are currently so high that foreign nationals could donate thousands of dollars to a candidate or political party and go undetected. For instance, in the Netherlands—which has no AFI laws in place—political parties need only disclose contributions exceeding €4,500 in a calendar year. *See* Wet financiering politieke partijen, Stb. 2013, 93, art. 25(1)(b). Furthermore, in New Zealand, the disclosure threshold for foreign contributions exceeds its NZ$50 contribution limit, meaning that no legal contribution from a foreign national need be disclosed. *See* Electoral Act 1993, § 209.

306. *See, e.g.*, MONT. CODE ANN. § 13-35-237 (2024). *Cf.* David Fontana, *The Geography of Campaign Finance Law*, 90 S. CAL. L. REV. 1247, 1290 (2017) (recommending similar disclosure

disclaimer may be somewhat low, it at least signals to listeners that the contents of the message are supported, either directly or indirectly, by foreign nationals. An alternative, higher value approach may be to require communications funded directly by foreign nationals to disclaim their country of origin; moreover, those funded indirectly by foreign nationals via a domestic PAC could include a disclaimer listing the top X countries of origin of said PAC's foreign donors.[307] Perhaps this requirement could also mandate that the disclaimer include the identities of the top foreign donors, though this may potentially be too much information to dump onto listeners at once.

What of dark money groups in the United States, such as social welfare organizations, that currently evade disclosure laws? How can one regulate these groups to be more transparent about foreign donors? While the obvious solution may be to subject them to the same disclosure requirements faced by candidates, political parties, and PACs, it is unclear in the U.S. context whether such a law would fly under the Roberts Court.[308] As a less drastic measure, a government could require a disclaimer like that discussed in the previous paragraph, where any political communications funded by dark money groups include a disclaimer that the funding group does not disclose its donors. In Montana, for instance, communications funded by dark money groups must include a disclaimer stating, "This communication is funded by anonymous sources. The voter should determine the veracity of its contents."[309] In the context of transnational campaign finance, the disclaimer might read, "This communication is funded by anonymous sources, some of whom may be foreign nationals."

One may question the efficacy of these disclosure requirements. Do voters actually receive the disclosed information and change their behavior based on it? As Abby Wood states, "[t]he answer is that some do, some of the time."[310] To start, while it is true that the average person does not sift through donor lists, "information intermediaries" such as the media and transparency advocacy groups (e.g., OpenSecrets) *do* go through such lists and report their findings to the public.[311] Furthermore, multiple studies have demonstrated that voters lose trust in political ads when it is disclosed that the ads were funded by dark money groups.[312] Likewise, another recent study has found that voters respond to ads differently when the funding group's top donors are revealed in a disclaimer.[313] Overall, these findings

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requirements showing what percentage of a congressional candidate's contributions came from out-of-district donors).

307. *Cf.* ARIZ. ADMIN. CODE R2-20-805(B) (2024) ("Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of $5,000 . . . .").

308. *See* Ams. for Prosperity Found. v. Bonta, 594 U.S. 595, 619 (2021) (striking down California law requiring nonprofits to disclose donors because the law was not narrowly tailored); Ciara Torres-Spelliscy, *The Supreme Court Moves the Goalposts on Donor Transparency*, BRENNAN CENT. FOR JUST. (July 13, 2021), https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-moves-goalposts-donor-transparency [perma.cc/A3Y4-QNX4] ("[T]he decision's ultimate consequences remain to be seen.").

309. MONT. CODE ANN. § 13-35-237.

310. Wood, *supra* note 302, at 1107.

311. *Id.* at 1110–11.

312. *See id.* at 1113–14.

313. *See* Matthew Lesenyie, *Reading the Fine Print: Issue Advertisements and the Persuasive Effects of Campaign Finance Disclosures*, 48 AM. POL. RSCH. 155, 168–69 (2020).

suggest that disclosure requirements for transnational campaign finance would indeed provide an informational benefit to voters.

D. Enforcement

The final piece in the regulatory puzzle of managing transnational campaign finance is enforcement. Truthfully, how to properly enforce campaign finance laws is a topic that can take up an entire book. This Section will, nevertheless, provide a brief glimpse into enforcing the regulation of transnational campaign finance.

To begin, a polity needs a regulatory agency with actual, robust enforcement capabilities. Experts have specifically emphasized a few key features. For one, agency leadership should be independent and free of partisan influence.[314] The agency should also have a proper budget to ensure timely resolution of enforcement matters.[315] Turning to actual enforcement, the agency should have a mechanism through which private complaints can be made, and should investigate such complaints in a serious manner or otherwise provide some other legal remedy to the complainant.[316] The agency itself should also conduct routine audits of candidates, political parties, and any other registered groups (e.g., PACs) to detect potential violations of campaign finance law.[317] Finally, the agency should develop a system through which it prioritizes certain violations over others and treats certain violations more seriously than others, with the recognition that 100% enforcement is unlikely.[318] While this list of features is not exhaustive, they provide a general framework for what it takes to have a regulatory agency that effectively enforces campaign finance laws.

Enforcing laws against foreign nationals, of course, presents unique complications not present in the enforcement of such laws domestically. Lori Ringhand has raised such concerns in a recent piece:

> Imagine a scenario in which a foreign national finances millions of dollars in expenditures in support of the election of a U.S. presidential candidate. . . . How would we know whether the financier was working, officially or unofficially, for a foreign government? Or where the financier got the money used to pay for the expenditures?[319]

Indeed, even if we knew all these answers, how does one prevent illicit forms of spending from occurring? And how does an agency prosecute foreign nationals engaging in illicit political spending if they are not physically present within the

314. *See* DANIEL I. WEINER, FIXING THE FEC: AN AGENDA FOR REFORM 6–7 (2019), https://www.brennancenter.org/our-work/policy-solutions/fixing-fec-agenda-reform [perma.cc/J97H-39BQ]; USAID, ENFORCING POLITICAL FINANCE LAWS 14 (2005), https://ww w.ifes.org/sites/default/files/migrate/tide_handbook_enforcing_political_finance_laws_0.pdf [perma.cc/MD9H-YPWU].

315. *See* WEINER, *supra* note 314, at 9; USAID, *supra* note 314, at 22–23.

316. *See* WEINER, *supra* note 314, at 8; USAID, *supra* note 314, at 61–62.

317. *See* Wood, *supra* note 302, at 1118–22; WEINER, *supra* note 314, at 8–9; USAID, *supra* note 308, at 54–55.

318. *See* WEINER, *supra* note 314, at 9; USAID, *supra* note 314, at 47.

319. Ringhand, *supra* note 31, at 929.

agency's polity? While disclosure requirements may provide *some* remedy to these issues, disclosure alone is not enough. Yet, there exist a few potential avenues that together could significantly bolster the enforcement of transnational campaign finance regulations.

For one, polities can place a legal burden on recipients of political spending—be they candidates, political parties, PACs, or platforms—that prohibits them from receiving any illegal forms of political spending from foreign nationals. The United States, in fact, already does this to an extent, holding it unlawful for "a person to solicit, accept, or receive a contribution or donation" that violates BCRA's AFI provision.[320] Combined with auditing programs, such a law could help ensure that recipients of transnational campaign finance properly vet the source and amount of money being received. The law could additionally require the recipient to report and return any contribution or expenditure found in violation of campaign finance regulations, which is the way it is currently done in New Zealand.[321]

Meanwhile, polities can also work with others to put in place laws that prohibit their citizens from partaking in political spending that violates the campaign finance laws of another polity. Such laws are not entirely unprecedented. The United States, for instance, has the Foreign Corrupt Practices Act, which, while not explicitly focused on campaign finance, essentially makes it unlawful for U.S. citizens to bribe foreign government officials.[322] Countries could similarly establish bilateral or multilateral treaties through which they agree to prosecute any citizen that engages in transnational campaign finance in violation of the laws of any other signatory country. Through these arrangements, enforcement would become a much more viable goal.

Finally, polities could require foreign nationals spending above a certain amount in connection to a given election to register as an official foreign political spender.[323] The United States places a similar requirement on foreign lobbyists: under the Foreign Agents Registration Act, anyone acting as an agent of a "foreign principal"—i.e., a foreign government, political party, corporation, or individual—"must register with the DOJ within 10 days of agreeing to act as an agent" and provide certain disclosures on their activities.[324] Such a law could further help agencies track the activities of the highest-spending foreign nationals.

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Transnational campaign finance can certainly produce problems within a democratic society. These problems are, however, manageable with proper regulation. And once proper regulation is achieved, the democratic value of transnational campaign finance—namely, its ability to help resolve the democratic

320. 52 U.S.C. § 30121(a)(2) (2024).

321. *See* Electoral Act 1993, §§ 207K, 209.

322. *See* 15 U.S.C. § 78dd-2 (2024). The Act has been described as "one of the most powerful and effective transnational anticorruption laws in the world." *Foreign Corrupt Practices Act*, NAT'L WHISTLEBLOWER CTR., https://www.whistleblowers.org/foreign-corrupt-practices-act [perma.cc/L2J2-6C4V] (last visited Jan. 14, 2024).

323. *See* Troy McCurry, *If It Was Good Enough to Work Against the Nazis. . .: Revitalizing the Foreign Agents Registration Act to Regulate Modern Foreign Electioneering*, 74 CATH. U. L. REV. 51, 82–88 (2025).

324. CONG. RSCH. SERV., IF10499, FOREIGN AGENTS REGISTRATION ACT (FARA): AN OVERVIEW 1 (2024), https://crsreports.congress.gov/product/pdf/IF/IF10499 [web.archive.org/web/20240410002227/https://crsreports.congress.gov/product/pdf/IF/IF10499]; *see also* 22 U.S.C. § 612(a) (2024).

externalities problem—can flourish without the tarnishing effects of unfettered foreign political spending taking hold. Still, even with regulations in place, lingering doubts may exist. Accordingly, Part V addresses a few final causes for concern that the reader may have about transnational campaign finance.

V. LOOSE ENDS

This Part briefly addresses some remaining concerns pertaining to transnational campaign finance not yet fully discussed within this Article. First, it considers whether transnational campaign finance, even if regulated, would simply open the door to "more of a bad thing," i.e., more private campaign financing and all the harm and inequality that come with it. Second, it explores whether transnational campaign finance would result in greater misinformation/disinformation within political discourse. Next, it confronts the question of whether transnational campaign finance is preferable to expanding voting rights to foreign nationals. Finally, in the U.S. context, it examines whether transnational campaign finance would fly in the face of Founding-era concerns about foreign influence.

A. "More of a Bad Thing"

For those who recognize the many downsides of private campaign finance—a group of which I am a part—adding even more opportunity for it to occur in a democratic society may seem counterproductive. Indeed, even in regulated systems, issues such as corruption, distortion, and misalignment continue to persist.[325] Would expanding the number of people who can participate in campaign financing to include foreign nationals not simply increase the magnitude of these issues? Potentially so. Nevertheless, this outcome is not a guarantee.

While many countries and other polities have, for instance, instituted limits on political spending,[326] these limits are often not strict enough to have a meaningfully positive impact. Take, for example, the goal of reducing the appearance of corruption, one of the two constitutionally permissible justifications for contribution limits in the United States.[327] One recent study suggests that for contribution limits to reduce the appearance of corruption for the majority of Americans, the limit must be set around $275.[328] Yet, as of 2022, only two U.S. states have any contribution limits that fall below that level;[329] federal limits are meanwhile more than ten times as great.[330] As this example demonstrates, spending limits on domestic campaign finance are not always properly formulated to meet their desired objectives.

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325. This is true even of systems that do not suffer from the same judicial deregulation of campaign finance law that exists in the United States. *See, e.g.*, YVES-MARIE DOUBLET, FIGHTING CORRUPTION: POLITICAL FUNDING 6 (n.d.), https://rm.coe.int/16806cbff2 [perma.cc/UNY4-3QH3] (discussing how campaign finance regulations of many European countries "fall short" of completely reining in the negative effects of private campaign finance).

326. *See supra* Section IV.B.

327. *See* McCutcheon v. FEC, 572 U.S. 185, 191 (2014) (plurality opinion).

328. *See* Matthew DeBell & Shanto Iyengar, *Campaign Contributions, Independent Expenditures, and the Appearance of Corruption: Public Opinion vs. the Supreme Court's Assumptions*, 20 ELECTION L.J. 286, 295 (2021).

329. *See* Martin, *supra* note 176, at 451.

330. *See Contribution Limits for 2025–2026 Federal Elections*, *supra* note 294.

Polities could avoid this in the context of transnational campaign finance by imposing truly effective limits. This may not be too tall an order, either. Given the general suspicion and reluctance that currently surrounds transnational campaign finance,[331] lawmakers may be easily swayed to place stricter limits on transnational campaign finance than those on domestic campaign finance. Subscribers to cosmopolitan theory may disagree with such disparate treatment. On the other hand, if subjecting foreign nationals to more restrictive campaign finance limits than domestic citizens allows a polity to permit transnational campaign finance without opening the floodgates to increased corruption, distortion, and misalignment, then perhaps the disparate treatment is well justified.

With all this said, critics may still contend that transnational campaign finance would only exacerbate the inequality inherent in private campaign finance as a whole—namely, that only financially well-off foreign nationals could meaningfully participate.[332] While this issue can be mitigated somewhat via spending limits, the majority of the world population still earns so little money that they will never have enough disposable income to engaging in *any* political spending, even if only a $1 contribution.[333] And those with such capabilities will be concentrated within the wealthiest of countries.[334] The question then becomes whether this inequality merits prohibiting all foreign nationals from participating in campaign finance. On the one hand, foreign political spending will not fully represent the interests of all foreign nationals, given that the political desires of the wealthy, middle class, and poor do not always align. On the other hand, cutting out all foreign nationals from political participation is how the democratic externalities problem persists in the first place.

For what it is worth, inequality in private campaign finance can be alleviated somewhat through measures that boost the influence of small-dollar donations. Specifically, a polity could adopt a small-donor multi-matching funds (SDMF) program, under which the government contributes a certain number of dollars to a candidate per each dollar contributed by a donor (up to a certain amount).[335] For instance, New York State provides $6 to statewide candidates per every $1 received via contribution up to $250.[336] Consequently, a $5 contribution really translates to a $35 contribution. In polities that adopt such a program,[337] lower-income foreign

331. *See supra* notes 177–179 and accompanying text.

332. *See supra* notes 170–171, 179 and accompanying text; *see also* Abhay P. Aneja, Jacob M. Grumbach & Abby K. Wood, *Financial Inclusion in Politics*, 97 N.Y.U. L. REV. 567, 587 (2022) (showing how over 91% of individual contributions to candidates in the United States come from white Americans); Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. 531, 539 (2016) ("[I]t is no secret that campaign finance reform is motivated in important part by worries about the translation of economic inequality into political inequality.").

333. *See* Schoch et al., *supra* note 170.

334. *Cf.* Fontana, *supra* note 306, at 1272 ("Contributors residing in 5 percent of the zip codes in the United States gave 77 percent of all itemized individual contributions to congressional elections as of ten years ago.").

335. *See Guide to Public Financing Programs Nationwide*, BRENNAN CTR. FOR JUST. (June 10, 2024), https://www.brennancenter.org/our-work/research-reports/guide-public-financing-programs-nationwide [perma.cc/Z5TN-7V8Y].

336. *Public Campaign Finance Program*, N.Y. STATE, https://pcfb.ny.gov/program-overview [perma.cc/J7BJ-AATB] (last visited Jan. 14, 2024).

337. At least eight U.S. states have now adopted such programs, as well as many localities. *See Guide to Public Financing Programs Nationwide*, *supra* note 335.

nationals' monetary influence could be amplified.[338] SDMF programs are not without critics, nevertheless. Rick Pildes, for instance, has argued that such programs strengthen polarization among elected officials.[339] As with all lawmaking, the question is whether the pros outweigh the cons. In the case of SDMF programs, their equalizing force may very well be worth the cost, particularly when it comes to transnational campaign finance.

Moreover, the cost of funding political communications has dropped precipitously with the rise of online ads. As Wood notes, "Online political speech is particularly useful to small campaigns, such as those at the state and local level, who are unable to afford to run television advertisements. These small campaigns can place ads online for mere pennies per view—or even for free."[340] For instance, if one wishes to advertise on YouTube, the cost ranges between $4 and $10 per every thousand people reached.[341] This shift has given hundreds of millions more people the ability to disseminate political messages to large-scale audiences. Of course, online advertising comes with its own set of issues that may require solutions of their own, as the next section covers.

At bottom, while transnational campaign finance could potentially build upon the already existing problems caused by private campaign financing, this outcome is not a guarantee and, with proper measures in place, might not be as pronounced as critics may anticipate.

B. Misinformation/Disinformation

Critics of transnational campaign finance may also argue that allowing foreign nationals to fund political communications may increase the amount of misinformation and disinformation spread to the public.[342] Many scholars and experts indeed fear a repeat of the 2016 U.S. presidential election, during which

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338. On the other hand, scholars like David Fontana have proffered SDMF programs as a means of boosting the influence of constituent donations in response to massive sums of outsider spending in elections. *See* Fontana, *supra* note 306, at 1291–93. Proponents of such a policy would likely find the boosting of foreign contributions troubling. This tension can be resolved in a few ways. For one, a polity could place a percentage limit on how much of a candidate's contributions can come from foreign nationals, so as to prevent instances of outsider contributions totally flooding a given election. *See supra* notes 292–293 and accompanying text. Strict dollar limits on individual instances of foreign spending can also help ensure that wealthy foreign nationals' spending does not outshine the spending of lower-income domestic residents. Finally, matching funds can operate on a tiered system where constituents' contributions receive more matching than those of non-constituents.

339. *See* Pildes, *supra* note 41, at 400–01. *But see* Ian Vandewalker, *The Benefits of Public Financing and the Myth of Polarized Small Donors*, BRENNAN CENT. FOR JUST. (Feb. 12, 2020), https://www.brennancenter.org/our-work/research-reports/benefits-public-financing-and-myth-polarized-small-donors [perma.cc/F4FF-ESR4].

340. Abby K. Wood, *Facilitating Accountability for Online Political Advertisements*, 16 OHIO ST. TECH. L.J. 520, 521 (2020).

341. Stephanie Heitman, *Starter Guide to YouTube Advertising Costs in 2024 (+5 Ways to Spend Less)*, LOCALIQ (Feb. 17, 2023), https://localiq.com/blog/youtube-advertising-cost [perma.cc/PQT7-22XX].

342. The difference between misinformation and disinformation is that the former is false without intent to cause harm whereas the latter is deliberatively false to mislead or manipulate a community. *Foreign Influence Operations and Disinformation*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, https://www.cisa.gov/topics/election-security/foreign-influence-operations-and-disinformation [perma.cc/WS6E-G8PB] (last visited Jan. 15, 2024).

Russian agents used online ads to spread disinformation to American voters.[343] These fears are not totally unfounded. From an epistemic perspective, for instance, voters are less able to make correct decisions when they base said decisions off false premises.[344] They may even be steered into making decisions harmful to themselves and their community. And for what it is worth, the Kremlin appears to show no signs of slowing down its influence operations in U.S. elections.[345]

At the same time, it is not entirely clear the degree to which foreign nationals would actually spread misinformation and disinformation in a way that tangibly harms a democratic society. Some scholars have even questioned whether Russia's disinformation tactics were truly a major cause of voter manipulation in 2016. For example, Yochai Benkler, Robert Faris, and Hal Roberts recently explored the issue and ultimately concluded that Americans voters' susceptibility to disinformation in 2016 should be blamed predominately on domestic sources, namely "divergent media practices and consumption habits."[346] At the very least, much of the false and misleading content consumed by the public is generated domestically rather than overseas.[347]

Accordingly, who is to say that communications funded via transnational campaign finance could not instead be used to *counter* domestic misinformation and disinformation? Certainly, at any given time, false ideas about foreign conflicts and issues are being spread by domestic actors.[348] Foreign nationals could potentially push back against such ideas via ad campaigns that share their own perspective on what is truly happening in their area of the world. Perhaps allowing such communications is then worth any potential misinformation or disinformation that comes with it.

Online advertising admittedly muddles this point to some degree. As some scholars have noted, the ability to target specific groups of people through online ads has made it difficult to engage in effective counterspeech because one generally cannot ascertain who was targeted by a particular campaign.[349] The upside of this is that only a small percentage of social media users are recipients of disinformation campaigns.[350] On the other hand, how does one reach out to these small groups of

343. *See, e.g.*, WENDY WEISER & ALICIA BANNON, AN ELECTION AGENDA FOR CANDIDATES, ACTIVISTS, AND LEGISLATORS 16–17 (2018) (Russia . . . sought to sway voters through political advertising. . . . Others may follow suit."); *see also* MUELLER, *supra* note 181, at 14–173 (detailing Russian actions).

344. GOODIN & SPIEKERMANN, *supra* note 12, at 94 (discussing how misinformed voters become less competent).

345. Jingnan, *supra* note 194.

346. YOCHAI BENKLER, ROBERT FARIS & HAL ROBERTS, NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS 268 (2018).

347. *See generally* PAUL M. BARRETT, TACKLING DOMESTIC DISINFORMATION: WHAT THE SOCIAL MEDIA COMPANIES NEED TO DO (2019), https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_domestic_disinformation_digital?e=31640827/68184927 [perma.cc/6F4L-DJFD]; *see also* Abby K. Wood & Ann M. Ravel, *Fool Me Once: Regulating "Fake News" and Other Online Advertising*, 91 S. CAL. L. REV. 1223, 1229–30 (2018) ("Plenty of disinformation advertising was produced in the United States.").

348. *See, e.g.*, Tom Hanson et al., *Teens Struggle to Identify Misinformation About Israel–Hamas Conflict—The World's Second "Social Media War,"* CBS NEWS (Dec. 19, 2023), https://www.cbsnews.com/news/israel-hamas-misinformation-social-media-war [perma.cc/F7A5-8EHP].

349. *See* Wood, *supra* note 340, at 553.

350. *See id.* at 530 (noting that in the 2016 election, only 1% of Twitter users were exposed to 80% of "fake news"). Moreover, these targeted individuals are often already radicalized. *See id.* at 532.

targeted people with counter-ads? One proposal has been to require political expenders to disclose their targeted audience whenever funding online ads.[351] Indeed, with the FEC having recently increased its regulation of online political advertising,[352] there could be an appetite to adopt such disclosure requirements.

Other additional regulations could be used to combat misinformation/disinformation stemming from transnational campaign finance. For instance, a polity could prohibit entities that are more likely to use political spending for nefarious reasons, e.g., foreign governments and their agents.[353] Governments could also call on platforms to regulate their content to curb misinformation and disinformation propagated by foreign nationals, though what such moderation should precisely look like is an ongoing conversation well beyond the reach of this Article.[354] The point here is simply that *some* form of regulatory prophylaxis is possible.

C. Why Not Voting Rights?

Some may question whether the purported democratic benefits of transnational campaign finance considered in this Article could simply be achieved by extending voting rights to foreign nationals. Would this not help resolve the democratic externalities problem without raising the potential concerns that private campaign financing causes? To start, this Article should not be interpreted as a dismissal of expanding voting rights. To the contrary, there are many sound theoretical arguments in support of extending suffrage to foreign nationals, especially noncitizen residents.[355] These arguments are, however, rooted largely within the cosmopolitan framework of democratic theory: the notion that citizenship or territory cannot justify disparate treatment of individuals.[356]

So, could granting voting rights to noncitizens help counteract democratic externalities? Perhaps, but only if one adopts a more cosmopolitan theory of democratic legitimization. Meanwhile, people who subscribe to alternative theories will have their own arguments against such a policy. For example, Sarah Song has argued that voting rights should be bound to territory because such a limit helps society better secure substantive rights, solidarity, and accountability.[357] Jonathan Kwan has furthermore contended that the principle of self-determination necessitates limiting voting rights to those living within a polity.[358] Lastly, Saul Levmore has recently stated that voting is not a proper mechanism through which

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351. *See id.* at 553.

352. *See* Taylor Giorno, *Federal Election Commission Passes New Digital Ad Disclosure Rule*, OPENSECRETS (Dec. 1, 2022), https://www.opensecrets.org/news/2022/12/federal-election-commission-passes-new-digital-ad-disclosure-rule [web.archive.org/web/20221201234558/https://www.opensecrets.org/news/2022/12/federal-election-commission-passes-new-digital-ad-disclosure-rule].

353. *See supra* notes 264–268 and accompanying text.

354. *See* Evelyn Douek, *Governing Online Speech: From "Posts-as-Trumps" to Proportionality and Probability*, 121 COLUM. L. REV. 759, 767–69 (2021) ("Online speech governance is a wicked problem with unenviable and perhaps impossible trade-offs.").

355. *See* Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1392, 1441–45 (1993).

356. *See* Mendoza, *supra* note 279, at 183.

357. Song, *supra* note 51, at 58–60.

358. Jonathan Kwan, *Self-Determination as the Ground and Constraint for the Right to Exclude: An Answer to the Boundary Problem*, 47 SOC. THEORY & PRAC. 299, 312–16 (2021).

to resolve democratic externalities because, ultimately, foreign nationals living outside the United States "do not pay taxes to the United States."[359]

As demonstrated, the question of voting rights raises a debate among democratic theorists that this Article had done its best to avoid. Indeed, the overall point of this Article is that transnational campaign finance can complement multiple democratic frameworks when it comes to addressing democratic externalities. Expanding suffrage to foreign nationals is, conversely, a solution that does not necessarily comport as well with some of the frameworks discussed above.

D. Founding-Era Concerns

One final criticism of transnational campaign finance unique to the United States may be that permitting the practice would disregard Founding-era concerns about foreign interference. Multiple scholars have referenced such concerns in support of heavier restrictions on transnational campaign finance.[360] Matt Vega has stated, for example, that "[o]ne of the Framers' greatest fears during the Federal Convention of 1787 was foreign corruption."[361] This may very well have been true.[362] Yet, when one delves deeply into Founding-era statements on the matter, it becomes clear that these concerns were predominately about foreign *government* influence, rather than foreign national influence more broadly.

James Madison, for example, discussed at the Convention the need to "secure the Union against the influence of foreign *powers*."[363] Furthermore, in the Federalist Papers, Publius—the pseudonym for Alexander Hamilton, James Madison, and John Jay—demonstrated fear that "blatant weaknesses of the central government under the Articles of Confederation constituted a standing invitation for European *powers* to meddle in American affairs."[364] Indeed, in Federal 64, John Jay expressed concern that the President and Senate might make "disadvantageous treaties" based on "private interests distinct from that of the nation."[365] Finally, George Washington famously warned in his farewell address against "[t]he policy and the will of one country [being] subjected to the policy and will of *another*."[366]

As these examples show, many Founding-era figures' concerns about foreign interference were focused on governments, rather than individuals.[367] Accordingly, so long as state-sponsored political spending is barred, it seems unlikely that transnational campaign finance would undermine general Founding-era beliefs about foreign interference.

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359. Levmore, *supra* note 54, at 11.

360. *See, e.g.*, Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 346–52 (2009); Vega, *supra* note 183, at 960–66.

361. Vega, *supra* note 183, at 960.

362. *See id.* at 960–61.

363. James Madison, *Opposition to the New Jersey Plan (June 19, 1787)*, *in* THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES 79, 83 (Ralph Ketcham ed., 1986) (emphasis added).

364. STEPHEN MILLER, SPECIAL INTEREST GROUPS IN AMERICAN POLITICS 66 (1983) (emphasis added).

365. THE FEDERALIST NO. 64, at 395 (John Jay) (Clinton Rossiter ed., 1961).

366. *Farewell Address (1796)*, *supra* note 197 (emphasis added).

367. Jefferson and Madison also raised concerns about corporate influence, though corporations were much different entities in the 1700s compared to today. *See* Vega, *supra* note 183, at 966.

CONCLUSION

In a global society in which the democratic externalities problem is on the rise, transnational campaign finance can potentially act as a practical means of ensuring that foreign nationals are not subjected to another polity's decisions without any possible recourse. Certainly, private campaign finance's role within democracy is tricky, and proper regulation of transnational campaign finance is an absolute necessity to safeguard democratic societies against its downsides. Yet, outright prohibiting the practice seems too drastic a measure when so many democratic decisions these days impact foreign nationals, sometimes at an existential level.

Future scholarship in this area may wish to explore in greater detail how transnational campaign finance interplays with one of the frameworks discussed in this Article. Furthermore, it could be valuable to delve further into the actual speech value that may be derived from acts of transnational campaign finance. Overall, transnational campaign finance is a substantially underdiscussed area in the campaign finance literature and would benefit considerably from greater attention.