

Memorandum of Law

Re: Constitutionally Permissible Safeguards Against Undisclosed Foreign Influence in Legal and Political Institutions

I. Issue Presented

Whether the State may strengthen eligibility, disclosure, and conflict-of-interest requirements for attorneys and public officials to mitigate risks of foreign influence, and what legal changes would be required to impose broader restrictions.

II. Short Answer

Yes—if such measures are **neutral, conduct-based, and narrowly tailored**. However, any attempt to broadly exclude individuals based on nationality would likely violate the Equal Protection Clause and would require a **constitutional amendment** to sustain.

III. Governing Law

A. Equal Protection Constraints

The Equal Protection Clause prohibits states from denying equal protection of the laws.

- Classifications based on **national origin or alienage** are subject to **strict scrutiny**
- The State must show:
 - a **compelling governmental interest**, and
 - that the law is **narrowly tailored**

Courts consistently reject broad occupational bans when **less restrictive alternatives** exist.

B. Constitutional Qualifications for Political Office

The United States Constitution already establishes:

- Citizenship requirements for Members of Congress
- A “natural-born citizen” requirement for the Presidency

Any expansion of these restrictions (e.g., excluding naturalized citizens) cannot be done by statute alone.

C. Existing Federal Framework Addressing Foreign Influence

Congress has already recognized foreign influence risks through the Foreign Agents Registration Act (FARA), which requires disclosure of foreign affiliations.

This demonstrates that the legally accepted approach is **transparency and accountability**.

IV. Argument

A. The State Has a Compelling Interest

The integrity of:

- the legal system, and
- democratic governance

constitutes a **compelling governmental interest**, particularly where undisclosed foreign influence is concerned.

B. Broad Nationality-Based Exclusions Are Not Viable

A rule barring “foreigners” from legal practice or public service would likely fail because it is:

- **Overinclusive** (applies regardless of actual risk), and
- **Underinclusive** (fails to capture domestic actors with foreign ties)

Such a rule would not satisfy strict scrutiny under the Equal Protection Clause.

C. Narrowly Tailored Alternatives (Legally Defensible)

The State can instead implement:

1. **Enhanced Disclosure Requirements**
 - Mandatory reporting of foreign government affiliations or funding
2. **Conflict-of-Interest Restrictions**
 - Recusal or disqualification in matters involving foreign principals
3. **Security-Based Screening for Sensitive Roles**
 - Clearance-style vetting tied to job function, not identity
4. **Strengthened Enforcement Mechanisms**
 - Penalties for nondisclosure or concealment

These measures directly address the risk while remaining constitutionally sound.

V. What Would Be Required to Impose Broader Restrictions

A. For the Legal Profession

To categorically exclude non-citizens or foreign-born individuals:

- You would need either:
 - A **fundamental shift in judicial interpretation**, or
 - A **constitutional amendment altering equal protection principles**

There is no statutory shortcut.

B. For Political Office

To impose stricter citizenship requirements than currently exist:

- A constitutional amendment to the United States Constitution is required

VI. Constitutional Amendment Process

Amendments are governed by **Article V**:

Step 1: Proposal

- 2/3 vote in both Houses of Congress, OR
- Convention called by 2/3 of state legislatures

Step 2: Ratification

- Approval by 3/4 of state legislatures **or** conventions

👉 This is intentionally difficult and rare.

VII. Conclusion

The Constitution permits strong protections against foreign influence, but only when they are **precise, neutral, and tied to actual conduct**.

Efforts to impose broad nationality-based exclusions would almost certainly fail under the Equal Protection Clause unless and until the United States Constitution itself is amended through the Article V process.

At this time, in pursuit of a more perfect Union, the State asserts a compelling interest in safeguarding the American people and its institutions from undisclosed foreign influence, including coordinated foreign campaigns that may compromise the integrity of its legal system and democratic processes. Accordingly, a narrowly tailored strengthening of transparency, disclosure, and conflict-of-interest safeguards is both warranted and constitutionally permissible.