PROHIBITIONS ON CAMPAIGN CONTRIBUTIONS FROM FOREIGN SOURCES: QUESTIONING THEIR JUSTIFICATION IN A GLOBAL INTERDEPENDENT ECONOMY

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1. INTRODUCTION

Nations constantly confront potential threats to their sovereignty and their right to political self-determination. During the past few decades, the rise of multinational corporations ("MNCs") and increases in foreign investment have replaced military force as the chief sources of such threats. As MNCs and other foreign enterprises expand their activities abroad, they generally seek to influence the domestic policies of the nations in which they do business.¹ This growing foreign political influence has caused the leaders of many countries to fear that their nations' political and economic independence are at risk.²

One way in which overseas corporations try to affect the domestic affairs of their host countries is through campaign contributions. A company may make a campaign donation "to protect [itself] against the passage of adverse laws and regulations by foreign governments."³ A foreign corporation contributes to the campaigns of candidates who support policies that are favorable to the its financial welfare.

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The domestic concern is that these foreigners are buying influence in the nation’s internal policy-making process. Governments have attempted to resolve this problem by adopting legislation that prohibits foreign individuals, corporations, and governments from contributing to the campaigns of domestic candidates. The United States enacted such a ban in 1976. Other countries recently have enacted similar prohibitions. Nations generally justify these restrictions by claiming that foreign campaign contributions threaten their right to maintain their sovereignty, determine their own laws, and elect their own officials free of outside interference. They argue that foreigners making significant campaign contributions affect election outcomes and thus influence future policy decisions, since politicians receiving generous donations from foreign interests are likely to keep them in mind when casting votes in the future. Policies thus may cease to reflect the domestic polity’s will and instead reflect the preferences of overseas investors. Critics conclude that foreign campaign contributions therefore subvert the goals of

6 See Damrosch, supra note 4, at 25-28. See also discussion infra Section 3.
7 See Savrin, supra note 5, at 784-89. Governments may even attempt to conceal their efforts to influence elections in other countries by encouraging private actors, such as corporations and labor unions, to make contributions to overseas campaigns. See Damrosch, supra note 4, at 15-16. Although the government orders such contributions, it hopes that the international community will view them as private donations instead of as an attempt by the regime to interfere with the sovereignty of another nation. See id. at 15.
8 See Savrin, supra note 5, at 789, 809 (arguing that foreign campaign contributions have caused politicians to place foreign interests ahead of their constituents’ interests when making policy). For instance, during the 1996 U.S. Presidential campaign, Republicans accused President Bill Clinton of altering his trade and human rights policies toward Indonesia in exchange for nearly one million dollars in campaign contributions from two wealthy Indonesian families with ties to a major financial-services company. See David E. Sanger, Clinton Officials Seeking to Defend Indonesian Policy, N.Y. TIMES, Oct. 17, 1996, at A1.
9 See id.
a democratic system. In addition, opponents of the inflow of overseas funds assert that excessive contributions may undermine the legitimacy of a government by causing the public to believe that their elected leaders have negotiated certain quid pro quo arrangements with foreigners in exchange for their contributions.

This Comment explores efforts to curb foreign political influence by restricting campaign contributions and evaluates the effectiveness and justifications of these regulations. Section 2 examines the U.S. prohibition against contributions from foreign nationals and exposes the tremendous loophole created through the Federal Election Commission’s (“FEC” or “the Commission”) interpretation of this law. Section 3 surveys legislation enacted in other countries to restrict campaign contributions from foreign sources. Section 3 reveals that certain countries may implement restrictions on foreign campaign financing in order to achieve what most would consider to be undemocratic ends. Section 4 discusses the Foreign Corrupt Practices Act (“FCPA”), the U.S. legislation intended, in part, to prohibit bribery of foreign public officials through campaign contributions and other payments. Instead of restricting overseas donations to U.S. political candidates, the FCPA focuses on barring U.S. companies from contributing to foreign political campaigns if these donations amount to bribes and are given with a corrupt purpose. Since the FCPA targets only illicit payments by domestic corporations, it differs from the other legislation discussed in this Comment. The FCPA presents a unique alternative to the more common barriers to outside contributions and is still the only national legislation aimed at attacking the more general problem of international bribery that plagues the world community. Finally, Section 5 suggests that the justifications for prohibiting all foreign campaign contributions should be re-examined and questioned due to the increasingly interdependent and global nature of the world economy. Section 5 argues that foreign corporations have a

10 See id. at 789-90.
11 See id. at 809-10.
significant interest in the domestic policies of other countries and thus may have a legitimate right to express these interests in some manner. Section 5 proposes that instead of indiscriminately outlawing all donations from abroad, countries should adopt the FCPA's approach to defining an illegal campaign contribution by focusing on eliminating only contributions made for corrupt purposes, specifically payments that may be classified as explicit bribes. Furthermore, Section 5 argues that only these types of payments, not campaign contributions in general, truly subvert democratic ideals. This Comment concludes that the international community should direct its attention to attacking the more serious and pervasive problem of international bribery instead of instituting blanket prohibitions against all types of foreign campaign contributions.

2. U.S. PROHIBITION ON FOREIGN CONTRIBUTIONS TO DOMESTIC CAMPAIGNS

The United States first considered adopting legislation to restrict foreign campaign contributions during the 1960s when congressional hearings revealed that numerous foreign interests had been donating funds to U.S. federal election campaigns through agents in Washington, D.C.\textsuperscript{14} Philippine sugar manufacturers who wished to influence legislation concerning sugar import quotas were among the major sources of these contributions.\textsuperscript{15} As a result of these hearings, Congress amended the Foreign Agents Registration Act ("FARA")\textsuperscript{16} in 1966 by declaring it a felony for a foreign principal to use an agent to contribute to domestic election campaigns or for a candidate to accept or solicit such contributions.\textsuperscript{17} FARA defines an "agent of a foreign principal" as "any person who acts . . . under the direction or control, of a foreign principal."\textsuperscript{18}

The language of this prohibition, however, still permitted

\textsuperscript{14} See Damrosch, supra note 4, at 21-22.
\textsuperscript{15} See id. at 22 & n.82.
\textsuperscript{17} See Savrin, supra note 5, at 791. The prohibition was codified at 18 U.S.C. § 613 (1994). This provision was later repealed when the law was revised. See F.E.C. Advisory Op. No. 1987-25 (Sept. 17, 1987).
foreign principals to provide funds directly to candidates. Such donations technically were legal because they were not distributed through an agent. President Richard Nixon exploited this loophole in his 1972 presidential election campaign by accepting large amounts of overseas donations. When the Watergate hearings exposed Nixon's reliance on foreign assistance, Congress considered amending the prohibition. Congress specifically addressed this issue during the 1974 debates concerning revisions to the Federal Election Campaign Act ("FECA").

Texas Senator Lloyd Bentsen proposed an amendment ("the Bentsen Amendment") that would bar all foreign nationals, aside from resident aliens, from making any contributions to domestic campaigns. Bentsen, concerned with the potential threat to U.S. sovereignty, noted that he did "not think foreign nationals have any business in our political campaigns. They cannot vote in our elections so why should we allow them to finance our elections? Their loyalties lie elsewhere; they lie with their own countries and their own governments." In 1976, Congress granted the FEC jurisdiction to implement and enforce the Bentsen Amendment, which was eventually recodified at 2 U.S.C. § 441e. Thus, by 1976, the United States had adopted legislation restricting campaign financing to only domestic sources. Whether this limitation would be effective, however, remained in question.

19 See Damrosch, supra note 4, at 23.
20 See MAURICE H. STANS, THE TERRORS OF JUSTICE 182 (1978) (defending the acceptance of foreign funding during the 1972 election campaign). Nixon allegedly received $1.5 million from the Shah of Iran, approximately $10 million from Arab interests, and $2 million from a wealthy French man named Paul Louis Weiller. See id. at 183-84 (denying that Nixon's campaign committee actually received these funds and arguing that such allegations were false).
21 See Martin Tolchin, Foreign Role in U.S. Politics Questioned, N.Y. TIMES, Jan. 8, 1986, at B7 [hereinafter Foreign Role].
23 See Savrin, supra note 5, at 793.
24 120 CONG. REC. 8783 (1974).
25 See 2 U.S.C. § 441e (1994). See also Savrin, supra note 5, at 794-95 (discussing the FEC's role in enforcing and administering the Bentsen Amendment).
2.1. The Language of 2 U.S.C. § 441e

The current provision prohibiting overseas contributions states:

It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.²⁶

The statute states that the term “foreign national” includes any “foreign principal” as defined in FARA.²⁷ According to this definition, any foreign corporation “organized under the laws of or having its principal place of business in a foreign country” is a foreign principal and hence a foreign national.²⁸ Thus, under the law, corporations located abroad are not permitted to fund U.S. election campaigns. As will be explained later, this method of determining when a corporation is defined as a foreign national creates a loophole allowing foreign enterprises to evade the law’s intent by channeling contributions through their U.S. subsidiaries.²⁹ The term, “foreign national” also includes foreign governments,³⁰ foreign political parties,³¹ and individuals who are not

²⁶ Id. § 441e(a).
²⁷ Id. § 441e(b). The definition of a “foreign principal” appears at 22 U.S.C. § 611(b). This definition can produce ironic results. For instance, Eni F.H. Faleomavaega, American Samoa’s delegate in Congress, recently discovered that the language of the statute prevented him from funding his own election campaign expenses because, being a non-citizen, he is classified as a “foreign national” and thus cannot contribute to a U.S. campaign. See American Samoa’s Election Law ‘Quirk’, POL. FIN. & LOBBY REP., Sept. 14, 1994, at 3.
³¹ See id.
U.S. citizens and are "not lawfully admitted for permanent residence."\textsuperscript{32}

The statute not only bars foreign nationals from donating money to a candidate, but also prohibits them from contributing any "other thing of value."\textsuperscript{33} This includes loans, gifts, deposits, guarantees, subscriptions, and any type of security.\textsuperscript{34} Under the law, both the foreign national and the U.S. citizen who receives or solicits such a contribution may be liable. The provision encompasses any person who solicits or accepts such contributions, regardless of whether he or she knows that the source of the donation is foreign.\textsuperscript{35} By not limiting the scope of the statute to only those who know that they are receiving foreign money, Congress created a law that potentially could lead to broad liability. For instance, members of a campaign committee who send a mass mailing to a person who happens to be a foreign national technically could be found to have violated the statute.\textsuperscript{36} The penalties for a violation, however, vary according to the mens rea of the actor.\textsuperscript{37} The FEC is generally successful in convincing the perpetrator to comply voluntarily with the penalty it imposes and rarely needs to bring such cases to federal court.\textsuperscript{38}

It is important to note that § 441e applies to contributions made to campaigns in all elections, including races for federal,

\textsuperscript{32} 2 U.S.C. § 441e(b)(2).
\textsuperscript{33} Id. § 441e(a).
\textsuperscript{34} See Ballman, supra note 29, at 32.
\textsuperscript{35} See id. at 33.
\textsuperscript{36} See id.
\textsuperscript{37} See id. If a person knowingly violates the prohibition, the FEC may fine the perpetrator up to twice the amount of the contribution, but no more than $10,000. See id. The FEC may also suggest that the U.S. Attorney General criminally prosecute the violator. See id. The maximum criminal penalty is a fine of three times the contribution up to $25,000 and one-year imprisonment. See id. Generally, the treasurer of the campaign committee is the person who is actually punished unless the candidate took part in or knew of the violations. See id.
\textsuperscript{38} See id. As a result of a recent investigation, Hyundai Motor America, Korean Airlines, and Samsung America, Inc. all pleaded guilty to violating the FECA by contributing to California Congressman Jay Kim's 1992 campaign. These three Korean-based companies received approximately $1 million in fines. See Samsung America Pleads Guilty to Political Contribution Violations, Fined $150,000, 2-7-96 West's Legal News 653, 1996 WL 258408, available in Westlaw, TP-ALL Database.
This broad scope reflects the congressional intent to exclude foreign interference in local as well as in federal politics.

2.2. The Loophole

The FEC largely has thwarted the goal of the Bentsen Amendment through its numerous opinions that consistently have interpreted § 441e as allowing domestic subsidiaries of foreign corporations to make contributions to favored candidates. Despite the fact that the domestic subsidiary may be foreign-controlled or even wholly-owned by its foreign parent, the statute does not define it as a foreign national because it is chartered in the United States and has its principal place of business in the United States. Therefore, § 441e does not regulate the political activities of a subsidiary with a foreign parent.

Subsidiaries wishing to support U.S. candidates generally establish political action committees ("PACs"), which solicit and collect contributions from the subsidiary's U.S. employees and often from its stockholders. Although the United States prohibits all corporations from directly contributing to federal campaigns, the FECA does permit domestic corporations to sponsor the establishment and administration of PACs, which may donate the money they collect to federal candidates who support policies which promote their corporation's business interests. Corporate PACs may contribute up to $5,000 to a candidate's campaign.

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40 See Savrin, supra note 5, at 783.


42 PACs are sometimes also referred to as "separate segregated funds."

43 See JOHN T. NOONAN, JR., BRIBES 649 (1984) (discussing the operation of corporate PACs); Savrin, supra note 5, at 796-97.

44 See Savrin, supra note 5, at 796-97.

45 See 2 U.S.C. § 441a(a)(2)(A) (1994). The impact of these corporate PACs on the U.S. electoral system cannot be understated. PACs associated with
Close to 100 foreign-controlled PACs actively support U.S. political campaigns.\textsuperscript{46} PACs sponsored by foreign-owned or foreign-controlled corporations contributed over $3.1 million to 1992 congressional campaigns.\textsuperscript{47} This amount marked a significant increase from the $2.4 million contributed during the 1989-90 election cycle.\textsuperscript{48} The MNCs making these contributions included Toyota, Shell Oil, and British Petroleum, all of which have U.S. subsidiaries.\textsuperscript{49} These large conglomerates generally contribute to the campaign chests of senior members of the House Ways and Means Committee and the Senate Finance Committee because these are the politicians who most influence U.S. trade and tax policy.\textsuperscript{50} By supporting incumbents, foreign subsidiaries present an additional hurdle for challengers to overcome in their election bids.

Although the FEC permits foreign corporations to funnel contributions through their subsidiaries' PACs, the Commission places certain restrictions on this practice.\textsuperscript{51} For instance, the FEC prohibits foreign nationals from participating in or influencing the PAC's activities.\textsuperscript{52} No foreign national may "direct, dictate, control, or directly or indirectly participate in the decision-making process of any . . . political [action] committee."\textsuperscript{53} The FEC requires foreign nationals who are members of the subsidiary's board to abstain from voting on PAC-related issues, such as the election of the individuals responsible for

\begin{itemize}
\item corporate interests spent approximately $64.4 million to support congressional candidates seeking office in 1994. See Telephone Interview with Ian Stirton, Member, Press Information Division of the FEC (Aug. 30, 1996).
\item See Craig Karmin, Foreign PACs Break Record, THE HILL, Sept. 21, 1994, at 1. Five of the top ten foreign PAC contributors during the 1994 congressional campaigns were pharmaceutical companies interested in influencing any potential health care reform efforts. See \textit{id}.
\item See Foreign-Connected PACs Increased Gifts in '92 Races, POL. FIN. & LOBBY REP., Jan. 12, 1994, at 1 [hereinafter Foreign PACs Increased Gifts].
\item See \textit{id}.
\item See \textbf{Pat Choate}, AGENTS OF INFLUENCE 110 (1990). See also Foreign Money, supra note 1, at 67-68 (referring to certain foreign-owned companies which employed PACs to contribute to the 1986 congressional campaigns).
\item See 11 C.F.R. § 110.4(a)(3) (1994).
\item See \textit{id}.
\item Id.
\end{itemize}
operating the committee. In addition, the PACs of foreign subsidiaries may not solicit or receive contributions from foreign nationals. To receive such donations would violate § 441e. Furthermore, the FEC has ruled that a subsidiary which receives most of its funding from its foreign parent and produces little income from its U.S. operations may not operate a PAC because the foreign parent essentially would be directly funding that PAC. Through these restrictions, the FEC attempts to narrow the loophole by reducing the extent to which foreigners can exercise control over PACs.

The loophole remains wide, however, in some settings. For instance, in certain states, subsidiaries with foreign parents may make direct contributions from their treasuries to candidates running for state or local office since the FECA prohibits such direct donations only when they are made to federal candidates. Thus, in states that permit corporations to support local campaigns, U.S. subsidiaries can contribute to state campaigns without even establishing a PAC. Again, § 441e does not restrict the subsidiaries’ activities because they are not considered foreign nationals. As with PAC contributions, however, the FEC has required that no foreign national influence the subsidiary’s decisions concerning campaign contributions. In addition, the subsidiary may use only the profits from its U.S. operations to make donations to state and local campaigns. The parent cannot provide the funds and may not just “replenish all or any portion of the subsidiary’s political contributions.”

55 See id.
56 See 2 U.S.C. § 441e(a).
58 See 2 U.S.C. § 441b(a).
59 See, e.g., Foreign Money, supra note 1, at 68 (stating that foreign-owned domestic companies can contribute directly to local campaigns in California).
62 See id.
63 Id.
Many critics feel that permitting foreign-owned companies located in the United States to support federal candidates through PACs and to directly contribute to local campaigns runs contrary to the true intent of the legislation. Such critics of the FEC’s liberal interpretation of § 441e argue that foreign parents are bound to influence the activities and decisions of their subsidiaries. The original proponent of the amendment, Senator Bentsen, has insisted that the foreign parent “will obviously dictate to the subsidiary on how its PAC will be used.” Although only domestic sources can donate money to the committee, how that money is spent certainly will reflect overseas corporate interests. FEC Commissioner Thomas E. Harris, a consistent dissenter in FEC opinions in this area, argues:

The PAC is always controlled by the top management of the corporation. By permitting foreign nationals to incorporate in the U.S. and thereby avoid the prohibitions of Section 441e . . . , the commission does a great disservice to the congressional intention to keep foreign influence out of federal elections in the [United States]. The notion that no decisions as to the activities of the proposed political [action] committee will be dictated or directed by foreign nationals strikes me as extremely naive.

The majority of the FEC, however, has justified its position by claiming that PACs are actually “instruments of the United States employees of foreign-owned companies” and thus prohibiting the establishment of these PACs “would deprive United States citizens of their right to make company-based contributions to political candidates.”

64 See Savrin, supra note 5, at 808 (arguing that the conflict between the FEC’s decisions and the original congressional intent behind the Bentsen Amendment generates an incoherent policy).
65 See Foreigners’ Political Roles, supra note 2, at A14.
66 Id.
67 See Foreign Role, supra note 21, at B7.
68 MARTIN TOLCHIN & SUSAN TOLCHIN, BUYING INTO AMERICA 19 (1988) [hereinafter BUYING INTO AMERICA].
Opponents to the current administratively-created loophole suggest that such a lenient policy threatens U.S. sovereignty by permitting foreign interests to influence domestic campaigns and policy-making. These critics believe that foreign nationals have no right to exercise such influence. Those who advocate closing this loophole, however, fail to acknowledge that foreign nationals may have legitimate concerns about future U.S. policies which could greatly affect the profitability of their subsidiaries. By conducting business in the United States, creating jobs for U.S. citizens, and subjecting themselves to U.S. laws, these foreign corporations may indeed earn the right to exercise a certain level of influence in U.S. politics. Section 5 of this Comment explores this argument in greater detail.

Even if the United States eliminates the loophole, foreign interests may continue to affect U.S. campaigns through other avenues. For instance, foreign corporations may strongly encourage their agents in the United States, such as law firms, investment banks, and public relations companies, to establish PACs aimed at supporting particular candidates. Alternatively, foreign manufacturers may urge their U.S. dealers and sellers to sponsor PACs which will contribute to favored candidates. The creation of such PACs might even be a condition for conducting business with the foreign enterprise. Thus, it is unlikely that opponents of the existing loophole ever will be able to achieve their goal of totally eliminating foreign influence in domestic campaigns.

Candidates often complain that they do not realize that the sources of their campaign contributions are affiliated with foreign interests. With the recent increase in the number of MNCs and the growth of our interdependent global economy, it is often

70 See Savrin, supra note 5, at 807-08.
72 See CHOATE, supra note 50, at 110.
73 See id. An example of such a PAC is the Auto Dealers and Drivers for Free Trade PAC ("AUTOPAC"). American vehicle importers established AUTOPAC to lobby for free trade policies. See id. at 110-11. Foreign automobile manufacturers encourage their dealers to help fund and participate in AUTOPAC. See id. at 111. AUTOPAC often expends its money to defeat candidates who advocate protectionist measures. See id.
74 See, e.g., Foreigners' Political Roles, supra note 2, at A14 (describing a campaign manager's surprise at discovering that he had accepted a contribution from the PAC of a company owned by a confidant of Ferdinand Marcos).
difficult to determine the extent of foreign ownership of a company.\textsuperscript{75} Thus, when a candidate receives a contribution from a domestic company’s PAC, he or she may not realize that this company is actually owned by a Japanese or Swiss conglomerate.\textsuperscript{76} This ignorance is problematic because candidates have the right to know the true identity of their financial supporters. In addition, voters are entitled to know exactly who is funding the candidates. An individual may cast his vote very differently if he discovers that a candidate received most of his or her funding from a foreign-owned entity. This problem will continue to grow as more companies take advantage of this loophole in the future.

2.3. Proposals to Close the Loophole

There have been efforts to revise the election laws in order to eliminate the existing loophole. Disappointed that his original amendment did not produce its intended effect of eliminating foreign influence in domestic campaigns, Senator Bentsen proposed a new amendment in 1990 that would have prohibited campaign contributions from any corporation with more than 50% foreign ownership.\textsuperscript{77} This amendment would have barred foreign-owned subsidiaries from making the donations which are currently so common. Initially, the Senate overwhelmingly approved the reform by a 73-27 vote.\textsuperscript{78} Congress, however, failed in that year to pass the extensive campaign finance reform legislation that included this amendment.\textsuperscript{79} When Bentsen reintroduced the proposal the following year, the Senate voted 60-35 against it.\textsuperscript{80}

The FEC also considered adopting a rule banning foreign-connected PAC contributions in 1990, but foreign-owned companies responded with a vigorous lobbying campaign in

\textsuperscript{75} See id.

\textsuperscript{76} See id.

\textsuperscript{77} See Richard Katz, Furor over Foreign Lobbying Fizzles in Washington, JAPAN ECON. J./NIKKEI WKLY., Sept. 7, 1991, at 10. See also Senator Pursues Ban on Political Donations by Foreign Interests, FIN. POST, July 18, 1990, at 6 (discussing Bentsen’s proposed amendment and his attempt to include it in the 1990 Senate bill to reform campaign financing).

\textsuperscript{78} See Katz, supra note 77.

\textsuperscript{79} See Foreign PACs Increased Gifts, supra note 47, at 3.

\textsuperscript{80} See Katz, supra note 77.
opposition to the proposed regulation.\textsuperscript{81} FEC Commissioner John Warren McGarry commented on the emphatic reaction sparked by this rule: "Never before in the FEC's history has another question raised as much interest, emotion or importance."\textsuperscript{82} These foreign companies achieved their goal when the FEC voted 4-2 to reject the suggested regulation and decided to maintain its existing policy.\textsuperscript{83} The tremendous outcry caused by the proposal demonstrates how much value foreign entities place on their ability to influence U.S. election outcomes. These MNCs clearly feel that they have important interests at stake and want to preserve their ability to support certain candidates. Viewed in this manner, foreign corporations are not very different from domestic interest groups who also strive to maintain their political influence in order to protect their economic welfare.

The most recent attempt at reform in this area is the bill that Congresswoman Marcy Kaptur presented to the House of Representatives in October 1995.\textsuperscript{84} This proposal is similar to Bentsen's in that it would outlaw contributions from PACs sponsored by corporations with over 50% foreign-ownership.\textsuperscript{85} The bill places the same restriction on PACs sponsored by trade associations which receive a majority of their funding from foreign companies.\textsuperscript{86} In addition, the bill addresses the problem of identifying funds derived from foreign sources by requiring that all corporate PACs disclose the extent to which their corporation is foreign-owned.\textsuperscript{87} Since Republicans thus far have displayed little support for this bill, it does not appear that it will be adopted.\textsuperscript{88} The bill is currently sitting in the House Committee on

\textsuperscript{81} See Foreign PACs Increased Gifts, supra note 47, at 5 ("[T]he FEC's rulemaking exercise triggered intense interest among foreign-owned corporations who feared they would suffer economic disadvantages if unable to compete alongside domestic corporations in the political finance arena."). The FEC's legal staff, however, supported the proposed rule. See id.

\textsuperscript{82} Id.

\textsuperscript{83} See id. In 1991, the FEC again voted 4-2 to uphold a ruling which permitted contributions from PACs sponsored by subsidiaries of foreign-owned companies. See Karmin, supra note 46, at 10.


\textsuperscript{85} See id.; Hearings on Campaign Finance Reform, supra note 49.

\textsuperscript{86} See Hearings on Campaign Finance Reform, supra note 49.

\textsuperscript{87} See id.

\textsuperscript{88} See Telephone Interview with representative of Congresswoman Marcy Kaptur's office (July 18, 1996).
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Oversight.\textsuperscript{89}

Although Congress and the FEC have continued to allow foreign-owned corporations to exploit the loophole created by the language of § 441e, the numerous attempts to close this loophole suggest that the future trend will be towards tightening, or at least trying to tighten, the restrictions on foreign financing of domestic campaigns. This focus reflects the prevailing view that this foreign influence represents an illegitimate intrusion upon U.S. sovereignty and upon the right of U.S. citizens to select their own leaders free of interference from outside parties. There are no signs that the United States plans to reconsider its rationale for prohibiting contributions from foreign nationals. To the contrary, if legislators such as Senator Bentsen and Congresswoman Kaptur can garner more support, the only likely change in the near future will be a movement towards a more restrictive policy against foreign campaign contributions.

3. Other Countries' Restrictions on Foreign Campaign Contributions

Several nations have adopted campaign financing regulations resembling § 441e.\textsuperscript{90} Lawmakers often enacted these restrictions partly in response to the numerous instances of outside interference in their internal political affairs.\textsuperscript{91} Like the United States, these countries generally justify their laws by claiming that they are necessary to preserve the nation's sovereignty.\textsuperscript{92} In certain instances, oppressive regimes have used such regulations to suppress potential challenges to the status quo.\textsuperscript{93}

3.1. The International Trend Towards Prohibition

In her testimony before the House Committee on Oversight, Congresswoman Marcy Kaptur argued in favor of her proposed amendment\textsuperscript{94} to § 441e by stating that many major trading partners of the United States have more stringent restrictions on

\textsuperscript{89} See id.
\textsuperscript{90} See discussion infra section 3.1.
\textsuperscript{91} See Damrosch, supra note 4, at 21.
\textsuperscript{92} See id.
\textsuperscript{93} See discussion infra section 3.2.
foreign contributions than does the United States. Nations with blanket prohibitions against foreign donations include Japan, India, Spain, Mexico, and China. Other countries have adopted less strict limitations. For instance, Israel employs a novel policy that differentiates foreign individuals from foreign corporations: foreign individuals are permitted to make contributions, but foreign corporations and partnerships may not directly or indirectly provide financial support to a political party. Germany also tolerates some foreign political influence by allowing companies based in other countries to contribute to campaigns as long as they have more than 50% German ownership.

Recently, other countries have followed the trend towards barring foreign financing of domestic campaigns. In 1993, the Canadians amended their Canada Elections Act to prohibit parties and politicians from accepting political contributions from an individual "who is not a Canadian citizen or a permanent resident," from corporations that do "not carry on business in Canada," and from "a foreign government or an agent of a foreign government." In July 1995, the Russian Central Electoral

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95 See Hearings on Campaign Finance Reform, supra note 49.
96 Article 22-5 of the Political Funds Control Law bars Japanese politicians from receiving campaign funds from a foreign individual, a foreign corporation, or any other entity which is mostly composed of foreigners. See LAW LIBRARY OF CONGRESS, CAMPAIGN FINANCING OF NATIONAL ELECTIONS IN SELECTED FOREIGN COUNTRIES 142 (1995).
97 In 1976, India enacted The Foreign Contribution (Regulation) Act which declares it unlawful for individuals or political groups to accept foreign political contributions without first receiving permission from the Central Government. See id. at 105.
98 Law 5/1985 on Political Parties bars donations from foreign individuals and corporations. See id. at 178.
99 The 1990 Code of Electoral Institutions and Procedures prohibits foreign individuals, political parties, organizations, and corporations from financially supporting Mexican candidates. See id. at 166.
100 See Hearings on Campaign Finance Reform, supra note 49.
101 See LAW LIBRARY OF CONGRESS, supra note 96, at 119; Damrosch, supra note 4, at 26 (discussing the Israeli approach).
102 See LAW LIBRARY OF CONGRESS, supra note 96, at 79. Germany also allows donations from foreign political parties represented in the European Parliament and from non-citizens who are members of the European Parliament. See id.
103 Act of May 6, 1993, ch. 19, sec. 107, § 217.1(1)(a), (b), (e), 1993 S.C. 251, 311 (Can.).
Commission approved regulations which prohibit foreign citizens and governments from donating funds to candidates seeking election to the State Duma, the Russian parliament's lower house. ¹⁰⁴ The regulations also prohibit Russian companies from contributing funds if foreigners own over 30% of the company's capital. ¹⁰⁵ The fact that Russia permits other domestic corporations to contribute directly to campaigns ¹⁰⁶ but prohibits foreign corporate contributions suggests that the Russians are less concerned with business exercising an undue amount of influence on political outcomes than with maintaining their sovereignty and freedom from outside political interference.

Great Britain is one of the few large countries which does not explicitly restrict the inflow of contributions from abroad. ¹⁰⁷ A recent controversy, however, has developed concerning the Tory Party's acceptance of and reliance upon foreign funds. ¹⁰⁸ Opponents allege that the Tories have received millions of pounds in secret donations from abroad. ¹⁰⁹ The Labor Party has accused the Tories of granting favorable tax treatment to foreigners in exchange for their contributions. ¹¹⁰ These allegations have prompted the English Parliament to consider reforming their campaign financing laws. ¹¹¹ The Labor Party demands that a


¹⁰⁵ See id.


¹⁰⁷ See LAW LIBRARY OF CONGRESS, supra note 96, at 144.


¹⁰⁹ See David Harrison & Paul Routledge, The Sleaze Factor Is Threatening to Swamp Central Office, OBSERVER, June 20, 1993, at 19. The most well-known foreign donors include John Latsis, a Greek shipowner, Hong Kong billionaire Li ka-Shing, chairman of a massive property-to-communications corporation, and Asil Nadir, a tycoon recently charged with committing fraud. See id. Opponents recently have alleged that the Tories received large donations between 1992 and 1994 from Serbian sources linked to Bosnian Serb leader, Radovan Karadzic. See Kelsey & Leppard, supra note 108, at 1.


total ban on foreign contributions be enacted.\textsuperscript{112} The Tories, however, want to limit the proposed prohibition to funds from foreign governments and rulers, thus excluding donations from foreign corporations and individuals.\textsuperscript{113} While the result of this debate remains unclear, it appears that Great Britain is likely to follow the international trend towards limiting foreign support of domestic candidates. Once again, a country appears to be on the verge of raising barriers against outside influence in its domestic political affairs.

3.2. Restrictions Used to Subvert Democratic Ideals

In certain cases, incumbent regimes appear to have enacted limitations on political contributions in order to suppress potential challenges to their power.\textsuperscript{114} For instance, during the late 1980s, the South African government used “certain laws excluding foreign assistance to political campaigns . . . as part of comprehensive strategies to prevent domestic opposition forces from organizing and acquiring power.”\textsuperscript{115} By invoking his authority to prohibit foreign financial assistance to domestic political organizations, former South African President P.W. Botha prevented the United Democratic Front, the nation’s major antiapartheid movement, from receiving overseas funding.\textsuperscript{116} Since these contributions constituted close to half of the movement’s budget, these measures severely limited the United Democratic Front’s activities.\textsuperscript{117} Botha justified the restrictions by claiming that the money represented an effort by the Western powers to infringe upon South Africa’s sovereignty and that these funds were being “‘used for undermining the state and promoting extraparliamentary politics.’”\textsuperscript{118} The true motivation for the

\textsuperscript{112} See id.; Martin Linton, Dept of Funds and Favours, THE GUARDIAN, June 18, 1993, at 22 (arguing in favor of adopting the Labor Party’s proposal).

\textsuperscript{113} See Johnston, supra note 111, at 11.

\textsuperscript{114} See Damrosch, supra note 4, at 21.

\textsuperscript{115} Id.

\textsuperscript{116} See id. at 26.

\textsuperscript{117} See id. In 1988, the South African government proposed a law called the Promotion of Orderly Internal Politics Bill which further limited foreign funding of opposition political groups. See John D. Battersby, Pretoria May Ban Foreign Funds for Rights Groups, N.Y. TIMES, Mar. 2, 1988, at A9.

prohibition, however, was to suppress the will of the people by eliminating the opposition’s access to the funding necessary to overthrow the oppressive incumbent regime.\textsuperscript{119} Thus, instead of promoting the democratic ideal of rule by the citizenry, limitations on contributions from foreign sources can be used to subvert this goal.

Nicaragua’s experience with regulating campaign financing provides another interesting example. During the 1984 elections, the Nicaraguan government permitted opposition political parties and candidates to receive money from foreign sources.\textsuperscript{120} Government leaders hoped that this open policy would promote international approval of the regime’s legitimacy and weaken its undemocratic and oppressive image.\textsuperscript{121} In 1988, however, the Sandinista leadership reversed its policy by declaring it treason for political parties to receive overseas financial assistance.\textsuperscript{122} Foreign political contributions were characterized as “part of a campaign against Nicaraguan sovereignty and integrity.”\textsuperscript{123} Although the Sandinistas implemented this policy primarily to prevent the U.S. government from providing financial aid, the regulations also applied to private U.S. corporations.\textsuperscript{124} Again, the real motivation for these new laws was the controlling political party’s desire to suppress popular opposition movements and to maintain power.

\textsuperscript{119} See Damrosch, supra note 4, at 21.
\textsuperscript{120} See id. at 27.
\textsuperscript{121} See id.
\textsuperscript{123} Id. (quoting then Nicaraguan Vice President Sergio Ramirez Mercado). Nicaragua revised this ban the following year due to its obligations under a new regional peace agreement. See Mark A. Uhlig, Anti-Sandinistas Wary on U.S. Aid, N.Y. TIMES, June 21, 1989, at A5. The modification permitted acceptance of foreign funds but required that half of the donations be retained by the Supreme Electoral Council, an organization responsible for monitoring elections. See id.
\textsuperscript{124} In 1989, a Sandinista newspaper alleged that a U.S. construction company had secretly delivered $500,000 to support opposition presidential candidate, Violeta de Chamorro, thus violating Nicaraguan laws requiring such funds to be transferred through the Supreme Electoral Council. See Nicaragua Says U.S. Funnelling Money to Opposition, Reuters, Oct. 10, 1989, available in LEXIS, World Library, Allnews File.
4. THE FOREIGN CORRUPT PRACTICES ACT

Thus far, this Comment has only discussed legislation aimed at limiting incoming campaign donations from foreign sources. The United States has also enacted the FCPA, which is legislation partly aimed at regulating the ability of U.S. corporations to fund the campaign chests of politicians running for office in other countries.\(^\text{125}\) This legislation resulted from investigations conducted in the 1970s which revealed numerous instances where U.S. businesses had used campaign contributions to bribe foreign officials.\(^\text{126}\) The FCPA attacks the problem of bribery of overseas officials,\(^\text{127}\) barring U.S. corporations from making campaign contributions to foreign candidates or political parties when the donations are, in essence, only bribes.\(^\text{128}\) Although the FCPA outlaws all forms of bribery of overseas officials, this Comment focuses only on its provision outlawing illicit campaign contributions. The more general language of the statute is relevant to the focus of this Comment, however, because it offers a unique alternative to defining what constitutes an illegal overseas campaign donation by barring only contributions made with a corrupt intent. Section 5 argues that nations should abandon their blanket prohibitions on foreign campaign contributions and instead bar only donations that are disguised bribes.

4.1. Revelations That Led to the Adoption of the FCPA

Like § 441e, the FCPA was enacted as a result of the Watergate investigation into illegal corporate campaign contributions.\(^\text{129}\) The Watergate inquiry inspired the Securities and Exchange Commission ("SEC") to conduct its own investigation, which revealed not only many illegal domestic contributions, but also numerous instances where U.S. corporations made foreign

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\(^{126}\) See id.

\(^{127}\) See id.


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political payments.\textsuperscript{130} The SEC referred to these overseas transactions as "questionable payments," because businesses often made them "in order to obtain and retain business overseas."\textsuperscript{131} One may classify these transactions as international bribes. A small percentage of these payments took the form of campaign contributions to political candidates.\textsuperscript{132}

The Subcommittee on Multinational Corporations of the U.S. Senate Foreign Relations Committee conducted hearings in 1975 on the issue of foreign political payments.\textsuperscript{133} During these sessions, Mobil,\textsuperscript{134} Gulf Oil,\textsuperscript{135} Exxon,\textsuperscript{136} and Lockheed Aircraft\textsuperscript{137} all testified concerning their past foreign political contributions.\textsuperscript{138} Investigators also discovered that other MNCs had become intricately involved in the domestic politics of other countries. For example, the International Telephone and Telegraph Corporation ("ITT") collaborated with the CIA and other branches of the U.S. government in a successful effort to remove communist Salvador Allende from power in Chile.\textsuperscript{139} Allende’s intention to nationalize Chile’s industries posed a serious threat to ITT’s business interests in that country.\textsuperscript{140} ITT

130 See Jacoby ET AL., supra note 3, at xv. Corporate executives often used secret funds, referred to as "slush funds," to make the payments. See id. at 46-47.

131 Timmeny, supra note 129, at 235.

132 See Morehead \& Gustavson, supra note 125, at 76.

133 See Jacoby ET AL., supra note 3, at 75.

134 Mobil funneled money to Italian political parties through its Italian affiliate. See id. at 161.

135 Gulf Oil donated $3 million in 1970 to South Korea’s Democratic Republican Party. See id. at 107.

136 Exxon admitted to having made contributions to anti-communist Italian parties during the 1960s and early 1970s. See id. at 108-10. Exxon funneled $29 million to these parties through its Italian subsidiary, Esso Italiana. See id. at 165-66.

137 Lockheed paid $22 million to foreign public officials and political parties during a period of more than five years. See id. at 115. In return, Lockheed obtained sales contracts for its aerospace products. See id. Former Japanese Prime Minister Tanaka and Prince Bernhard of the Netherlands were among the recipients of these bribes. See id.

138 See id. at 75.


140 See id. at 120.
first helped to fund Allende’s opposition during the election campaign.\textsuperscript{141} Once Allende triumphed and became president, ITT and other MNCs which had Chilean investments worked with the CIA to create the economic instability that provoked the 1973 military coup resulting in Allende’s fall from power.\textsuperscript{142} This incident demonstrates the astonishingly active role that U.S. companies played in foreign affairs.

By October 1977, over 400 U.S. corporations had admitted to having expended more than $300 million in questionable foreign political payments.\textsuperscript{143} Certain U.S. businesses had bribed foreign public officials and tried to buy political influence in order to protect and secure their investments abroad. Disclosures of these bribes had precipitated the fall of certain regimes whose officials had accepted these payments.\textsuperscript{144} Congress expressed concern that these developments would undermine U.S. diplomatic relations as foreigners began to believe that corporations manipulated American foreign policy.\textsuperscript{145} Congress feared that other countries would doubt the integrity and credibility of U.S. corporations and would hesitate to conduct business with them.\textsuperscript{146} These fears prompted Congress to pass the FCPA in 1977.

4.2. Provisions of the FCPA and the Requirement of Corrupt Intent

The FCPA prohibits issuers\textsuperscript{147} and domestic concerns\textsuperscript{148}

\textsuperscript{141} See id. at 123-24. The Anaconda Company, which held copper mine shares in Chile, and other MNCs with Latin American investments also devoted funds towards opposing Allende in the 1970 election. See id. at 140-41.

\textsuperscript{142} See id. at 130-36, 140.


\textsuperscript{144} See Harvey L. Pitt & Karl A. Groskaufmanis, Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct, 78 GEO. L.J. 1559, 1583 (1990). The Japanese and Bolivian governments collapsed soon after Lockheed and Gulf disclosed their past corrupt payments to officials in these countries. See id. at 1583 n.145. The Italian government also suffered instability when the public learned that high officials had received American bribes. See Timmeny, supra note 129, at 237-38.

\textsuperscript{145} See Timmeny, supra note 129, at 238.

\textsuperscript{146} See id.

\textsuperscript{147} An “issuer” refers to any corporation that must register under the Securities and Exchange Act of 1934. See 15 U.S.C. §§ 78c(a)(8), 78l(a)-(b).
from bribing foreign public officials, parties, or political candidates. Although the FCPA is intended to ban bribes of all forms, for the purposes of this Comment, the provision regarding payments to foreign political parties and candidates is the most pertinent:

It shall be unlawful . . . to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or . . . anything of value to . . . any foreign political party or official thereof or any candidate for foreign political office for purposes of . . . influencing any act or decision of such party, official, or candidate in its or his official capacity, or . . . inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate . . . .

The FCPA applies only to payments made for the purpose of assisting the payer "in obtaining or retaining business." In addition to prohibiting direct payments, the FCPA also prohibits U.S. companies from making payments to a third party with knowledge that that party will proceed to use the money to offer a bribe. The FCPA, which is enforced by the SEC and the U.S. Attorney General, provides that a company may be fined as much as $2 million for a violation, and individuals may be

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148 A "domestic concern" refers to any American company or individual. See id. § 78dd-2(h).

149 See id. §§ 78dd-1, 78dd-2. The FCPA also establishes certain corporate accounting provisions aimed at increasing disclosure of corporate expenditures. See id. § 78m; see also Jadwin & Shilling, supra note 125, at 679 (explaining the FCPA accounting provisions).

150 15 U.S.C. §§ 78dd-1(a) (applying to issuers), 78dd-2(a) (applying to domestic concerns).

151 Id.

152 See id. §§ 78dd-1(a)(3), 78dd-2(a)(3). A person will be held to have such knowledge if he or she possessed actual knowledge or is found to have been in a state of "willful blindness." See Jadwin & Shilling, supra note 125, at 682.

153 See Muffler, supra note 13, at 6.
imprisoned for up to five years.\textsuperscript{154}

The FCPA differs from § 441e in that the FCPA is not a blanket prohibition on all contributions to foreign political candidates. Instead, the FCPA only bars contributions made for a "corrupt" purpose and given with the intent of obtaining a financial benefit.\textsuperscript{155} In other words, a corporate officer is only liable if he or she makes a contribution with the intent either to wrongfully influence the candidate's actions or to induce the candidate to misuse his or her official position once elected.\textsuperscript{156} Thus, it appears that in order to find the payer guilty of violating the FCPA, there must be evidence that the payer struck some type of corrupt \textit{quid pro quo} arrangement with the recipient.\textsuperscript{157}

Some may argue that any individual or company which makes a campaign contribution intends to influence the candidate and that therefore, any contribution should be considered bribery under the statute.\textsuperscript{158} There is, however, a distinction between a legitimate campaign contribution and a bribe. One may make a campaign contribution solely because he or she supports a candidate's policies or ideological viewpoint. This type of campaign contribution cannot be classified as a bribe and would not be a corrupt payment under the FCPA. A campaign contribution qualifies as a bribe only if the "payment [is] made to \textit{induce} the payee to do something for the payer that is improper" or in some way forces the payee to violate his or her public duty.\textsuperscript{159} Illicit campaign contributions are thus characterized by

\textsuperscript{154} See 15 U.S.C. § 78ff(c).
\textsuperscript{155} See id. §§ 78dd-1(a), 78dd-2(a).
\textsuperscript{156} See Wade, \textit{supra} note 143, at 268-69 (analyzing what Congress intended by requiring that the payment be made for a corrupt purpose).
\textsuperscript{158} See NOONAN, \textit{supra} note 43, at 621-24 (discussing how a "contribution" is sometimes difficult to differentiate from a "bribe" because one who makes a campaign contribution often expects some type of reciprocity from the candidate).
\textsuperscript{159} JACOBY ET AL., \textit{supra} note 3, at 90. A bribe is defined as any money given "with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity." \textit{BLACK'S LAW DICTIONARY} 191 (6th
the existence of a corrupt quid pro quo arrangement. Although this may seem to be a fine distinction, it is a distinction which allows many countries, including the United States, to permit individuals and interest groups to contribute to campaigns while at the same time prohibiting domestic bribery. Thus, as a practical matter, the distinction is very real.

Section 441e and the other laws restricting donations are not limited to barring campaign contributions from foreign nationals who have a corrupt intent and are attempting to bribe political candidates. Instead, these regulations are blanket prohibitions on all foreign contributions regardless of the payer’s intent. Section 5 of this Comment will address the question of whether such a broad ban should apply to foreigners while domestic PACs and U.S. citizens are prohibited only from making illicit bribes.

4.3. The Reluctance to Address the Problem of Foreign Bribes to Political Candidates

Although most nations at least formally prohibit bribery of domestic government officials, no country has yet adopted legislation resembling the FCPA to regulate illicit payments to foreign officials. The best explanation for this is that a country has an incentive to allow its own companies to bribe foreign officials because this may increase the chance that domestic companies will obtain overseas business. Such business will improve the nation’s trade balance and benefit the country’s
overall economy.\textsuperscript{165} Thus, governments often look the other way when domestic firms secure business through corrupt payments abroad.\textsuperscript{166}

The FCPA has remained relatively ineffective in curbing illicit international payments because of its unilateral nature.\textsuperscript{167} If the SEC or the U.S. Attorney General discovers that an American corporation has bribed an overseas political candidate or official, the U.S. government has no jurisdiction to prosecute the foreign recipient.\textsuperscript{168} The U.S. government must rely on the other country to investigate and punish the recipient. This often may not occur.

The international community has recognized that transnational bribery is prevalent and that jurisdictional difficulties create the need for some type of multinational treaty or agreement to control the corruption.\textsuperscript{169} Efforts at forming an international agreement to ban bribery, however, have been relatively unsuccessful thus far. In 1975, the United Nations adopted a resolution denouncing bribery by MNCs and calling upon nations to cooperate in order to eliminate these corrupt payments.\textsuperscript{170} Few member nations responded to this request.\textsuperscript{171} In 1976, the Organization of Economic Cooperation and Development ("OECD") issued the \textit{OECD Declaration and Decisions on International Investment and Multinational Enterprises}, which included a provision barring companies doing business in OECD countries from offering bribes to public servants.\textsuperscript{172} This decla-

\textsuperscript{165} See id.
\textsuperscript{166} See id.
\textsuperscript{167} See Muffler, supra note 13, at 8 ("The FCPA's major flaw however, is its unilateral character which limits its effectiveness in the world community."). When the United States originally enacted the FCPA in 1977, Congress assumed that a universal international treaty constraining bribery would likely be established in the near future. See id. at 5-6.
\textsuperscript{168} See Jadwin and Shilling, supra note 125, at 685.
\textsuperscript{169} See Muffler, supra note 13, at 18-19.
\textsuperscript{171} See Muffler, supra note 13, at 10-11.
\textsuperscript{172} See id. at 9; see also Jay M. Vogelson, Corrupt Practices in the Conduct of International Business, 30 INT'L LAW. 193, 195 (1996) (describing the OECD provisions in the 1976 declaration).
ration, though, was nonbinding and ultimately ineffective.\textsuperscript{173} The International Chamber of Commerce adopted rules of conduct aimed at combatting illicit payments the following year.\textsuperscript{174} The rules prohibited MNCs from bribing officials in order to secure business.\textsuperscript{175} The effectiveness of the panel created to interpret the rules was limited, though, because its by-laws required that it obtain the accused party's permission before proceeding with investigations.\textsuperscript{176}

In 1993, a nonprofit organization called Transparency International was established to encourage countries to address the problem of bribery of foreign public officials.\textsuperscript{177} Transparency International's goal is to have all countries enact legislation similar to the FCPA.\textsuperscript{178} Unfortunately, countries such as Britain, Japan, and Germany have firmly opposed the organization's efforts.\textsuperscript{179} In Germany, bribes are still listed as a legitimate business expense as long as the recipient is named.\textsuperscript{180} Thus, many countries appear content to allow international bribery to continue and to permit their corporate agents to strike corrupt deals with public servants.

5. A REANALYSIS OF THE JUSTIFICATIONS FOR PROHIBITIONS ON FOREIGN CAMPAIGN CONTRIBUTIONS AND A PROPOSAL FOR AN ALTERNATIVE COURSE

Those who support excluding foreign financial assistance from domestic political campaigns and the movement in the United States towards tightening existing regulations generally offer two justifications for such restrictions. First, they assert that these laws are necessary to preserve a nation's right to sovereignty and its entitlement to be free of foreign interference in its internal

\textsuperscript{173} See Muffler, \textit{supra} note 13, at 9.
\textsuperscript{174} See Vogelson, \textit{supra} note 172, at 195.
\textsuperscript{175} See id.
\textsuperscript{176} See id.
\textsuperscript{177} Transparency International is a coalition consisting of international business executives, past and present government officials, and development experts. See id. at 198 n.16.
\textsuperscript{178} See Muffler, \textit{supra} note 13, at 12.
\textsuperscript{179} See id. at 13-15.
political affairs.\textsuperscript{181} Second, they claim that these laws promote the democratic ideals of self-determination and rule by the citizenry.\textsuperscript{182} Given the increasingly global nature of the international economy and the rise in foreign investment throughout the world, it is time to reevaluate these traditional justifications and reassess their legitimacy.

5.1. \textit{The Illusion of True Sovereignty in the Modern World}

Most people agree that there is an international legal principle that, to a limited extent, restricts countries from interfering in each other's internal affairs.\textsuperscript{183} Numerous international treaties and agreements have consistently established this broad principle of non-intervention.\textsuperscript{184} Some may argue that this principle does not apply to private conduct such as corporate campaign contributions. A state, however, often has an international obligation to prevent such private conduct if the action is found to be an international wrong because it violates the principle of sovereignty.\textsuperscript{185}

The scope of this norm against foreign interference is vague.\textsuperscript{186} Although the principle clearly seems to prohibit the

\textsuperscript{181} See Savrin, supra note 5, at 784.

\textsuperscript{182} See id.

\textsuperscript{183} See, e.g., \textsc{Restatement (Third) of the Foreign Relations Law of the United States} § 102 (1987).


\textsuperscript{186} See Jackamo, supra note 184, at 967-68 ("[T]he line separating improper, illegal intervention from legitimate interference is quite difficult to draw.")
unjustified use of force within the borders of another state, the recent rise of “non-forcible forms of covert intervention such as election campaign financing” has made the extent the customary rule pertains to these new peaceful means of interference unclear. The international community seems to accept and even applaud certain nonforcible methods of intervention. For instance, if a regime employs oppressive tactics commonly viewed as human rights violations, other nations may legitimately respond by implementing economic sanctions or other nonforcible reactive measures. Such efforts are intended to influence the internal affairs of the other country by inducing the tyrannical government to cease engaging in this unacceptable conduct. Few, though, would argue that these responses violate the other country’s sovereignty. Furthermore, states often supply financial assistance and arms to rebels attempting to overthrow a dictatorship. These nonforcible measures are generally not considered a violation of the principle of non-interference.

Nonforcible means of intervention are not limited to state actions. With the recent surge in international investment, overseas investors have taken a much more active role in influencing the policies and legislation of the countries in which they have business interests. They have accomplished this primarily by increasing their international lobbying efforts.

Representatives of interest groups and corporations from all over the world regularly travel to Washington, D.C. seeking favorable legislation. The Japanese are among the most active in this area. Japanese enterprises employ former top U.S. political consultants as their lobbyists on Capitol Hill.
Japanese executives often threaten to reduce their U.S. investments unless legislators adopt tax and trade policies which are beneficial to their company’s financial welfare. Major foreign investors may establish a plant in a powerful congressman’s district for the sole purpose of influencing his vote. In addition, foreign corporations may join U.S. trade associations in order to influence their lobbying efforts. Foreign nationals are even permitted to contribute directly to organizations actively lobbying for an upcoming local ballot referendum. These are just a few examples of the ways in which foreign businesses lobby in the United States. The fact that the United States allows such activities and only requires foreign nationals to register before lobbying suggests that Americans have accepted the fact that MNCs are entitled to express their voices and, to some extent, participate in the political process in the United States.

International lobbying is not limited to foreign nationals lobbying in Washington, D.C. The United States also does its share of lobbying abroad. U.S. companies that do a significant amount of business in Japan recently realized the importance of establishing political ties in that country. In addition, European lobbyists have increased their activities within the European Community.

Most countries appear to accept and tolerate this recent surge in foreign lobbying. Thus, the international norm against intervention in another nation’s affairs seems to permit such

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196 See Foreign Money, supra note 1, at 67.
197 See CHOATE, supra note 50, at 134.
198 See id. at 116.
202 See Odile Prevot, A New Concern in Europe: Lobbyists, the Merchants of Influence, 5 TRANSNAT’L LAW. 305 (1992).
political activity. Why then should this norm be invoked to justify the prohibition on foreign political contributions to candidates? If foreign corporations can freely spend their money to lobby domestic legislators, it seems contradictory that they should be prohibited from spending that money to contribute to the campaigns of these very same legislators. In both cases, the foreign enterprise seeks to expend funds in order to affect future domestic policies. Viewed in this light, prohibiting campaign contributions from foreign sources appears to be an inconsistent policy, because foreigners are allowed to exercise political influence through various other avenues. Legislators should reevaluate these restrictions, keeping in mind that the notion of maintaining a state free of any foreign political influence is no longer a realistic goal given our current global interdependent economy and the numerous ways in which overseas interests already employ nonforcible tactics to affect domestic politics.

5.2. Prohibitions May Not Promote Democratic Ideals

Although governments justify legislation barring foreign campaign donations by claiming that it will promote the democratic ideal of rule by the citizenry, in reality, such bans may not enhance true democratic rule. The South African and Nicaraguan governments employed such campaign financing regulations in order to prevent opposition groups from obtaining the necessary funding to overthrow the ruling elite. This demonstrates how oppressive regimes may use campaign financing restrictions to suppress truly democratic movements. The United Nations Security Council has gone so far as to authorize nations to provide covert political financing to dissident groups attempting to overthrow a government which consistently violates its subjects' human rights.

Providing financial assistance to dissident political parties and their candidates often permits them to better express their voice

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203 See Savrin, supra note 5, at 789-90 (stating that foreign contributions to domestic campaigns undermine the right to self-determination "by allowing candidates receiving foreign funds to broadcast their views more widely than would be possible without the support of foreign contributors, thereby diminishing the capacity of the electoral process to reflect solely the will of the people").

204 See discussion supra section 3.2.

205 See Jackamo, supra note 184, at 976.
and challenge incumbent rulers. Thus, one may argue that such aid actually promotes the democratic vision of providing all citizens with equal access to the political forum.\textsuperscript{206} If foreign contributions are allowed, political groups which normally would lack the funds necessary to express their views and conduct election campaigns may obtain this needed financing.

Proponents of maintaining prohibitions on foreign campaign financing in the United States may respond that the above arguments for permitting overseas assistance do not apply in this country because the recipients of the funding generally are not dissident groups, but instead are wealthy incumbents who are capable of running for office with or without foreign assistance. One may refute this argument by taking a different perspective and contending that, regardless of whom they wish to support, foreign interests are always entitled to the right to influence the domestic political affairs of countries in which they have invested tremendous amounts of money and resources.

This justification for allowing foreigners to fund political campaigns is based on a corollary of pluralism, one of the more modern democratic political theories. Robert Dahl, the most famous proponent of pluralism, argues that an ideal democracy may exist only if individuals and interest groups possess equal opportunities to express their preferences to their political leaders.\textsuperscript{207} One of the ways of expressing these preferences is by financially supporting a particular political candidate. Pluralists stress that a true democracy permits all interested groups and individuals to bargain and compromise in order to determine public policy.\textsuperscript{208} Although most pluralist theorists focus solely on providing political access to a nation’s legal citizens, given the great interdependence of foreign markets and the current global nature of the international economy, it may be time to extend the pluralist framework to include foreign interests.\textsuperscript{209}

\textsuperscript{206} See id. at 968.


\textsuperscript{208} See HARMON ZEIGLER, PLURALISM, CORPORATISM, AND CONFUCIANISM 3 (1988).

\textsuperscript{209} See Telephone Interview with Adrian Rodriguez, doctoral degree candidate in political science, at Rutgers University (Dec. 6, 1995).
Foreign investors certainly have genuine concerns about domestic policies in other countries. For example, a tax reform or a modification in trade policy could have a tremendous financial impact on a foreign corporation. If pluralist theory requires that an ideal democracy permit all interested groups to express their views, then any government purporting to be democratic must allow foreign corporations with significant domestic operations to convey their preferences. The international community's acceptance of huge numbers of foreign lobbyists suggests that, to some extent, the world does recognize that foreign investors have a right to voice their views. Accordingly, foreign investors also should be able to express these preferences by choosing to support certain political candidates. Thus, permitting foreign interests to fund candidates may actually promote democratic ideals rather than subvert them.

Furthermore, many corporations feel that their significant investments abroad entitle them to the right to influence election outcomes and political affairs in their host countries. Foreign investment is generally quite beneficial to domestic economies: it creates jobs, supplies capital, and often brings new technology to existing firms. Foreigners may indeed deserve the opportunity to influence domestic decision-making processes after bolstering a country's economy with their investments.

5.3. A Proposal for an Alternative Course

This Comment has demonstrated that the recent international trend has been to tighten the restrictions on campaign contributions from foreign sources. In the United States, legislators are considering closing the loophole which allows foreign companies to use their U.S. subsidiaries to contribute to U.S. campaigns. In England, the Conservative Party is encountering pressure to pass a prohibition barring all foreign donations. The justifications for these policies, however, no longer appear to apply given the growing interdependent nature of the world.

210 See Savrin, supra note 5, at 808.
211 See CHOATE, supra note 50, at 121 (stating that the Japanese feel "that their American investments give them the right to participate actively in U.S. elections").
212 See Foreign Money, supra note 1, at 63.
213 See discussion supra sections 2.3 and 3.1.
economy and the increasing intensity of foreign lobbying efforts. We can no longer maintain our belief in the myth that each nation is a sovereign state whose laws and policies affect only its own citizens. Instead, we must acknowledge that many of these domestic decisions produce ramifications throughout the world. Overseas investors who have contributed large amounts of money to their host country’s economy and who can be seriously affected by changes in policy have a legitimate right to influence their host’s decision-making processes, including its elections.

Foreign corporations should be able to contribute to a candidate’s campaign chest to the same extent as domestic corporations can. Thus, in the United States, foreign nationals ought to be allowed to establish their own PACs to contribute to campaigns. Regulations preventing foreigners from funding or directly controlling PACs should be removed. Foreign enterprises that conduct business in countries such as Japan, where political parties receive much of their financing from domestic companies,214 should be permitted to make political contributions. If governments are concerned that this would result in business exercising an undue amount of influence on the political process, then these countries should prohibit all corporate donations, regardless of their sources, and move towards a system of publicly financed election campaigns.215 Allowing only domestic business entities to contribute provides them with an unfair advantage over their foreign competitors.

Corporations making contributions to political campaigns should, however, be required to disclose the extent to which they are owned by foreigners.216 Candidates have a right to know who is funding their election campaigns. In addition, voters have a right to know the identity of each candidate’s supporters because this may affect the candidate’s agenda once elected.

Instead of adopting blanket restrictions on foreign campaign financing, the world community should focus its attention on reducing only those campaign contributions which, in essence, serve as international bribes. As mentioned earlier, it is often

214 See CHOATE, supra note 50, at 28-29 (describing the reliance of Japanese political parties on private contributions).
215 See Telephone Interview with Adrian Rodriguez, doctoral degree candidate in political science, at Rutgers University (Dec. 6, 1995).
216 See Savrin, supra note 5, at 812-13, 816 (proposing that corporate PAC donors be required to reveal the level of foreign ownership in their company).
difficult to distinguish a legitimate campaign contribution from an illicit bribe.\textsuperscript{217} The distinction, however, is a significant one: campaign contributions are payments made to preferred candidates, whereas bribes are corrupt payments made in exchange for the recipient's agreement to act improperly or to violate his or her public duty.\textsuperscript{218} Bribes are therefore distinct in that they involve an explicit \textit{quid pro quo} arrangement.\textsuperscript{219}

Bribery is problematic for numerous reasons. From an economic perspective, bribes are inefficient because they lead to the misallocation of resources and often artificially inflate the cost of goods.\textsuperscript{220} In addition, the revelation that certain public officials have received kickbacks from overseas sources can produce much political unrest.\textsuperscript{221} Bribes also cause public officials to place their own private interests ahead of the good of the entire country.\textsuperscript{222} Bribes "undermine ... the democratic process and diminish the hope that the government will be impartial and represent the interests of its citizens."\textsuperscript{223} Thus, bribes, more than any other type of transnational payment, subvert democratic ideals by causing public officials to improperly execute their duties.

If the world community truly wishes to promote democratic rule and encourage officials to represent the interests of their people, it should focus on eliminating international bribery rather than on implementing blanket prohibitions on all forms of foreign campaign contributions. Other countries should adopt legislation similar to the FCPA of the United States. Even if this is accomplished on a domestic level, however, jurisdictional difficulties may render such legislation difficult to enforce internationally. Thus, it is also necessary to develop multinational agreements prohibiting the bribery of foreign public officials and encouraging nations to cooperate in the enforcement of this ban. A multilateral antibribery agreement with an effective enforcement mechanism

\textsuperscript{217} See supra notes 158-60 and accompanying text.
\textsuperscript{218} See \textit{JACOBY ET AL.}, supra note 3, at 90.
\textsuperscript{219} See \textit{id}.
\textsuperscript{220} See Murphy, supra note 164, at 390-91.
\textsuperscript{221} See \textit{id.} at 391. Brazil and Italy have recently suffered from such scandals. See \textit{id}.
\textsuperscript{222} See \textit{JACOBY ET AL.}, supra note 3, at 142.
\textsuperscript{223} Muffler, supra note 13, at 16-17.
will be needed to successfully resolve this serious problem. Several scholars have advocated the establishment of such an international agreement, and there has been some progress towards that end.

6. Conclusion

This Comment has explored and critiqued national prohibitions on campaign contributions from foreign sources. Although the United States bans donations from foreign nationals, a loophole exists which permits foreign business entities to channel funds through their U.S. subsidiaries. The future of this loophole remains in doubt, as legislators recently proposed reforms which would prevent foreigners from exercising such indirect political influence. Other countries also restrict the inflow of political funding from abroad, occasionally in order to suppress potential opposition groups. Even nations that have not yet established prohibitions, such as England, have encountered recent pressure to enact similar bans.

These prohibitions have been justified as necessary measures to maintain a nation’s sovereignty and to permit its citizens to select their own leaders. Proponents of these bans argue that foreigners have no right to interfere with a country’s domestic affairs. These proponents of the prohibitions, however, seem to ignore the realities accompanying our increasingly interdependent world

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224 See JACOBY ET AL., supra note 3, at 242 (suggesting that a multinational “diplomatic anti-corruption policy” should be established); Muffler, supra note 13, at 4 (arguing for an international treaty intended to deter foreign corrupt practices). The American Bar Association recently adopted a recommendation urging the United States to encourage and support efforts by the international community to implement mechanisms aimed at deterring corrupt practices in the area of international business. See Vogelson, supra note 172, at 193.

225 See supra notes 169-80 and accompanying text. On May 27, 1994, the OECD adopted the OECD Recommendation on Bribery in International Business Transactions, which urges member countries to cooperate in their efforts to combat bribery and to adopt effective measures to deter their corporations from bribing foreign public officials to obtain overseas business. See Vogelson, supra note 172, at 196-97. This Recommendation, however, is not legally binding and merely encourages member countries to implement the Recommendation by altering their own national laws. See Earle, supra note 180, at 225. In addition, the Justice Ministers from the Council of Europe recently established a multi-disciplinary group to initiate research projects and training programs aimed at deterring corrupt international payments. See Vogelson, supra note 172, at 197.
The tremendous rise in transnational investment has produced a comparable increase in foreign political influence. MNCs realize that domestic laws and policies have a significant impact on their investment returns. Thus, these MNCs have enhanced their lobbying efforts and have sought to take advantage of any opportunity to affect domestic decision-making. The old model portraying each state as a sovereign and completely independent entity has been replaced by the modern reality that nations are dependent on each other's capital and can no longer remain isolated from outside political influence. Nonforcible intervention must be tolerated to some extent.

Campaign contributions are just one example of nonforcible intervention. Foreigners who contribute to their host's economy through investment deserve the right to attempt to influence that country's election outcomes. If a nation permits corporations to contribute to campaigns, foreign as well as domestic companies should enjoy this privilege since both have comparable interests at stake.

Instead of focusing on eliminating all foreign campaign contributions, the international community should attempt to prohibit only those contributions which in essence are only bribes. International bribery is common throughout the world and presents a significant obstacle to effective democratic government. Reducing such corrupt payments by adopting measures similar to the FCPA would be a much more effective way of promoting true democratic rule.