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Philips Electronics

Randall B. Moorhead
Vice President
Government Affairs

SEP 13 3 27 PM '02

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FEDERAL ELECTION
COMMISSION
OFFICE OF LEGAL
COUNSEL

September 13, 2002

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: FEC Notice 2002-14 – US Subsidiaries of Foreign Companies

Dear Ms. Dinh:

I write in response to the Federal Election Commission's rulemaking to implement the Bipartisan Campaign Reform Act of 2002 (BCRA). Further, please consider this communication as a request to testify at any public hearing that may be held by the Commission on the topic of prohibitions on contributions or donations from foreign nationals.

Specifically, I wish to address the issue of whether a foreign-controlled U.S. corporation, including a domestic subsidiary should be prohibited from making corporate donations and/or from making federal contributions from their political action committees.

BCRA Does Not Raise This Issue

The Notice of Proposed Rulemaking asks whether the term "indirectly" should cover a foreign controlled U.S. corporation, including a U.S. subsidiary, when such corporation makes non-federal donations of corporate funds to state and local party committees or sponsors a political action committee to which U.S. employees may contribute. Neither the statute nor the legislative history suggests that Congress intended to have the Commission address this issue in its BCRA rulemaking. The current laws and regulations are well known, and certainly Congress had ample opportunity to address this matter if current practice had been a concern. As a matter of substance, U.S. subsidiaries are American companies, organized under U.S. laws, and should not be discriminated against in their ability to make non-federal donations or sponsor PACs for their employees, provided that they, like any other company, adhere to the laws in place to prevent foreign nationals from participating in our elections. Certainly the American employees of these companies should not be denied the opportunity to fully participate in their political system through a company PAC.

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Congress Previously Considered and Rejected a Ban on U.S. Subsidiary Sponsored PACs

The House and Senate during campaign finance reform debate, in 1998 and 1992 respectively, considered and rejected proposals to prohibit U.S. subsidiary PACs. In fact, both Houses passed amendments that reaffirmed existing law and regulations on this topic. The House, during its 1998 consideration of the "Shays-Meehan" bill, passed the Gillmor-Tanner Amendment 395 to 0, 3 present (Attachment 1), the Senate during the 1992 consideration of the "Congressional Campaign Spending Limit and Election Reform Act" unanimously passed the Breaux Amendment (Attachment 2). In each case the amendment, which reaffirmed existing law, was offered in response to proposals to effect a U.S. subsidiary PAC prohibition. The overwhelming support expressed by each chamber for these amendments when juxtaposed with the alternative prohibition is clear evidence of the intent of the national legislature.

I am unaware of any subsequent debate on the matter in either House. The absence of that debate coupled with the previous legislative history speaks volumes. The Congress sees no reason to tamper with current law and regulations.

Notions of Foreign Influence are Mistaken

As the Commission is aware, current law and regulations prohibit foreign national involvement, including any foreign national decision making with respect to a political action committee. This is strictly adhered to with respect to the Philips Electronics North America Corporation PAC of which I have been treasurer since its inception in 1989. No foreign national has ever been involved in any of the PAC's decision making, including the decision to create the PAC. It serves as it is intended to, as a vehicle for U.S. persons to associate together to engage in political speech that is in their common political interest. This is a First Amendment protected activity, affirmed by the Supreme Court in the "Buckley v Valeo" case. The political rights of Americans should not be abridged because of where they work. It is absurd that Americans who work for Ford or Exxon-Mobil should be allowed to participate in a corporate PAC while their American neighbors who work for Daimler-Chrysler or Shell Oil are prohibited this avenue of political participation.

Thank you for the opportunity to express our views.

Sincerely,



Treasurer, Philips Electronics North America Corp.
Political Action Committee

Attachments (2)

ATTACHMENT 1

AMENDMENT OFFERED BY MR. GILLMOR TO AMENDMENT NO 13 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR SHAYS

Mr GILLMOR. Mr Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gillmor to Amendment No. 13 in the Nature of a Substitute Offered by Mr. Shays:

Add at the end of title V the following new section (and conform the table of contents accordingly)

SEC. 510. PROTECTING EQUAL PARTICIPATION OF ELIGIBLE VOTERS IN CAMPAIGNS AND ELECTIONS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by sections 101, 401, and 507, is further amended by adding at the end the following new section:

PROTECTING EQUAL PARTICIPATION OF ELIGIBLE VOTERS IN CAMPAIGNS AND ELECTIONS

Sec. 326. (a) In General: Nothing in this Act may be construed to prohibit any individual eligible to vote in an election for Federal office from making contributions or expenditures in support of a candidate for such an election (including voluntary contributions or expenditures made through a separate segregated fund established by the individual's employer or labor organization) or otherwise participating in any campaign for such an election in the same manner and to the same extent as any other individual eligible to vote in an election for such office.

(b) No Effect on Geographic Restrictions on Contributions: Subsection (a) may not be construed to affect any restriction under this title regarding the portion of contributions accepted by a candidate from persons residing in a particular geographic area.

Mr. GILLMOR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment in the nature of a substitute be considered as read and printed in the Record.

The CHAIRMAN pro tempore (Mr. Collins). Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. GILLMOR. Mr. Chairman, the amendment which the gentleman from Tennessee (Mr. Tanner) and I are offering would reaffirm in law a vital national interest, namely, that all Americans eligible to vote be treated in the same way by the Federal Election Campaign Act. The Gillmor-Tanner amendment is necessary because proposals have been made, both in this body and at the FEC, which would treat nearly 5 million Americans as second-class citizens politically. Namely, such proposals would deny American citizens who work for American subsidiaries of companies which are headquartered abroad an avenue of political association and participation that is guaranteed all other Americans, namely, the right to voluntarily contribute money to political candidates through political action committees sponsored by their employers.

Mr. Chairman, in my home State of Ohio, more than 218,000 Ohioans are employed by American subsidiaries of companies headquartered abroad, and there are more than 5 million Americans nationwide. That number is growing daily. It will get larger still as soon as the merger between Chrysler and Daimler-Benz is completed to form a new Daimler-Chrysler corporation.

It makes no sense to tell these Americans that today they may contribute to their company's political action committee, but the day the merger is completed they instantly become second class citizens and are denied this avenue of political participation. Even though the name on the paycheck may change.

these employees remain American citizens, and the vagaries of corporate mergers should not be permitted to deny them their rights as Americans.

Just as past barriers were erected to discourage participation in the political process, some of today's propositions attempt to deny participation based on where an American chooses to work. Just as discriminatory behavior was wrong then, it is wrong now. Foreign nationals should not be allowed to contribute to American campaigns. That practice is already against the law, and I believe we ought to uphold that law, and this amendment in no way changes the illegality of foreign campaign contributions.

Furthermore, both the current law and the Federal Election Commission regulations prohibit foreign nationals' contributions to or any foreign national decision-making with respect to either corporate or labor-sponsored political action committees, and those prohibitions would not be amended by this amendment.

In closing, Mr. Chairman, the political rights of American citizens must not be limited by race, gender or place of employment, and a vote for the Gillmor-Tanner amendment would protect the right of American citizens to be treated equally by our current election law and any reforms that may eventually be enacted.

Mr. Chairman, I yield to the gentleman from Connecticut (Mr. Shays).

Mr. SHAYS. Mr. Chairman, I know that the gentleman from Tennessee (Mr. Tanner) wants to speak. I just want to speak on behalf of the Meehan-Shays supporters, that we do support this amendment. It is a right of American citizens today.

I know we will have other amendments to consider, but we do support it and would urge others to support it as well.

Mr. GILLMOR. Mr. Chairman, I yield to the gentleman from California (Mr. Fazio).

Mr. FAZIO of California. Mr. Chairman, I rise in strong support of this amendment which I think is really an affirmation of existing law and one, however, that is needed because the debate, the discussion, of overseas contributions has been muddled to a point where some have implied that perhaps those who work for corporations that are headquartered in other parts of the world should be prevented from participating in our political system.

We are part of a global economy, and increasingly who we work for is going to change during the time in which we work for them. Gentleman pointed out the Daimler-Benz-Chrysler merger as a good example of a long-standing American corporation where its employees have contributed both to its union's political action fund and its corporate PAC, and under some proposals that have been made their ^{rates} will be truncated and eliminated. *R. Shays*

It seems to me the American people ought to be able to participate in politics regardless of the vagaries of who they work for at any given time. We all know that increasingly the subsidiaries, or even the companies that once were independent have become affiliated with entities that have not only multiple owners in terms of stockholders in most countries in the world, but perhaps the corporate headquarters anywhere else.

This amendment is, I think, an important reassertion of what should be a fundamental right for every American.

Mr. TANNER. Mr. Chairman, I move to strike the requisite number of words. Mr. TANNER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. TANNER asked and was given permission to revise and extend his remarks.)

Mr. TANNER Mr. Chairman, I yield to the gentleman from Maryland (Mr. Hoyer)

Mr. HOYER Mr. Chairman, I would associate myself with the remarks of the gentleman from California (Mr. Fazio).

Obviously the vagaries of employment are that on any given time a corporate entity may or may not be a foreign-held corporation, but the American citizen who wants to participate and contribute through such devices as are legally available to American citizens to do so should be maintained, and I think that is appropriate, and I support the gentleman's amendment.

Mr. TANNER. Reclaiming my time, Mr. Chairman, I understand the sponsors of the amendment are going to agree to this, and so in order to save time I submit my statement in support of the Gillmor amendment for the Record.

•Mr. Chairman, I rise to urge my colleagues to support an amendment which I have cosponsored with my colleague from Ohio, Mr. Gillmor, which would very simply protect the rights of all American citizens who are eligible to vote by ensuring that they will not be discriminated against as the result of changes we make to our campaign finance law.

•In our zeal to pass some kind of campaign finance reform, let's not inadvertently take away rights from Americans to participate in our electoral process. I think we all agree that we should be very careful not to pass any reform which hinders Americans from participating.

•Our amendment would make it clear that U.S. citizens who work for companies in the United States which happen to be foreign-owned will not lose the rights they presently enjoy to fully participate in federal campaigns.

•An amendment being proposed later in this debate would bar U.S. subsidiaries of foreign-owned companies from operating PACS. Under this proposal, the definition of 'foreign' would be decided by degree of ownership. Any company that is more than 51 percent foreign-owned would not be allowed to operate a PAC—regardless of the number of employees they have in the U.S. or the extent of their contributions to the U.S. economy.

•Let me first reiterate that U.S. law presently forbids foreign nationals from participating in any way in federal elections, including contributing to and making decisions about a PAC.

•Many U.S. subsidiaries make substantial contributions to our economy and are stellar corporate citizens. To discriminate against them and the U.S. citizens they hire is simply wrong. For instance, both Hardees and Burger King are foreign-owned, yet they—like U.S.-owned McDonalds—are U.S. institutions which hire American citizens to work in the thousands of restaurants all across my state and throughout this country. It would simply be unfair to deny American employees of Hardees and Burger King the basic right of participating in a PAC while ensuring American employees of McDonalds that they would continue to have the right to fully participate in their own government's election process.

•After all, those employees at Hardees and Burger King pay taxes, shop at local stores, volunteer for the local charities and otherwise contribute to their communities just as their neighbors do who work for U.S.-owned companies. I urge all of my colleagues to ask constituents in your district who work for U.S. subsidiaries if they should be treated as 'foreign' I am sure the response will convince you that it is patently unfair to discriminate against these American workers.

•U.S. subsidiaries of companies based outside the U.S. are increasingly important participants in the American economy. In my home state of Tennessee

•138,200 Tennessee workers are employed by U.S. subsidiaries

•From 1980 to 1995, Tennessee employment at U.S. subsidiaries increased more than five times faster than all jobs in Tennessee.

•Employees at U.S. subsidiaries constitute over 6% of Tennessee's total work force.

•Support the rights of ALL Americans to participate fully in our political process and give these employees at U.S. subsidiaries the assurance that we will not treat them as second class citizens.

•Support the Gilmore-Tanner amendment.

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wanted to take this opportunity because I will be offering amendments later in the month concerning foreign contributions to U.S. campaigns, and I respect my colleague from Ohio and his desire to preserve the rights of U.S. citizens regardless of where they work to participate in our political system. But I have to say to both the gentleman from Connecticut (Mr. Shays) and the gentleman from Massachusetts (Mr. Meehan) that sometimes what appears is not always everything that should appear in the offering of an amendment, and I think, as we move through this bill, there may be the opportunity to refine some of the concepts in the amendment currently on the floor from other issues that also bear on the subject of national interest versus any purely private interest. And I think under our laws it is pretty clear that U.S. elections should be for U.S. citizens and that we have a problem in this country in foreign money infecting U.S. campaigns on both sides of the aisle.

Mr. Chairman, we have seen what has happened when millions and millions of dollars manages to come into this country either as independent expenditures or for various candidates not being disclosed properly, and in some cases, even though the law says foreign citizens shall not contribute, in fact they end up contributing because the disclosure requirements for foreign contributions are not kept in a separate category at the FEC.

This issue is not as simple as it first appears on the surface, and so I would say with all due respect to my colleague from Ohio, though I respect the right of individual Americans to contribute to campaigns, I draw the line where in fact those contributions are coming from foreign interests. I do not care who those foreign interests are, this is a nationally sovereign country, and we should be able to safeguard the election processes inside our nation.

Now let me draw an example for those of us who served during this period of time when Toshiba Company through a subsidiary in northern Europe gave away U.S. submarine technology to the then Soviet state, and if I were asked if I think Toshiba should be able to contribute to U.S. elections, I would say absolutely not. Their ability to try to subvert the rightful penalties that they should have paid for that incredible act against this country and our national security should not have been rewarded by allowing that corporation to participate in any way in the U.S. political process.

Now for their employees, for their employees to be able to participate as U.S. citizens they should be able to participate in their elections if they wish to support a candidate absolutely. But there are serious problems with the way in which foreign contributions are booked and with the way in which records are kept at the FEC.

I have studied this now for almost 10 years. I know this issue inside and out.

So I would just say that I would vote present on the proposal offered by the gentleman from Ohio (Mr. Gillmor) if it were brought to a full vote here. I would encourage the gentleman from Connecticut (Mr. Shays) and the gentleman from Massachusetts (Mr. Meehan) to work with us as we try to get equal

disclosure on foreign contributions into the elections in this country and to try to draw a very clear line here on what we are talking about.

Mr. Chairman, there is a difference between U.S. citizens and foreign interest participating in U.S. elections.

Mr. SHAYS. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from Connecticut.

Mr. SHAYS. Mr. Chairman, I thank the gentlewoman from Ohio (Ms. Kaptur) for the tone of her message and the strength of her message, and I agree with her comments, and one of the challenges that we have is, as these amendments come in, make sure we are touching base with all sides and making sure that we are able to meld this process so we can accommodate the various sincere and real concerns that Members have such as the gentlewoman, and I appreciate her present vote, and I appreciate her comments.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman from Connecticut (Mr. Shays) very much, and I thank my colleague from Ohio (Mr. Gillmor) for alerting me to the fact that this amendment would be discussed, and we look forward to working with the gentleman as our amendment comes up on the floor.

Mrs. KELLY. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the Gillmor-Tanner amendment which seeks to ensure that all American citizens are treated equally under the law. The political rights of American voters should not be determined by where they work.

Just as our Nation has assured equal political participation for all citizens regardless of race, gender or national origin, we should ensure that no class of Americans are denied an avenue of political participation that is available to all other Americans.

In my home State of New York nearly 349,000 American citizens work for American subsidiaries of companies headquartered abroad. It makes no sense that my constituent who works at their American-owned McDonald's can join with fellow employees and contribute to campaigns through a political action committee while their neighbor who works at a foreign-owned Burger King or Hardee's is denied this avenue of participation in our political system.

Mr. Chairman, it is only fair and common sense that we provide in our election law a provision to ensure that all Americans receive the same opportunities and avenues of political participation. I urge my colleagues to support the Gillmor-Tanner amendment.

[Page: H4864]

Mr. PRICE of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Gillmor-Tanner amendment. I come from a State where the number of employees of U.S. subsidiaries of corporations headquartered in other countries has grown by 233 percent since 1980. Two of the largest employers in the high-tech Research Triangle Park, for example, Nortel and Glaxo-Wellcome, collectively employ 15,000 people in North Carolina. They make tremendous contributions to the U.S. economy, to the North Carolina economy, and to our local communities. It is unfair to discriminate against American citizens who are employees of these companies.

It is already illegal, Mr. Chairman, for foreign nationals to participate in political action committees. PACs are operated by U.S. employees, and funds for PACs are provided only by U.S. employees. There is no reason to deny U.S. citizens the right to participate fully in the political process, and that includes financial participation.

The Gillmor-Tanner amendment is a straightforward amendment ensuring that all U.S. citizens are treated equally under our campaign finance laws regardless of where they work.

I encourage all colleagues to support this sensible and fair provision.

Mr. FRELINGHUYSEN. Mr. Chairman, I rise in support of the Gillmor amendment. This amendment has a simple objective: it ensures that American citizens who can vote in elections are not prohibited from participating in the political process solely because they work for U.S. subsidiaries of foreign-owned companies.

Although Federal election law already bars foreign nationals and foreign corporations from contributing to Federal candidates, in the current debate on campaign finance reform, amendments have been filed that would not only restrict foreign nationals from participating, but American citizens employed by foreign-owned companies as well.

Mr. Chairman, while intended to reduce foreign influence on our elections, such a change in election law would only end up excluding a class of Americans from enjoying rights held by all others. This approach would not only be unfair to the 209,000 residents of my state of New Jersey who work for U.S. subsidiaries of foreign-owned companies, but would also be constitutionally indefensible. The Gillmor amendment makes clear that campaign finance reform should apply equally to all Americans, and I urge my colleagues to support it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. Gillmor) to the amendment in the nature of a substitute offered by the gentleman from Connecticut (Mr. Shays).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GILLMOR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were--ayes 395, noes 0, answered 'present' 3, not voting 35, as follows:

Roll No. 251

[Roll No. 251]

AYES--395

•Abercrombie•Ackerman•Aderholt•Allen•Andrews•Archer•Armey•Bachus•Baesler•Baldacci•Ballenger•Barca
a•Barrett (NE)•Barrett
(WI)•Bartlett•Barton•Bass•Bateman•Becerra•Bentsen•Bereuter•Berman•Berry•Bilbray•Bilirakis•Bishop•Bla
gojevich•Bliley•Blumenauer•Boehlert•Boehner•Bonilla•Bonior•Bono•Borski•Boswell•Boucher•Boyd•Brady
(PA)•Brady (TX)•Brown (CA)•Brown (FL)•Brown
(OH)•Bryant•Bunning•Burr•Burton•Buyer•Calvert•Camp•Campbell•Canady•Cannon•Capps•Cardin•Carson
•Castle•Chabot•Chambliss•Chenoweth•Christensen•Clay•Clayton•Clement•Clyburn•Coble•Collins•Combe
st•Condit•Cook•Costello•Coyn•Cramer•Crane•Crapo•Cubin•Cummings•Cunningham•Danner•Davis
(FL)•Davis (IL)•Davis (VA)•Deal•DeFazio•DeGette•Delahunt•DeLauro•DeLay•Deutsch•Diaz-
Balart•Dickey•Dicks•Dingell•Dixon•Doggett•Dooley•Doolittle•Doyle•Dreier•Duncan•Dunn•Edwards•Ehlers•
Ehrlich•Emerson•Engel•English•Ensign•Eshoo•Etheridge•Evans•Ewing•Farr•Fattah•Fawell•Fazio•Filner•F
oley•Forbes•Ford•Fossella•Fowler•Fox•Frank (MA)•Franks

(NJ)•Frelinghuysen•Frost•Furse•Gallegly•Ganske•Gejdenson•Gekas•Gibbons•Gilchrest•Gillmor•Gilman•G
oode•Goodlatte•Gordon•Goss•Graham•Granger•Greenwood•Gutierrez•Hall (OH)•Hall
(TX)•Hamilton•Hansen•Harman•Hastert•Hastings
(WA)•Hayworth•Hefley•Hefner•Herger•Hill•Hilleary•Hilliard•Hinchey•Hinojosa•Hobson•Hoekstra•Hooley•H
orn•Hostettler•Houghton•Hoyer•Hulshof•Hunter•Hutchinson•Hyde•Inglis•Istook•Jackson (IL)•Jackson-Lee
(TX)•Jefferson•Jenkins•John•Johnson (CT)•Johnson (WI)•Jones•Kanjorski•Kelly•Kennedy
(RI)•Kennelly•Kildee•Kilpatrick•Kim•Kind (WI)•King
(NY)•Kingston•Kleczka•Klink•Klug•Knollenberg•Kolbe•Kucinich•LaFalce•LaHood•Lampson•Lantos•Largent
•Latham•LaTourette•Lazio•Lee•Levin•Lewis (CA)•Lewis
(KY)•Linder•Lipinski•Livingston•LoBiondo•Lofgren•Lowey•Lucas•Luther•Maloney (CT)•Maloney
(NY)•Manton•Manzullo•Markey•Mascara•Matsui•McCarthy (MO)•McCarthy
(NY)•McCollum•McCrary•McDermott•McGovern•McHale•McHugh•McInnis•McIntosh•McIntyre•McKeon•M
cKinney•Meehan•Meek (FL)•Menendez•Metcalf•Mica•Millender•McDonald•Miller (CA)•Miller
(FL)•Minge•Mink•Moakley•Mollohan•Moran (KS)•Moran
(VA)•Murtha•Myrick•Nadler•Neal•Nethercutt•Neumann•Ney•Northup•Norwood•Nussle•Oberstar•Obey•Olv
er•Owens•Oxley•Packard•Pallone•Pappas•Pascrell•Pastor•Paul•Paxon•Payne•Pease•Pelosi•Peterson
(MN)•Peterson (PA)•Petri•Pickering•Pickett•Pitts•Pombo•Pomeroy•Porter•Portman•Poshard•Price
(NC)•Pryce
(OH)•Quinn•Radanovich•Rahall•Ramstad•Rangel•Redmond•Regula•Riggs•Riley•Rivers•Rodriguez•Roem
er•Rogan•Rogers•Rohrabacher•Ros-Lehtinen•Roukema•Roybal-
Allard•Royce•Rush•Ryun•Sabo•Sanchez•Sanders•Sandlin•Sanford•Sawyer•Saxton•Scarborough•Schaeffe
r, Dan•Schaffer,
Bob•Schumer•Scott•Sensenbrenner•Serrano•Sessions•Shadegg•Shaw•Shays•Sherman•Shimkus•Shuster
•Sisisky•Skaggs•Skeen•Skelton•Slaughter•Smith (MI)•Smith (OR)•Smith (TX)•Smith, Adam•Smith,
Linda•Snowbarger•Snyder•Souder•Spence•Spratt•Stabenow•Stark•Stearns•Stenholm•Stokes•Strickland•S
tump•Stupak•Talent•Tanner•Tauscher•Tauzin•Taylor (MS)•Taylor
(NC)•Thomas•Thompson•Thornberry•Thune•Thurman•Tiahrt•Tierney•Townes•Traficant•Turner•Upton•Vela
zquez•Vento•Visclosky•Walsh•Wamp•Waters•Watkins•Watt (NC)•Watts (OK)•Waxman•Weldon
(PA)•Weller•Wexler•Weygand•White•Whitfield•Wicker•Wise•Wolf•Woolsey•Wynn•Yates•Young
(AK)•Young (FL)

*ADOPTED UNANIMOUSLY
 AFTER A MOTION TO TABLE
 WAS DEFEATED 60 NO TO 35 YES*

AMENDMENT NO. _____

Calendar No. _____

Purpose: To prohibit certain election-related activities of foreign nationals.

IN THE SENATE OF THE UNITED STATES—102d Cong., 1st Sess.

S. 3

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes.

Referred to the Committee on _____
 and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BREUX to the amendment (No. _____) proposed by Mr. _____

Viz:

1 In lieu of the matter proposed to be inserted, insert the
 2 following:

3 SEC. __. PROHIBITION OF CERTAIN ELECTION-RELATED ACTIVI-
 4 TIES OF FOREIGN NATIONALS.

5 (a) FINDINGS AND DECLARATIONS.—The Congress
 6 finds and declares that—

7 (1) the electoral process of the United States
 8 should be open to all American citizens;

9 (2) foreign nationals should have no role in the
 10 American electoral process;

1 (3) Congress does not intend and has never in-
2 tended to permit foreign nationals to participate, di-
3 rectly or indirectly, in the decisionmaking of political
4 committees established pursuant to the Federal Elec-
5 tion Campaign Act of 1971;

6 (4) it is the intent of Congress to prohibit any
7 participation whatsoever by any foreign national in
8 the activities of any political committee; and

9 (5) while it is necessary to safeguard the politi-
10 cal process from foreign influence, it is critical that
11 any protections not discriminate against American
12 citizens employed by foreign-owned companies and
13 that Americans' constitutional rights of free associa-
14 tion and speech be protected.

15 (b) Prohibition of Certain Election-related Activities
16 of Foreign Nationals.—Section 319 of the Federal Election
17 Campaign Act of 1971 is amended by—

18 (1) redesignating subsection (b) as subsection
19 (e); and

20 (2) inserting after subsection (a) the following
21 new subsections:

22 “(b) A foreign national shall not direct, dictate, con-
23 trol, or directly or indirectly participate in any person's
24 decisionmaking concerning the making of contributions or
25 expenditures in connection with elections for any Federal,

1 State, or local office or decisionmaking concerning the ad-
2 ministration of a political committee.

3 “(c) A nonconnected political committee or the sepa-
4 rate segregated fund established in accordance with section
5 316(b)(2)(C) or any other organization or committee in-
6 volved in the making of contributions or expenditures in
7 connection with elections for any Federal, State, or local
8 office shall include the following statement on all printed
9 materials produced for the purpose of soliciting contribu-
10 tions:

11 “‘It is unlawful for a foreign national to make
12 any contribution of money or other thing of value to
13 a political committee.’”

14 “(d) A nonconnected political committee or a sepa-
15 rate segregated fund established in accordance with section
16 316(b)(2)(C) or any other organization or committee in-
17 volved in the making of contributions or expenditures in
18 connection with elections for any Federal, State, or local
19 office shall certify in regular reports to the Commission, or
20 in a manner prescribed by the Commission, that no foreign
21 national has participated either directly or indirectly in the
22 decisionmaking of the political committee or separate seg-
23 regated fund, including the appointment of the administra-
24 tors of the committee or fund.’”

1 (b) PENALTY.—Section 309(b)(1)(C) of FECA (2
2 U.S.C. 437g(d)(1)(C)) is amended by inserting “section
3 319 or” before “section 322”.

Recorded vote in the SENATE (Vote 1067: 35-60)

(Dem: 31-23; Rep: 4-3)

Voting on:

S. 3 BY BOREN (D-OK) -- Senate Election Ethics Act of 1991

05/21/91 -- IN THE SENATE

Amendment offered, BY BREAUX (D-IA) in the nature of a substitute,
 regarding election-related activities of foreign nationals (Amendment
 251 to Amendment 250, CR Page S-6184)

Motion, BY BENTSEN (D-TX) No. 251 to No. 250

Recorded vote requested, BY BENTSEN (D-TX) on his motion to table

Rejected motion, BY BENTSEN (D-TX) (VOTE NO. 1067:35-60) to table Amendment

No. 251 to Amendment No. 250

(Senate failed to table the Breaux Dole Amendment No. 251 to Amendment No. 250,
 in the nature of a substitute, regarding election-related activities of
 foreign nationals)

-----35 Members Who Voted 'YES'-----

AKAKA (D-HI)	GORE (D-TN)	MOYNIHAN (D-NY)
BAUCUS (D-MT)	GRAHAM, BOB (D-FL)	NUNN (D-GA)
BENTSEN (D-TX)	GRASSLEY (R-IA)	PELL (D-RI)
BINGAMAN (D-NM)	HARKIN (D-IA)	REID (D-NV)
BOREN (D-OK)	HEFLIN (D-AL)	RIEGLE (D-MI)
BRYAN, RICHARD (D-NV)	HOLLINGS (D-SC)	ROCKEFELLER (D-WV)
BURDICK (D-ND)	JEFFORDS (R-VT)	RUDMAN (R-NH)
BURNS (R-MT)	KENNEDY, EDWARD (D-MA)	SARBANES (D-MD)
BYRD, ROBERT (D-WV)	KERRY, JOHN (D-MA)	SASSER (D-TN)
DODD (D-CT)	KOHL (D-WI)	SIMON (D-IL)
EXON (D-NE)	LEVIN, CARL (D-MI)	WELLSTONE (D-MN)
FOWLER (D-GA)	METZENBAUM (D-OH)	

-----60 Members Who Voted 'NO'-----

ADAMS (D-WA)	D'AMATO (R-NY)	MIKULSKI (D-MD)
BOND (R-MO)	FORD, WENDELL (D-KY)	MITCHELL, GEORGE (D-ME)
BRADLEY (D-NJ)	GARN (R-UT)	MURKOWSKI (R-AK)
BREAUX (D-LA)	GLENN (D-OH)	NICKLES, DON (R-OK)
BROWN (R-CO)	GORTON (R-WA)	PACKWOOD (R-OR)
BUMPERS (D-AR)	GRAMM, PHIL (R-TX)	PRESSLER (R-SD)
CHAFEE (R-RI)	HATCH (R-UT)	ROBB (D-VA)
COATS (R-IN)	HATFIELD (R-OR)	ROTH, WILLIAM (R-DE)
COCHRAN (R-MS)	JOHNSTON, BENNETT (D-LA)	SANFORD (D-NC)
COHEN (R-ME)	KASSEBAUM (R-KS)	SEYMOUR (R-CA)
CONRAD (D-ND)	KASTEN (R-WI)	SHELBY (D-AL)
CRAIG (R-ID)	KERREY, BOB (D-NE)	SIMPSON (R-WY)
CRANSTON (D-CA)	LAUTENBERG (D-NJ)	SMITH, ROBERT C. (R-NH)
DANFORTH (R-MO)	LEAHY (D-VT)	SPECTER (R-PA)
DASCHLE (D-SD)	LIEBERMAN (D-CT)	STEVENS (R-AK)
DECONCINI (D-AZ)	LOTT (R-MS)	THURMOND (R-SC)
DIXON, ALAN (D-IL)	LUGAR (R-IN)	WALLOP (R-WY)
DOLE (R-KS)	MACK (R-FL)	WARNER (R-VA)
DOMENICI (R-NM)	MCCAIN (R-AZ)	WIRTH (D-CO)
DURENBERGER (R-MN)	MCCONNELL (R-KY)	WOFFORD (D-PA)

-----5 Members Who Were 'NOT VOTING'-----

BIDEN (D-DE)	INOUE (D-HI)	SYMMS (R-ID)
HELMS (R-NC)	PRYOR (D-AR)	

Please type desired COMMAND (or 'MENU').....

INTERNATIONAL NEWS

Senate acts on funds for political units

By Nancy Dunne in Washington

THE US Senate has approved legislation which prohibits foreigners from giving money to or seeking influence over political action committees, which contribute to political campaigns. The move comes amid rising concern over foreign influence on the US political process.

However, the 3.5m US employees of foreign-owned companies will still be allowed to form the politically influential committees, called PACs, which provide financing for national candidates. This was a rejection of the argument that such employees could be subjected to pressure from their parent companies in making decisions about contributions.

The new provision, an amendment to campaign finance reform legislation, was passed on Tuesday night. It

was introduced by Senator John Breaux, a Louisiana Democrat.

It had the support of foreign companies, whose representatives lobbied hard to prevent a more restrictive amendment backed by Senator Lloyd Bentsen, which was defeated.

Under existing regulations, PACs are prohibited from accepting foreign contributions. Senator Bentsen complained that the rule was not monitored or enforced. He produced a study saying that 120 PACs of companies with significant foreign ownership had operated in the 1987-88 election campaign, contributing \$2.8m (£1.61m) to US candidates.

"I fear a more insidious process is at work: direct or indirect contributions or material support from foreign states or entities," the senator said.

May 21, 1991

amendment, there will be a vote on the Wellstone amendment.

So there will be two votes tomorrow morning on the McConnell amendment at 10 and then 10 minutes after the completion of that vote, or approximately 10:30, there will be a vote on the Wellstone amendment.

Mr. BREAUX. Will the majority leader yield for a question?

Mr. MITCHELL. Might I add one more comment? Mr. President, I merely wish to make clear in behalf of the Senator from Kentucky that there will be no amendments in order to the McConnell amendment or to any language that he may be striking. That protects from any amendments being offered both to his amendment or to any language that he may be striking.

The PRESIDING OFFICER. The agreement is so modified.

Mr. BREAUX. I ask the majority leader, if the Breaux amendment were to be adopted, which is essentially a substitute for the Bentsen amendment, perhaps there will be one vote, if the Breaux amendment were agreed to.

Mr. MITCHELL. That is possible. Mr. President, I thank my colleagues and I especially thank the distinguished Senator from Texas, who has been very cooperative in the scheduling of his amendment.

AMENDMENT NO. 250
(Purpose: To amend the Federal Election Campaign Act of 1971 to tighten provisions relating to contributions by foreign nationals)

Mr. BENTSEN. I thank the majority leader for his comments. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN), for himself, Mr. BOREN, Mr. SHILBY, Mr. LEAHY, and Mr. WIRTH, proposes an amendment numbered 250.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, insert the following:

SEC. CONTRIBUTIONS BY FOREIGN NATIONALS.
Section 319 of FECA (2 U.S.C. 441e) is amended—

(1) in subsection (a) by inserting after "foreign national" the first place it appears the following: "Including any separate segregated fund or nonparty multicandidate political committee of a foreign national,"

(2) in subsection (b)(1) by inserting before the semicolon at the end the following: "but shall include any partnership, association, corporation, or subsidiary corporation organized under or created by the laws of the United States, a State, or any other place subject to the jurisdiction of the United States if more than 50 percent of the entity is owned or controlled by a foreign principal".

Mr. BENTSEN. Mr. President, last July the Senate approved my amendment prohibiting companies that are

more than 50 percent foreign owned from forming political action committees. That vote was 73 to 27. I have now reoffered the amendment. The sponsors are Senators BORN, SHILBY, WIRTH, and LEAHY.

I want to be sure that this amendment is part of whatever campaign reform legislation goes to the conference, and I hope we can agree to it quickly and amicably.

We need this amendment to protect us against unwarranted foreign influence in our electoral processes. We need it to keep American elections American. In the past decade, foreign direct investment in the United States has increased fourfold. I really have no objection to that, but while we were running up huge budget and trade deficits, more and more U.S. companies were acquired by foreign corporations. Many of these foreign-owned companies already had political action committees and were active in the political process. In fact, according to a study originally done for me by the Congressional Research Service, there were 120 PAC's of companies with significant foreign investment in the 1987-88 election cycle, and those PAC's gave candidates \$2.8 million. According to existing regulations, those PAC's were not supposed to let foreigners contribute to their funds or participate in spending decisions. That is the rule. But there is no monitoring or enforcement procedure. Instead, I think an insidious process is at work. The PAC committee probably looks over its shoulder to be sure it does nothing that would anger corporate headquarters. They are not dumb. They understand that those who go along get along in that type of situation. But employees face a potential conflict of interest between their judgments as American citizens and their jobs in a foreign-owned company.

What do they do, for example, if they want to support a candidate who supports domestic policies which they favor but who is known as a strong critic, for example, of Soviet policies? What if their headquarters in France or Germany has just cut a big deal with the Kremlin? By banning foreign company PAC's, my amendment would also put a stop to any effort by foreigners to buy into our political process by acquiring companies with established and effective PAC's.

My amendment would put those PAC's out of business. The employees could still make political contributions as individuals. This does not deny them that. If they want to support this candidate for the Senate, Governor, whatever, they can do that and make their individual contributions. But that would not be reported back to Frankfurt or to Tokyo. Is that unfair? Is it unfair discrimination against foreign companies? I sure do not think so.

Just look at what other countries do. Japan forbids political contributions by foreigners, foreign corporations or

groups or organizations in which foreigners or foreign corporations are a major component. They are not alone. Germany largely prohibits foreign political contributions, except it does permit nonresident business entities to make political contributions if they are owned 50 percent by German citizens. Just last year, France tightened its laws to forbid direct or indirect contributions or material support from foreign states or entities. On reciprocity grounds alone, therefore, we need this amendment.

The Department of Justice strongly supports this restriction against foreign PAC's. In a formal submission to the Federal Election Commission last year, the Department argued that the 50 percent foreign ownership test is a reasonable, objective and easily quantifiable standard, which is a vast improvement over the case-by-case control of FEC opinions.

Mr. President, I ask unanimous consent to print in the RECORD the statement by the Justice Department.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE
CRIMINAL DIVISION,

Washington, DC, November 15, 1991.

Re Notice of Proposed Rulemaking, Number 1990-11, 11 C.F.R. Part 110.

Hon. LEE ANN ELLIOTT,

Chairman, Federal Election Commission,
Washington, DC.

DEAR MADAM CHAIRMAN: This letter presents the views of the Department of Justice on the captioned Notice of Proposed Rulemaking, in which the Federal Election Commission proposes a new regulation which would define the definition of "foreign national" for the purpose of 2 U.S.C. § 441e to include any corporation whose equity ownership by non United States nationals exceeds 50%.

The Department of Justice strongly supports this proposed regulation.

Section 441e is an internal security statute. It was originally enacted as part of the 1966 amendments to the Foreign Agents Registration Act of 1938, as amended (FARA). Its purpose from the start was to minimize foreign financial intervention in the domestic United States election process.

Until 1976 this statute was codified at 18 U.S.C. § 613, and it covered only political contributions made by "agents of foreign principals," either for or on behalf of the "foreign principal," or otherwise in his capacity as an "agent," as those terms were defined in FARA and Section 613. The scope of former Section 613 was broad enough to prohibit all such contributions by multinational corporations that fell within the broad definitions of "foreign principal" or "agent" thereof, even those exempt from registration under FARA. The purpose of FARA, and thus of former Section 613, was to protect the integrity of domestic political institutions against foreign intervention and influence. Former Section 613 was enforced exclusively by this Department through criminal prosecutions.

In 1974 Section 613 was expanded to forbid all political contributions to domestic United States elections by any person who was not either a United States citizen, or a person admitted for permanent residence pursuant to 8 U.S.C. § 1401(a)(20). The result of this amendment was to significant

by expand upon the internal security objectives which this statute serves.

In 1976 this law was incorporated into the Federal Election Campaign Act (FECA) as part of the recodification of FECA which took place that year. In the process, it was made subject to the FEC's rulemaking, advisory opinion, and administrative enforcement procedures (see 2 U.S.C. § 437f and 437g) "knowing and willful" violations of this statute which involve illegal contributions of more than \$2,000 remained federal criminal offenses subject to prosecution by this Department under 2 U.S.C. § 437d(1).

Section 441e represents one of the main federal statutory defenses against efforts by foreign nationals and foreign interests to influence the domestic election processes of the United States through campaign contributions. The function of this statute is to safeguard a vital feature of the Nation's sovereignty. In our opinion, it deserves a broad construction in keeping with the vital national security interests which it was enacted to protect.

In the years since 1976, when the Federal Election Commission (FEC) was given authority to interpret this statute's scope, the Commission has issued several advisory opinions on Section 441e's application to multi-national business organizations. However, the line between permissible and impermissible conduct that has emerged from this case-by-case interpretive process has not been a precise one. As a result, there is, in our opinion, an area of ambiguity insofar as Section 441e's application to political contribution activity by many types of business organizations that have substantial foreign capitalization and/or control. This state of uncertainty is not consistent with this statute's purpose.

One example of this ambiguity is the extent to which Section 441e reaches contributions by domestic United States subsidiaries of foreign multi-national enterprises. Within this grey area, a permissive latitude unfortunately exists for foreign interests to influence the domestic election processes of the Nation, the provisions of Section 441e notwithstanding.

The 50% foreign ownership test advanced by the proposed FEC regulation is a reasonable, objective, and easily quantifiable standard, which is a vast improvement over the case-by-case "control" analysis that is necessary under the line of FEC Advisory Opinions on this subject. This proposed regulation therefore succeeds quite well in achieving its objective of clarifying the standard of coverage.

One result of this clarification of coverage will be to enable the FEC to better protect the domestic integrity of United States elections through enforcement actions brought under 2 U.S.C. § 437g(a). Another result will be to aid this Department in pursuing criminal charges against those who intentionally violate Section 441e by reducing the magnitude of present ambiguities concerning the statute's reach, by providing clearer notice of coverage to those subject to its terms, and by facilitating proof of the elevated scienter element necessary to support criminal convictions under the FECA. See e.g. *AFL-CIO v. FEC*, 628 F.2d 97 (D.C. Cir. 1980); *National Right to Work Committee v. FEC*, 716 F.2d 1401 (D.C. Cir. 1983).

The 50% ownership test which the Commission has proposed is fully consistent with the internal security objectives of the statute. In fact, the majority ownership approach which the FEC is proposing for access to domestic political activity is in fact more lenient than is the Federal Communication Commission's (FCC's) standard for

foreign access to the domestic airwave.¹ Accordingly, arguments that the test selected by the FEC is unfair to foreign nationals fall way short of the mark.²

In the opinion of the Department of Justice, this is a good regulation which is badly needed, and which will advance the important national security goals that underlie 2 U.S.C. § 441e. The FEC should adopt this regulation without delay.

I appreciate the opportunity which the FEC has given us to have input into this issue, and I trust that the views expressed in this letter will assist the Commission in its rulemaking decision.

Sincerely,

ROBERT S. MUELLER III,
Assistant Attorney General.

Mr. BENTSEN, Mr. President, the Department added that the change proposed here would enable the FEC to better protect the domestic integrity of U.S. elections and would aid the Justice Department in pursuing criminal charges against intentional violators. The Department also dismisses the argument that speech or associational rights of American citizens would be unfairly impeded. Instead, it argues that this foreign PAC restriction is "badly needed" and ought to be adopted "without delay."

Mr. President, we discriminate against foreign influence and control in many areas—radio and television station ownership, airlines, corporate takeovers with national security implications. I think we should do no less when it comes to our electoral sovereignty.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will run equally against each side on the amendment.

Mr. BENTSEN, Mr. President, if there is no demand for time, I would be prepared to yield back my time and go to a vote.

Mr. McCONNELL, Mr. President, I want to make sure I understand the Bentsen amendment. I would ask my friend from Texas, am I correct that employees who are U.S. citizens who work for companies in this country of which the majority of stock is owned by a foreign entity would no longer be allowed to establish and fund a political

¹ The Communications Act, and in particular 47 U.S.C. § 316(b)(3) thereof, prohibits the issuance of broadcast licenses to, or the holding of such licenses by, any entity whose capital stock is more than 20% owned by foreign nationals or foreign interests. Like Section 441e, the purpose of this FCC provision is to prevent foreign domination of the Nation's airwaves.

² Nor will the proposed 50% ownership test unfairly impede the associational or speech rights of United States nationals who may be employed by foreign dominated businesses entities. Such United States citizens will remain free to form, to be solicited by, and to contribute to non-connected political committees. The only associational or speech limitation imposed by this proposed regulation will be on the capacity of foreign citizens and foreign capital to be used to stimulate and coordinate contribution activity from American employees. Such a narrow limitation on domestic political intervention by non American individuals and interests is clearly justified from a First Amendment perspective as a legitimate measure to safeguard the Nation's sovereignty.

cal action committee and participate in American politics?

Mr. BENTSEN. They can participate in American politics.

Mr. McCONNELL. Not through a PAC.

Mr. BENTSEN. Not through a company PAC. Now, they could make individual contributions as long and as much as they want under the Federal laws.

Mr. McCONNELL. It is the understanding of the Senator from Kentucky that there are roughly 30,000 employees in Kentucky who work for companies that are majority owned by foreign corporations. My concern, I say to my friend from Texas, is that we have established maybe inadvertently—I understand his concern about foreign influence. Foreigners cannot contribute to our elections now, and I think that is a good rule. I worry about diminishing this aspect of citizenship for those employees. It is a matter of great concern.

Last year, I opposed the Senator's amendment and am inclined to do it again for that very reason, because to this Senator, to put those employees in sort of a diminished role in terms of the full array of opportunities to participate in the political process is somewhat troubling.

Mr. BENTSEN. I understand the comments of the Senator from Kentucky, but it was my understanding that the Senator from Kentucky supports doing away with all PAC's.

Mr. McCONNELL. Yes, but in the absence of a decision to do that—and I assume that the amendment of the Senator from Texas is designed to deal with that environment in which PAC's continue to exist—it seems to this Senator that all Americans ought to be treated the same in terms of their ability to participate the same through a political action committee if they should continue to exist.

Should the proposition of the Senator from Kentucky prevail, which is, by the way, also in the bill my friend from Texas supports, there would not be any connected PAC's but that would discriminate against all Americans equally if they are concerned about their inability to form a PAC. But if PAC's are going to continue to exist, it seems to this Senator just because a Kentuckian happens to work for a company that is now majority owned by a foreign entity, it is not a great idea to diminish his citizenship to that extent.

Mr. BENTSEN. Let me, if I might reply, give the Senator the argument that is given by the Justice Department. They flatly dismissed that argument. They said, "The only association or speech limitation imposed by this proposed regulation will be on the capacity of foreign citizens and foreign capital to be used to stimulate and coordinate contribution activity from American employees, and such a narrow limitation on domestic political

intervention by an American individual and interests is clearly justified from a first amendment perspective as a legitimate measure to safeguard the Nation's sovereignty." That is the Justice Department's opinion.

Mr. McCONNELL. As I understand what the Senator has just read, in effect the affected employees would still have the option of forming what is called a nonconnected PAC.

Mr. BENSTEN. That is true.

Mr. McCONNELL. The employee down the street who works for a company that is majority owned domestically would still have the option of forming a connected PAC. So in that sense it still seems to this Senator that we have arbitrarily put the employee who works for a foreign-owned company in a different position.

I appreciate the explanation of the Senator from Texas, and that really is all of my observations on the subject.

Mr. BREAUX. Mr. President, I was wondering if it is appropriate at this time to go ahead and offer my amendment. The Senators still have time. It may be a way of moving things along.

The PRESIDING OFFICER. If the Senators will yield back their time on the amendment, it would be appropriate.

Mr. BREAUX. Parliamentary inquiry. How much time is remaining?

Mr. McCONNELL. How much do I have?

The PRESIDING OFFICER. The Senator from Kentucky has 9 minutes.

Mr. McCONNELL. I yield back my time.

Mr. BENTSEN. I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 251

(Purpose: To prohibit certain election-related activities of foreign nationals)

Mr. BREAUX. Mr. President, I send an amendment to the desk to the Bentsen amendment.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana (Mr. BREAUX), for himself and Mr. Dole, proposes an amendment numbered 251 to the amendment numbered 250.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 319. PROHIBITION OF CERTAIN ELECTION-RELATED ACTIVITIES OF FOREIGN NATIONALS

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) the electoral process of the United States should be open to all American citizens;

(2) foreign nationals should have no role in the American electoral process;

(3) Congress does not intend and has never intended to permit foreign nationals to participate, directly or indirectly, in the

decisionmaking of political committees established pursuant to the Federal Election Campaign Act of 1971;

(4) it is the intent of Congress to prohibit any participation whatsoever by any foreign national in the activities of any political committee; and

(5) while it is necessary to safeguard the political process from foreign influence, it is critical that any protections not discriminate against American citizens employed by foreign-owned companies and that Americans' constitutional rights of free association and speech be protected.

(b) PROHIBITION OF CERTAIN ELECTION-RELATED ACTIVITIES OF FOREIGN NATIONALS.—Section 319 of the Federal Election Campaign Act of 1971 is amended by—

(1) redesignating subsection (b) as subsection (e); and

(2) inserting after subsection (a) the following new subsections:

"(b) A foreign national shall not direct, dictate, control, or directly or indirectly participate in any person's decisionmaking concerning the making of contributions or expenditures in connection with elections for any Federal, State, or local office or decisionmaking concerning the administration of a political committee.

"(c) A nonconnected political committee or the separate segregated fund established in accordance with section 316(b)(2)(C) or any other organization or committee involved in the making of contributions or expenditures in connection with elections for any Federal, State, or local office shall include the following statement on all printed materials produced for the purpose of soliciting contributions:

"It is unlawful for a foreign national to make any contribution of money or other thing of value to a political committee."

"(d) A nonconnected political committee or a separate segregated fund established in accordance with section 316(b)(2)(C) or any other organization or committee involved in the making of contributions or expenditures in connection with elections for any Federal, State, or local office shall certify in regular reports to the Commission, or in a manner prescribed by the Commission, that no foreign national has participated either directly or indirectly in the decisionmaking of the political committee or separate segregated fund, including the appointment of the administrators of the committee or fund."

(c) PENALTY.—Section 309(b)(1)(C) of FECA (2 U.S.C. 4379(d)(1)(C)) is amended by inserting "section 319 or" before "section 322".

Mr. BREAUX. Mr. President, I essentially start by telling my colleagues that I agree with the thrust and the goal of the Bentsen amendment which I interpret to be the elimination of influence by foreign nationals or foreign companies on the American political process. They should not be involved. They should not be influencing the political process in this country.

However, I point out that under the Breaux-Dole amendment, which is now pending as a substitute, we retain current law. Current law also recognizes that foreigners should not be involved in the political process of the United States. There are no foreign PAC's in existence in the United States of America. None. Not one. There are no foreign nationals who are able to make a contribution to anyone in the U.S. political system. There are no foreign contributions to

any existing U.S. PAC. That is illegal. That is prohibited under the current rules and the current regulations.

What we are dealing with under the Bentsen amendment, to which my amendment is a substitute, is a prohibition against U.S. domiciled subsidiaries that are taxpaying companies in this country; and are companies that are licensed and chartered in this country; that employ U.S. citizens in this country, which citizens are taxpaying citizens in this country; and under the Bentsen amendment these citizens, 3 million-plus Americans, if PAC's are to be allowed, would be prohibited from doing what any other American citizen is permitted to do, and that is to make a contribution to the company's political action committee for which he happens to work.

It is interesting that in my reading of the amendment of the Senator from Texas it would not prohibit that employee for that foreign-owned subsidiary from making a contribution to his labor union PAC. It could be the labor union that works in that foreign subsidiary, which interests are the same as that subsidiary in seeing to it that that subsidiary does well and makes a profit so they can continue to work for it. The Bentsen amendment would not prohibit that employee from making a contribution to the labor PAC that works in that plant.

Take Shell Oil, for instance, which employs literally thousands of people in my State of Louisiana, which is a foreign-owned company. But the Shell Oil Co. that is located in Louisiana is a Louisiana citizen. It pays Louisiana taxes. It is domiciled in our State. They employ thousands of Louisiana citizens. Those citizens, under the Bentsen amendment, would not be able to contribute to the PAC of the labor union that happens to work in that particular plant. They can make a contribution to the labor union, but they could not make a contribution to the Shell political action committee.

What my amendment would do is simply say that the current law under the Federal Election Commission that prohibits any foreign national from donating money to or serving on the board of a PAC of a U.S. subsidiary is contingent and it becomes the law of the land, not just a rule, not just a regulation.

The Breaux amendment says that there can be no foreign PAC's. The Breaux amendment says that there can be no foreign contributions to any U.S. political action committee. It goes even further than that. It requires that there be a certification, a certification in every political action committee's file, which certification clearly says that this PAC has not solicited, accepted, or received a contribution from a foreign national. It further says that no foreign national has directed, dictated, controlled, or directly or indirectly participated in the decisionmaking process of this political

committee with regard to any of the elections, and that any person who knowingly and or willfully makes a false statement in this certification shall be subject to the penalties.

Mr. President, the penalties that we have in this legislation are indeed very strict in the sense that they are criminal penalties that are applicable to anybody found to be in violation. These penalties are, and I point out, a person who violates it is subject to 1 year plus and/or a \$25,000 fine or up to 300 percent fine over the amount of the violation of the PAC contribution.

Mr. President, what we have done in my substitute legislation which I point out is only applicable if PAC's are somehow found to be still legal after this legislation is completed that there will be no foreign contributions to any U.S. organized political action committees, that no foreign national can participate in any U.S. political action committee, but that the millions of citizens in this country who merely work for a U.S. subsidiary that happens to be 50 percent or more owned by a foreign citizen should not be prohibited from participating in the political process.

I am very concerned that while I share completely and totally the concerns that the Senator from Texas [Mr. BENTSEN] has expressed, I merely point out that the broad brush of his amendment goes much farther than we need to go in order to clear up the political action committee foreign subsidiary problem.

I also point out that, number one, we have not had problems in this area. We have not seen any violations of foreign nationals trying to make contributions to political action committees or trying to influence that political action committees do with their funds with the companies that are in fact U.S. subsidiaries of foreign nationals already. This is not a problem that needs to be corrected. And I want to point out that in general political action committees have not been causing any problems in the election process. In fact, in 1972 they were part of the reform. They had the amount that they can contribute dramatically reduced because of inflation. In 1972 a PAC could give a \$5,000 contribution. Almost 20 years later that is the same limit or ceiling on what they can give.

It is very clear that because of inflation over almost 20 years, that the \$5,000 ceiling in 1972 is worth far less in 1991 or the 1992 election cycles. So every year by inflation we have dramatically reduced the amount of money that a political action committee can donate in terms of its effective buying power. The final point is that these political action committees, in fact, are not part of the problem at all.

In my own State, there are between 50,000 and 60,000 Louisiana citizens who would be prohibited by the Bentsen amendment from making a contribution to the political action committee of the company they happen to

work for merely because this U.S.-domiciled subsidiary, the U.S.-domiciled company of Louisiana that happens to be foreign owned would prohibit them from participating in their political action committee for that particular company. They would not be prohibited from making a contribution to the labor union PAC that works within the same boundaries of that company which has the same interests in assuring that that company would in fact be successful from a financial standpoint.

Mr. President, I do not think that these 50,000 to 60,000 Louisianians should be arbitrarily prohibited without a showing of a problem from participating in the process through the political action committees that their companies have set up to allow them to have a greater voice in the selection of the candidates that they would like to see serve them in a national Congress and also in other areas as far as State and local governments are concerned.

Mr. President, I offer my amendment as a substitute to the Bentsen amendment, and ask that Senator Dole be allowed to join with me as a cosponsor as he has indicated to me by unanimous consent.

Mr. McDONNELL. I would like to be added as a cosponsor.

Mr. BREAUX. If there is no further debate, I ask for the yeas and nays on the amendment.

Mr. BENTSEN addressed the Chair. The PRESIDING OFFICER. The Senator from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. President, I appreciate the comments of the Senator from Louisiana about the objectives of my amendment. He is sharing the objective. But the amendment he proposes has an interesting provision requiring the PAC officials to certify that no foreign national participated directly or indirectly in the PAC decisions and provided the criminal penalties for local violations. As he has stated, those are identical to the provisions that are already on the books now for illegal contributions totaling \$2,000 or more.

But this amendment does not eliminate a single foreign PAC, and in no way does it get rid of the pressures on those working for that company which is foreign owned.

Mr. President, this came very forcefully to mind when we had the question of Toshiba, and the transfer of submarine propellers technology to the Soviet Union. We had tried carefully and zealously to prevent it from going to our major threat at that time, the U.S.S.R.

When that issue was raised on Toshiba, in that election cycle and every public forum, public hall meeting that I held, you had Americans there, the managers of the divisions representing Toshiba, arguing against the U.S. position in that regard.

That is what I saw happening. So do not tell me they do not look over their

shoulder to see what the management thinks back home.

That is why I think it is important that we put a quantifiable limitation on these PAC's, one that is easily defined. The current law, according to the Justice Department, is ambiguous, harder to enforce than a 50 percent ownership test that is under my amendment.

This amendment that is being brought up at the present time assumes that it will be easy to make these certificates of noninterference and do it truthfully. Perhaps, perhaps not. The question is how do you prove the subtle pressures in a court of law?

So if you want to be sure you catch the violators, remember that the Department of Justice favors the ban on PAC's with 50-percent foreign ownership. Instead of permitting this current ambiguity to continue to cloud the FEC decisions over the years, I think we ought to put this rule in, carry out the Bentsen amendment, and defeat the amendment proposed as a substitute by the Senator from Louisiana.

The PRESIDING OFFICER. Who yields time?

Mr. BREAUX. I yield myself such time as I may use.

I only point out in response to the good points of my colleague from Texas, some of which I think everyone really needs to understand, that there are no foreign PAC's. They are illegal. There are no foreign contributions to any U.S.-subsidiary PAC that can be legally made under current rules and regulations. Those are illegal. No foreign national, no foreign citizen, can contribute to any U.S. political action committee now. That is the rule under the Federal Election Commission.

My legislation takes that a step further, and makes that a statutory requirement; also adds the fact that there has to be a certification that every political action committee must file to that effect when they file their reports; and, third, imposes very strict criminal penalties for the first time as well as civil penalties for anybody who knowingly violates any of those rules and regulations.

We can argue whether we should have political action committees or not. These amendments only apply if in fact they are found to be legal after all of these legislative efforts are completed. But the point I make is that these matters that the Senator is addressing himself, which I agree with, should not be allowed in this country. They are already prohibited.

The final point is that, I think, millions of American citizens who work in this country, who desire to participate in their political action committee formed by the company they work for, located in this country, domiciled in this country, licensed in this country, paying tax in this country, should not be arbitrarily prohibited from doing

so. That is what the amendment would do.

I do not know if we have more arguments.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. LIEBERMAN). Is there a sufficient second?

Mr. LAUTENBERG. Mr. President, I am strongly opposed to letting foreigners influence our political process. Ours is a government of, by and for the people—the American people. And that is the way it should be.

The underlying Bentsen amendment, unfortunately, is inconsistent with that principle. The amendment would treat some American citizens as second-class citizens, by denying them political rights available to other Americans. That is why I feel compelled to oppose it.

Mr. President, the issue is not whether foreigners can get involved in the American political process. They should not and, under current regulations, they may not.

Nor, Mr. President is the issue one of political action committees or PAC's. The legislation we are considering would ban all PAC contributions, whether they represent Americans who work for foreign-owned companies or Americans who work for domestically owned companies.

Mr. President, the real issue here is whether American citizens who happen to work for a company with majority ownership abroad should be denied political rights available to other Americans.

Mr. President, the second-degree amendment proposed by the distinguished Senator from Louisiana [Mr. BREAUX] would codify existing regulations, to ensure that no foreigner may participate in the American electoral process. Foreigners would be prohibited from donating money to a PAC, or from influencing the decisions of a PAC. The amendment also would put teeth into these rules, through the establishment of penalties for violators. I think these proposals make sense, and I support the Breaux amendment.

Mr. President, my State of New Jersey has aggressively sought investment from abroad. Given our location and our top flight, educated work force, we are an attractive location for many foreign investors. As a result, the citizens of our State are now benefiting not only from the jobs that have been created by such companies, but by the products that are produced by these companies in New Jersey for sale to New Jerseyites and other Americans.

Mr. President, according to the New Jersey Department of Commerce, in 1987 there were 169,000 New Jerseyites who worked for foreign-owned companies. That number may well be higher now. These people—and the children and families who depend on them—should not be discriminated against just because a majority of the

owners of their company happen to reside outside the country.

Mr. President, we should do everything we can to ensure that foreigners do not directly participate in American electoral politics. But let us not discriminate against American citizens in the process.

Mr. BENTSEN. Mr. President, I will be moving to table the amendment with the yielding back of time.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, I am prepared to yield back the remainder of my time, assuming the proponent of the amendment is.

I ask unanimous consent that we set the vote at 6:15 to give people time to get here, and I move to table.

Mr. BREAUX. I yield the remainder of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the hour of 6:15 p.m. having arrived, the vote will now occur on the motion to table made by the Senator from Texas to the second-degree amendment of the Senator from Louisiana, [Mr. BREAUX].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I further announce that the Senator from Hawaii [Mr. INOUE] is absent on official business.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. SYMS] is necessarily absent.

I also announce that the Senator from North Carolina [Mr. HELMS] is absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 35, nays 60, as follows:

(Rollcall Vote No. 67 Lcs.)

YEAS: 35

Adams	Byrd	Exon
Baucus	Burdick	Fowler
Bentsen	Burns	Gore
Biden	Byrd	Grassman
Breaux	Dobbs	Graham
Brown		Graham
Bumpers		Graham
Chafee		Graham
Chafee		Graham
Coburn		Graham
Cole		Graham
Conrad		Graham
Craig		Graham
Cranston		Graham
D'Amato		Graham
Danforth		Graham
Daschle		Graham
DeConcini		Graham
Dixon		Graham
Dole		Graham
Domenici		Graham

Barkin	Levin	Rockefeller
Bell	Metzenbaum	Rudman
Bell	Mohr	Sarbanes
Bennett	Murray	Sasser
Biden	Pell	Simon
Breaux	Reid	Wellstone
Brown	Riegle	

NAYS: 60

Adams	Durenberger	Mikulski
Baucus	Ford	Mitchell
Biden	Garn	Murkowski
Breaux	Gleason	Nickles
Brown	Gorton	Packwood
Bumpers	Griffin	Pressler
Chafee	Hatch	Reeb
Chafee	Hatch	Roth
Coburn	Johnston	Sanford
Cole	Kassebaum	Seymour
Conrad	Kasten	Shelby
Craig	Kerry	Simpson
Cranston	Lautenberg	Smith
D'Amato	Leahy	Specter
Danforth	Lieberman	Stevens
Daschle	Lott	Thurmond
DeConcini	Lufer	Wallop
Dixon	Mack	Warner
Dole	McCain	Wirth
Domenici	McConnell	Wofford

NOT VOTING—5

Biden	Inouye	Syms
Helms	Pryor	

So the motion to lay on the table the amendment (No. 251) was rejected.

The PRESIDING OFFICER. The question occurs now on the amendment offered by the Senator from Louisiana [Mr. BREAUX].

Mr. BENTSEN. Mr. President, if I may address the majority leader and the Senator from Louisiana?

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. President, I am prepared to accept the amendment to my amendment and do not see a need for a rollcall vote.

Mr. BREAUX. Will the Senator yield? I certainly agree with the Senator. I ask unanimous consent to vitiate the order for the vote that was previously ordered on my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BREAUX. I thank the Chair.

The PRESIDING OFFICER. The question then is on agreeing to the amendment offered by the Senator from Louisiana [Mr. BREAUX].

The amendment (No. 251) to the amendment (No. 250) was agreed to.

The PRESIDING OFFICER. Without objection, amendment No. 250, as amended, will be agreed to.

The amendment (No. 250), as amended, was agreed to.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment as amended was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, parliamentary inquiry. Am I correct now that the Bentsen amendment, as amended by the Breaux amendment, has been agreed to by the Senate?

PACs & LOBBIES

June 19, 1991

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FEC won't ban foreign-connected PACs

By Edward Zuckerman, Editor & Publisher

After the Federal Election Commission voted last week to kill a proposed rule that would have prohibited PAC sponsorship by foreign-owned companies, one of the agency's lawyers observed:

"In the interest of protecting national security, we have laws that forbid foreign ownership of airlines and television stations. But the FEC doesn't feel our electoral process deserves protection."

While the final verdict may have disheartened some of the agency's legal experts, who argued in vain for the rule's adoption, it certainly shouldn't have been a surprise.

Last week's 4-2 vote was precisely identical to earlier votes, cast in a long series of advisory opinions, which have repeatedly told foreign-owned corporations that they can sponsor PACs and make contributions to U.S. political office-seekers provided that all the money comes from U.S. citizens and all the giftmaking decisions are made without involvement by the company's foreign owners.

If there was any element of surprise at all, then it occurred last year when two commissioners who have supported the past advisory opinions dealing with "foreign-connected PACs"—Democrat John Warren McGarry and Republican Thomas Josefak—voted in favor of a motion to open the rulemaking procedure. Indeed, McGarry made the motion that enabled the exercise to proceed.

But even so, McGarry made it clear at the very beginning that his action shouldn't be interpreted as a shift in his philosophy. He made the motion, he said, because there was sufficient public concern to justify the kind of examination that only a formal rulemaking procedure can provide.

The decision to start a formal rulemaking procedure triggered an intense and mostly undisclosed lobbying campaign that was guided by the Association for International Investment (AFII), a pro-trade group headed by former U.S. Attorney General Elliot Richardson, and a loose-knit coalition of foreign-connected PACs.

They won a strategic advantage by persuading the Sen-

ate, only a few weeks earlier, to reverse its previous adoption of a campaign reform amendment that was identical to the FEC's proposal to ban PAC sponsorship by corporations which are at least 50% foreign-owned.

While 73 senators supported the amendment when it was offered during last year's campaign reform debate by Sen. Lloyd Bentsen (D-Tex.), it was scuttled during last month's debate. Instead, the Senate adopted an amendment offered by Sen. John Breaux (D-La.) that had been drafted for him by the foreign-connected PAC coalition.

Instead of banning PAC sponsorship by foreign-owned companies, Breaux's amendment requires all PACs to certify to the FEC that they haven't received any money or direction from foreign nationals. As written, it would apply not only to 4,500 FEC-registered PACs but also to an

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National bank fined for political spending

A national bank in Maywood, N.J., and nine of its officers have paid \$34,725 in civil penalties after admitting they were reimbursed by the bank for contributions they made to various political organizations and candidates.

Officers at the National Community Bank of New Jersey claimed to the Federal Election Commission that they were not aware of a federal law, enacted in 1907, which makes it illegal for a national bank to make contributions or expenditures in connection with any election.

Instead, they said in a letter to the FEC, they regarded their gifts as "an aspect of the bank's business development program, similar to our contributions to charitable and community betterment programs."

Among payments reimbursed by the bank: \$3,000 for a dinner sponsored by Bill Bradley for the U.S. Senate Committee and \$2,500 to participate in a Bergen County Republican Organization golf outing.

Altogether, the executives received a total of \$48,825 worth of reimbursements. They paid \$31,700 to attend 95

(Continued on Page 4)

Proposed rulemaking on foreign PAC sponsorship is killed by FEC, 4-2

(From Page 1)

estimated 12,000 PACs which are registered with state election law enforcement agencies and expose them to potential civil and criminal penalties for non-compliance.

"Never before in the FEC's history has another question raised as much interest, emotion or importance," McGarry marveled to a near capacity crowd of mostly foreign-owned corporation lobbyists who attended last week's session.

After a seemingly inexhaustible series of highly spectacular acquisitions of U.S. businesses by foreign investors, the number of foreign-connected PACs is generally thought to be on the rise. And concomitantly with that--and hence the nervousness about their existence--the total number of dollars flowing through foreign-connected PACs to the campaign coffers of U.S. political officeholders is thought to be increasing.

While an examination of FEC registration records shows that the number of foreign-connected PACs has grown, the amount they collectively contribute to federal candidates hasn't kept pace.

A Congressional Research Service tabulation of 1987-88 election cycle contributions by foreign-connected PACs identified \$2.8 million worth of gifts in federal elections. A PACs & Lobbies analysis of the more recent 1989-90 election cycle shows their overall contributions dropped to \$2.4 million.

While the rulemaking exercise failed to change a single vote among the FEC's six politically appointed members, it certainly had to make them wonder what, exactly, was really at stake here. Their rulemaking proposal attracted dozens of comments, requiring an expenditure of time and legal talent if nothing else, from managers of companies whose PACs distributed as little as \$500 to federal candi-

dates during the last two years.

Nothing was more telling than the conflicting advice which came from the Bush Administration. While the U.S. Justice Department said the regulation's adoption would help to strengthen national security, the Departments of Treasury, Commerce and State incredulously claimed the regulation would violate international treaties.

Treaty obligations, incidentally, was a key point raised against the proposed regulation by IFAA, suggesting possible coordination between the Richardson-led lobbying group and the three governmental departments.

Various treaties, the three cabinet departments said in their joint letter to the FEC, requires "national treatment," an international law concept which assures that a country will treat foreign citizens and corporations the same as its own.

But the FEC legal staff examined several treaties and discovered that each one specifically excluded political activity from their coverage.

In testimony to the FEC, IFAA general counsel Bradley R. Larschan claimed that the proposed regulation "would tend to undermine the government's international eco-

(Continued on Page 4)

Here are PAC-sponsoring corporations, identified as being at least 50% foreign-owned, and the amounts their PACs contributed to federal candidates during the 1989-90 election cycle.

A.E. Staley Manufacturing Co.	59,661	Holiday Inns Inc.	59,000
A.T. Massey Coal Co.	3,750	ICI Americas Inc.	79,425
AMCA International Corp.	500	Joseph E. Seagram & Sons Inc.	124,025
American Petrofina Inc.	18,300	Lafarge Corp.	3,000
Aneev Holdings Inc.	7,616	Libbey-Owens-Ford Co.	25,350
Ansell Inc.	14,550	Manne Midland Banks Inc.	90,668
Asarco Inc.	20,150	MCA Inc.	182,400
Asea Brown Boveri Inc.	55,528	National Steel & Shipbuilding Co.	13,825
Barclays American Corp.	1,000	National Westminster Bancorp NJ	2,650
BATUS Inc.	3,526	National Westminster Bank USA	500
Beecham Inc.	2,500	Nestle Enterprises Inc.	61,681
BHP-Utah International Inc.	22,750	New United Motor Manufacturing Inc.	1,350
BP America Inc.	121,250	North American Philips Corp.	19,925
BOC Group Inc.	1,625	Northern Telecom Inc.	30,150
Budd Co.	17,450	Oppenheimer & Co.	3,000
Brown & Williamson Tobacco Corp.	58,100	Pacific Resources Inc.	28,850
Burroughs Wellcome Co.	23,900	Peter Pan Seafoods Inc.	8,125
Central Pacific Bank	7,400	Pillsbury Co.	42,985
CIBA-GEIGY Corp.	120,775	Pirelli Cable Corp.	13,500
Cominco American Inc.	5,600	Republic Financial Services Inc.	1,500
Connaught Laboratories Inc.	15,250	Rhone-Poulenc Inc.	64,700
Farmers Group Inc.	43,798	Royal Group Inc.	3,100
First Boston Corp.	84,500	Sandoz Inc.	43,430
General Accident Insurance Co	250	Santa Fe International Corp.	27,150
Georgia U.S. Corp.	10,600	Security Life of Denver Insurance Co	22,550
Glaxo Inc.	105,850	Shell Oil Co.	144,600
Grand Trunk Railroad Corp.	14,625	Siemens Energy & Automation Inc.	9,500
Great West Life Assurance Co.	3,350	SmithKline Beecham Corp.	116,850
Hardee's Food Systems Inc.	55,300	Southland Corp.	19,600
Hawkeye Bancorporation	16,750	Spiegel Inc.	33,850
Hiram Walker & Sons Inc.	21,600	Tex/Con Oil & Gas Co.	500
Hoechst-Celanese Corp.	137,800	Union Bank	12,000
Hoffman La Roche Inc.	57,750	Total	2,423,099

FEC kills foreign PAC rule

(From Page 3)

conomic policy and cause the U.S. to derogate from its obligation to treat U.S. companies alike, regardless of who owns its shares. Treasury's letter might have added the government's concern that the adoption of the proposed rule would send the wrong signal to the international investment community at the wrong time."

To the contrary, the FEC legal staff argued, the treaties cited by IFAA "have recognized the difference between promoting free trade and maintaining internal security."

Moreover, fears that the regulation's imposition might invoke retaliatory measures are groundless because all the countries who are parties to the treaties--Japan, France, Spain, Portugal, Israel and Mexico--place restrictions on foreign participation in their own elections, the FEC legal staff said.

The FEC got oral and written advice from dozens of foreign-connected PAC managers who claimed the proposed rule would unconstitutionally restrict the rights of U.S. citizens to contribute to a PAC.

If that were so, as Democratic Commissioner Danny

Lee McDonald suggested, then employees at such major U.S. companies as the IBM Corp., Beatrice Foods Co. and Procter & Gamble Manufacturing Co. might have grounds to bring lawsuits claiming their employers' refusal to sponsor PACs were depriving them of their constitutional right to contribute to a PAC.

The constitutional argument is "really a red herring," the agency's legal staff said in its report.

"If we were to accept the argument, we would also be accepting the proposition that the employees have a constitutional right to have their employer establish a PAC... (C)learly, an employer with an established PAC can decide to eliminate it for financial or other reasons, and employees cannot force the employer to pay the establishment, administrative and solicitation costs of the PAC.

"Thus, it cannot be argued that employees have a right to have their employer subsidize a PAC," the report said.

Moreover, if it were a matter of constitutional right, then employees at such companies as Gould, Inc. (acquired by Nippon Mining Co. Ltd.) and Columbia Pictures Entertainment Co. (acquired by the Sony Corp.) would have filed lawsuits long ago to force their companies' new owners to reverse their decisions to terminate their PAC programs.

High court sets another Hobbs Act review

The U.S. Supreme Court will review the Hobbs Act conviction of a Georgia county official who accepted \$7,000 from an undercover FBI agent to help in a property rezoning matter.

At issue is whether the federal anti-extortion law can be applied in cases where there is no proof that the idea of payment was initiated by the public official. The law makes it a federal crime for a public official to obtain property "under color of official right."

The conviction of former DeKalb County (Atlanta) commissioner John H. Evans Jr. was upheld by the 11th U.S. Circuit Court of Appeals.

Evans claimed the jury should have been told that it had to find that he initiated the transaction in order to reach a guilty verdict. But the appeals court rejected that argument, instead saying the Hobbs Act is violated when a public official "knows that he is being offered the payment in exchange for a specific requested exercise of his official power."

The appeals court decision, however, conflicts with decisions by two other appeals courts.

The Supreme Court's June 3 announcement of its decision to review the case, *Evans vs. U.S.*, came two weeks after deciding a case involving a former West Virginia legislator's Hobbs Act conviction.

In that case, *McCormick vs. U.S.*, the high court ruled that the Hobbs Act is violated only when there is "an explicit promise or undertaking by the official to perform or

not to perform an official act."

McCormick was accused to accepting \$2,900 in cash after mentioning his campaign expenses to a lobbyist seeking help on legislation for the benefit of a group of unlicensed foreign physicians.

In both cases, the public officials claimed the money they received was meant to help defray their campaign expenses. But neither included the gifts in their campaign finance disclosure reports to state election law agencies; and, neither reported the money as personal income subject to federal tax.

National bank pays fine

(From Page 1)

state- and local-related political events and \$17,125 to attend 18 federal political events during a 42-month period between 1985 and 1988.

The bank ended its reimbursement practices when it was discovered by an attorney in 1988. Two PACs were established by the bank, one for making contributions in federal elections and another for state elections.

If the financial activity disclosed by the "NCB PAC" during the 1989-90 election cycle is an accurate barometer, then it would seem that the appetite for attending political functions has been greatly diminished now that the bank is no longer paying for the tickets.

During the last election cycle, the bank's federal PAC raised a total of \$4,200 from its executive and administrative personnel but contributed only \$1,000 to federal candidates

The FEC Rides Again

THE FEDERAL Election Commission has spent most of its ineffectual history not doing what it should. Now it has taken the opposite tack and is considering doing something that it should not: keeping the U.S. subsidiaries of foreign corporations from organizing PACs.

Foreign citizens and companies are already forbidden to contribute to U.S. political campaigns. Sen. Lloyd Bentsen, the leading congressional advocate, argues that extension of this ban to the U.S. subsidiaries of such companies is a necessary next step, because the current rule still "permits foreign companies to buy into our political process." In 1988 the PACs of companies with "significant foreign ownership" gave federal candidates about \$2.8 million, or 5 percent of that cycle's PAC total. FEC vice chairman John Warren McGarry, who proposed the reconsideration, has made the further point that there is "built-in coercion" when a subsidiary organizes a PAC; he means that the foreign owners are pulling the strings.

But the U.S. subsidiaries of foreign corporations are made up of U.S. employees; it is they who contribute to the PACs and whose right to participate in the process in this way would be curtailed.

Surely "coercion" is no more present in these foreign-connected PACs than in the purely domestic variety. If it is a disqualifying attribute in the one—because it strips away the fig leaf of voluntary individual contributions—why not the other? A foreign entity can also do all kinds of other things to influence the U.S. political and legislative processes: buy ads; gn up its workers, suppliers and customers; lobby; even, in the case of the Senate, which has not banned the practice, see to the paying of honoraria to members. Would the would-be purifiers of our system ban these activities too? We assume not.

In an interdependent and increasingly transnational world it is hard to draw national lines and deal with national competition and fears of the sort that lie behind this proposal. The line that is currently drawn—no direct foreign contributions to U.S. campaigns—is reasonable and enforceable. To take the proposed next step might be politically satisfying, but it would also be intrusive and accomplish no useful purpose.

The problem isn't foreign money that's buying U.S. politicians; it's U.S. money. That's what Congress and its election commission should move to limit.