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Last week, Minnesota Governor Tim Walz signed the Democracy for the People Act (DPA), a sweeping new law that substantially changes the state's campaign finance and voting rules. The DPA establishes a new automatic voter registration process, allows 16 and 17 year olds to pre-register to vote, and lets voters request permanent absentee voting. It also drastically limits the ability of many businesses to participate in Minnesota elections if they are "foreign-influenced." Under the new law, corporations and limited liability companies (LLCs) will be considered foreign-influenced and prohibited from making independent expenditures in connection with state and local elections if they have a single foreign investor with 1% or more ownership or two or more foreign investors with 5% or greater ownership. These businesses will also be prohibited from making contributions or expenditures in connection with state and local ballot measures. Minnesota's law is the strictest state legislation enacted to date to curb perceived foreign influence in state elections. It will have major impacts for businesses that engage in political activities in the state. A discussion of the law and its implications follows below.

Foreign-Influenced Corporations

The new law applies to for-profit corporations (including LLCs) and non-profit corporations that do business or conduct activities in Minnesota. It is not limited to corporations or LLCs organized under Minnesota law or with a principal place of business in the state. A business will be deemed foreign-influenced if any one of the following conditions are met:

- A single foreign investor holds, owns, controls or otherwise has direct or indirect ownership of **1% or more** of the total equity or voting shares of the corporation. A "foreign investor" is any person or entity who is (i) a foreign government or political party, (ii) a business or organization organized under the laws of, or having its principal place of business in, a foreign country, or (iii) an individual who is not a U.S. citizen or green card holder. A foreign investor also includes any corporation (including a domestic corporation) which is more than 50% held, owned or controlled by a person or entity described above.
- Two or more foreign investors in the aggregate hold, own, control or otherwise have direct or indirect ownership of **5% or more** of the total equity or voting shares of the corporation.
- A foreign investor participates directly or indirectly in the corporation's political activities in the United States. "Political activities" are not defined by the law. Continuing paragraph after bullet.

Prohibited Activities

For-profit corporations were already prohibited from making contributions to Minnesota candidates, political parties and political committees under existing state law. Under the new law, any business that falls within the broad definitions above will be further restricted from engaging in the political process. Beginning on January 1, 2024, any business that is deemed to be foreign-influenced will be prohibited from:

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- Making or offering to make an expenditure to promote or defeat any state or local candidate's election. Notably, the law does not include an exception for independent expenditures (i.e., communications expressly advocating the election or defeat of a clearly identified candidate that are not coordinated with the candidate or candidate's campaign).
 - Making contributions or expenditures to promote or defeat a ballot question, or to qualify a question for placement on the ballot.
 - Making contributions to candidates or their committees.
 - Making contributions to any political committee, political fund or political party unit.

To prevent circumvention of these restrictions, the DPA also prohibits foreign-influenced corporations from making any contribution or donation to any person or entity with the condition that the funds be used for a prohibited purpose.

Implications and Compliance

The DPA might appear consistent with federal law prohibiting foreign nationals from intervening in federal, state, and local elections. In reality, however, the DPA will likely prohibit many domestic businesses from engaging in the political process given the low thresholds for classifying a corporation as foreign-influenced. Most publicly traded companies have at least some foreign ownership. Under the new law, an American corporation with 99% domestic ownership will be considered foreign-influenced if a single, individual investor who is not a U.S. citizen or green card holder retains a 1% ownership stake. Notably, a business will not be deemed foreign-influenced if its only foreign ownership is through a U.S.-based mutual fund.

Minnesota's new law also sets it apart from other states by restricting businesses from engaging in activities that have been recognized as protected exercises of First Amendment rights. Following the Supreme Court's landmark *Citizens United v. Federal Election Commission* decision, corporations are permitted to make independent expenditures to influence federal, state and local elections, provided that such corporation is not organized under the laws of, or has its principal place of business in, a foreign country. Beginning next year, domestic businesses will be prohibited from making independent expenditures to influence state or local Minnesota elections if they qualify as foreign-influenced. The DPA also expands the class of communications that may be regulated as independent expenditures by broadening the definition of "express advocacy" under state law. Moreover, foreign-influenced corporations will be prohibited from contributing to super PACs that make independent expenditures in the state as well.

The DPA should have more limited impacts on the activities of political committees that receive financial support from a connected corporate entity (i.e., separate segregated funds), as these committees were already prohibited from making contributions in connection with Minnesota elections under existing law. However, it is unclear whether the state will interpret the DPA to prohibit an out-of-state separate segregated fund from making independent expenditures to influence state elections if its connected corporation qualifies as foreign-influenced under the law.

In any event, the DPA's strict restrictions on corporate political activity will almost certainly face a First Amendment challenge in court. Until then, companies must carefully navigate the DPA if they intend to be politically active in the state. Unsurprisingly, the law presents a host of compliance challenges. Whether a publicly traded company is foreign-influenced within the meaning of the law may change from one day to the next. In addition, any corporation that makes a permitted contribution or expenditure will be required to submit a certification to the state verifying that it is not foreign-influenced within seven days of the contribution or expenditure. This certification must be signed by the corporation's chief executive officer under penalty of perjury. Corporations making contributions or expenditures will therefore need to implement compliance measures to ensure the accuracy of their certifications regarding foreign ownership.

It remains to be seen whether Minnesota's new law is an outlier or the beginning of a trend to limit political activities by businesses with minimal foreign ownership. Seattle enacted a similar municipal law in 2020 that remains in effect today, and comparable legislation has been introduced in Congress and in a handful of state legislatures.

The Akin political law team will continue to monitor these developments and keep clients informed. We are available to counsel clients on federal, state and local campaign finance laws and develop compliance programs.

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