



**Written Testimony for the Senate State Affairs Committee Regarding SB 17  
Submitted by Danny Woodward, Policy Attorney, Beyond Borders Program  
Texas Civil Rights Project**

**March 6, 2025**

Dear Chairman Hughes and Members of the Committee,

I am a Policy Attorney with the Beyond Borders program at the Texas Civil Rights Project. I am writing today to express our opposition to SB 17.

SB 17 bans foreign organizations controlled by countries identified by the Director of National Intelligence in the Annual Threat Assessment (ATA) as a risk to national security, as well as individuals domiciled in those countries, from acquiring title to land in Texas if such an acquisition would "create a risk to the health, safety, and welfare of the public." The bill is problematic for many reasons, but I want to focus on four concerns in particular.

**SB 17 is unconstitutional because it discriminates based on national origin.**

The Equal Protection Clause of the Fourteenth Amendment requires the government, including state governments, treat people as individuals rather than treat them differently based solely on national origin.<sup>1</sup> SB 17 is unconstitutional because it treats people from certain countries differently from people from other countries because of their national origin.

Proponents of SB 17 may argue that the bill does not discriminate based on national origin because the bill does not itself name the countries involved, and because the identity of the countries is subject to change based on the ATA. This argument misunderstands the Fourteenth Amendment. The government is not allowed to treat individuals differently based on their national origin, unless the law is narrowly tailored to a compelling government interest. It does not matter if the government lets someone else choose which nationalities it is going to discriminate against. **Discrimination is discrimination and it is unconstitutional.**

**SB 17 does not provide adequate protections for individuals.**

The bill attempts to exempt many categories of immigrants by exempting lawful permanent residents and by limiting its application to individuals who are domiciled in countries

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<sup>1</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 223 (2023).



identified as risks in the ATA. The bill does not, however, provide a definition of the word domicile, which means that the word would be left to the courts to interpret.

One common legal understanding of domicile is that it is a person's permanent home that they intend to return to, even if they are temporarily living elsewhere. Under this understanding, SB 17 likely prohibits people on student visas and temporary work visas from purchasing land in Texas. However, many people enter the United States on such temporary visas with the intention of finding a legal pathway to permanent residence. Many of them may wish to buy property as the foundation for their American dream. For these people, their subjective intent tells us that they are domiciled in the United States, while their visa indicates intent to return. Courts would need to sift through this confusion. If the legislature does move forward with this legislation, it should **remove all individuals from the bill in order to avoid needlessly harming people trying to build a life for themselves and their families.**

### **SB 17 is unconstitutional because it is preempted by federal law.**

SB 17 is preempted by federal law and therefore any action taken by the state under the law could be immediately challenged as unconstitutional. In our system, federal law reigns supreme over state law.<sup>2</sup> It is a "well-settled proposition" that federal law will preempt state law when the state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"<sup>3</sup>

SB 17 is preempted by federal law because the federal government has enacted a comprehensive statutory framework to limit the risks of certain real estate transactions to national security, or, in some cases, block transactions altogether.<sup>4</sup> The Committee on Foreign Investment in the United States (CFIUS) was established in 1975 by executive order to, among other things, "review investments in the United States which, in the judgment of the Committee, might have major implications for United States national interests."<sup>5</sup> In 1988, Congress amended the Defense Production Act to grant the President authority to review and block transactions that raise national security concerns. In 2018, Congress further expanded CFIUS's authority by adding jurisdiction to review transactions by foreign persons in real estate near certain locations like military bases.<sup>6</sup> In short, Congress has granted

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<sup>2</sup> U.S. Const. art. VI, cl. 2.

<sup>3</sup> *Arizona v. United States*, 567 U.S. 387, 406 (2012) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). See Kristen E. Eichensehr, *CFIUS Preemption*, 13 Harv. Nat'l Sec. J. 1 (2022).

<sup>4</sup> 50 U.S.C. § 4565; See Kristen E. Eichensehr, *CFIUS Preemption*, 13 Harv. Nat'l Sec. J. 1 (2022).

<sup>5</sup> Exec. Order No. 11,858, 40 Fed. Reg. 20263 (May 7, 1975).

<sup>6</sup> 50 U.S.C. § 4565(a)(4); 31 C.F.R. § 800.213; See Eichensehr, *supra* note 3 at 5.



CFIUS authority to review real estate transactions by foreign persons and entities “in order to determine the effect of such transactions on the national security of the United States.”<sup>7</sup>

CFIUS has a thorough investigation process that can result in negotiating with the parties to mitigate risks. Solutions may include ensuring that only U.S. citizens handle certain products, ensuring that certain activities only occur in the United States, and recommending that the President block a transaction.<sup>8</sup> Presidents have blocked at least seven transactions through the CFIUS process.<sup>9</sup>

SB 17 undermines the federal government's established regulatory scheme in several ways. First, the CFIUS process involves negotiation between the parties and the federal government to achieve an optimal outcome while protecting U.S. security interests.<sup>10</sup> If Texas law requires a certain outcome, that would interfere with the President's ability to negotiate and pursue their national security aims.<sup>11</sup>

Second, SB 17 interferes with the President's ability to conduct foreign policy. In *Crosby v. National Foreign Trade Council*, the Supreme Court held that a Massachusetts law implementing state-level sanctions on Myanmar was unconstitutional because, while federal and state sanctions had the same goals, the state sanctions interfered with “the federal decision about the right degree of pressure to employ” against a foreign actor.<sup>12</sup> SB 17 similarly interferes with federal foreign policy prerogatives. Third, the CFIUS process consists of individual review of transactions, not sweeping bans based on national origin.<sup>13</sup> The mechanism that SB 17 uses to identify hostile countries is problematic because the Director of National Intelligence does not produce the ATA with the understanding that they will be determining who can purchase land in Texas.

Finally, while both the CFIUS program and SB 17 seek to protect against national security threats, SB 17 regulates different transactions than the federal process. SB 17 prohibits sale of land to most organizations and individuals controlled by or domiciled in certain foreign countries, while CFIUS process is triggered by the purchase, lease, or concession of real estate to any foreign person if the land meets certain security-related criteria.<sup>14</sup> There may

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<sup>7</sup> U.S. DEPT OF TREASURY, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS), <https://home.treasury.gov/policy-issues/international/thecommittee-on-foreign-investment-in-the-united-states-cfius> (last visited Mar 5., 2025).

<sup>8</sup> Eichensehr, *supra* note 3 at 5-7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 15-16.

<sup>11</sup> *Id.*

<sup>12</sup> *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 379-80 (2000).

<sup>13</sup> Eichensehr, *supra* note 3 at 15.

<sup>14</sup> 50 U.S.C. § 4565(a)(4).



be overlap between the two schemes, but there will almost certainly be instances that violate SB 17 but do not trigger the CFIUS process. SB 17 thus “overprotects” federal interests in a manner that the Supreme Court found unconstitutional in *Arizona v. United States*.<sup>15</sup> Accordingly, SB 17 is unconstitutional because it is preempted by federal law.

**SB 17 provides no meaningful protection from the threat it seeks to address.**

The goal of SB 17 is “to protect key land and natural resources from hostile countries and their actors.”<sup>16</sup> The bill would have only a marginal impact on protecting land from hostile countries seeking to harm the health, safety, and welfare of the public. The reason is obvious: if a hostile country truly sought to purchase land in Texas to harm our country, it would do so through an intermediary that does not have an apparent connection with that country. It could even do so by simply using a person from the hostile nation who is domiciled in the United States or another country that is not on the list.

Sb 17 theoretically addresses this by prohibiting organizations controlled by hostile actors from acquiring land, but in practice, sophisticated intelligence services could easily circumvent the restriction through subterfuge and layers of control. An imprecise but useful comparison is the statistic that 80% of people arrested from fentanyl smuggling at Ports of Entry from 2019-2024 were U.S. citizens.<sup>17</sup> Drug smugglers use U.S. citizens to smuggle fentanyl because U.S. citizens are less likely to be searched when entering the United States than other individuals. Similarly, sophisticated foreign actors could easily find people who do not appear suspicious to purchase land if they were truly interested in using that land to harm us. Thus, rather than solve a problem, SB 17 discriminates against people based solely on national origin and fuels a harmful narrative against immigrants.

For these reasons we urge the committee to vote against SB 17.

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<sup>15</sup> Eichensehr, *supra* note 3 at 14-15.

<sup>16</sup> Tex. Sen. Rsch. Ctr., Bill Analysis: S.B.17, 1 (2025).

<https://capitol.texas.gov/tlodocs/89R/analysis/html/SB000171.htm>.

<sup>17</sup> David J. Bier, “US Citizens Were 80 Percent of Crossers with Fentanyl at Ports of Entry from 2019 to 2024,” Cato Institute (Aug. 8, 2024),

[https://www.cato.org/blog/us-citizens-were-80-crossers-fentanyl-ports-entry-2019-2024#:~:text=Data%20from%20the%20US%20Sentencing,border%20districts%20\(80%20percent\)..](https://www.cato.org/blog/us-citizens-were-80-crossers-fentanyl-ports-entry-2019-2024#:~:text=Data%20from%20the%20US%20Sentencing,border%20districts%20(80%20percent)..)