REGULATING FOREIGN POLITICAL ADVOCACY*

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Foreign nationals can presently spend unlimited sums of money on political communications in the United States, including donations to issue-advocacy groups, all while remaining anonymous. This situation is not a product of legislative inaction. Rather, it stems from a 2011 federal court decision that narrowly construed a federal law banning foreign-funded campaign finance. Foreign nationals—including foreign governments—thus remain free to spend billions of dollars to influence our elections through political advocacy so long as they avoid express support for or opposition against electoral candidates. This reality raises many legitimate concerns about self-governance, corruption, and national security, and has given rise to calls for further regulation. Yet, in our age of systematic judicial deregulation of campaign finance law, we cannot presume any law is safe from challenge.

This Article accordingly examines whether legislatures may constitutionally restrict this practice of "foreign political advocacy," and if so, to what degree. To do this, the Article first identifies theoretical and doctrinal support for a First Amendment right of Americans to receive foreign speech, and asserts that restrictions on foreign political advocacy would burden this right. At the same time, it recognizes a compelling governmental interest in preserving American democratic self-government that likely extends to regulations on foreign political advocacy.

Invoking such a compelling interest, however, itself raises questions about whether foreign political advocacy is wholly bad for self-government. On the one hand, excessive foreign influence over our political discourse may partially usurp control over governance from the American people. Yet, hearing foreign perspectives on our politics can also serve an epistemic function for American

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democracy by better exposing our electorate to the state of the world, in turn leading to more well-informed decision-making at the polls.

The Article works through these considerations, in part employing an original survey designed to assess to what extent voting-age Americans value information received via foreign political advocacy. Survey results were telling, indicating that many Americans may indeed incorporate foreign political advocacy into their voting decisions. The Article therefore concludes that while legislators may restrict foreign political advocacy, they should refrain from fully prohibiting the practice. Instead, more nuanced regulations are needed that define legitimate participation, set dollar limits, require robust disclosure, and impose effective enforcement mechanisms.

"Why may we not hear what these men from other countries, other systems of government, have to say?"[1]

– Alexander Meiklejohn

INTRODUCTION

Imagine a scenario in which the United States places sanctions on a country in response to rampant human rights abuses by its regime. With a presidential election mere months away, the country's dictator wishes to support the election of John Smith, an anti-sanctions presidential candidate, over Jane Doe, a pro-sanctions presidential candidate. Accordingly, he directs his oligarchic cronies to spend millions of dollars targeting[2] swing-state constituents with an online ad campaign stating the following: "Jane Doe is a communist monster hellbent on dismantling our Constitution and country."[3] For months, swing-state voters are inundated with this political ad whenever they log onto their social media accounts. And the whole time, they are not even aware that foreign oligarchs are funding it.[4]

Under present U.S. campaign finance laws, this hypothetical scenario is entirely legal. Indeed, there are currently zero regulations limiting foreign nationals'[5] ability to spend money on political advocacy in the United States so long as such advocacy does not explicitly call for the support or defeat of a candidate during an election.[6] In other words, the advocacy need only remain in the broad realm of what the campaign finance field calls "issue advocacy."[7]

1. ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948), *reprinted in* POLITICAL FREEDOM: THE CONSTITUTION POWERS OF THE PEOPLE 3, 6 (1960).

2. Online advertising is particularly useful for political advocacy in that you can hyper-target demographics you most wish to reach. *See, e.g.*, *Audience Ad Targeting*, META, https://www.facebook.com/business/ads/ad-targeting [https://perma.cc/8DY7-DSWY (staff-uploaded archive)].

3. As the 2016 election demonstrated, certain foreign actors are more than happy to flood social media with such provocative, partisan advertising. *See* Kurt Wagner, *Congress Just Published All the Russian Facebook Ads Used to Try and Influence the 2016 Election*, VOX (May 10, 2018, at 12:48 ET), https://www.vox.com/2018/5/10/17339864/congress-russia-advertisements-facebook-donald-trump-president [https://perma.cc/J2VM-RZ5G (dark archive)].

4. Federal law currently only requires advertising disclaimers for public communications funded by individuals if they expressly advocate for the election or defeat of a candidate, mention a candidate's name within a certain period before an election, or solicit contributions. *See* 11 C.F.R. § 110.11(a) (2024).

5. This Article defines "foreign national" to mean any person or entity who is not a U.S. citizen or permanent resident of the United States. *See* 8 U.S.C. § 1101(a)(20) (2024).

6. Jennifer Daskal, *Speech Across Borders*, 105 VA. L. REV. 1605, 1648 (2019); Eugene D. Mazo, *Our Campaign Finance Nationalism*, 46 PEPP. L. REV. 759, 786–87 (2019) [hereinafter Mazo, *Our Campaign Finance Nationalism*].

7. *Issue Advocacy*, BALLOTPEDIA, https://ballotpedia.org/Issue_advocacy [https://perma.cc

Contrast this laissez-faire approach with federal law's absolute prohibition on foreign nationals spending money on advocacy for or against a candidate—i.e., "express advocacy"[8]—or donating money directly to candidates, political parties, or political committees.[9] Why the disparate treatment? The answer is not found explicitly in a statute. Rather, it derives from a federal court decision—*Bluman v. FEC*[10]—in which then-Judge Brett Kavanaugh interpreted federal law's ban on foreign-funded campaign finance as not applying to issue advocacy.[11] As a result, foreign nationals can now spend unlimited sums of money on political communications designed to influence U.S. elections so long as they avoid explicit support for or opposition against named candidates.

This phenomenon—referred to as "foreign political advocacy" for the remainder of this Article[12]—has become a source of major concern for campaign finance scholars and reform advocates alike. To start, it raises questions about the bounds of political participation: Should foreign nationals be able to influence our political processes on federal, state, and local levels? If so, to what extent? The reason courts have upheld prohibitions on foreign-funded express advocacy and campaign donations is, in fact, because they have found that the government has a compelling interest "in limiting the participation of foreign citizens in activities of American democratic self-government."[13]

Beyond democratic participation, there is also the threat that nefarious foreign actors—especially foreign governments—will use political spending not for good-faith reasons,[14] but rather to destabilize targeted constituencies. The 2016 presidential election showcased this when the Russian government directed online campaigns to sow disinformation and polarization among

/XF2E-3345]. Even advocacy in support of political parties falls under the umbrella of issue advocacy if it does not expressly call for the support or defeat of a candidate. *See* John A. Fortunato & Shannon E. Martin, *The Supreme Court Perspective of Media Effects as Expressed in Campaign Finance Reform*, 14 TEX. WESLEYAN L. REV. 197, 208 (2008).

8. Express advocacy refers to political advertising that uses "magic words" such as "vote," "defeat," "support," or "elect," or that which "[w]hen taken as a whole and with limited reference to external events . . . could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)." 11 C.F.R. § 100.22.

9. *See* 52 U.S.C. § 30121(a). There are some minor exceptions to this general prohibition. *See infra* note 69 and accompanying text.

10. 800 F. Supp. 2d 281 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

11. *See id.* at 284.

12. This Article uses the phrase "foreign political advocacy" rather than "foreign issue advocacy" because issue advocacy is essentially a catch-all phrase for any non-express advocacy, and accordingly captures many communications that, while meant to spread awareness about issues, may not be meant to influence the political process. This Article is not concerned with such types of issue advocacy.

13. *Bluman*, 800 F. Supp. 2d at 288.

14. By "good faith," I mean a foreign national using political advocacy with an intent to actually further the political goals stated or implied in the funded communication.

American voters.[15] Finally, in its current unregulated form, foreign political advocacy kindles anxieties about the corrupting and distorting effects of big money in politics.[16]

These combined concerns have prompted several experts to consider implementing further restrictions on foreign spending in elections that would, to varying degrees, cover foreign political advocacy.[17] This Article seeks primarily to answer one question: Is this possible? That is, does the government actually have the ability to constitutionally restrict foreign political advocacy?

The *Bluman* decision itself provided zero clarification on this issue. To be sure, U.S. campaign finance doctrine has long recognized political advocacy as receiving strong First Amendment protections when done by *citizens* (or permanent residents).[18] But what of temporary residents—e.g., work visa holders—whose political speech rights are reduced,[19] or foreign nationals living abroad, who receive zero speech protection under our Constitution?[20] Does their political advocacy implicate any constitutionally recognized speech interests? And if so, to what extent, if any, can and should the government regulate the practice? These questions have thus far received little in-depth treatment in the literature.[21] Yet, in a democratic society reckoning with tensions brought on by

15. *See* 1 ROBERT S. MUELLER, III, U.S. DEP'T OF JUST., REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 35 (2019), https://www.justice.gov/storage/report.pdf [https://perma.cc/4WJ8-7RW9] ("[T]he investigation established that Russia interfered in the 2016 presidential election through the 'active measures' social media campaign carried out by the [Russian Internet Research Agency] . . . .").

16. *See infra* notes 269–70 and accompanying text.

17. *See, e.g.*, RICHARD L. HASEN, CHEAP SPEECH: HOW DISINFORMATION POISONS OUR POLITICS—AND HOW TO CURE IT 102–09 (2022); Daniel P. Tokaji, *Truth, Democracy, and the Limits of Law*, 64 ST. LOUIS U. L.J. 569, 576–80 (2020) ("There is good reason for expanding existing law to cover online communications by foreign governments and their agents."); Becky Cain, *Sham Issue Ads: Solutions to a Clear Record of Abuse*, 10 STAN. L. & POL'Y REV. 71, 72–73 (1998) (mentioning foreign donors as a reason to confront "sham issue advocacy"); *Kavanaugh Decision Created Opening for Foreign Interference in U.S. Elections*, CAMPAIGN LEGAL CTR. (Sep. 7, 2018), https://campaignlegal.org/update/kavanaugh-decision-created-opening-foreign-interference-us-elections [https://perma.cc/R5DM-QL8R] (arguing that *Bluman* should not have opened the door for foreign-funded issue advocacy).

18. *See* Buckley v. Valeo, 424 U.S. 1, 14–15 (1976) (per curiam).

19. *See* Allison Hayward & John R. Vile, *First Amendment Rights of Non-Citizens, Aliens*, FREE SPEECH CTR., https://firstamendment.mtsu.edu/article/aliens [https://perma.cc/R4ZB-FAGN] (last updated Apr. 14, 2025).

20. *See* Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 140 S. Ct. 2082, 2086 (2020) ("[I]t is long settled as a matter of American constitutional law that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution.").

21. Toni Massaro briefly considered the right to receive speech and its relation to transnational campaign finance more broadly in an article that shortly followed the *Bluman* decision. *See* Toni M. Massaro, *Foreign Nationals, Electoral Spending, and the First Amendment*, 34 HARV. J.L. & PUB. POL'Y 663, 682–85 (2011).

both globalization and big money in politics,[22] these issues merit proper discussion.

To start, this Article contends that regulations on foreign political advocacy do indeed implicate First Amendment speech interests—namely, the right to *receive* speech.[23] As Part II asserts, when a foreign national funds political communications in the United States, an inquiry into speech rights cannot stop at the foreign national;[24] rather, the recipients of such communications have a constitutionally protected speech interest in *receiving* them. First Amendment theory and caselaw alike support this notion. Whether one believes the First Amendment exists to promote a "marketplace of ideas" or instead facilitate the democratic process, a predominate purpose of the Amendment remains epistemic: it is meant to help people receive and learn from information that others are putting out into the world.[25] Thus, the listener is a central component of the speech rights equation,[26] so much so that the judiciary has routinely referenced a First Amendment right to receive speech,[27] even when such speech derives from foreign speakers.[28] This Article draws a straightforward implication here: any law restricting the inflow of foreign political advocacy in the United States would burden the First Amendment rights of American listeners.

Yet, the inquiry cannot end here. Because, as the *Bluman* court noted, the government has a compelling interest in protecting American democratic self-government from foreign participation,[29] an interest that would seem

22. *See* John J. Martin, *The Democratic Value of Transnational Campaign Finance*, 15 U.C. IRVINE L. REV. 809, 818–25 [hereinafter Martin, *Democratic Value*] (discussing the tension created by liberal democratic decision-making in global society); Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion*, OPENSECRETS (Feb. 11, 2021, at 13:14 ET), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16 [https://perma.cc/NG79-2D93 (staff-uploaded archive)].

23. This Article occasionally refers to this concept as the "listener's interest," "listener" referring to anyone on the receiving end of speech, including text that someone does not literally listen to.

24. Though, as this Article discusses, this has not stopped the Supreme Court from adopting a largely speaker-oriented approach to its campaign finance doctrine. *See infra* notes 120–22 and accompanying text.

25. *See infra* Section II.A.

26. *See* James Grimmelmann, *Listeners' Choices*, 90 U. COLO. L. REV. 365, 379 (2019).

27. *See, e.g.*, TikTok Inc. v. Garland, 145 S. Ct. 57, 66 (2025) (per curiam); Beard v. Banks, 548 U.S. 521, 533 (2006) (recognizing "access to newspapers, magazines, and photos" as having "an important constitutional dimension"); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603–06 (1982); Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969); Griswold v. Connecticut, 381 U.S. 479, 482 (1965); Lamont v. Postmaster Gen., 381 U.S. 301, 305 (1965); United States v. Cong. of Indus. Orgs., 335 U.S. 106, 144 (1948) (Rutledge, J., concurring); Martin v. City of Struthers, 319 U.S. 141, 143 (1943).

28. *See Lamont*, 381 U.S. at 302, 305, 307; *see also* Joseph Thai, *The Right to Receive Foreign Speech*, 71 OKLA. L. REV. 269, 280 (2018).

29. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

extendable beyond foreign-funded express advocacy to foreign political advocacy more broadly. Indeed, we are a country that defines its demos[30] largely through national identity.[31] Thus, to the extent that foreign political advocacy influences how voters think about politics and, in turn, how they vote, the practice would seem a form of foreign political participation that disrupts the bounds of our demos and, hence, merits regulatory response.[32]

At the same time, there is a competing democratic principle at play here—epistemic decision-making. Specifically, American democracy highly values the free flow of ideas as a tool of arriving at the wisest democratic decisions possible.[33] This tenet is rooted in both First Amendment principles and general theory about the utility of free speech in democratic society.[34] Consequently, foreign political advocacy arguably serves a desirable epistemic function in our system of self-government, in that it can expose voters to foreign perspectives on American politics that, in turn, make them more well-informed at the voting booth. As two scholars have recently asserted, foreign nationals "have important contributions to make to American political debates,"[35] especially on cross-border issues that directly impact them such as climate policy, military aid, trade, and immigration.[36] This holds especially true given that the effects of U.S. decision-making are often externalized onto foreign nationals.

Indeed, while this introduction began with a fairly unsympathetic hypothetical about an oligarch, imagine an equally, if not more greatly, possible scenario in which a coalition of temporary residents of the United States band

30. The "demos" is the populace of a democratic society. *See Demos*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/demos [https://perma.cc/PLX5-JCHN].

31. *See infra* notes 196–200 and accompanying text.

32. *See infra* notes 205–09 and accompanying text.

33. *See infra* notes 137–51, 219–20 and accompanying text.

34. *See infra* notes 137–51, 219–20 and accompanying text.

35. Evelyn Douek & Genevieve Lakier, *Rereading* Bluman v. Federal Election Commission, KNIGHT FIRST AMEND. INST. AT COLUMBIA UNIV. (June 23, 2022), https://knightcolumbia.org/blog/rereading-bluman-v-federal-election-commission [https://perma.cc/GZL7-KTH5]; *see also* Eugene Volokh, *"Should We Regulate Foreign Speech?,"* REASON: VOLOKH CONSPIRACY (Apr. 8, 2022, at 11:03 ET), https://reason.com/volokh/2022/04/08/should-we-regulate-foreign-speech [https://perma.cc/Z5NM-LL43] ("[M]uch important information relevant to American political debates comes from foreign citizens.").

36. *See CO2 Emissions by Country*, WORLDOMETER, https://www.worldometers.info/co2-emissions/co2-emissions-by-country [https://perma.cc/ZGU3-6NRW] (showing that the United States accounts for approximately thirteen percent of global carbon emissions); Jill Lawless & Samya Kullab, *More US Aid Will Help Ukraine Avoid Defeat in Its War with Russia. Winning Is Another Matter*, AP NEWS: WORLD NEWS (Apr. 24, 2024, at 13:18 ET), https://apnews.com/article/ukraine-russia-war-us-weapons-battle-impact-43072858c26195f6c91565c1ebbf1629 [https://perma.cc/8LU8-KPQJ (staff-uploaded archive)]; *100+ Policy Changes That Have Devastated Immigrants and Asylum Seekers*, IMMIGRANT LEGAL RES. CTR., https://www.ilrc.org/100-policy-changes-have-devastated-immigrants-and-asylum-seekers [https://perma.cc/Z8KA-UV93].

together to fund pro-immigration policy campaigns.[37] If such a group were severely limited or prohibited from engaging in foreign policy advocacy, the likelihood of American voters receiving its perspectives on the issue would significantly diminish. This result would, from an epistemic perspective, seem antithetical to self-government rather than in service of it.

The net epistemic value of foreign political advocacy is, however, tough to measure. Whereas there are many examples of intelligent, informative political communications funded by foreign nationals,[38] there are also many examples of such communications advancing inflammatory, polarizing, and/or misinformative speech.[39] While the former may serve epistemic ends for American democratic self-government, the latter would seem to undermine them. This is not to say that foreign political advocacy is, on balance, harmful to our democracy, but rather that the precise degree to which it may objectively benefit voters, and therefore our system of self-government, is inconclusive.

In light of this uncertainty, this Article turns to the self-governors themselves—the voters—to gauge how they internalize foreign political advocacy. Specifically, I conducted a survey consisting of 1,568 voting-age American respondents. The survey began with each respondent randomly assigned to view one hypothetical political ad, either foreign-funded or domestically funded.[40] Respondents were then asked to evaluate how much they as voters would value receiving information in the ad before them.[41]

The survey's results were quite telling. In short, a sizable number of respondents placed at least moderate value on information received via foreign political advocacy.[42] Moreover, and quite intriguingly, the average valuation given to each hypothetical political ad by the respondents did not differ to any significant degree regardless of whether the sponsor was foreign or domestic.[43] These results, while not a direct measure of the objective value of foreign

37. Perhaps it is not a coincidence that multiple groups representing refugees and immigrants filed amicus briefs in support of the plaintiffs in *Bluman v. FEC*. *See* Brief of Amici Curiae the Illinois Coalition for Immigration and Refugee Rights and the National Immigrant Justice Center in Support of Appellants at 1–5, Bluman v. FEC, 565 U.S. 1104 (2012) (No. 11-275) [hereinafter Brief of Amici Curiae]. The Second Trump Administration's new policies targeting illegal immigration and worker visas, among other things, will likely further fuel the desire of foreign nationals to engage in advocacy on the issue. *See* Restriction on Entry of Certain Nonimmigrant Workers, 90 Fed. Reg. 46027, 46028 (Sep. 19, 2025) (imposing a $100,000 fee on H-1B visas); Joel Rose, *Trump's Immigration Orders Are a Blueprint for Sweeping Policy Changes*, NPR: IMMIGR. (Jan. 27, 2025, at 12:43 ET), https://www.npr.org/2025/01/27/nx-s1-5276139/trump-immigration-border-orders-blueprint [https://perma.cc/Q6U3-ZAKW] (discussing President Trump's reframing of immigration as a national security issue).

38. *See, e.g.*, *infra* note 229 and accompanying text.

39. *See, e.g.*, *infra* note 232 and accompanying text.

40. *See infra* Section III.C.1.

41. *See infra* Section III.C.1.

42. *See infra* Section III.C.2.

43. *See id.*

political advocacy, indicate at the very least that many American voters personally perceive some benefit in receiving foreign political advocacy. This in turn supports the notion that Americans will incorporate information received via foreign political advocacy—particularly factual and educational information[44]—into their self-governing decisions. In other words, into their choice of vote.

Given the historic importance of voter perception in campaign finance jurisprudence,[45] these findings have potential doctrinal significance. Namely, they suggest that when applying the government's compelling interest in protecting self-government to restrictions on foreign political advocacy, courts should recognize that foreign political advocacy is not wholly in conflict with self-governance, but rather can complement it to some extent.

What does this mean on a practical level? While this Article avoids being overly prescriptive, it contends that while legislatures may constitutionally impose restrictions on foreign political advocacy, they should refrain from entirely banning the practice. Instead, a balance must be struck where the practice is limited enough to allow the American demos to retain general control over its political processes, but permitted enough to allow American voters to receive some level of foreign political communications.[46] Accordingly, the final part of this Article provides a framework for nuanced regulations of foreign political advocacy. Specifically, it focuses on defining legitimate participants, setting dollar limits, implementing robust disclosure requirements, and developing effective enforcement mechanisms.

This Article contributes to the existing literature in three ways. First and foremost, it provides the first in-depth analysis of how restrictions on foreign political advocacy might unduly burden First Amendment speech rights. Second, it contributes to a broader empirical literature that gauges how voter perceptions can inform campaign finance doctrine and legislation. Lastly, it falls within a growing literature critiquing campaign finance policy reforms currently

44. The survey's hypothetical political ads were designed to be "higher value"—that is, factual and informative—to act as a baseline when measuring American voters' interest in receiving them. The idea is that if the survey respondents did not value receiving such higher-value foreign political advocacy, they likely would not value more inflammatory and misinformative forms of foreign political advocacy either. *See infra* Section III.C.1. Accordingly, survey results specifically measure the degree to which American voters have an interest in receiving higher-value foreign political advocacy.

45. *See, e.g.*, FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 470 (2007) (referencing ways in which voters factor issue advocacy "into their voting decisions" when considering whether the government had a compelling interest in prohibiting the use of corporate funds to finance issue ads); Eugene D. Mazo, *The Disappearance of Corruption and the New Path Forward in Campaign Finance*, 9 DUKE J. CONST. L. & PUB. POL'Y 259, 275 (2014) [hereinafter Mazo, *The Disappearance*] ("[T]he appearance of corruption is an equal second category under which campaign finance regulations may be justified.").

46. *See infra* Section III.D.

being pursued by advocates in the United States.[47] This Article proceeds as follows: Part I gives readers a primer on the relevant campaign finance jurisprudence, concentrating particularly on the regulation of foreign political spending. After this, Part II discusses theoretical and doctrinal sources for a First Amendment right to receive speech and considers how regulations on foreign political advocacy may implicate such a right. Part III then considers the government's compelling interest in restricting foreign political advocacy in the name of American democratic self-government, wrestling between the competing democratic principles of protecting the demos' control over the political process and maintaining the free flow of political speech. This part also analyzes the survey I conducted and the implications of its findings. Finally, Part IV examines how legislatures might go about placing restrictions on foreign political advocacy in the future.

I. A PRIMER IN U.S. CAMPAIGN FINANCE JURISPRUDENCE

This part covers the relevant campaign finance law at issue in this Article. The first section briefly overviews how the judiciary has generally treated the regulation of campaign finance, particularly funded advocacy. The second section then delves into the specific doctrine surrounding the regulation of transnational campaign finance—in other words, the act of foreign nationals engaging in campaign finance within U.S. domestic elections. The section ends by discussing the distinct lack of regulation over politically-motivated issue advocacy by foreign nationals, what this Article calls "foreign political advocacy."

A. *General Doctrine*

Political spending in the United States can generally be divided into two categories: contributions and expenditures. Contributions involve the act of a donor giving money to a political actor.[48] Expenditures meanwhile involve the act of spending money to engage in advocacy.[49] Expenditures are most often

47. Much of this focus has been on small-donor multi-matching funds. *See, e.g.*, Alex Keena & Misty Knight-Finley, *Are Small Donors Polarizing? A Longitudinal Study of the Senate*, 18 ELECTION L.J. 132, 141–42 (2019); Richard H. Pildes, *Participation and Polarization*, 22 U. PA. J. CONST. L. 341, 400–01 (2020).

48. The Federal Election Commission ("FEC") defines a contribution as "[a] gift, subscription, loan . . . , advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for . . . office." 11 C.F.R. § 100.52(a) (2024).

49. The FEC defines an expenditure as "[a] purchase, payment, distribution, loan . . . , advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for . . . office." 11 C.F.R. § 100.111(a). Nevertheless, expenditures are often thought of as also including those made in pursuit of issue advocacy. *See, e.g.*, Van Hollen, Jr. v. FEC, 811 F.3d 486, 490 (D.C. Cir. 2016) (referring to "issue ads funded through independent expenditures"); Nicholas O.

used to fund political communications, such as television and online advertisements, mass mailings, and phone banking.[50] They can, nevertheless, be put toward other uses, such as sponsoring a campaign event or hosting a website.

When expenditures are made in support of or against a clearly identified candidate, this is considered "express advocacy."[51] All other political communications funded by expenditures are considered "issue advocacy," even those that support political parties or mention a candidate, so long as viewers are not explicitly encouraged to vote a particular way.[52] In reality, this distinction is somewhat dubious.[53] For instance, a political ad that says "Kamala Harris belongs in prison" alone would not be considered express advocacy despite its obvious electoral motives.

Yet, for legal purposes, the distinction is highly relevant. For example, whether advocacy falls within the category of "express" or "issue" impacts the degree to which the government can regulate it. In general, while the government may institute contribution limits,[54] it cannot place dollar limits on expenditures made by Americans to engage in advocacy.[55] The Supreme Court has consistently held that such limits greatly burden First Amendment speaker rights: the less one is able to expend on advocacy, the less speech they are able to theoretically produce.[56]

Stephanopoulos, *Quasi Campaign Finance*, 70 DUKE L.J. 333, 349–54 (2020) ("Quasi campaign finance, then, is money that pays for communications with voters that are not about elections but that nevertheless depend on an electoral link for their effectiveness."); Margaret H. Lemos & Guy-Uriel Charles, *Patriotic Philanthropy? Financing the State with Gifts to Government*, 106 CALIF. L. REV. 1129, 1153 n.136 (2018) (referring to "targeted issue advertising" as "a form of independent expenditures").

50. *See Advertising and Disclaimers*, FEC, https://www.fec.gov/help-candidates-and-committees/advertising-and-disclaimers [https://perma.cc/7AND-YGWB].

51. 11 C.F.R. § 100.22(a).

52. *See Issue Advocacy*, *supra* note 7.

53. George S. Scoville III, Note, *Curtailing the Cudgel of "Coordination" by Curing Confusion: How States Can Fix What the Feds Got Wrong on Campaign Finance*, 48 U. MEM. L. REV. 463, 500 (2017) ("[T]here is a nontrivial argument that the distinction between issue advocacy and express advocacy is a distinction without a difference. . . .").

54. This is the case so long as they are not so low as to limit candidates' and political parties' ability to engage in effective advocacy. *See* Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 395–97 (2000).

55. *See* Citizens United v. FEC, 558 U.S. 310, 365–66 (2010). Note that expenditures made in coordination with a candidate or party are considered contributions. *See* Buckley v. Valeo, 424 U.S. 1, 78 (1976) (per curiam).

56. *See Buckley*, 424 U.S. at 19. Numerous scholars have critiqued this equivocation between the act of spending money to spread communications and the actual act of communicating. *See, e.g.*, Jessica A. Levinson, *The Original Sin of Campaign Finance Law: Why* Buckley v. Valeo *Is Wrong*, 47 U. RICH. L. REV. 881, 899–900 (2013) ("[T]he Court confuses the ability to speak, which is not affected by campaign finance restrictions, with the ability to use money to reach a wider audience."); Deborah Hellman, *Money Talks but It Isn't Speech*, 95 MINN. L. REV. 953, 965–66 (2011) ("[N]ot all giving and spending of money should be seen as expressive enough to raise the specter of the First Amendment.").

The Court nonetheless permits some degree of regulation in connection with express advocacy. The Federal Election Campaign Act ("FECA"),[57] for example, imposes certain disclosure requirements that are only applicable to express-advocacy communications.[58] The same cannot be said of issue advocacy, the regulation of which the Court has routinely invalidated.[59] In fact, the only standing federal regulations over issue advocacy are those that regulate "electioneering communications," which cover a narrow strand of issue ads made shortly before an election that clearly identify a candidate without explicitly supporting or opposing them.[60] Other than that, issue-advocacy expenditures remain "largely untraceable" within the U.S. campaign finance regulatory regime.[61]

The above-described doctrine is the doctrine as applied to political spending from American individuals and entities, which represents, of course, a major segment of political spending in this country. Nevertheless, it does not paint the whole picture. Indeed, while the Court's jurisprudence in this area has been dominated largely by libertarian First Amendment ideals,[62] there is one slice of campaign finance doctrine where First Amendment concerns have largely fallen to the wayside: the regulation of political spending by foreign nationals. As the next section covers, courts have instead upheld wholesale prohibitions on many forms of such spending, including foreign contributions and foreign-funded express advocacy. Questions now remain as to whether these holdings would extend more broadly to foreign political advocacy.

B. *Transnational Campaign Finance Doctrine*

The jurisprudence of transnational campaign finance regulation is relatively small. In fact, it was not until 2011, in *Bluman v. FEC*, that caselaw developed on the issue.[63] Yet, as foreign political influence becomes an increasingly hot-button issue in this country, this area of the law continues to grow in relevance. This section accordingly provides an overview of it. To start,

57. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 52 U.S.C. §§ 30101–11, 30113–45).

58. Tammera R. Diehm, Katherine A. Johnson & Jordan E. Mogensen, *Campaign Finance Issues in Election Communications: An Explanation of the Current Legal Standard and Modern Trends*, 104 MINN. L. REV. HEADNOTES 1, 3–4 (2020).

59. *See, e.g.*, FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 481–82 (2007) (striking down prohibition on the use of corporate funds for issue-advocacy communications).

60. *See* 11 C.F.R. § 100.29(a) (2024) (defining electioneering communication). Electioneering communications are subject to certain disclaimer and reporting requirements. *See id.* §§ 104.20, 110.11(a)(4).

61. Diehm et al., *supra* note 58, at 3. This is true not only at the federal level, but state and local levels too. *See, e.g.*, *id.* at 5–6 (discussing the invalidation of Minnesota restrictions).

62. *See* Jack M. Balkin, *Free Speech Versus the First Amendment*, 70 UCLA L. REV. 1206, 1270 (2023).

63. *See* 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

it summarizes *Bluman* and the general status of transnational campaign finance regulation in the United States. It then examines two of the most intriguing aspects of *Bluman*, namely its dismissal of First Amendment interests and its refusal to interpret federal prohibitions on transnational campaign finance as extending to issue advocacy. Building upon these points, the section concludes by raising the primary question of this Article: whether the government can constitutionally regulate foreign political advocacy.

1. *Bluman v. FEC*

In 2002, citing concerns over gaps in U.S. campaign finance laws,[64] Congress included within its landmark Bipartisan Campaign Reform Act ("BCRA")[65] a provision that imposes a near-blanket ban on transnational campaign finance.[66] Specifically, the law makes it illegal 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.[67]

The law defines "foreign national" to include foreign governments, foreign corporations/organizations, and noncitizens who are not permanent residents of the United States.[68] Thus, BCRA outright prohibits foreign nationals from engaging in most forms of political spending in this country, covering federal, state, and local elections alike. And while a few loopholes have come to light

64. Mazo, *Our Campaign Finance Nationalism*, *supra* note 6, at 781–82.

65. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended at 36 U.S.C. § 510 and in scattered sections of 52 U.S.C.).

66. *Id.* sec. 303, 116 Stat. at 96.

67. 52 U.S.C. § 30121(a) (2024).

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

since its passage,[69] BCRA's provision remains one of the tightest restrictions on transnational campaign finance worldwide.[70]

As with most campaign finance restrictions, it did not take long for someone to challenge this provision in court. Empowered by the recent *Citizens United* decision where the Court held that "the First Amendment generally prohibits the suppression of political speech based on the speaker's identity,"[71] two temporary residents of the United States argued that BCRA's restrictions on transnational campaign finance were unconstitutional as applied to them.[72] Specifically, in a case titled *Bluman v. FEC*,[73] the plaintiffs argued that these restrictions violated the First Amendment rights of all "aliens who are lawfully residing and working in the United States."[74] The idea was simple: if the First Amendment prevented the government from discriminating based on speaker identity, and if BCRA prohibited certain people from partaking in campaign finance based on their identity as foreign nationals, then BCRA's prohibition is violative of the First Amendment.[75] A federal three-judge panel in the District of Columbia heard and decided the matter.[76]

The *Bluman* court ultimately upheld the BCRA provision.[77] At the outset of its opinion, the court made a perhaps surprising move by stating that the case "does not implicate" the typical First Amendment issues raised in most campaign finance law challenges.[78] The court reasoned that because foreign nationals' speech rights are often considered weaker than those of citizens, the

69. For one, BCRA's prohibition does not apply to spending by domestic subsidiaries of foreign corporations or domestic corporations with significant foreign ownership, otherwise known as "foreign-influenced" corporations. James Ianelli, *Noncitizens and* Citizens United, 56 LOY. L. REV. 869, 888–89 (2010). Moreover, it does not apply to foreign spending in state and local ballot measures. *See* FED. ELECTION COMM'N, MUR 7523, ATTACHMENT TO FIRST GENERAL COUNSEL'S REPORT 1–2 (2020), https://eqs.fec.gov/eqsdocsMUR/7523_17.pdf [https://perma.cc/THU6-X5PV]. Many states and localities have worked to fill these gaps. *See* Martin, *Democratic Value*, *supra* note 22, at 844–46.

70. *See* Martin, *Democratic Value*, *supra* note 22, at 843–44.

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

72. The two plaintiffs were Benjamin Bluman—a Canadian citizen residing in Massachusetts on a TN visa—and Asenath Steiman—a dual Canadian/Israeli citizen residing in New York on a J-1 visa. Complaint ¶¶ 10, 15, Bluman v. FEC, 800 F. Supp. 2d 281 (D.D.C. 2011) (No. 10-1766), 2010 WL 4236439 [hereinafter Complaint]. Bluman had contributed small donations to various Democratic politicians, as well as made expenditures to expressly advocate for Barack Obama's 2008 campaign. *See id.* ¶ 13. Steiman had contributed small donations to various Republican politicians, party committees, and PACs. *Id.* at ¶ 18. The plaintiffs did not contend that the BCRA provision they challenged was facially unconstitutional. *See id.* ¶ 1.

73. 800 F. Supp. 2d 281 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

74. Complaint at ¶ 26.

75. *See* Mazo, *Our Campaign Finance Nationalism*, *supra* note 6, at 783–84.

76. BCRA mandates that any constitutional challenge against its provisions must be heard before a three-judge panel in the U.S. District Court for the District of Columbia. *See* 52 U.S.C. § 30110 note (Judicial Review, Special Rules for Actions Brought on Constitutional Grounds) (2024).

77. *Bluman,* 800 F. Supp. 2d at 292.

78. *Id.* at 286.

case did not implicate nearly as strong speech interests.[79] Rather, the case "raise[d] a preliminary and foundational question about the definition of the American political community and, in particular, the role of foreign citizens in the U.S. electoral process."[80]

Following this, the court declared that the government had 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."[81] The court reached this conclusion by first citing a line of cases in which the Supreme Court found foreign nationals subject to fewer rights and privileges under the Constitution than U.S. citizens.[82] In particular, the court found indications from the Supreme Court that "aliens' First Amendment rights" to engage in political speech "might be less robust than those of citizens in certain discrete areas."[83] Next, the court noted that, in many such cases, the Supreme Court held that the government has a specific interest in excluding foreign nationals from activities "intimately related to the process of democratic self-government."[84] Indeed, the Court had stated quite strongly that the power to exclude foreign nationals "from participation in . . . democratic political institutions [is] part of the sovereign's *obligation* to preserve the basic conception of a political community."[85] Synthesizing these cases, the *Bluman* court held it to be "fundamental to the definition of our national political community" to exclude foreign nationals from activities of democratic self-government, and thus found the government to have a compelling interest in realizing such an exclusion.[86]

Invoking this compelling interest, the three-judge panel in *Bluman* upheld BCRA's restriction on transnational campaign finance as constitutional.[87] The court first acknowledged the integral role that campaign finance plays in the process of democratic self-government: "Political contributions and express-advocacy expenditures finance advertisements, get-out-the-vote drives, rallies,

79. *Id.* at 287.

80. *Id.* at 286.

81. *Id.* at 288.

82. *See id.* at 287.

83. *See id.* (citing Harisiades v. Shaughnessy, 342 U.S. 580, 591–92 (1952)).

84. *Id.* (quoting Bernal v. Fainter, 467 U.S. 216, 220 (1984)). The *Bluman* court failed to acknowledge that the cases it referenced were specifically focused on the issue of foreign nationals holding government positions. *See, e.g.*, Cabell v. Chavez-Salido, 454 U.S. 432, 447 (1982) (upholding citizenship requirement for probation officers); Ambach v. Norwick, 441 U.S. 68, 80–81 (1979) (upholding law prohibiting foreign nationals from becoming school teachers); Foley v. Connelie, 435 U.S. 291, 299–300 (1978) (upholding law limiting the appointment of law enforcement officers to citizens).

85. *Bluman,* 800 F. Supp. 2d at 287 (alteration in original) (emphasis added) (quoting *Foley*, 435 U.S. at 295–96).

86. *Id.* at 288.

87. *Id.*

candidate speeches, and the myriad other activities by which candidates appeal to potential voters."[88] The court similarly likened a prohibition on foreign nationals engaging in election spending to prohibitions on them voting or serving as elected officers, which were both previously held permissible under the Constitution.[89] Accordingly, the court found campaign finance to fall within the "activities of American democratic self-government" from which the government may exclude the participation of foreign nationals.[90]

To conclude its opinion, the *Bluman* court explained why temporary residents are entitled to less protection in the campaign finance sphere than permanent residents.[91] The court proffered three theories.[92] For one, permanent residents have "a long-term stake" in American society, whereas temporary residents "have only a short-term interest in the national community."[93] Second, "[t]emporary resident[s] . . . by definition have primary loyalty to other national political communities."[94] Finally, permanent residents share certain obligations and rights with U.S. citizens—such as military service—that temporary residents do not.[95] For these reasons, the court took no issue with BCRA's disparate treatment of permanent and temporary residents.[96]

Bluman was ultimately summarily affirmed by the Supreme Court[97] and has held strong for fourteen years. Reactions to the decision have meanwhile been mixed. While some scholars and practitioners praised the decision, others have highlighted some of the questionable assumptions and inconsistencies that underlie the *Bluman* court's opinion. Indeed, as the next section discusses, two of the *Bluman* court's most astonishing moves were its dismissal of First Amendment concerns and its refusal to extend BCRA's prohibition on transnational campaign finance to foreign political advocacy.

2. Post-*Bluman* Considerations: Which Advocacy and Whose Speech Rights?

While *Bluman* has undoubtedly become a fixture in campaign finance jurisprudence, it has received mixed reactions from scholars and reform advocates. Certainly, some have signaled support for the decision, or have at

88. *Id.*

89. *See id.* (citing Sugarman v. Dougall, 413 U.S. 634, 647–49 (1973)).

90. *Id.*

91. *See id.* at 291.

92. *See id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *See id.* The *Bluman* court also confronted a few other arguments, such as whether BCRA's restriction is underinclusive or the product of unacceptable jingoistic sentiment. *See id.* at 291–92. These arguments are not as important for this Article's purpose.

97. *See* Bluman v. FEC, 565 U.S. 1104, 1104 (2012).

least implicitly treated its outcome as sound.[98] Nevertheless, others have expressed a range of concerns about *Bluman* and how it comports with the Supreme Court's broader campaign finance doctrine. Some scholars have, for instance, noted an inconsistency between *Bluman*'s holding and *Citizens United*'s statement that laws regulating speech may not discriminate based on speaker identity.[99] Others have also found *Bluman* in contradiction with caselaw that prohibits state laws from limiting out-of-state political spending from fellow U.S. citizens.[100] Meanwhile, Professor Lori Ringhand has criticized *Bluman* for its narrow focus on self-government principles at the expense of noting the potential corrupting effects of transnational campaign finance on elected officials.[101] Finally, and less discussed in the literature, there is the issue of *Bluman*'s dubious, borderline xenophobic assertions about temporary residents' place in the American political community.[102]

98. *See, e.g.*, Anthony J. Gaughan, *Putin's Revenge: The Foreign Threat to American Campaign Finance Law*, 62 HOW. L.J. 855, 861–62 (2019); Brittany Morgan Albaugh, Note, *Two Paths to Preventing Foreign Influence: Reforming Campaign Finance and Lobbying Law*, 13 J. INT'L BUS. & L. 283, 288–89 (2014); *see also* Ian Vandewalker, *Kavanaugh Could Narrow Ban on Foreign Money in Elections*, BRENNAN CTR. FOR JUST. (July 10, 2018), https://www.brennancenter.org/our-work/analysis-opinion/kavanaugh-could-narrow-ban-foreign-money-elections [https://perma.cc/88CV-X7Q6] (arguing that *Bluman* did not go far enough in its holding).

99. *See, e.g.*, Thai, *supra* note 28, at 297–98; *see also* Richard L. Hasen, Citizens United *and the Illusion of Coherence*, 109 MICH. L. REV. 581, 607 (2011) (predicting this incoherence).

100. *See* Anthony Johnstone, *Outside Influence*, 13 ELECTION L.J. 117, 119 (2014); Ben Wallace, Comment, *A Vote Against State Nonresident Contribution Limits*, 78 LA. L. REV. 597, 623–24 (2018); *see also* Mazo, *Our Campaign Finance Nationalism*, *supra* note 6, at 789 ("*Bluman* failed to offer a view on what activities the states, as their own political communities, might reserve for their own residents.").

101. *See* Lori A. Ringhand, *Contextualizing Corruption: Foreign Financing Bans and Campaign Finance Law*, 44 CARDOZO L. REV. 873, 916–17 (2023).

102. Take, for instance, the court's assertion that temporary residents exist outside the American political community because they "by definition have only a short-term interest in the national community." Bluman v. FEC, 800 F. Supp. 2d 281, 291 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012). This statement is flawed because (1) millions of noncitizen residents with temporary visa statuses have long-term plans to reside in the United States, and (2) foreign nationals who move from the United States back to their home countries will often still have interests in U.S. decision-making. *See* Richard Bellamy, *Globalization and Representative Democracy: Normative Challenges*, *in* THE OXFORD HANDBOOK OF POLITICAL REPRESENTATION IN LIBERAL DEMOCRACIES 655, 656–63 (Robert Rohrschneider & Jacques Thomassen eds., 2020) (overviewing the problem of democratic externalities). The statement is also flawed in its presumption that one must have long-term interests in a polity in order to validly participate within its political community. For one, voters themselves very often base their decisions on short-term considerations. There are furthermore many political issues that are themselves short-term in nature.

Dubious too is the *Bluman* court's claim that "[t]emporary resident foreign citizens by definition have primary loyalty to other national political communities." *Bluman*, 800 F. Supp. 2d at 291. As noted earlier, many "temporary residents" in the United States live here with no intention of returning to their home countries. Imagine a Canadian man who is married to a permanent resident and waiting on approval for an immigrant visa—his legal status as a current temporary resident "bears no relation to [his] actual intention or likelihood to make this country [his] permanent home." Brief of Amici Curiae, *supra* note 37, at 13. Additionally, the statement ignores the reality that it is possible to

These criticisms are all sound. Yet, they do not fully address what are arguably the two most consequential moves the *Bluman* court made: its decision to not extend BCRA's prohibition on transnational campaign finance to issue advocacy and its outright dismissal of First Amendment interests. Beginning with the former, the court plainly stated that "[t]his statute, as we interpret it, does not bar foreign nationals from issue advocacy—that is, speech that does not expressly advocate the election or defeat of a specific candidate."[103] Although presented in a rather unassuming manner, this decision was truly substantial. In effect, it gave foreign nationals carte blanche to legally spend unlimited sums of money to spread political messages to American voters on a wide scale, as well as donate unlimited sums of money to domestic, politically active nonprofits, otherwise known as dark money groups.[104] And while this advocacy may technically be limited to "issues," recall that issue ads can go as far as invoking candidate names and political parties, so long as they do not use "magic words" that express outright electoral support or opposition.[105] As one extreme example, a Russian-funded online ad stated in 2016 that "Hillary Clinton is the co-author of Obama's anti-police and anti-constitutional propaganda."[106] This was not express advocacy, but rather permissible foreign political advocacy.

Why the *Bluman* court made this move remains unclear. The court, in fact, hardly elaborated on the decision in its opinion. One likely reason may stem from the court's interpretation of BCRA's "expenditure" and "independent expenditure" language.[107] The court may have interpreted these terms as only including express advocacy and in turn exempting issue advocacy. Yet, it is far from clear whether issue-advocacy expenditures are not actually captured by this language.[108] Moreover, this interpretation would seem to ignore the part of

hold loyalties to two national communities. Indeed, millions of Americans hold dual citizenship between the United States and another country and are still eligible to vote in U.S. elections. *See* PETER J. SPIRO, AT HOME IN TWO COUNTRIES: THE PAST AND FUTURE OF DUAL CITIZENSHIP 3 (2016). We do not assume that these Americans are unable to make intelligent, informed decisions in our elections despite them holding loyalty to an additional political community. Yet, the court applies this treatment to temporary residents.

103. *Bluman*, 800 F. Supp. 2d at 284.

104. *See* Tom Kertscher, *Can Foreigners Indirectly Fund Political Ads by Giving Money to a US Nonprofit That Then Gives Money to a US Super PAC?*, WIS. WATCH (Feb. 29, 2024), https://wisconsinwatch.org/2024/02/politics-ads-foreigners-super-pac-contributions-federal-law-loophole-fact-brief [https://perma.cc/C6M3-42EN]; *Dark Money Basics*, OPENSECRETS, https://www.opensecrets.org/dark-money/basics [https://perma.cc/AN3Y-ZW3P (staff-uploaded archive)].

105. *See supra* notes 7–9 and accompanying text.

106. Scott Shane, *These Are the Ads Russia Bought on Facebook in 2016*, N.Y. TIMES (Nov. 1, 2017), https://www.nytimes.com/2017/11/01/us/politics/russia-2016-election-facebook.html [https://perma.cc/F929-5PBF (staff-uploaded, dark archive)].

107. *See* 52 U.S.C. § 30121(a)(1)(C) (2024).

108. *See supra* note 49 and accompanying text; *see also* Ringhand, *supra* note 101, at 884 n.61.

the BCRA provision that applies the prohibition to expenditures made "for an electioneering communication,"[109] which by definition would include *some* issue ads (namely those that clearly identify a candidate without expressing support for or opposition against them).[110] It is unclear why the *Bluman* court ignored this statutory reality.

Alternatively, the court may have believed that issue advocacy receives stronger First Amendment protections than express advocacy, at least in the context of temporary residents.[111] Indeed, temporary residents' speech rights appear reduced in the context of political speech, such as express advocacy, given the crucial role such speech plays within the democratic process.[112] The court may have believed that this reduction in speech rights would not extend to issue advocacy since it less directly invokes electoral themes, and thus wished to skirt any constitutional concerns about regulating temporary residents' issue advocacy by preemptively declaring that BCRA does not cover it.

Yet, while issue advocacy does not call for specific electoral outcomes, it still falls within the realm of political speech. As noted earlier, issue advocacy can go as far as mentioning specific candidates and political parties.[113] And even when issue ads do not make any such mentions and focus purely on "the issues," their ultimate goal is so often to influence voter behavior.[114] When Americans for Prosperity Foundation, for instance, circulates an ad calling for lower taxes,[115] does anyone really believe that the group's goal is simply to educate its audience? Certainly not. Instead, there is the implicit message to vote for candidates who support these policies. At bottom, much of issue advocacy is political in nature. It therefore seems unlikely that temporary residents' speech

109. 52 U.S.C. § 30121(a)(1)(C).

110. *See* 11 C.F.R. § 100.29(a) (2024); *see also* Deborah Goldberg, *Federal and State Campaign Finance Reform: Lessons for the New Millenium*, 34 ARIZ. STATE L.J. 1143, 1148 (2002) (describing how the regulation of electioneering communications closed a loophole through which issue ads that mentioned candidates but avoided magic words could evade regulation).

111. From a speaker's perspective, this distinction would not matter for foreign nationals living abroad. *See supra* note 20 and accompanying text.

112. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 287–88 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012) (explaining how the government may exclude foreign nationals from activities "intimately related to the process of democratic self-government" (citation omitted)); *see also* United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990) ("[T]his textual exegesis . . . suggests that 'the people' protected by . . . the First [Amendment] . . . refers to a class of persons who are part of a national community . . . ."); Hayward & Vile, *supra* note 19 ("Resident aliens lack security in political expression.").

113. Before BCRA defined such advocacy as "electioneering," experts referred to it as "sham" issue advocacy. *See, e.g.*, Cain, *supra* note 17, at 72.

114. *See* Stephanopoulos, *supra* note 49, at 355–60 (discussing the scope of this phenomenon).

115. *See, e.g.*, Press Release, Ams. for Prosperity Found., Americans for Prosperity Foundation Announces $500,000 Tax Reform Ad (Apr. 17, 2018), https://americansforprosperity.org/press-release/americans-for-prosperity-foundation-announces-500000-tax-reform-ad [https://perma.cc/8D7F-HQ5C].

rights would be any stronger when engaging in issue advocacy over express advocacy—at least, they would remain weaker than citizens' speech rights.

Overall, the *Bluman* court seemed determined to avoid as much First Amendment deliberation as possible. This brings us to the court's second intriguing move: its immediate dismissal of the existence of any strong First Amendment interests at the outset of its opinion. Specifically, the court said that "[t]his case does not implicate" those "First Amendment issues" raised in previous campaign finance cases.[116] Certainly, from a purely speaker-oriented approach to First Amendment speech rights, this seems correct, being that foreign nationals have less than full, if not zero, constitutional protection.[117] Nevertheless, the major shortcoming of this approach is that it downplays, if not outright ignores, the interests of the listener. Speech is, after all, not a one-sided process; it is a "communicative pathway" that starts at the person making the speech and ends at the person receiving it.[118] Many scholars and jurists have even—as covered in Part II—acknowledged a right to receive speech baked into the First Amendment.[119] The *Bluman* decision nonetheless makes no mention of the rights of those on the receiving end of foreign political advocacy, including, perhaps most importantly, the American voter.

This was admittedly not *too* surprising a move, as the Supreme Court's broader campaign finance jurisprudence has always prioritized speakers' rights. In *Buckley*, for example, the Court framed its analysis on the constitutionality of contribution limits in terms of the contributor's right to express support for a candidate and the candidate's right to engage in effective campaign advocacy.[120] And when it came to expenditure limits, the Court focused its concerns on how such limits would "compel[] . . . speaker[s] to hedge and trim" their political communications.[121] This fixation on the speech rights of the

116. *Bluman*, 800 F. Supp. 2d at 286.

117. *See supra* notes 19–20 and accompanying text.

118. Grimmelmann, *supra* note 26, at 379. As Justice Scalia more succinctly put it, "The [First] Amendment is written in terms of 'speech,' not speakers." Citizens United v. FEC, 558 U.S. 310, 392 (2010) (Scalia, J., concurring); *see also* Owen M. Fiss, *The Right Kind of Neutrality*, *in* FREEING THE FIRST AMENDMENT: CRITICAL PERSPECTIVES ON FREEDOM OF EXPRESSION 79, 81 (David S. Allen & Robert Jensen eds., 1995) ("[W]hat the First Amendment prohibits is law that abridges 'the freedom of speech,' not the freedom *to* speak.").

119. *See, e.g.*, Stephens v. County of Albemarle, 524 F.3d 485, 492 (4th Cir. 2008) (discussing the standing requirements to assert "a right to receive speech"); Pittman v. Cole, 267 F.3d 1269, 1283 n.12 (11th Cir. 2001) (same); Davis v. E. Baton Rouge Parish Sch. Bd., 78 F.3d 920, 926–27 (5th Cir. 1996) (same); Mark Fenster, *Transparency and the First*, 14 FIU L. REV. 713, 713 (2021); Thai, *supra* note 28, at 279–82; Thomas I. Emerson, *Legal Foundations of the Right to Know*, 1976 WASH. U. L.Q. 1, 5–14; Alexander Meiklejohn, *The First Amendment Is an Absolute*, 1961 SUP. CT. REV. 245, 255.

120. *See* Buckley v. Valeo, 424 U.S. 1, 20–21, 33–34 (1976) (per curiam).

121. *Id.* at 43.

spender—that is, the "speaker"—has remained a running theme in the Court's campaign finance jurisprudence up through the Roberts Court era.[122]

At the same time, the Court has at least *acknowledged* the listener's interest in its more recent campaign finance holdings. In upholding campaign disclosure requirements, for instance, the Court has routinely cited as a justification the "informational interest" that voters have in receiving such disclosures.[123] As the *Citizens United* Court stated, "The First Amendment protects political speech; and disclosure permits citizens . . . to react to the speech . . . in a proper way."[124] Furthermore, in the context of expenditure limits, the Court has referenced the importance of the electorate being able to receive free-flowing political communications.[125] Scholars note this phenomenon having particularly occurred in the *Citizens United* opinion.[126]

Accordingly, the *Bluman* decision was even *more* speaker-oriented than the modern Supreme Court's campaign finance jurisprudence, in that it did not even pay lip service to the potential First Amendment interests of anybody beyond the speaker. As Professor Jessica Bulman-Pozen notes, *Bluman* "mov[ed] from the speech-based logic of *Citizens United* . . . to a speaker-based

122. *See, e.g.*, Randall v. Sorrell, 548 U.S. 230, 247 (2006) (plurality opinion) (focusing on whether Vermont's contribution limits "prevented candidates and political committees from amassing the resources necessary for effective advocacy" (citation omitted)); *Citizens United*, 558 U.S. at 342–43 (discussing whether regulations of expenditures can discriminate based on speaker identity); McCutcheon v. FEC, 572 U.S. 185, 227 (2014) (plurality opinion) (focusing on the right of "constituents" to contribute to a campaign); FEC v. Cruz, 142 S. Ct. 1638, 1651 (2022) (discussing how limits on personal loan repayments may place a "drag" on candidate speech). This fixation can be blamed in part on the Court's broader approach to First Amendment doctrine. *See* Elizabeth A. Reese, *The Inexplicable Absence of the Voters in the Candidate Finance Debate*, 56 HOUS. L. REV. 123, 128–29 (2018) ("First Amendment doctrine and values have influenced the development of campaign finance debates by focusing attention on the rights and roles of speakers to the detriment of concern for who is listening and what effect speech has on listeners.").

123. *See* Daniel R. Ortiz, *The Informational Interest*, 27 J.L. & POL. 663, 666–68 (2012); Abby K. Wood, *Learning from Campaign Finance Information*, 70 EMORY L.J. 1091, 1102 (2021).

124. *Citizens United*, 558 U.S. at 371.

125. *See, e.g.*, *id.* at 354–55 ("By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests.").

126. *See, e.g.*, Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077, 1138 (2014) (stating that *Citizens United* carried a "speech-based logic" rather than a "speaker-based logic"). Nevertheless, the *Citizens United* Court still ultimately prioritized the rights of the speaker above all else. For example, its decision to strike down limits on corporate and union expenditures ultimately came down to its holding that the government may not suppress speech based on the identity of the *speaker*. *See Citizens United*, 558 U.S. at 350. Thus, while some scholars have contended that *Citizens United* "focuse[d] on the interests of listeners," Kathleen M. Sullivan, *Two Concepts of Freedom of Speech*, 124 HARV. L. REV. 143, 174 (2010), it seems mistaken to conclude that the case marked a notable turn away from the Court's usual speaker-oriented approach to campaign finance.

logic."[127] The court was concerned only with the speech rights of foreign nationals wishing to engage in political advocacy. And once the court determined that such individuals lacked the same First Amendment protections enjoyed by U.S. citizens and permanent residents, it decided that the First Amendment was not a major issue in the case.[128]

3. Is Foreign Political Advocacy Regulatable? An Unanswered Question

With all this said, *Bluman* has left us with a major problem with no definitive solution. Presently, foreign nationals can spend unlimited, untraceable sums of money to flood American voters with political communications, so long as they do not use the "magic words" of express advocacy.[129] Concerns naturally abound about the degradation of democratic self-governance and the corrupting effects of big money in politics. Meanwhile, there remains no clear understanding of whether and to what degree the government can regulate the practice. This is perhaps why modern efforts to limit foreign political advocacy have been limited to a few states and localities and have focused predominately on advocacy made in connection with ballot measures[130] (which debatably falls within the realm of express advocacy).[131] With no guidance from the judiciary on how exactly restrictions on foreign political advocacy interplay with First Amendment speech rights, it is difficult to know where to begin.

This Article therefore dedicates its remainder to answering this question. Ultimately, it concludes that foreign political advocacy is indeed regulatable, though not totally prohibitable (and that, regardless, a total prohibition would be bad policy). We begin this argument with Part II, in which this Article recognizes what *Bluman* did not: that regulations on any foreign speech, including foreign political advocacy, implicate core First Amendment speech rights—namely, the right to receive speech.[132]

127. Bulman-Pozen, *supra* note 126, at 1138. As stated in the previous footnote and above, I do not believe *Citizens United* represented so much of a turn away from the Court's speaker-oriented approach to campaign finance that it should be wholly described as a "speech-based" opinion. *See supra* note 126 and accompanying text.

128. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 286–88 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

129. *See supra* notes 7–9 and accompanying text.

130. *See* Martin, *Democratic Value*, *supra* note 22, at 844–46. There have been other, more indirect regulations, such as those designed to combat dark money groups. *See, e.g.*, MONT. CODE ANN. § 13-35-237 (2023); ARIZ. ADMIN. CODE § R2-20-805(B) (2023).

131. *See* Ciara Torres-Spelliscy, *Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics After* Citizens United *and* Doe v. Reed, 27 GA. STATE U. L. REV. 1057, 1077–78 (2011).

132. This Article acknowledges the long-running debate as to whether spending on political advocacy should even qualify as speech. *See, e.g.*, Hellman, *supra* note 56, at 965–66; Ben Goad, *John*

II. THE RIGHT TO RECEIVE SPEECH

The First Amendment protects not only the freedom to speak, but also the freedom to receive speech. This notion is well-founded in both First Amendment theory and caselaw. The first two sections of Part II establish this. The final section then discusses how the right to receive speech may interplay with Americans' ability to receive communications via foreign political advocacy.

A. *The Theory*

Ask one hundred theorists about the purpose of anything and you will likely get one hundred unique answers. The First Amendment is no different in this regard. After centuries of debate and discussion, there remains no single unifying theory of the purpose of the First Amendment, including the speech rights it affords.[133] For some, the First Amendment is predominately meant to promote a "marketplace of ideas."[134] For others, it is meant to facilitate the process of democratic self-governance.[135] Despite such disagreement, however, there is an overarching theme among these theories: The First Amendment was designed to serve epistemic ends—in other words, to allow people to become more knowledgeable. And central to that purpose is the ability for people to receive the information that others are putting out into the world.[136]

Consider the self-government justification of First Amendment speech rights. The theoretical foundation for this justification starts with the basic

Paul Stevens: 'Money Is Not Speech,' THE HILL (Apr. 30, 2014, at 11:33 ET), https://thehill.com/regulation/204800-john-paul-stevens-money-is-not-speech [https://perma.cc/AZM5-A44A]. Yet, because the Supreme Court has held in the affirmative, this Article treats it as so. At the very least, the author believes that such spending can result in the spread of communications or expression.

133. David S. Ardia, *Beyond the Marketplace of Ideas: Bridging Theory and Doctrine to Promote Self-Governance*, 16 HARV. L. & POL'Y REV. 275, 279–80 (2022).

134. *See id.* at 282–85; *see also* William P. Marshall, *In Defense of the Search for Truth as a First Amendment Justification*, 30 GA. L. REV. 1, 1 (1995) ("In Speech Clause jurisprudence, . . . the oft-repeated metaphor that the First Amendment fosters a marketplace of ideas that allows truth to ultimately prevail over falsity has been virtually canonized.").

135. *See, e.g.*, Tabatha Abu El-Haj, *How the Liberal First Amendment Under-Protects Democracy*, 107 MINN. L. REV. 529, 543–45 (2022); Ashutosh Bhagwat, *The Democratic First Amendment*, 110 NW. U. L. REV. 1097, 1100–11 (2016); Robert Post, *Participatory Democracy and Free Speech*, 97 VA. L. REV. 477, 482 (2011); *see also* Jeffrey E. Thomas, Comment, *Statements of Fact, Statements of Opinion, and the First Amendment*, 74 CALIF. L. REV. 1001, 1055 (1986) (referring to "the search-for-truth theory and the self-government theory" as the "two . . . most common first amendment theories"). For a good outline of these two competing schools of thought, see School of Media and Strategic Communications, *First Amendment Theories*, OKLA. STATE UNIV. (Mar. 16, 2024), https://media.okstate.edu/faculty/jsenat/jb3163/theorists.html [https://web.archive.org/web/20240316023113/https://media.okstate.edu/faculty/jsenat/jb3163/theorists.html].

136. Indeed, in epistemic theory, competency is determined by the degree to which one understands the "state of the world." *See* ROBERT E. GOODIN & KAI SPIEKERMANN, AN EPISTEMIC THEORY OF DEMOCRACY 76–79 (2018).

premise that free speech is a necessary component of a democratic system.[137] Indeed, it is difficult to imagine how a democracy would function without the free exchange of ideas.[138] Voters and legislators cannot know how to decide a democratic question—e.g., an election—if they are not able to hear and weigh thoughts on said question.[139] Certainly, they *could* render a decision without having heard such thoughts. Yet, the aggregative outcome of that decision-making—e.g., an electoral victory—would be the equivalent of flipping a coin; people would be left to randomly select an option with no informed reasoning behind their decision. Hence, numerous First Amendment theorists have posited that our constitutional speech rights were afforded to facilitate our democratic process.[140]

From that starting point, proponents of the self-government justification have offered competing theories as to how exactly the First Amendment facilitates democracy. Many of the theories center around the importance of the listener.[141] Alexander Meiklejohn, for example, famously argued that the First Amendment exists to provide absolute protection on speech relating to public

137. *See, e.g.*, ROBERT A. DAHL, ON POLITICAL EQUALITY 16–17 (2006) ("[F]reedom of speech . . . is necessary if a democratic system is to exist."); CASS R. SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH 121–65 (1993) (contending that free speech is a "precondition" for democracy).

138. There is, of course, plenty of disagreement over whether *all* speech must necessarily be free for democracy to function. For instance, must one permit hate speech? *See* Andrew Reid, *Does Regulating Hate Speech Undermine Democratic Legitimacy? A Cautious 'No*,*'* 26 RES PUBLICA 181, 197–98 (2020). At the very least, though, there seems to be widespread agreement that speech on political issues should be covered. *See* Burson v. Freeman, 504 U.S. 191, 196 (1992) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.").

139. *See* GOODIN & SPIEKERMANN, *supra* note 136, at 61–62 ("[F]reedom of speech and opinion . . . contribute to collective correctness.").

140. Some have even suggested that self-governance is the *only* interest served by the First Amendment. *See, e.g.*, Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 20–35 (1971). *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).

141. There are, of course, others that center more around the speaker. For example, Robert Post has highlighted the importance of free speech in validating feelings of democratic participation. *See* Post, *supra* note 135, at 482 ("Democracy is achieved when those who are subject to law believe that they are also potential authors of law."). Similarly, Thomas Emerson has likened free speech to a safety valve, where people who vote for a losing candidate or ballot measure will still perceive the winning choice as legitimate because they had an opportunity to voice their opinion. *See* Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 885 (1963). This Article does not deny the merit of these theories; indeed, there can be, and likely are, multiple democratic functions the First Amendment can serve. Post has even recognized this, identifying the listener's interest to be at least an important secondary interest under the First Amendment. *See* Post, *supra* note 135, at 486. The purpose of this section is simply to showcase how the listener is a significant, often central, person within the self-government school of First Amendment theory.

matters so that voters may reach "wise decisions."[142] In other words, the First Amendment is meant to foster an informed electorate.[143] As Meiklejohn states, "The 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."[144] Thus, from a Meiklejohnian perspective, the most vital interests served by free speech are those of listeners—specifically, voters. Meiklejohn explicitly acknowledges this, stating that 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."[145] While many may regard this view as extreme, one need not adopt a fully listener-first outlook to understand its greater point: Without any audience, a speaker's speech serves no informational value within democratic society. The words simply lose any epistemic purpose they may have otherwise had.[146]

Other theorists such as Vincent Blasi have likewise identified a "checking value" in the First Amendment.[147] Under this theory, the First Amendment exists to help the electorate act as a counterweight against government wrongdoing; when people can openly speak about the misconduct of government officials, the voters can react accordingly.[148] The theory itself draws heavily from Founding-era views on the utility of speech, particularly James Madison's 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."[149] And, like the informed-voter value,[150] the checking value centers around the benefits speech provides to the listener.[151] Who, after all, does the checking? To be sure, the person reporting on government misconduct will act on their knowledge as a voter. Yet, the broader impact of

142. Meiklejohn, *supra* note 1, at 26, 37. Meiklejohn was certainly not the first to raise this point, however. *See, e.g.*, ZECHARIAH CHAFEE JR., FREE SPEECH IN THE UNITED STATES 33 (1941) (stating that the First Amendment served "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").

143. This Meiklejohnian theory of First Amendment purpose aligns with what democratic theorists call epistemic democracy. *See* GOODIN & SPIEKERMANN, *supra* note 136, at 70–71 (discussing how the spread of ideas can result in a more competent electorate).

144. Meiklejohn, *supra* note 1, at 75.

145. *Id.* at 26.

146. To analogize a famous philosophical question: If a person speaks in a forest and no one is around to hear it, did they engage in speech? Subscribers to the Meiklejohnian informed-voter theory may say no.

147. Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. BAR FOUND. RSCH. J. 521, 528 (1977).

148. *See id.* at 527.

149. *Id.* at 536; *see also* JAMES MADISON, REPORT ON THE ALIEN AND SEDITION ACTS (1800), *reprinted in* JAMES MADISON: WRITINGS 652–53 (Jack N. Rakove ed., 1999).

150. *See supra* notes 142–46 and accompanying text.

151. *See* Blasi, *supra* note 147, at 558 (stating that the checking value 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").

their reporting is how it sways the democratic decisions of the larger audience that hears it. The listeners are the checkers.

Listener-oriented speech rights are not exclusive to self-government theories of the First Amendment, of course. The marketplace-of-ideas theory—which has been widely adopted within the judiciary[152]—also places heavy emphasis on the listener's interest. To start, the marketplace-of-ideas theory views truth-seeking as the ultimate goal of speech rights; the more ideas put out into society, the greater likelihood the "truth" will be ascertained.[153] As scholars have noted, this concept seems to rely "largely on expression's instrumental value to listeners," as opposed to just speakers.[154] Certainly, the speaker benefits from an open marketplace, in that they get to spread their message to more people. At the same time, who is realizing the truth within this marketplace? Those who receive the speech. One may liken this to antitrust law, in which the primary concern in fostering a competitive marketplace, at least from the judiciary's perspective, has been that of consumer welfare.[155] In the marketplace of ideas, the listener is the consumer, whose welfare diminishes when they have less access to speech and, in turn, truth.

Furthermore, one need not necessarily consider the First Amendment's *purpose* to deduce the existence of listener speech rights. Instead, one could simply look to the *text*: "Congress shall make no law . . . abridging the freedom of speech."[156] As noted above, the text crucially says "speech," not "speakers."[157] Several scholars and jurists alike have interpreted this choice of language to mean that the Speech Clause's protection is not exclusive to the rights of the

152. *See, e.g.*, Davis v. FEC, 554 U.S. 724, 755–56 (2008) ("[I]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market.") (quoting Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969)).

153. *See* Erica Goldberg, *First Amendment Contradictions and Pathologies in Discourse*, 64 ARIZ. L. REV. 307, 330 (2022). This differs somewhat from the various identified goals of the self-government theory discussed earlier. For self-government proponents, the realization of truth is meant to serve some democratic function, such as making the "correct" democratic decisions. For marketplace-of-ideas proponents, truth-seeking in and of itself appears to be the goal, regardless of how it is used.

154. Tori M. Massaro & Helen Norton, *Free Speech and Democracy: A Primer for Twenty-First Century Reformers*, 54 U.C. DAVIS L. REV. 1631, 1658 (2021).

155. *See* Lina M. Khan, Note, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710, 737 (2017) ("Protecting these long-term interests requires a much thicker conception of 'consumer welfare' than what guides the current approach."); Sandeep Vaheesan, *The Evolving Populisms of Antitrust*, 93 NEB. L. REV. 370, 405 (2014); John B. Kirkwood & Robert H. Lande, *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency*, 84 NOTRE DAME L. REV. 191, 211–12 (2008).

156. U.S. CONST. amend. I.

157. *See supra* note 118 and accompanying text.

speaker.[158] To the contrary, it takes two to tango: speech demands a speaker to communicate it and a listener to receive and process it.[159]

Overall, there is strong theoretical support for the notion that First Amendment speech rights include a right to receive. Some theorists even regard the listener's interest as paramount.[160] While this Article does not take that strong a position, it does contend that there are numerous theoretical foundations for the right to receive speech. The next question, then, is whether the judiciary has actually recognized this right. As the following section shows, despite U.S. campaign finance jurisprudence's general disregard of listener interests, the right to receive speech has been well-documented in the caselaw for decades.

B. *The Caselaw*

The right to receive speech is not just a theoretical concept. Rather, over the past century, it has developed into a recognized right within the judiciary. Beginning in the 1940s, the Supreme Court started to acknowledge such a right as going hand-in-hand with the right to speak. In *Martin v. City of Struthers*,[161] for instance, the Court confronted a local ordinance that prohibited individuals from going door-to-door to distribute flyers.[162] Invalidating the ordinance, the Court explicitly stated that the freedom of speech both "embraces the right to distribute literature" and "necessarily protects the right to receive it."[163] Five years later, four justices of the Court reinforced this notion in a case involving labor union publications.[164] Specifically, in a concurrence, Justice Rutledge—joined by three other justices—wrote that First Amendment rights "involve the

158. *See, e.g.*, Citizens United v. FEC, 558 U.S. 310, 392 (2010) (Scalia, J., concurring); Douek & Lakier, *supra* note 35 ("This is one reason why throughout this post we focus on the constitutional status of foreign *speech*, not foreign *speakers*."). Admittedly, when Justice Scalia harped on this point in his *Citizens United* concurrence, he was trying to argue that corporate speech is just as protected as speech made by individual speakers. *See Citizens United*, 558 U.S. at 392–93 (Scalia, J., concurring) ("[The First Amendment's] text offers no foothold for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals . . . ."). Still, his overall point was that speech is a broader concept not synonymous with speaker expression.

159. *See* Grimmelmann, *supra* note 26, at 379. Indeed, one of Merriam-Webster's many definitions of "speech" is the "*exchange* of spoken words." *Speech*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/speech [https://perma.cc/UBK6-NTLH] (emphasis added).

160. *See, e.g.*, Meiklejohn, *supra* note 1, at 26.

161. 319 U.S. 141 (1943).

162. *Id.* at 142.

163. *Id.* at 143. The opinion further reads that "[f]reedom to distribute information to every citizen wherever he desires to *receive* it is so clearly vital to the preservation of a free society that . . . it must be fully preserved." *Id.* at 146–47 (emphasis added).

164. *See* United States v. Cong. of Indus. Orgs., 335 U.S. 106, 108–09 (1948).

right to *hear* as well as to speak,"[165] thus further demonstrating an express recognition of a right to receive speech.

While these cases involved the receipt of speech from domestic speakers, the Court has seemingly extended the right to the receipt of *foreign* speech as well. Indeed, the Court first observed the existence of a right to receive foreign speech in the 1960s case *Lamont v. Postmaster General*,[166] in which the Court reviewed a federal law requiring the government to detain any "communist political propaganda" originating from a foreign country.[167] Striking down the law, the Court found it to be "a limitation on the unfettered exercise of the *addressee's* First Amendment rights," the addressee being the domestic recipient of the propaganda.[168] Writing in even clearer terms, Justice Brennan stated in a concurrence that "the right to receive publications is . . . a fundamental right."[169] The Court thus signaled that the right to receive speech holds strong regardless of whether the speaker resides within or outside the United States.[170]

The Court continued to affirm the right to receive speech throughout the 20th century and into the 21st century. In *Griswold v. Connecticut*,[171] the Court stated plainly 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."[172] Furthermore, in a 1969 case involving radio communications, the Court invoked a First Amendment "right of . . . listeners."[173] Thirteen years later, the Court acknowledged a "right of access . . . embodied in the First Amendment" upon striking down a state law prohibiting entry into the courtroom during certain witness testimony.[174] More recently, in 2006, the Court found First Amendment interests implicated in a case involving limitations on prisoners' access to reading materials.[175] And in 2025, the Court seemingly acknowledged that the federal TikTok ban implicated a right to receive speech (though ultimately upheld the ban under a governmental interest in protecting national security), a recognition of a continued right to receive in our digital age.[176] As

165. *Id.* at 144 (Rutledge, J., concurring) (emphasis added).

166. 381 U.S. 301 (1965).

167. *Id.* at 302–03.

168. *Id.* at 305 (emphasis added).

169. *Id.* at 308 (Brennan, J., concurring).

170. *See* Thai, *supra* note 28, at 280 (stating that *Lamont* "made clear that the right . . . also extends to information and ideas disseminated by speakers abroad"); Douek & Lakier, *supra* note 35 (stating that *Lamont* established a "robust protection for foreign speech"); Massaro, *supra* note 21, at 682–85 (discussing *Lamont* in the context of the right to receive speech).

171. 381 U.S. 479 (1965).

172. *Id.* at 482.

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

174. Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603–06, 610–11 (1982).

175. *See* Beard v. Banks, 548 U.S. 521, 527–28 (2006). The Court ultimately upheld the limitations, finding them reasonably related to legitimate penological interests. *See id.* at 530–33, 536.

176. *See* TikTok Inc. v. Garland, 145 S. Ct. 57, 66, 72 (2025) (per curiam).

these cases show, the right to receive speech has maintained recognition in the Court's eyes over the decades.

The lower courts have further developed the right to receive speech, providing clarity on when one may invoke it. Take, for example, the Seventh Circuit, which acknowledges that "[w]hen one person has a right to speak, others hold a reciprocal right to receive the speech."[177] At the same time, the appellate court has stated that the "right to receive . . . presupposes a willing speaker."[178] Accordingly, for one to claim a right to receive, they must demonstrate "the existence of a willing speaker" from whom they would receive speech.[179] Numerous other circuit and district courts have also adopted this standard.[180]

The incorporation of the right to receive speech in First Amendment doctrine showcases, at a minimum, some degree of adoption of a listener-oriented approach to speech rights.[181] Yet, despite this, campaign finance doctrine remains largely silent on listener rights. The one exception, as noted earlier, may be in cases involving disclosure requirements, where the Court has emphasized the "informational interest" that campaign disclosures provide for the public.[182] In such cases, the Court generally favors the listener's interest in reading disclosure reports over the reporter's interest in not publishing them. Nevertheless, these cases are ultimately discussed in the context of listeners receiving *compelled* speech, rather than speech from willing speakers—it is therefore unclear whether the "informational interest" can truly be described as a First Amendment interest rather than an interest derived from more general democratic principles. One can find a benefit in informing voters without believing that said voters have a First Amendment right to receive information that no one has willingly disclosed.

Regardless, existing caselaw on the right to receive speech suggests that such a right must exist in the campaign finance sphere: If political spenders have First Amendment interests in making expenditures to fund communications, surely First Amendment interests are present on the other end. What does this mean for foreign political advocacy? The final section of this Part ponders this question.

177. ACLU of Ill. v. Alvarez, 679 F.3d 583, 592 (7th Cir. 2012) (internal quotation marks omitted) (quoting Ind. Right to Life, Inc. v. Shepard, 507 F.3d 545, 549 (7th Cir. 2007)).

178. *Id.* (internal quotation marks omitted) (quoting Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 756 (1976)).

179. *Ind. Right to Life, Inc.*, 507 F.3d at 549 (internal quotation marks and citation omitted).

180. *See, e.g.*, Pa. Fam. Inst., Inc. v. Black, 489 F.3d 156, 165 (3d Cir. 2007) (per curiam); Bank v. N.Y. State Dep't of Agric. & Mkts., No. 21-CV-642, 2022 WL 293812, at *4 (N.D.N.Y. Feb. 1, 2022); United States v. Dimasi, No. 09-10166, 2011 WL 915349, at *3 (D. Mass. Mar. 16, 2011).

181. Of course, the judiciary is far from some radical Meiklejohnian institution, as it still gives much greater attention to speaker interests than listener interests. *See* Meiklejohn, *supra* note 1, at 26.

182. *See supra* notes 123–24 and accompanying text.

C. *An Extension to Foreign Political Advocacy?*

When foreign nationals make advocacy expenditures or donate to groups that engage in such advocacy, they are ultimately funding political communications intended to reach the American public. Despite this, when it comes to express advocacy, the *Bluman* court has said that such spending does not implicate serious First Amendment concerns unless the foreign national is a permanent U.S. resident.[183] Should this holding extend to political advocacy more broadly? As the previous section shows, such an inquiry cannot be limited to the foreign speaker, who typically has little to no First Amendment protection.[184] Instead, it is also essential to ask what *Bluman* did not: Do Americans have a First Amendment right to receive foreign political advocacy?

The answer hinges upon a few considerations. First, are there willing speakers?[185] It appears so. At the very least, *Bluman* shows that *some* foreign nationals have a desire to partake in spending to influence political discourse.[186] Of course, it is hard to gauge the exact extent to which foreign nationals are willing to "speak" to Americans via political communications, both because express-advocacy communications are prohibited and issue-advocacy communications evade disclosure requirements.[187] At the same time, there are many instances of foreign entities making political expenditures in connection with state and local ballot measures, illustrating an appetite for spreading political communications to Americans on democratic decisions that some foreign nationals may feel affect them.[188]

The next question is then whether, for First Amendment purposes, it matters if the received speech comes from foreign nationals rather than U.S. citizens or permanent residents. As noted earlier, the *Lamont* case would suggest that the right to receive speech exists regardless of speech origin: the recipient

183. *See* Bluman v. FEC, 800 F. Supp. 2d 281, 286–87 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

184. *See* Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 140 S. Ct. 2082, 2086 (2020) ("[I]t is long settled as a matter of American constitutional law that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution."); Hayward & Vile, *supra* note 19. *But see* Douek & Lakier, *supra* note 35 ("The idea that foreigners can be treated as second-class speakers . . . is not sound as a matter of doctrine.").

185. *See supra* notes 178–80 and accompanying text.

186. *See supra* note 72.

187. Diehm et al., *supra* note 58, at 3–4.

188. *See, e.g.*, Ringhand, *supra* note 101, at 898 (Australian company/Montana referendum); 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 [https://perma.cc/LU7N-89FN (staff-uploaded, dark archive)] (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 [https://perma.cc/6DLR-G8AN] (Luxembourgish company/Los Angeles ballot initiative).

of communist political propaganda still had a First Amendment right to receive it even if it came from overseas.[189] *Citizens United* further bolstered this argument by holding that "the First Amendment generally prohibits the suppression of political speech based on the speaker's identity."[190] Of course, the *Citizens United* Court was considering the speaker rights of domestic speakers when it stated this. Still, the principle seems transferable to the right to receive speech: One's right should not be subject to different standards depending on the national *identity* of the speaker from whom one receives speech. To hold otherwise would, as Professor Toni Massaro puts it, "ignore the internal logic of *Citizens United*."[191]

Based on these two factors, restrictions on foreign political advocacy would seem to implicate a constitutional right to receive speech.[192] If this is the case, however, further questions abound.[193] First and foremost, could the government still justify restrictions on foreign political advocacy in light of this constitutional listeners' interest? The *Bluman* court, after all, upheld a prohibition on foreign-funded *express* advocacy by citing a compelling interest in preserving American democratic self-governance.[194] Could this interest extend to foreign political advocacy more broadly? And if so, to what degree could such restrictions be justified? Does foreign political advocacy raise enough concerns about the undermining of self-government to merit a total prohibition? Or are more nuanced restrictions warranted?

189. *See* Lamont v. Postmaster Gen., 381 U.S. 301, 305 (1965).

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

191. Massaro, *supra* note 21, at 666.

192. This claim itself may raise questions about how one achieves standing in a right-to-receive case. Specifically, what is the injury? This question falls somewhat out of this Article's purview, as it is primarily concerned with exploring how courts would decide this issue on its merits. Yet, in brief, a critical prerequisite would seem to be the need for a "willing speaker." *See supra* notes 178–80 and accompanying text. So, in instances of foreign political advocacy, a plaintiff would need to demonstrate that a foreign national was willingly directing speech toward the plaintiff. Would the plaintiff also need to demonstrate that they intentionally sought out the speech? Right-to-receive doctrine appears not to have directly answered this question, though the answer may be no. In *Lamont*, for example, the plaintiff received *unsolicited* mail, yet the Court still recognized his right to receive. *See* Lamont v. Postmaster Gen., 229 F. Supp. 913, 916 (S.D.N.Y. 1964), *rev'd*, 381 U.S. 301 (1965). Critics may argue that this creates too broad grounds for asserting injury. At the same time, courts routinely apply more lenient standing requirements in right-to-*speak* cases. *See* Jennifer L. Bruneau, Comment, *Injury-in-Fact in Chilling Effect Challenges to Public University Speech Codes*, 64 CATH. U. L. REV. 975, 993 (2015). Perhaps the same treatment is warranted in right-to-receive cases.

193. An additional question may arise about foreign donations to domestic issue-advocacy groups—namely, where is the burden on the right to receive foreign speech? Indeed, the burden is admittedly more indirect than that of regulations on direct foreign expenditures in advocacy. Even if the right to receive were inapplicable, though, dollar limits on foreign donations to issue-advocacy groups would likely still implicate the *speaker* rights of such groups by burdening their ability to raise funds needed to engage in advocacy. *Cf.* Randall v. Sorrell, 548 U.S. 230, 236, 247 (2006) (plurality opinion) (applying the same logic to limits on individual contributions to candidate committees).

194. Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012).

Part III grapples with this question. Specifically, it identifies a tension between two tenets of American democratic self-government that make it difficult to fully ascertain where foreign political advocacy might fall within it: On the one hand, foreign political advocacy may, at a certain level, erode at our traditional model of the American demos that is bound to national principles. At the same time, foreign political advocacy may advance certain epistemic goals in our democratic decision-making by informing voters of foreign perspectives on our politics. How do we work through this balance? The next part offers some considerations.

III. AN UNCLEAR SELF-GOVERNMENT INTEREST

Suppose that restricting foreign political advocacy implicates fundamental First Amendment rights. What can the government do, if anything, to regulate the practice? The natural starting place is *Bluman*. Indeed, recall that the *Bluman* court declared the government to have a compelling interest "for purposes of First Amendment analysis 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."[195] Could the government successfully assert this interest to justify the regulation of foreign political advocacy? As the first section below argues, it is certainly plausible given foreign political advocacy's potential ability to usurp control over the political process from the American demos.

Yet, as the next section contends, there are competing democratic values potentially at issue here. While foreign political advocacy may undermine self-government if too prevalent, one could argue that, at more limited levels, receiving foreign political communications provides an epistemic benefit to democratic society. Namely, it could help American voters better understand how their decisions affect noncitizens, thus giving them greater knowledge of the state of the world and, in turn, greater ability to make competent, well-informed democratic decisions. This theoretical argument, of course, presumes that foreign political advocacy would actually bring with it some net epistemic value rather than a torrent of misinformation and disinformation.

Such an objective value is difficult, if not impossible, to precisely measure. This does not, however, mean that there are no means of assessing whether foreign political advocacy may, at the very least, play some informative role in democratic society. Indeed, if self-government is the concern, one can turn to the self-governors themselves—that is, the voters—to ascertain whether and to what extent they value and internalize information received via foreign political advocacy. Accordingly, the penultimate section analyzes whether American voters will *actually* factor foreign political advocacy into their democratic

195. *Id.*

decisions. Specifically, the section examines a survey study I designed to gauge voting-age Americans' interest in receiving information via foreign-funded political communications. Though only one survey, its results interestingly suggest that voting-age Americans may place moderate value on receiving foreign political advocacy, to the same extent that they value domestically funded advocacy. As the final section then argues, these results suggest that we should caution against placing a total bar on foreign political advocacy, and instead institute more nuanced restrictions that account for these competing interests.

A. *Preserving the Bounds of the Demos*

The United States has traditionally defined its demos—the "people" of a democracy—by national principles. That is, we define our demos in terms of citizenship, and, to some extent, territory.[196] This is due in large part to our constitutional design. The suffrage amendments refer to voting as a "right of citizens of the United States."[197] Articles One and Two prohibit noncitizens from holding elected federal office.[198] Furthermore, state constitutions often explicitly prohibit noncitizens from voting.[199] Even internally, in terms of how legislative representation is structured, American self-government can be described as, as Professor David Fontana notes, "geographic," where "[c]itizens in different places [are] believed to constitute different political communities because . . . [they are] in different places."[200]

196. While one must presently be a citizen of the United States to vote in federal elections and, in most cases, a citizen of a state or locality to vote in their elections, some localities have extended suffrage to permanent noncitizen residents who live within their territory. *See Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEDIA, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States [https://perma.cc/UL6B-FVWT]. Moreover, for what it is worth, the United States allows permanent noncitizen residents to partake in campaign finance. *See* 52 U.S.C. § 30121(b)(2) (2024) (carving out exception to ban on foreign spending for permanent residents).

One may note that nothing in the Constitution specifically limits participation in federal elections to citizens. Indeed, voter qualifications for congressional elections and presidential elections are set by the states themselves. *See* U.S. CONST. art. I, § 2, cl. 3; *id.* art. II, § 1, cl. 2; *id.* amend. XVII. A state could theoretically design its voter qualification laws in a way that allows noncitizens to vote in federal elections. Nevertheless, no state presently grants suffrage to noncitizens. *See Laws Permitting Noncitizens to Vote in the United States*, *supra*. Accordingly, federal election participation is for all intents and purposes limited to citizens.

197. U.S. CONST. amend. XV, § 1; *id.* amend. XIX; *id.* amend. XXVI, § 1.

198. U.S. CONST. art. 1, §§ 2–3 (House and Senate seats); *id.* art. 2, § 1 (President).

199. As one recent example, the New York Court of Appeals invalidated a New York City law permitting its lawful permanent residents to vote in municipal elections, citing a provision in the New York Constitution as limiting the right to vote within the state to citizens. *See* Fossella v. Adams, No. 15, 2025 WL 864620, slip op. at *1, *4–6 (N.Y. Mar. 20, 2025).

200. David Fontana, *The Geography of Campaign Finance Law*, 90 S. CAL. L. REV. 1247, 1253–58 (2017) (emphasis omitted). The United States is far from alone in having a nationally defined demos. As David Beetham notes, "the *demos* that is democracy's subject has come to be defined almost

Thus, noncitizens who do not permanently reside within the United States decidedly fall outside the American demos, or what the *Bluman* court calls the "American political community."[201] This is, indeed, precisely why the *Bluman* court upheld BCRA's prohibitions against foreign contributions and foreign-funded express advocacy.[202] To permit foreign nationals to engage in these practices to *any* degree would arguably place them on equal grounds with the American demos. Indeed, it is no secret that direct monetary support to candidates increases their chances of winning an election.[203] Allowing foreign nationals to exercise any such firsthand control over U.S. electoral outcomes would consequently undermine the traditional, nationally defined bounds of the American demos.[204]

The big question, though, is whether this logic can extend to foreign political advocacy more broadly. Can the government, say, place dollar limits on foreign-funded issue advocacy designed to influence elections under the rationale that such advocacy from abroad can threaten the demos' ability to self-govern? To begin, it is necessary to ask whether issue advocacy can potentially qualify as an activity of self-government. The answer would appear to be yes. Sharing thoughts on political issues and hearing others' thoughts on them is, after all, how voters collectively choose which democratic decisions they should or should not make. This is true not only of "direct advocacy of candidates and measures," as Professor Eugene Volokh notes, "but also [of] issue advocacy

exclusively in national terms, and the scope of democratic rights has been limited to the bounds of the nation-state." DAVID BEETHAM, DEMOCRACY AND HUMAN RIGHTS 137 (1999). There are, of course, democratic theories that proffer broader boundaries for the demos. *See* Sarah Song, *The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State*, 4 INT'L THEORY 39, 49–54 (2012) (overviewing different ways of defining the demos). Nevertheless, the American demos has, for the most part, been defined by nationality throughout our history. *See supra* notes 196–99 and accompanying text.

201. Bluman v. FEC, 800 F. Supp. 2d 281, 286 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012). Meanwhile, courts seemingly view permanent residents as falling within the American political community. In a recent district court opinion, for instance, in striking down an Ohio law prohibiting permanent residents from partaking in campaign finance, the court noted how lawful permanent residents have a long history of contributing to American society, including fighting and dying for the country. *See* OPAWL—Bldg. AAPI Feminist Leadership v. Yost, 747 F. Supp. 3d 1065, 1088 (S.D. Ohio 2024).

202. *See Bluman*, 800 F. Supp. 2d at 291–92.

203. *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 ECON. 167, 185 (2022); Thomas Ferguson, Paul Jorgensen & Jie Chen, *How Money Drives US Congressional Elections: Linear Models of Money and Outcomes*, 61 STRUCTURAL CHANGE & ECON. DYNAMICS 527, 531–32 (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 [https://perma.cc/N4TD-MYFL].

204. *See supra* notes 196–200 and accompanying text.

more broadly."[205] This rings especially true for issue advocacy that nears the threshold of express advocacy, made with clear intentions of influencing voter behavior.[206] Advocating for, say, laws to increase military aid to a foreign nation would be an activity related to self-government.

And when such activity reaches a certain level, it threatens to reduce the American demos' control over its system of self-governance. While the precise level is unquantifiable, one can imagine an extreme situation where over half of all spending on issue advocacy in the United States is funded by foreign nationals. In such a situation, political narratives would be driven to a great degree by foreign nationals. At that point, would the political process remain fully in people's hands? This is not necessarily a far-fetched scenario, either. In a 2021 Maine ballot initiative, for instance, one Canadian company's spending comprised approximately 20% of all expenditures made in connection with the initiative.[207] Moreover, foreign donations to politically active nonprofits are estimated to be in the hundreds of millions of dollars.[208] One Swiss billionaire was recently found to have donated more than $200 million since 2016 to nonprofits furthering Democratic causes.[209] Such massive influence over communications about political issues, and in turn influence over how Americans vote, would seem to justify placing at least some restrictions on foreign-funded issue advocacy in the name of preserving American democratic self-government.

Yet, could the government impose a wholesale *prohibition* on such issue advocacy? The answer remains unclear, though there is good reason to believe it is no. For one, while the lines between express advocacy and issue advocacy are often blurred, the distinction is not entirely folly. Express advocacy always acts as a direct form of participation in the political process, as each instance of express advocacy is made with the clearest, most unequivocal intention of aiding a specific electoral candidate. Meanwhile, issue advocacy is often something less than that. It can range from naming a candidate sans magic words of "support"

205. Eugene Volokh, *Should the Law Limit Private-Employer-Imposed Speech Restrictions?*, 2 J. FREE SPEECH L. 269, 289 (2022); *see also* Mazo, *Our Campaign Finance Nationalism*, *supra* note 6, at 814 (equating issue advocacy to "influenc[ing] elections").

206. *See supra* notes 113–15 and accompanying text.

207. *See Maine Question 1, Electric Transmission Line Restrictions and Legislative Approval Initiative (2021)*, BALLOTPEDIA, https://ballotpedia.org/Maine_Question_1,_Electric_Transmission_Line_Restrictions_and_Legislative_Approval_Initiative_(2021) [https://perma.cc/Y8A5-BTKH] (noting that Hydro-Québec Maine Partnership's expenditures were about $22 million out of a total of about $98.65 million spent).

208. Ciara Torres-Spelliscy, *An Insidious Foreign Dark Money Threat*, BRENNAN CTR. FOR JUST. (Jan 19, 2019), https://www.brennancenter.org/our-work/analysis-opinion/insidious-foreign-dark-money-threat [https://perma.cc/GUA6-RV62].

209. *See* Press Release, Frank LaRose, Ohio Sec'y of State, LaRose to Ohio House: Ban Foreign Influence over Ohio's Elections (May 9, 2024), https://www.ohiosos.gov/media-center/press-releases/2024/2024--5-09 [https://perma.cc/6YP3-F7KP (staff-uploaded archive)].

or "oppose," to advocating for lower taxes, to trying to raise support for better mental health programs.

Thus, at a minimum, prohibiting all forms of foreign-funded issue advocacy to protect self-governance would seem too overinclusive a law.[210] Even for more politically charged issue advocacy, the level of participation still seems lower than that of express advocacy to a point where the government's compelling self-government interest may only justify moderate restrictions instead of a total prohibition.[211]

Furthermore, there is a potential competing principle at play here. While maintaining the demos' control over the political process is crucial to American democratic self-government, there is another vital tenet as well: the need for a well-informed electorate. As the next section contends, the success of a system of self-governance hinges upon having voters who are knowledgeable about the state of the world. This necessitates a free flow of information from a range of sources, including noncitizens who may have unique perspectives on U.S. democratic decision-making. Thus, receiving foreign political advocacy may arguably be an "activit[y] of American democratic self-government" that the government has an interest in partially permitting rather than fully blocking.[212]

B. *An (Objective) Epistemic Value?*

The ability to receive speech is not simply a constitutional right, but also a core tenet of American democratic self-government. Why is this? To start, it must be recognized that American democracy—be it on the federal, state, or local level—operates under an aggregative model of decision-making.[213] That is, we prioritize the aggregation of political opinions—i.e., the tallying of votes—as a means of making democratic decisions.[214] The most common example of this is elections. Contrasting with more deliberative forms of decision-making,

210. Indeed, in providing model statutory language for regulating foreign political advocacy, I try to cover only instances of advocacy designed to influence our lawmaking or indirectly impact electoral outcomes. *See infra* note 290 and accompanying text.

211. Recall that the government's compelling interest here is to "prevent[] foreign influence over the U.S. political process." Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge panel), *aff'd*, 565 U.S. 1104 (2012). Thus, if it only takes defined limitations rather than a complete prohibition to prevent foreign political advocacy from reaching a point that it unduly influences our political process, prohibition would seemingly be not narrowly tailored enough a remedy to pass constitutional muster.

212. *See id.*

213. Ammar Maleki & Frank Hendriks, *Contestation and Participation: Operationalizing and Mapping Democratic Models for 80 Electoral Democracies, 1990–2009*, 51 ACTA POLITICA 237, 252–53 (2016).

214. James A. Gardner, *Election Law and Democratic Theory*, *in* THE OXFORD HANDBOOK OF AMERICAN ELECTION LAW 49, 54 (Eugene D. Mazo ed., 2024); Juan Perote-Peña & Ashley Piggins, *A Model of Deliberative and Aggregative Democracy*, 31 ECON. & PHIL. 93, 93 (2015).

where reciprocal deliberation is required for a decision to be just,[215] aggregative democracies use the vote itself as a means of legitimizing their decisions. As aggregative democrats argue, the mass aggregation of private interests and preferences culminates, on average, in the best decisions for society.[216]

This theory, nevertheless, operates under a crucial assumption: that the average voter possesses enough of an understanding of the "state of the world" to vote in a competent manner. Without this, voters will be unable to collectively achieve the best democratic decisions.[217] What, then, is the best way to ensure voter competency? It requires, in part, the free flow of speech and opinion, which, as Robert Goodin and Kai Spiekermann note, "contribute[s] to collective correctness."[218] As discussed earlier, this is, by many accounts, the reason the First Amendment exists in the first place—to ensure that Americans make well-informed choices.[219] This is not a uniquely American concept, of course. Many democratic theorists recognize the free flow of information as a fundamental condition for achieving "correct" democratic decisions.[220] The alternative is to render decisions based on ignorance, which leaves the utility of decisions up to, at best, chance.

So where does foreign political advocacy fit into this? Quite simply, hearing foreign perspectives on U.S. politics can improve voter knowledge and, in turn, competency. Indeed, part of knowing the "state of the world" is knowing how democratic decisions will impact others. And a great many decisions made in the United States, in fact, have effects that extend well beyond its demos onto foreign nationals living both within and outside the country—decisions on issues like climate policy, immigration, trade, and

215. *See* AMY GUTMANN & DENNIS THOMPSON, WHY DELIBERATIVE DEMOCRACY? 3–7 (2004) (providing an overview of deliberative democracy).

216. *See* Clarissa Rile Hayward, *What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance*, 39 POL. THEORY 468, 472–73 (2011).

217. *See* GOODIN & SPIEKERMANN, *supra* note 136, at 77–79.

218. *Id.* at 62. Modern scholarship has also identified diversity as another necessary condition for making the best decisions. *See* Joy Milligan & Bertrall L. Ross II, *We (Who Are Not) the People: Interpreting the Undemocratic Constitution*, 102 TEX. L. REV. 305, 355 (2023). One could argue that foreign political advocacy helps inject national diversity into American political discussions, thus improving voter competence.

219. *See supra* notes 141–51 and accompanying text.

220. *See* GOODIN & SPIEKERMANN, *supra* note 136, at 77–79; Joshua Cohen, *Procedure and Substance in Deliberative Democracy*, *in* DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL 95, 98 (Seyla Benhabib ed., 1996) (discussing how aggregative democratic decision-making "requires a framework of rights of participation, association, and expression"). This concept stems in part from Condorcet's jury theorem ("CJT"), though the CJT in its original form requires unconditional independence—voters cannot be influenced by outside information. *See Jury Theorems*, STAN. ENCYCLOPEDIA OF PHIL. (Nov. 17, 2021), https://plato.stanford.edu/entries/jury-theorems/#CondJuryTheo [https://perma.cc/5D5R-4ME3 (staff-uploaded archive)]. Yet, more modern renditions of the CJT have recognized the necessity of speech and association in arriving at the best decisions. *See id.*

military aid.[221] These "democratic externalities," as theorists call them,[222] are, of course, unavoidable in a world with borders. At the same time, voters still benefit from learning about the cross-border impacts of their decisions so that they may cast their votes in the most well-informed manner possible.[223] Foreign political advocacy can contribute to this.[224]

One may, nevertheless, question whether funded political communications actually bring objective epistemic value to the electorate. Political ads are certainly not an *ideal* means through which to obtain political information. As Professors Barbara Allen and Daniel Stevens note, political ads "are fundamental tools in the art of persuasion, and [sponsors] cannot be expected to expand upon and qualify their claims in order to provide the fullest possible context for the public to digest. Nor would that be possible in 30 seconds."[225] Yet the reality is that most Americans get their political news via social media platforms, news websites, or television—all of which are inundated with advertisements and paid, promoted content.[226] Thus, foreign political advocacy would appear no less informative than the status quo.

A related concern, however, is that foreign political advocacy may not only have little informative value, but may go one step further and misinform, or even disinform, its recipients.[227] From an epistemic perspective, this is a

221. *See supra* note 36 and accompanying text.

222. *See, e.g.*, Bellamy, *supra* note 102, at 663, 664 tbl. 34.1; 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).

223. This does not necessarily mean that one must vote the way foreign nationals in an impacted area want one to vote. Rather, it simply means that one must account for their concerns in arriving at one's democratic decisions. This helps a society internalize its democratic externalities. *See* ROBERT D. COOTER & MICHAEL D. GILBERT, PUBLIC LAW AND ECONOMICS 66–67 (2022); Martin, *Democratic Value*, *supra* note 22, at 834–38.

224. This point seems especially pertinent when Americans have routinely demonstrated a lack of knowledge of global issues. *See Americans Lack Knowledge of International Issues Yet Consider Them Important, Finds New Survey*, COUNCIL ON FOREIGN RELS. (Dec. 5, 2019, at 07:00 ET), https://www.cfr.org/news-releases/americans-lack-knowledge-international-issues-yet-consider-them-important-finds-new [https://perma.cc/JF8Z-35WB]. *See generally* 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 [https://perma.cc/CUG4-ZTYZ] (quantifying what Americans know about international affairs).

225. BARBARA ALLEN & DANIEL STEVENS, TRUTH IN ADVERTISING?: LIES IN POLITICAL ADVERTISING AND HOW THEY AFFECT THE ELECTORATE 9 (2019).

226. Amy Mitchell, Mark Jurkowitz, J. Baxter Oliphant & Elisa Shearer, *Demographics of Americans Who Get Most of Their Political News from Social Media*, PEW RSCH. CTR. (July 30, 2020), https://www.pewresearch.org/journalism/2020/07/30/demographics-of-americans-who-get-most-of-their-political-news-from-social-media [https://perma.cc/6P2T-2VLB].

227. 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.

legitimate concern, as voters are less able to make good decisions based on false premises.[228] Nevertheless, it is tough to quantify the extent to which foreign political advocacy would actually misinform or disinform Americans.

There are, in fact, examples of what we may call "higher-value" foreign political advocacy. For instance, in a recent ballot initiative campaign in Maine about whether to block an electricity transmission corridor between Maine and Canada, a Canadian energy company put out promoted content on social media that included messages such as:

> Hydro-Québec will accelerate payments within the approved $258 million Clean Energy Corridor financial benefits package for Maine. This will bring Maine millions of dollars in rate relief and investments toward broadband and electric vehicle infrastructure as early as fall 2020—two years ahead of schedule.[229]

While only a couple sentences, the message appears factual, informative, and measured. Provided its sponsor was disclosed (it was in this case),[230] this message surely offered *some* value to Maine voters, even if they ultimately rejected the argument and voted to block the corridor.[231]

Not every instance of foreign political advocacy, however, falls within this "higher-value" camp. Many are inflammatory, polarizing, and plainly false, designed to play on voters' emotions and partisan biases rather than to inform. Many will remember Russia's use of online ads during the 2016 U.S. presidential election to sow discord among Americans. Hundreds of thousands of dollars were spent on content aimed at promoting division. For example, one Kremlin-funded Facebook post read, "Hillary Clinton is the co-author of Obama's anti-police and anti-Constitutional propaganda."[232] Clearly prioritizing provocation over information, most would agree that such examples of foreign political advocacy bring little epistemic benefit to the electorate.

To what extent does this matter? That is, does the existence of some unquantifiable, but nevertheless troubling, amount of

Foreign Influence Operations and Disinformation, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Feb. 8, 2025), https://www.cisa.gov/topics/election-security/foreign-influence-operations-and-disinformation [https://web.archive.org/web/20250208001448/https://www.cisa.gov/topics/election-security/foreign-influence-operations-and-disinformation].

228. *See* GOODIN & SPIEKERMANN, *supra* note 136, at 94 (acknowledging the negative impact of confirmation bias upon the electorate's political actions).

229. Side by Side for Good, FACEBOOK (July 21, 2020), https://www.facebook.com/hydroquebeccleanenergy/posts/pfbid0vT8cj1f4kGfmDp6wq7Zx5xTLcvkfgdh2aA393AS5S4KUGLnLjoQZSHrPqDjGEiPPl?locale=hi_IN [https://perma.cc/2SB6-K8QB (staff-uploaded archive)].

230. *See infra* Section IV.C (discussing the informational value of disclosure to voters).

231. Indeed, studies have shown that political ads can provide a genuine informational benefit to voters, especially politically aware ones. *See, e.g.*, Nicholas A. Valentino, Vincent L. Hutchings & Dmitri Williams, *The Impact of Political Advertising on Knowledge, Internet Information Seeking, and Candidate Preference*, 54 J. COMMC'N 337, 350–52 (2004).

232. Shane, *supra* note 106.

misinformative/disinformative foreign political advocacy strengthen the government's compelling interest in restricting the practice? It is a complicated issue. Certainly, if one were determining the effect of this reality on people's First Amendment right to receive foreign speech, the answer would be that the existence of false speech, even if excessive, is irrelevant. While the precise degree of protection afforded to false speech by the First Amendment is up for debate,[233] false *political* speech is the most safely guarded type of false speech.[234] For instance, when Ohio attempted to prohibit knowing or reckless dissemination of false information about political candidates, the Supreme Court expressed particular concern about the burdens the law "impose[d] on electoral speech."[235] The Sixth Circuit ultimately struck down the law on remand for targeting false political speech that fell outside the realm of defamation.[236] It therefore seems safe to say that the receipt of false political speech is covered by the First Amendment to some degree.

On the one hand, this suggests that the government could not prohibit foreign political advocacy under a plain anti-misinformation rationale. Yet, could it justify this rationale indirectly through its self-government interest? That is, could it say that false political speech of foreign origin is enough of a threat to American democratic self-government to warrant banning all foreign-funded political communications? To do so, there would seemingly need to be something uniquely bad and threatening about false political speech coming from a foreign national. And perhaps one could credibly argue that when an outsider misleads members of the American political community on matters of political importance, there is a certain additional layer of intrusiveness that is not present when fellow citizens share false information.

Again, though, this phenomenon is difficult to quantify. For instance, it is unclear whether foreign political advocacy would exacerbate the problem of misleading political communications. To the contrary, some scholars have concluded that American voters' modern susceptibility to misinformation/disinformation can be blamed more so on domestic sources such as "divergent media practices and consumption habits" rather than

233. *See* Erwin Chemerinsky, *False Speech and the First Amendment*, 71 OKLA. L. REV. 1, 5 (2018) ("There is no consistent answer as to whether false speech is protected by the First Amendment."). The Supreme Court has strongly signaled that false speech receives at least some protection. *See, e.g.*, United States v. Alvarez, 567 U.S. 709, 727 (2012) (plurality opinion) ("The remedy for speech that is false is speech that is true.").

234. *See* Balkin, *supra* note 62, at 1267–70 (noting how scholars have called for First Amendment doctrine to be altered to allow for the regulation of false political speech).

235. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 165 (2014).

236. *See* Susan B. Anthony List v. Driehaus, 814 F.3d 466, 472–73 (6th Cir. 2016); *see also* Eugene Volokh, *When Are Lies Constitutionally Protected?*, KNIGHT FIRST AMEND. INST. COLUM. UNIV. (Oct. 19, 2022), https://knightcolumbia.org/content/when-are-lies-constitutionally-protected [https://perma.cc/C3QZ-FPXQ] (noting in the section on "[l]ies in election campaigns" how such speech is generally protected by the First Amendment).

perceived foreign interference via issue ads.[237] If anything, foreign political advocacy could potentially counter misinformed beliefs in this country about overseas issues.

Furthermore, one must caution from viewing this issue dichotomously, where there is only "true" speech and "false" speech. In reality, we often do not know with absolute confidence what is true. Instead, we say what we believe is most correct based on our present observations and understandings of the universe. Sometimes people say things that are right. Sometimes people say things that are wrong. Sometimes we will never know. Thus, not every instance of foreign political speech with disputed veracity should be ascribed nefarious intent—a good-faith opinion, even if ultimately disproven, is not inherently a threat to democratic self-government.[238]

With all this said, it is tough to fully determine how the theoretical epistemic value of foreign political advocacy interacts with the government's compelling "self-government" interest. It is indeed difficult to balance two abstract goals—preserving the bounds of the demos versus maintaining a free flow of information for the electorate. In light of this unresolved tension, it may be better to direct attention toward more concrete considerations.

Specifically, when talking about what is good or bad for self-government, maybe we should turn to the self-governors themselves—that is, the voters. Indeed, in the field of campaign finance, voters' perceptions of our democracy have routinely been a significant consideration when determining how to regulate the practice. It is why, when reviewing restrictions on domestic campaign finance, courts uphold laws under a compelling governmental interest in reducing not only the actuality of corruption, but the *appearance* of corruption as well.[239] It is also why courts invoke voters' informational interest to justify disclosure laws.[240]

Likewise, how American voters perceive foreign political advocacy would seem highly relevant to whether the practice has a place within their system of

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

238. More controversially, one could argue that intentionally false communications could still provide secondary layers of information to voters beyond the purported facts within them. For instance, if an online ad says that Senator Smith is a Putin-loving traitor who refuses to send help to Ukraine, and contains a disclaimer that Germans For Peace sponsored the ad, the ad signals that some Germans are extremely in favor of the United States sending aid to Ukraine, even if the information on Senator Smith may be wrong or exaggerated.

239. *See* FEC v. Cruz, 142 S. Ct. 1638, 1652 (2022); Mazo, *The Disappearance*, *supra* note 45, at 275 ("[T]he appearance of corruption is an equal second category under which campaign finance regulations may be justified.").

240. *See supra* notes 123–24 and accompanying text.

self-government. Do voters find value in receiving it? Or do they instead reject its presence within the larger realm of political speech? Indeed, while the precise objective value of foreign political advocacy is indeterminable, any value it renders upon American society would itself be contingent on Americans having an actual desire to hear it. The next section thus explores this question through the use of an original survey, ultimately finding that a significant number of voting-age Americans assign at least some informational value to foreign political advocacy.

C. *Measuring (Subjective) Value*

There is an array of campaign finance literature focused on measuring voter perceptions. Many have focused on perceptions of corruption, given its relevance in justifying regulations over domestic campaign finance.[241] For instance, numerous studies have explored how contributions and expenditures raise corruption concerns for voters in varying scenarios.[242] Other studies have meanwhile focused on the informational value that campaign finance disclosures provide to voters.[243] At the same time, little has been written specifically about voters' feelings on foreign political advocacy. There have been studies that evaluate voter responses to candidates receiving out-of-*state* contributions—with mixed results—though these studies were again concerned with perceptions of corruption and did not look into advocacy spending.[244] There have also been polls conducted to measure the degree to which voters

241. *See Cruz*, 142 S. Ct. at 1652.

242. *See, e.g.*, Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance of Corruption": Linking Public Opinion and Campaign Finance Reform*, 19 ELECTION L.J. 510, 515–22 (2020); 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, 291–96 (2021); John J. Martin, *The Unique Appearance of Corruption in Personal Loan Repayments*, 108 CORNELL L. REV. 1443, 1492–96 (2023) [hereinafter Martin, *Unique Appearance*]; Shaun Bowler & Todd Donovan, *Campaign Money, Congress, and Perceptions of Corruption*, 44 AM. POL. RSCH. 272, 288–90 (2016); Rebecca L. Brown & Andrew D. Martin, *Rhetoric and Reality: Testing the Harm of Campaign Spending*, 90 N.Y.U. L. REV. 1066, 1079–80 (2015); Abby Blass, Brian Roberts & Daron Shaw, *Corruption, Political Participation, and Appetite for Reform: Americans' Assessment of the Role of Money in Politics*, 11 ELECTION L.J. 380, 385 (2012).

243. *See, e.g.*, Matthew Lesenyie, *Reading the Fine Print: Issue Advertisements and the Persuasive Effects of Campaign Finance Disclosures*, 48 AM. POL. RSCH. 155, 168–69 (2020); Travis N. Ridout, Michael M. Franz & Erika Franklin Fowler, *Sponsorship, Disclosure, and Donors: Limiting the Impact of Outside Group Ads*, 68 POL RSCH. Q. 154, 163–64 (2015); Conor M. Dowling & Amber Wichowsky, *Does It Matter Who's Behind the Curtain? Anonymity in Political Advertising and the Effects of Campaign Finance Disclosure*, 41 AM. POL. RSCH. 965, 981–82, 985–86 (2013); Wood, *supra* note 123, at 1113–15.

244. *See, e.g.*, Spencer & Theodoridis, *supra* note 242, at 521 (showing no unique corruption concerns); Conor M. Dowling & Amber Wichowsky, The Effects of Increased Campaign Finance Disclosure: Evaluating Reform Proposals 22–23 (Aug. 21, 2014) (unpublished manuscript), https://ssrn.com/abstract=2483194 [https://perma.cc/BX4Z-CJWY (staff-uploaded archive)] (observing that voters view the receipt of out-of-state donations as significantly less "acceptable" behavior from candidates than receiving donations from wealthy individuals).

support or oppose foreign spending in elections, though these polls typically present respondents with dichotomous options like yes/no or agree/disagree and, more importantly, have not focused specifically on foreign political advocacy.[245]

1. Methodology

In light of this, I conducted a survey designed to gauge the value voters ascribe to foreign political advocacy. The survey, conducted online, simulated the most likely scenario in which respondents would see such advocacy: by viewing a political ad.[246] Specifically, respondents were presented with a version of the below vignette,[247] with variable portions of the vignette in bold:

> You are a resident of State X, which is part of the United States. In State X, your state senator, John Smith, is in a tight reelection race against a challenger, James Doe. One night, you are watching television when a political ad plays during a commercial break. The political ad condemns a recent legislative vote cast by Senator Smith that made it more difficult for foreign investment to enter State X. Specifically, the political ad showcases how Senator Smith's actions cost thousands of jobs for citizens of **[State X / Country Y / Country Y, a foreign country that shares a border and strong economic ties with State X / Country Y, a foreign country thousands of miles away from the United States that was hoping to expand economic ties with State X]**. After the political ad finishes, it is disclosed that the political ad was paid for by **["Citizens of State X for a Stronger Economy," a political action committee based in State X / "Citizens of Country Y for a Stronger Economy" a political action committee based in Country Y]**.[248]

245. *See, e.g.*, NIELSEN SCARBOROUGH, PROGRAM FOR PUB. CONSULTATION SCH. PUB. POL'Y, UNIV. MD., ALLOWING FOREIGN ENTITIES TO INFLUENCE BALLOT INITIATIVES WITH CAMPAIGN CONTRIBUTIONS: QUESTIONNAIRE (Feb. 2022), https://publicconsultation.org/wp-content/uploads/2022/03/ForeignInfluenceBallotInitiatives_Quaire_0322.pdf [https://perma.cc/GU77-VMSM (staff-uploaded archive)] (showing that 79.4% of respondents agreed with banning foreign spending in ballot measure campaigns). The use of agree/disagree response choices possibly biases responses in favor of agreement over disagreement. *See* Willem E. Saris, Melanie Revilla, Jon A. Krosnick & Eric M. Shaeffer, *Comparing Questions with Agree/Disagree Response Options to Questions with Item-Specific Response Options*, 4 SURV. RSCH. METHODS 61, 74–76 (2010).

246. While political in nature, the ad avoided any language that would make it express advocacy. To recall, while specifically identifying a candidate may render an ad an electioneering communication if done close enough to an election, this alone does not make it express advocacy absent words of clear electoral support or opposition. *See* 11 C.F.R. §§ 100.22, 100.29(a) (2024) (defining express advocacy and electioneering communication).

247. Vignettes are a useful tool in surveying to help "standardize the social stimulus across respondents and at the same time make[] the decision-making situation more real." Cheryl S. Alexander & Henry Jay Becker, *The Use of Vignettes in Survey Research*, 42 PUB. OP. Q. 93, 103 (1978).

248. The precise text of each of the four vignettes can be found in the Appendix *infra*.

As this text and Table 1 below show, not all participants received the exact same vignette. Rather, respondents were divided into four cohorts, each receiving a version of the above-described vignette, with two crucial details varying between each cohort: (1) the ad's description of who was negatively affected by the recent legislative vote, and (2) the sponsor of the political ad. After reading it, respondents were asked, "As a voter of State X, to what extent would you value the information you received from the political ad described above?" Respondents were given five options from which to choose: Very Highly, Highly, Moderately, Slightly, and Not At All.[249]

Table 1: Survey Group Breakdown

	Impact	**Sponsor**
Cohort 1 (Domestic)	Discussed how legislative vote impacted citizens of State X	PAC based in State X
Cohort 2 (Foreign Sponsor/Domestic Interest)	Discussed how legislative vote impacted citizens of State X	PAC based in foreign country
Cohort 3 (Bordering Country)	Discussed how legislative vote impacted citizens of bordering country	PAC based in bordering foreign country
Cohort 4 (Faraway Country)	Discussed how legislative vote impacted citizens of faraway country	PAC based in faraway foreign country

249. I avoided more dichotomous question/response options—for example, "Do you believe the information you received from the political ad described above would be of value to you as a voter?"—because of potential biasing issues. *See* Saris et al., *supra* note 245, at 74–76.

At this stage of the research, the hypothetical political ad was designed to invite the least amount of personal bias. For one, it represents what we might consider a higher-value example of foreign political advocacy, in that it comes across as informative rather than inflammatory, and truthful rather than disinformative. Thus, if respondents placed little value on this hypothetical political ad, chances are they simply place little value on foreign political advocacy in general. Yet, if they place some value on it, that indicates that voters do not fully discount the utility of foreign political advocacy. For similar reasons, the political ad discusses a relatively milquetoast issue—foreign investment—and does not reference any specific country.[250]

The survey was conducted over the course of a week in November 2023, concluding with 1,568 unique respondents recruited through a third-party service.[251] The survey was open only to voting-age American citizens, since such individuals represent the most direct participants in the U.S. political process. The cohorts were fairly equal in size,[252] and respondents generally reflected the demographics of the U.S. population.[253]

250. Future surveys can and should be conducted to see how further variables might affect responses. *See infra* text accompanying notes 258–59.

251. I specifically used the service Qualtrics to field the survey to its participant pool of individuals who have agreed to be contacted to respond to surveys. *See Unlock Breakthrough Insights with Market Research Panels*, QUALTRICS, https://www.qualtrics.com/research-services/online-sample [https://perma.cc/7MLG-MAJV]. This method of survey is known as non-probability sampling, "in which not all population members have an equal chance of participating in the study." *Non-Probability Sampling: Types, Examples, & Advantages*, QUESTIONPRO, https://www.questionpro.com/blog/non-probability-sampling [https://perma.cc/7GGJ-X88A]. While some refer to this as "convenience sampling," courts have generally found this method of sampling to be reliable. *See, e.g.*, Counts v. Gen. Motors, LLC, 606 F. Supp. 3d 547, 573 (E.D. Mich. 2022). The survey was administered in multiple batches throughout the course of a week. Any respondent who took less than a minute to complete the survey was scrubbed from the results dataset.

252. The four cohorts in which the respondents were divided ranged from 389 to 395 respondents. These sizes were intentionally chosen to achieve eighty percent power to detect an effect size (d) of 0.20. *See Power and Effect Sizes*, FUNDAMENTALS OF QUANTITATIVE ANALYSIS, https://psyteachr.github.io/quant-fun-v2/power-and-effect-sizes.html [https://perma.cc/Q2EY-JJK3].

253. When it came to race, ethnicity, and age, only slight demographic variations existed among the four cohorts. *Compare infra* Appendix tbl. 4 (showing the demographic makeup of the four cohorts), *with QuickFacts*, U.S. CENSUS BUREAU (Apr. 16, 2024), https://www.census.gov/quickfacts/fact/table/US/PST045223 [https://web.archive.org/web/20240416042414/https://www.census.gov/quickfacts/fact/table/US/PST045223] (showing the demographic makeup of the U.S. population), *and* LAURA BLAKESLEE, ZOE CAPLAN, JULIE A. MEYER, MEGAN A. RABE & ANDREW W. ROBERTS, AGE AND SEX COMPOSITION: 2020 at 2 tbl. 1 (2023), https://www2.census.gov/library/publications/decennial/2020/census-briefs/c2020br-06.pdf [https://perma.cc/AN9W-5Z72 (staff-uploaded archive)] (same). Respondents skewed somewhat female (60% female versus 40% male), though this skew also remained fairly consistent among the four cohorts, thereby likely equalizing any potential effect this skew may have had on the relative differences between the cohort means. Indeed, when isolating each cohort's male and female group, the means remained relatively similar intra-cohort. The greatest difference was in the Foreign Sponsor–Domestic Interest cohort, in which the male mean value rating was 0.342 while the female one was 0.430. Even then, if the male–female ratio had been

To quantify the survey results, I assigned a "value rating" score to each answer option, designed to act as a numerical representation of the degree to which a respondent valued the speech in the political ad. Specifically, 0 was assigned to "Not At All," 0.25 was assigned to "Slightly," 0.5 was assigned to "Moderately," 0.75 was assigned to "Highly," and 1 was assigned to "Very Highly." The mean score for each cohort was calculated to produce a mean value rating, with a mean closer to 1 indicating more value.[254] For example, a mean value rating of 0.8 would suggest that a cohort's respondents highly valued the information in the hypothetical political ad, whereas a mean value rating of 0.2 would suggest that they only slightly valued it. The cohorts' mean value ratings were then compared using Welch's *t*-test to determine whether any differed from any other to a statistically significant degree.[255]

2. Results

This section overviews and interprets the results of the survey described above. Table 2 shows the mean value ratings for each of the four survey cohorts. Meanwhile, Table 3 displays the percentage distribution of their responses. For brevity's sake, the four cohorts are referenced as (1) Domestic, (2) Foreign Sponsor–Domestic Interest, (3) Bordering Country, and (4) Faraway Country.

The most significant result here is that many voting-age Americans seem to place, at a minimum, *some* informative value on foreign political advocacy, at least in its higher-value form. When looking at the Foreign Sponsor–Domestic Interest cohort, 47.6% of respondents—almost a majority—placed at least moderate value on the information in the political ad. Similarly, the other two cohorts with a foreign sponsor—Bordering Country and Faraway Country—had 51.2% and 50.1% of their respective respondents place moderate or higher value on the information. These percentages only slightly trailed the Domestic cohort's 52.4% statistic. This indicates that voting-age Americans view higher-

50–50, this suggests the total mean value rating would be 0.386, only slightly less than the 0.392 reflected in the results.

254. This method of assigning numerical scores to qualitative answers is frequently used to interpret and compare survey results. *See, e.g.*, Martin, *Unique Appearance*, *supra* note 242, at 1495; DeBell & Iyengar, *supra* note 242, at 293; Spencer & Theodoridis, *supra* note 242, at 517.

255. A *t*-test "is an inferential statistical test used to determine if there is a significant difference between the means of two groups and how they are related." Adam Hayes, *T-Test: What It Is with Multiple Formulas and When to Use Them*, INVESTOPEDIA, https://www.investopedia.com/terms/t/t-test.asp [https://perma.cc/J8TV-9J8R] (last updated May 31, 2025).

I specifically used Welch's *t*-test because I had no solid reason to assume equal variance. *See The Welch's Test*, EASYMEDSTAT (Feb. 12, 2024), https://help.easymedstat.com/support/solutions/articles/77000401220-the-welch-s-test [https://perma.cc/GC23-T8KQ]. Nevertheless, there is little reason to believe an equal-variance *t*-test would have produced different results. I also conducted an ANOVA test to simultaneously examine the differences between all of the four cohorts' mean value ratings. The result ultimately led to the same conclusion as that of each of the *t*-tests covered in this section, namely that no statistically significant differences existed among any of the mean value ratings ($F = 0.67$, $p > .05$).

value information received via foreign political advocacy as being nearly as useful as information received via domestically funded advocacy.

Indeed, when comparing the cohorts' mean value ratings, no significant difference was observed. To start, the mean value rating of the Domestic cohort was 0.424 (*S.E.* = 0.016),[256] again averaging slightly below "moderately." This rating was higher than any of the other three, but was only 0.032 greater than the lowest mean value rating of the three foreign-sponsor cohorts—that of Foreign Sponsor–Domestic Interest. The difference was not enough to be statistically significant (t = 1.36, p = 0.17).[257] Meanwhile, the Domestic cohort had only a 0.008 difference from the mean value rating of the Bordering Country cohort (t = 0.36, p = 0.72) and a 0.013 difference from that of the Faraway Country cohort (t = 0.56, p = 0.58). Overall, these findings further support the conclusion that many voting-age Americans find political communications to have informative value even if foreign funded.

Table 2: Mean Value Ratings by Cohort Scenario

Scenario	Mean	S.E.	n
1. Domestic	0.424	0.016	389
2. Foreign (Domestic Issue)	0.392	0.017	393
3. Bordering Country	0.416	0.017	391
4. Faraway Country	0.411	0.016	395

256. "*S.E.*" stands for "standard error," which represents "the approximate standard deviation of a statistical sample population." Will Kenton, *Standard Error (SE) Definition: Standard Deviation in Statistics Explained*, INVESTOPEDIA, https://www.investopedia.com/terms/s/standard-error.asp [https://perma.cc/R8XJ-GW6C] (last updated May 16, 2025).

257. For a difference to be statistically significant at a 95% confidence level, the value of t must exceed 1.96. If a t-value were significant it would be accompanied by a $p < 0.05$, the p-value being "a number describing the likelihood of obtaining the observed data under the null hypothesis of a statistical test. . . . A smaller p-value means stronger evidence in favor of the alternative hypothesis." Brian Beers, *P-Value: What It Is, How to Calculate It, and Examples*, INVESTOPEDIA, https://www.investopedia.com/terms/p/p-value.asp [https://perma.cc/7484-KP4H] (last updated Oct. 2, 2025).

Table 3: Percentage Distribution of Responses by Cohort Scenario

	Scenario			
Response	*1. Domestic*	*2. Foreign (Domestic Issue)*	*3. Bordering Country*	*4. Faraway Country*
Very Highly	11.1%	13.0%	12.5%	11.9%
Highly	14.1%	12.7%	13.3%	13.4%
Moderately	27.2%	21.9%	25.3%	24.8%
Slightly	28.5%	23.2%	25.8%	27.1%
Not at All	19.0%	29.3%	23.0%	22.8%
Moderately or More	52.4%	47.6%	51.2%	50.1%

These results also suggest that the geographic proximity of a foreign sponsor, as well as whether the political communication focuses on domestic or foreign interests, may not matter much to the average American recipient. Regarding domestic interest versus foreign interest, the difference between the mean value ratings of Bordering Country and Foreign Sponsor–Domestic Issue was 0.024 (t = 0.99, p = 0.32), with the difference dropping to only 0.019 (t = 0.80, p = 0.42) when comparing Faraway Country and Foreign Sponsor–Domestic Issue. And as noted earlier in the Section, all three groups had a similar percentage of respondents who answered "Moderately" or greater. Regarding proximity, the difference between the mean value ratings of Bordering Country and Faraway Country was 0.005 (t = 0.21, p = 0.83), representing the smallest rating difference between any of the cohorts. These two findings are noteworthy in that they show that Americans may value foreign political advocacy even if it covers topics that are not necessarily "close to home." Rather, the interest in foreign political advocacy may remain substantial across a range of potential subjects.

Of course, as acknowledged above, the survey's vignette avoided specificities.[258] While this was purposeful, some may question how much can be inferred from this study. Certainly, this is the first survey to look into this precise question of how voters value foreign political advocacy, and it should not remain the only one. Future projects may wish to include different variables. For instance, one could prime participants by instructing them before reading the political ad that there is no guarantee whether the information in the ad is true or not. Alternatively, one could present a hypothetical ad that reflects an example of lower-value advocacy—something that mimics the types

258. *See supra* text accompanying note 250.

of advocacy spread by Russia during the 2016 presidential election.[259] The goal here would be to see to what degree respondents place less value on receiving such information. One may also wish to introduce more concrete details: how would respondents' reactions differ if the sponsor were an adversarial nation like Russia, versus a friendly nation like Canada, versus a relatively unknown nation like Timor-Leste? Working through the implications of these findings would help build upon the research conducted for this Article.

At the same time, the evidentiary value of the above-discussed survey results does not seem insignificant. To the contrary, the results indicate that a sizeable portion of the American electorate will value, as voters, some information they receive via foreign political advocacy. Thus, whereas the precise objective epistemic value of foreign political advocacy is indeterminable,[260] the survey provides tangible proof that any such epistemic value would not be lost on American voters. To the contrary, the voters—in other words, the self-governors—see at least some utility in receiving foreign political advocacy. The next section discusses the potential doctrinal consequences.

D. *Finding the Balance*

We now return to the question of to what extent the government may impose restrictions on foreign political advocacy. As noted above, the government's interest in preserving self-government may give it leeway to enact some limits on the practice, even if advocacy captured by such limits are less direct forms of foreign political participation than contributions or express advocacy.[261] Yet, should the potential epistemic value of receiving foreign perspectives on our politics temper this interest to some degree? It would seem so. While plenty of foreign political advocacy may spread dubious, if not plainly false, claims, there are also instances of advocacy that can provide truly informative value to Americans.[262] And as the survey results indicate, many Americans seem open to receiving and internalizing such information from foreign nationals. Accordingly, at a minimum, a total prohibition on foreign political advocacy appears too overly restrictive a measure to justify, even in the name of protecting self-government. To the contrary, blocking Americans' access to any foreign-funded political communication would seem *antithetical* to self-government, given that many voters could find such communications useful in determining how to think about political issues and, ultimately, how to vote.

259. *See supra* note 232 and accompanying text.
260. *See supra* Section III.B.
261. *See supra* notes 205–09 and accompanying text.
262. *See supra* note 229 and accompanying text.

One may question whether Americans' subjective valuation of foreign political advocacy would really matter from a doctrinal perspective. Would courts actually care about this when reviewing restrictions on the practice? The answer is maybe. Certainly, as discussed earlier, courts find voter perception relevant in the context of the government's anticorruption and informational interests.[263] When it comes to issue advocacy, too, the Supreme Court has signaled interest in how voters think. In *FEC v. Wisconsin Right to Life*,[264] for instance, the Court referenced the ways in which voters factor issue advocacy "into their voting decisions" when considering whether the government had a compelling interest in prohibiting the use of corporate funds for issue ads.[265] So too might courts consider how voters factor foreign political advocacy into their actions of self-governing when considering the extent to which it actually threatens American democratic self-government. Thus, any legislature looking to regulate the practice should likely caution from instituting a total ban on it, lest the law be deemed overly restrictive.

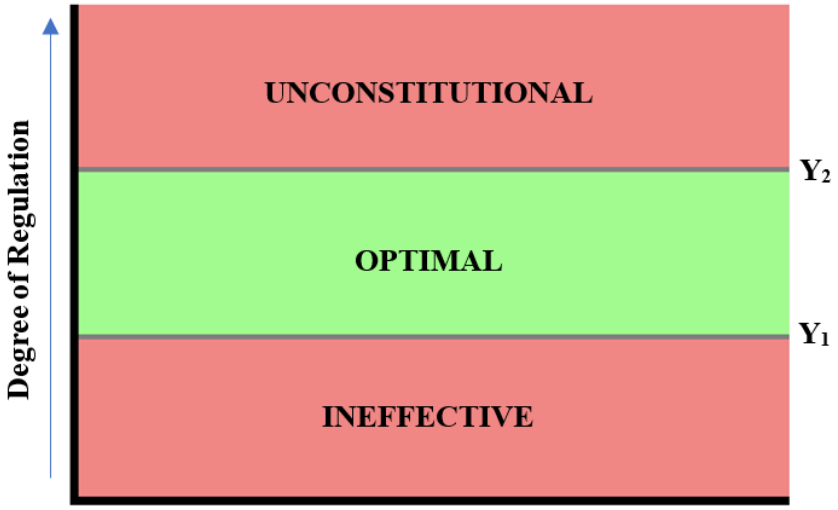
What then can the government do? Ultimately, any legislature seeking to regulate foreign political advocacy must balance two considerations. First, there is the point at which a regulation becomes effective in fulfilling the government's interest—this point is visualized as Y_1 in Figure 1. To get past this threshold, the legislature must impose regulations strict enough to actually prevent foreign nationals from exercising undue control over the political process. We can imagine laws that, for instance, place dollar limits on certain issue-advocacy expenditures by foreign nationals and donations by foreign nationals to issue-advocacy groups (also known as dark money groups), as well as laws that foster proper enforcement mechanisms. Anything below Y_1 would ultimately be futile policy. Second, there is the point at which a regulation is no longer narrowly tailored—this point is visualized as Y_2 in Figure 1. To exceed this point, the regulations must be a degree of burdensome on the receipt of foreign political advocacy beyond what is needed to preserve democratic self-government. While a prohibition on the practice is the clearest example of this, any restriction that deprives Americans of receiving foreign political speech to a point that needlessly undermines voters' ability to gain a more competent understanding of the state of the world would fall above Y_2.

263. *See supra* notes 239–40 and accompanying text.

264. 551 U.S. 449 (2007).

265. *See id.* at 470.

Figure 1: Degree of Regulation



This Article makes no attempt to precisely define either of these levels of regulation. Each polity—whether it be the United States, a state, or a locality—will have individual needs, concerns, and idiosyncrasies that will alter where the range of permissible regulation lies. And legislative bodies themselves are best equipped to make such determinations.[266] Indeed, courts reviewing restrictions on foreign political advocacy should ideally refrain from attempting to calculate the optimal limits on said advocacy in a given polity. Instead, as I have previously argued in the context of contribution limits, courts should "scrutinize the *process* undertaken by a legislative body" to ensure it duly considered the levels of Y_1 and Y_2 noted above before implementing the restrictions in question.[267] This "institutional-analysis approach" to judicial review would help ensure that regulations on foreign political advocacy are a product of good faith and rigor without usurping the legislature's unique position to ascertain the proper bounds and limits of democratic participation within its polity.[268]

* * *

266. *See* Robin Charlow, *Judicial Review, Equal Protection and the Problem with Plebiscites*, 79 CORNELL L. REV. 527, 578 (1994) ("Legislatures, unlike courts, have substantial staff, funds, time and procedures to devote to effective information gathering and sorting.").

267. John J. Martin, *Danger Signs in State and Local Campaign Finance*, 74 ALA. L. REV. 415, 472–73 (2022) (emphasis in original); *see also* Richard L. Hasen, *The Newer Incoherence: Competition, Social Science, and Balancing in Campaign Finance Law After* Randall v. Sorrell, 68 OHIO STATE L.J. 849, 879 (2007) (arguing against courts employing a "superficial aura of scientific exactness" in its review of campaign finance laws).

268. *See* Eric Berger, *Deference Determinations and Stealth Constitutional Decision Making*, 98 IOWA L. REV. 465, 498–500 (2013) (overviewing the institutional-analysis approach).

While the precise degree of permissible regulation of foreign political advocacy will go undefined in this Article, there are still certain types of regulations that one can identify as important for proper management of the practice. Part IV accordingly discusses, at a high level, what regulating foreign political advocacy in a nuanced manner could realistically look like.

IV. MANAGING FOREIGN POLITICAL ADVOCACY

There are many good reasons to regulate foreign political advocacy. Keeping the power of self-government in the hands of the demos has been the one mainly discussed thus far. Yet, there are other appropriate reasons to limit foreign political advocacy that may still act as secondary legislative rationales. There is, for one, the corrupting influence of unfettered spending. Allowing foreign nationals to spend unlimited sums of money on advocacy or donate unlimited sums to issue-advocacy groups, for instance, fuels opportunities for illicit quid pro quo between said foreign nationals and elected officials.[269] There are also less direct forms of corruption, such as top spenders using their wealth to distort electoral outcomes in their favor or influence policymaking in a way that misaligns voter preferences and policy outputs.[270] This concern is perhaps all too fresh in Americans' minds as the world's wealthiest man has attempted to manipulate politics in multiple countries over the past year.[271] Finally, foreign political advocacy presents unique challenges in the sphere of national security. Namely, foreign governments, quasi-state entities, and terrorist organizations

269. While the Supreme Court has claimed that independent expenditures present no corruption concerns, reality paints a different story. *See, e.g.*, Albert W. Alschuler, Laurence H. Tribe, Norma L. Eisen & Richard W. Painter, *Why Limits on Contributions to Super PACs Should Survive* Citizens United, 86 FORDHAM L. REV. 2299, 2310–11 (2018) ("[O]ne cannot . . . insist[] that, as a matter of logic and law, contributions to independent-expenditure groups cannot corrupt at all."); Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1, 44–45 (2012) ("[I]t is difficult to argue that independent expenditures do not raise any risk of quid pro quo corruption . . . ."); *see also* DeBell & Iyengar, *supra* note 242, at 293 (discussing how unregulated independent expenditures create a notable appearance-of-corruption risk); Saurav Ghosh, *Voters Need to Know that "Redboxing" Remains a Widespread Problem*, CAMPAIGN LEGAL CTR. (Mar. 21, 2024), https://campaignlegal.org/update/voters-need-know-redboxing-remains-widespread-problem [https://perma.cc/5683-4ZPL] (discussing how candidates can legally coordinate with individuals or groups making expenditures through redboxing).

270. *See* Anna 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); Nicholas O. Stephanopoulos, *Aligning Campaign Finance*, 101 VA. L. REV. 1425, 1428 (2015). Even if to invoke its compelling anticorruption interest the government must target quid pro quo corruption, this does not preclude a legislature from also being motivated by broader corruption concerns.

271. *See* Cat Zakrzewski, *Elon Musk Goes Global with His Playbook for Political Influence*, WASH. POST, https://www.washingtonpost.com/politics/2025/01/04/elon-musk-uk-germany-canada-far-right [https://perma.cc/266L-36E2 (staff-uploaded, dark archive)] (last updated Jan. 5, 2025).

may engage in political spending with the goal of destabilizing a society or propping up a friendly regime.[272]

These problems all showcase why foreign political advocacy should not go unregulated in a well-functioning democratic system. How, then, should the government go about managing the practice? There are, in brief, four conditions[273]: defining legitimate participation, setting limits, requiring robust disclosure, and adopting proper enforcement mechanisms.

A. *Defining Participation*

First, a government must draw lines on *who* gets to participate in foreign political advocacy, both geographically and identity-wise. For instance, should only foreign nationals living in certain areas get to engage in the practice? From a listener's perspective, the location of the foreign national may matter little. This is, at least, what the survey results suggest.[274] The listener is not, however, the only factor in this equation. An equally important consideration may be which foreign communities are impacted enough by the United States' decisions (or those of states or localities therein) to justify permitting their political spending—that is, which foreign nationals will be more likely to have something meaningful to share with American voters.[275]

The easiest group to include would surely be temporary residents, who, during their time in the United States, are often just as affected by democratic decisions as citizens are (if not more affected in certain policy areas, such as immigration). From there, it becomes more complicated. In this respect, geographic proximity may be the soundest way to structure a system, given that people in nearby countries will, on average, be more affected by decisions than

272. *See, e.g.*, MUELLER, *supra* note 15, at 14–173 (detailing Russia's social media campaigns, hacking and dumping efforts, and government links with the Trump campaign); Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs*, 83 AM. J. INT'L L. 1, 14 (1989) (discussing how the U.S. government provided funding to anti-left parties in Chile in the 1970s).

273. I delve more deeply into this topic in a separate article. *See* Martin, *Democratic Value*, *supra* note 22, at 850–63.

274. *See supra* Section III.C.2. Of course, in the real world, varying perceptions of different foreign nationals are much more complicated than simply "nearby" and "faraway." Moreover, the survey did not include a vignette involving temporary residents of the United States funding a political ad, who fall on their own proximity plane in comparison to foreign nationals residing outside the country. Perhaps the mean value rating of a hypothetical fifth Temporary Resident cohort would have varied significantly. At the same time, it is difficult to imagine that voting-age Americans would value a political communication funded by foreign nationals living within their country *less* than those funded by foreign nationals living abroad.

275. Many democratic theorists have, in fact, advocated for systems in which those more affected by a democracy's decisions have greater relative influence within the democracy. *See, e.g.*, Harry Brighouse & Marc Fleurbaey, *Democracy and Proportionality*, 18 J. POL. PHIL. 137, 142–46, 155 (2010); IAN SHAPIRO, DEMOCRATIC JUSTICE 37 (1999).

those in faraway ones.[276] By way of example, Germany's political laws adopt this approach: European Union ("EU") citizens and foreigners represented by German parties of national minorities may donate to German political parties as much as German citizens can, whereas all other foreign nationals are subject to a €1,000 limit.[277]

If such an approach were similarly employed in the United States, line-drawing may vary depending on the jurisdiction. In Maine, for instance, it may only make sense to allow Canadians to engage in political spending since Maine's lawmaking is unlikely to substantially impact people in any other country. On a federal level, though, it seems sound to permit foreign nationals from a wider array of countries to participate, given our national laws and policies affect so many people worldwide.[278]

Then there is the question of identity, namely whether corporations, governments, and other entities should be able to participate in foreign political advocacy in the same manner as natural persons. For governments and their agents, the soundest policy may be exclusion, given the distinct risk of manipulation of the democratic process that arises when powerful state actors have the ability to flow money into it.[279] At the very least, governments deemed foreign adversaries should be prohibited from engaging in advocacy.[280] As the recent TikTok ban case demonstrates, the government could justify such a prohibition under an interest in preserving national security.[281]

The question of corporate entities is a bit more complex. On the one hand, corporate-funded foreign political advocacy may potentially help Americans

276. For instance, on matters concerning immigration and trade, the perspectives of people in bordering countries would seem more valuable than the perspectives of other foreign nationals. *See* Martin, *Democratic Value*, *supra* note 22, at 851 ("[F]oreign nationals living in bordering or nearby countries may, on average, feel greater effects from a polity's decisions than those living farther away."). People may raise equal protection concerns about disparate treatment of foreign nationals depending on their nationality. Yet, constitutional equal protection does not cover foreign nationals outside the United States. *See* Gomez v. Trump, 485 F. Supp. 3d 145, 188 (D.D.C. 2020).

277. *See* Parteiengesetz [PartG] [Party Law], July 24, 1967, BGBL I at 773, as amended by Achtes Gesetz zur Änderung des Parteiengesetzes [Eighth Act Amending the Political Parties Act], June 28, 2002, BGBL I at 2268, 2270, § 25(3)(c).

278. Take, for instance, climate policy. The United States accounts for about thirteen percent of CO2 emissions around the globe. *CO2 Emissions by Country*, *supra* note 36. Thus, foreign nationals from places ranging from Mexico to Tuvalu all have some interest in how the United States' government responds to the climate crisis.

279. *See supra* note 272 and accompanying text. Wariness about a foreign country interfering in our affairs dates back to the Founding. Famously, George Washington forewarned in his farewell address about "the policy and the will of one country" being "subjected to the policy and will of another." George Washington, *Farewell Address (1796)*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/historic-document-library/detail/george-washington-farewell-address-1796 [https://perma.cc/7PHD-ZKQV].

280. The State Department keeps a running list of "foreign adversaries," which presently includes China, Cuba, Iran, North Korea, Russia, and Venezuela. *See* 15 C.F.R. § 7.4(a) (2024).

281. *See* TikTok Inc. v. Garland, 145 S. Ct. 57, 72 (2025).

learn about how certain business regulations affect foreign corporations. At the same time, there are reasonable arguments against the practice, such as the fact the corporate "speech" does not necessarily reflect shareholder beliefs,[282] as well as the issue of wealth concentration distorting electoral outcomes.[283] Such factors suggest that foreign corporations should be even more greatly restricted in their participation than natural persons.[284]

It is admittedly unclear though whether limits on foreign political advocacy could apply disparately between foreign corporations and foreign individuals. The *Citizens United* Court famously held that "the First Amendment does not allow political speech restrictions based on a speaker's corporate identity."[285] Yet, *Citizens United* was concerned with the rights of domestic corporations to *speak*. The big question is whether the right to listen too prevents identity discrimination; can the government say that its citizens can listen more to certain types of foreign nationals over others? This is ultimately a complex question that merits an article of its own. For now, it is worth simply noting that corporate-funded foreign political advocacy may present unique issues that justify such disparate treatment under a self-government or national security interest—namely that, in many countries, the state is often embedded within corporations in ways not fully ascertainable.[286] Thus, if a polity were to prohibit state-funded foreign political advocacy as suggested above,[287] it may make sense for harsh limitations on corporate-funded advocacy to go hand in hand.

Overall, when drawing the lines of who may participate in foreign political advocacy, prioritizing more-affected foreign nationals over less-affected ones, and natural persons over state and corporate entities, may best support self-governance. Even then, opinions on where the lines should precisely fall will

282. *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, at 130, 135.

283. *See* 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."); Harvey, *supra* note 270, at 98.

284. A few states have attempted to prohibit domestic corporations with certain levels of foreign ownership from engaging in political spending, with mixed success. *Compare* Minn. Chamber of Com. v. Choi, 765 F. Supp. 3d 821, 833, 858 (D. Minn. 2025) (striking down Minnesota law targeting corporations where one foreign national owns at least one percent of shares or foreign nationals combined own at least five percent of shares), *and* Cent. Me. Power Co. v. Me. Comm'n on Governmental Ethics & Election Pracs., 721 F. Supp. 3d 31, 39, 56 (D. Me. 2024), *aff'd*, 144 F.4th 9 (1st Cir. 2025) (issuing a preliminary injunction against a similar Maine law), *with* COLO. REV. STAT. § 1-45-103(10.5)(b) (2023) (targeting domestic corporations with majority foreign ownership).

285. Citizens United v. FEC, 558 U.S. 310, 347 (2010).

286. *See, e.g.*, Amir 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 [https://perma.cc/YFT5-ALM5].

287. *See supra* notes 279–80 and accompanying text.

vary depending on how one defines prerequisites and goals of the democratic process.[288]

B. *Setting Limits*

The second consideration concerns how precisely to limit foreign political advocacy. At a minimum, placing *some* dollar limits on spending is necessary to mitigate the issues of undue electoral influence, corruption, and national security—that is, dollar limits on both the direct funding of advocacy as well as on donations to issue-advocacy groups. Legislatures will be best attuned to the needs of their particular democratic system—for instance, a limit of $10,000 per year per foreign national may be right for a state with a smaller population but overly restrictive for a state with a larger one.[289] Of course, placing dollar limits on something as not-so-clearly defined as issue advocacy is tricky business. This Article recognizes this fact. An ad discussing the merits or pitfalls of present federal tax policy (run a month prior to a congressional election) and an ad talking about the importance of instituting proper mental health programs could both be reasonably considered issue ads, yet the former is far more likely to have been motivated by desires to influence an election than the latter. Line-drawing is therefore needed, lest foreign nationals be subject to dollar limits on the purchase of any communication in the United States.

Much can be written on how to discern regulatable political advocacy from all other forms of communication—too much to fit into a subsection of an article. For now, this Article offers two potential options for polities seeking to regulate direct foreign expenditures on political advocacy, ideally done in tandem. First, one can adopt a conservative definition of "political advocacy" that only captures issue advocacy truly meant to influence the political process, something along the lines of:

> Any communication that when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy for the implementation or dismantling of a statute, regulation, or policy of the United States or a state or locality therein, or otherwise generally for the election or defeat of candidates who would support or oppose the implementation or dismantling of said statute, regulation, or policy.[290]

288. *See* Martin, *Democratic Value*, *supra* note 22, at 850–56 (discussing how this line-drawing may vary depending on whether one is a cosmopolitan versus deliberative democrat versus epistemic democrat).

289. *Cf.* Chad Flanders, *Alaskan Exceptionalism in Campaign Finance*, 37 ALASKA L. REV. 191, 191–92 (2020) (explaining how the particular political history of Alaska justified stricter campaign finance limits).

290. *Cf.* 11 C.F.R. § 100.22(b) (2024) (defining express advocacy).

The "reasonable person" standard here—already used by the Federal Election Commission ("FEC") in the context of express advocacy[291]—is crucial because it would give enforcement agencies the ability to make case-by-case determinations rather than being beholden to an underinclusive, inflexible definition. Second, one can apply temporal limits to what falls within regulatable foreign political advocacy. Specifically, only advocacy done or donations made within a certain number of months before an election—and therefore more likely made to influence said election—would be subject to aggregate dollar limits. This is, in fact, the method presently used to regulate electioneering communications.[292]

How would regulatory agencies know if a foreign national has exceeded their dollar limit for a given period? The most effective way may be to require any foreign national interested in making political-advocacy expenditures or donating to domestic issue-advocacy groups to register as an official "foreign political spender." This would mirror the way federal law presently mandates the registration of foreign lobbyists.[293] Registered spenders could then be required to report an expenditure or donation they make within the period covered by dollar limits, in the same manner that domestic independent-expenditure groups must report their expenditures to the FEC.[294] Regulatory agencies could moreover rely upon disclosures and disclaimers to track direct foreign spending to better keep tabs on who may be evading limits.[295] None such laws would, of course, result in an ideal system. Far from it, many instances of direct expenditures would still fall through the cracks. Yet, as a presently unregulated practice, we should refrain from letting perfect be the enemy of progress.

There are, furthermore, other types of dollar limits that the government can more practically enforce, namely limits on foreign donations to domestic issue-advocacy groups. While enforcing campaign finance laws against foreign nationals residing outside U.S. borders may prove difficult, enforcing such laws against domestic entities is far more doable. One could imagine, say, a limit of $5,000 on the receipt of donations from any one foreign national in a calendar

291. *See id.*; *see also Making Independent Expenditures*, FEC, https://www.fec.gov/help-candidates-and-committees/making-independent-expenditures [https://perma.cc/6D9K-4NU8].

292. *See* 11 C.F.R. § 100.29(a)(2) (limiting the coverage to communications made within sixty days before a general election or thirty days before a primary election).

293. CONG. RSCH. SERV., IF10499, FOREIGN AGENTS REGISTRATION ACT (FARA): AN OVERVIEW 1 (2024), https://crsreports.congress.gov/product/pdf/IF/IF10499 [https://perma.cc/7PCF-MQNT (staff-uploaded archive)]; *see also* 22 U.S.C. § 612(a) (2024). For an article that makes a similar proposal, 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).

294. *See Making Independent Expenditures*, *supra* note 291.

295. *See infra* Section IV.C.

year.[296] Or perhaps even a limit on the percentage of issue-advocacy groups' funds that can come from foreign sources.[297] While this may present a potential burden on such groups' speaker rights,[298] the self-government interest may be compelling enough to justify some degree of limitation. There have been, in fact, recent pushes to enact such limits into federal law.[299]

C. *Disclosure Requirements*

The third condition is disclosure. If foreign political advocacy is to be allowed to some extent, it must be paired with robust disclosure requirements. To start, the law should mandate the public disclosure of donors to issue-advocacy groups, which are currently exempt from present disclosure laws, earning them the nickname of "dark money" groups.[300] Furthermore, political communications funded by foreign nationals should be required to include some form of a disclaimer that makes clear that the communication is funded by foreign sources, perhaps even providing the name of the funder and/or country of origin.[301] Such requirements would serve two functions: (1) assist regulators with enforcement of restrictions, and (2) provide informative value to voters.[302] On the latter point, disclaimers are especially important, as they will help voters contextualize the political communication they are receiving. Indeed, a political ad calling for a ceasefire between Ukraine and Russia would be interpreted differently by many people if it were funded by a Ukrainian group versus a

296. This would match the present $5,000 limit on donations to PACs. *See Contribution Limits*, FEC, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits [https://perma.cc/KDZ7-7T9T].

297. *Cf*. HAW. REV. STAT. § 11-362 (2024) (limiting the percent of contributions that candidates may receive from out-of-state residents to thirty percent of total contributions).

298. *See supra* note 193; *see also* SpeechNow.org v. FEC, 599 F.3d 686, 696 (D.C. Cir. 2010) (striking down limits on donations to PACs that do not engage in coordinated expenditures with candidates, i.e., "super PACs").

299. *See* Press Release, Jason Smith, Chairman, U.S. House Comm. on Ways & Means, Ways and Means Advances Solutions to Protect Election Integrity, Fight Foreign Money in American Politics (May 16, 2024), https://waysandmeans.house.gov/2024/05/16/ways-and-means-advances-solutions-to-protect-election-integrity-fight-foreign-money-in-american-politics [https://perma.cc/L7HB-RKUK].

300. *See Dark Money Basics*, *supra* note 104 (overviewing the types of groups that fall within this category, such as 501(c)(4) social welfare organizations). While the Supreme Court's recent decision in *Americans for Prosperity Foundation v. Bonta* may call into question whether such a law would be upheld, the crucial difference is that the law struck down in *Bonta* required *all* nonprofits to disclose donors, rather than narrowing its focus to ones engaged in political spending. *See* 141 S. Ct. 2373, 2378, 2389 (2021).

301. Some states have implemented similar disclaimer requirements. *See, e.g.*, MONT. CODE ANN. § 13-35-237 (2023) (requiring disclaimer when communication is funded by PAC with anonymous donors); ARIZ. ADMIN. CODE § R2-20-805(B) (2023) ("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 . . . .").

302. *See* Wood, *supra* note 123, at 1102; Ortiz, *supra* note 123, at 668.

Russian group. The identity of the speaker shapes the value that their speech provides to the listener.

Finally, as an indirect means of curbing the spread of false information online, regulators could require the disclosure of targeted demographics whenever someone, including a foreign national, pays for an advertisement or promotes content on social media.[303] Such disclosure could assist those interested in countering foreign misinformation/disinformation campaigns to know precisely who to target with their countercommunications.[304] There may indeed be an appetite to adopt such a requirement, given the FEC's recent expansion of disclaimer requirements to online political advertising.[305] Paired with the above suggestions, these measures would give voters not only a clearer sense of who is trying to influence them, but also a better chance to meaningfully respond.

D. *Enforcement Mechanisms*

Finally, for foreign political advocacy to be properly managed, robust enforcement mechanisms must be put in place. This is admittedly easier said than done. Such efforts would first require an enforcement agency that is nonpartisan, well-funded, and equipped with the ability to investigate and routinely audit groups engaging in political spending to detect violations of campaign finance law.[306] Moreover, issue-advocacy groups that receive foreign funding should bear some of the legal burden by being required to vet and return any contribution from a foreign national that exceeds legal limits. Likewise, platforms that receive money directly from foreign nationals to fund political advocacy should be held responsible if they knowingly accept any such payments that contravene expenditure limits on foreign political advocacy. The United States already requires this under BCRA in the context of contributions

303. *See* Abby K. Wood, *Facilitating Accountability for Online Political Advertisements*, 16 OHIO STATE TECH. L.J. 520, 553 (2020).

304. *See id.*

305. *See* Taylor Giorno, *Federal Election Commission Passes New Digital Ad Disclosure Rule*, OPENSECRETS (Dec. 1, 2022, at 15:36 ET), https://www.opensecrets.org/news/2022/12/federal-election-commission-passes-new-digital-ad-disclosure-rule [https://perma.cc/N9YJ-9PMP (staff-uploaded archive)].

306. *See* DANIEL I. WEINER, BRENNAN CTR. FOR JUST., FIXING THE FEC: AN AGENDA FOR REFORM 6–9 (2019), https://www.brennancenter.org/media/161/download/Report_Fixing_FEC.pdf?inline=1 [https://perma.cc/5SF6-CX66]; USAID, ENFORCING POLITICAL FINANCE LAWS: TRAINING HANDBOOK 14, 22–23, 47, 54–55, 61–62 (2005), https://www.ifes.org/sites/default/files/migrate/tide_handbook_enforcing_political_finance_laws_0.pdf [https://perma.cc/L9XC-SRAB].

to candidates, parties, and PACs,[307] as do other countries that have more lenient restrictions on transnational campaign finance.[308]

Furthermore, as discussed earlier, a foreign national engaging in direct expenditures should be required to register as a political spender in the same way foreign lobbyists must register—at the very least, such a requirement should apply to foreign nationals who spend over a certain amount.[309] Finally, given the difficulty of enforcing campaign finance laws against people living overseas, countries can work with one another to put in place treaty obligations under which participating countries assent to prosecuting any citizen who violates the campaign finance laws of another country. In other words, every participating country would agree to adopt their own campaign-finance-oriented version of something akin to the Foreign Corrupt Practices Act,[310] which, while not explicitly focused on campaign finance, makes it unlawful for U.S. citizens to bribe foreign government officials.[311]

CONCLUSION

Foreign political advocacy is presently an almost entirely unregulated practice in the United States. For a variety of reasons, this needs to change. And as this Article has demonstrated, regulating foreign political advocacy is far from unachievable. Certainly, courts should not ignore Americans' First Amendment right to receive speech. And as this Article's survey indicates, many Americans indeed have an interest in hearing what foreign nationals have to say about U.S. political issues. This does not mean, however, that foreign political advocacy should continue unfettered. Instead, a balance must be struck that achieves our democratic society's interest in reducing the practice without entirely inhibiting Americans' ability to receive foreign political communications.

There is still plenty of room for further research in this area. Future work may wish to change survey methodologies to test whether the results here still hold. Overall, though, in a progressively globalized society, hardline bans on foreign political advocacy are becoming increasingly difficult to defend, especially for hegemonic countries like the United States. When properly

307. *See* 52 U.S.C. § 30121(a)(2) (2024) (holding it unlawful for "a person to solicit, accept, or receive a contribution or donation" in violation of BCRA's prohibitions on transnational campaign finance).

308. *See, e.g.*, Electoral Act 1993, ss 207K, 209 (N.Z.).

309. *See supra* note 293 and accompanying text.

310. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78dd-1–3).

311. *See* 15 U.S.C. § 78dd-2 (2024); *see also Foreign Corrupt Practices Act*, NAT'L WHISTLEBLOWER CTR., https://www.whistleblowers.org/foreign-corrupt-practices-act [https://perma.cc/U5GW-63UV] (describing the act as "one of the most powerful and effective transnational anticorruption laws in the world").

regulated, the practice can be a crucial tool for mitigating our democratic externalities by allowing American voters to become more well-informed on how our democratic decisions affect other communities. Prohibitions on the practice accordingly deserve greater scrutiny within the campaign finance literature.

APPENDIX

Group 1 (Domestic)

You are a resident of State X, which is part of the United States. In State X, your state senator, John Smith, is in a tight reelection race against a challenger, James Doe. One night, you are watching television when a political ad plays during a commercial break. The political ad condemns a recent legislative vote cast by Senator Smith that made it more difficult for foreign investment to enter State X. Specifically, the political ad showcases how Senator Smith's actions cost thousands of jobs for citizens of State X. After the political ad finishes, it is disclosed that the political ad was paid for by "Citizens of State X for a Stronger Economy," a political action committee based in State X.

As a voter of State X, to what extent would you value the information you received from the political ad described above?

- o Very Highly
- o Highly
- o Moderately
- o Slightly
- o Not At All

Group 2 (Foreign–Domestic Interest)

You are a resident of State X, which is part of the United States. In State X, your state senator, John Smith, is in a tight reelection race against a challenger, James Doe. One night, you are watching television when a political ad plays during a commercial break. The political ad condemns a recent legislative vote cast by Senator Smith that made it more difficult for foreign investment to enter State X. Specifically, the political ad showcases how Senator Smith's actions cost thousands of jobs for citizens of State X. After the political ad finishes, it is disclosed that the political ad was paid for by "Citizens of Country Y for a Stronger Economy," a political action committee based in Country Y, a foreign country that shares strong economic ties with State X.

As a voter of State X, to what extent would you value the information you received from the political ad described above?

- o Very Highly
- o Highly

- o Moderately
- o Slightly
- o Not At All

Group 3 (Bordering Country)

You are a resident of State X, which is part of the United States. In State X, your state senator, John Smith, is in a tight reelection race against a challenger, James Doe. One night, you are watching television when a political ad plays during a commercial break. The political ad condemns a recent legislative vote cast by Senator Smith that made it more difficult for foreign investment to enter State X. Specifically, the political ad showcases how Senator Smith's actions cost thousands of jobs for citizens of Country Y, a foreign country that shares a border and strong economic ties with State X. After the political ad finishes, it is disclosed that the political ad was paid for by "Citizens of Country Y for a Stronger Economy," a political action committee based in Country Y.

As a voter of State X, to what extent would you value the information you received from the political ad described above?

- o Very Highly
- o Highly
- o Moderately
- o Slightly
- o Not At All

Group 4 (Faraway Country)

You are a resident of State X, which is part of the United States. In State X, your state senator, John Smith, is in a tight reelection race against a challenger, James Doe. One night, you are watching television when a political ad plays during a commercial break. The political ad condemns a recent legislative vote cast by Senator Smith that made it more difficult for foreign investment to enter State X. Specifically, the political ad showcases how Senator Smith's actions cost thousands of jobs for citizens of Country Y, a foreign country thousands of miles away from the United States that was hoping to expand its economic ties with State X. After the political ad finishes, it is disclosed that the political ad was paid for by "Citizens of Country Y for a Stronger Economy," a political action committee based in Country Y.

As a voter of State X, to what extent would you value the information you received from the political ad described above?

- o Very Highly
- o Highly
- o Moderately
- o Slightly
- o Not At All

Table 4 – Survey Respondent Demographics

	Scenario				
Demographics	*Domestic*	*Foreign (Domestic Issue)*	*Bordering Country*	*Faraway Country*	*Total*
Age					
18 to 34	30.8%	32.6%	29.2%	27.1%	29.9%
34 to 54	33.4%	31.6%	32.2%	31.4%	32.1%
55+	35.7%	35.9%	38.6%	41.5%	37.9%
Sex					
Male	37.0%	42.2%	42.2%	39.0%	40.1%
Female	63.0%	57.8%	57.8%	61.0%	59.9%
Ethnicity					
Non-Hispanic	82.5%	81.7%	82.1%	81.5%	82.0%
Hispanic	17.5%	18.3%	17.9%	18.5%	18.0%
Race					
White	74.6%	76.1%	74.9%	73.7%	74.8%
Black	15.4%	10.9%	11.5%	14.4%	13.1%
Asian or Pacific Islander	5.4%	6.9%	5.9%	6.1%	6.1%
American Indian, Alaskan Native, Mixed Race, or Other	4.6%	6.1%	7.7%	5.8%	6.1%