

Discriminatory Land Laws

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Background

Historical “alien land laws” are nothing new to American history. These racist restrictions were first enacted in the late 1800’s to prevent Asian immigrants from purchasing or even leasing property to prevent their communities from permanently settling in the U.S. The terminology itself was born out of xenophobia and racism. It was illegal for Chinese and Japanese immigrants then to become American citizens, they were deemed to be “aliens ineligible to citizenship.”¹ Thus, the history of such land laws cannot be divorced from [discriminatory immigration policies](#) such as the Immigration Act of 1917 and Chinese Exclusion Act of 1882 which criminalized their mere existence.² Similar bills such as restrictive statutes against immigrants owning agricultural land were also passed in the 1970s by multiple states such as Missouri, Iowa, and Minnesota in response to anti-Japanese sentiment.³

Relevant case law has failed to completely shut the door on land laws as it pertains to foreign citizens. The [relevant U.S. Supreme Court case](#) is *Oyama v. California* (1948) and while the Supreme Court did declare that these types of laws were unconstitutional as applied to American citizens, it did not explicitly overturn them as applied to foreign individuals.⁴ In fact, legal scholars believe that *Oyama* “left open the authority of state and local governments to continue to use their police powers to regulate noncitizens’ access to property.”⁵

Four years later, California’s own law was formally struck down by the California Supreme Court in 1952 in *Sei Fujii v. State of California*.⁶ In [that case](#), while the state court found that the state’s alien land law was enacted as an “instrument for effectuating racial discrimination” and thus violated the Equal Protection Clause of the 14th Amendment.

The Land Laws

Asian Americans Advancing Justice | AAJC views discriminatory land law on non-US individuals to be legally problematic and likely unconstitutional, especially if the law is [broad in scope](#), [vague in language](#), and [targets individuals](#). At least 25 states have introduced such legislation and several such as Florida and Tennessee have already enacted them. Multiple such bills have also been introduced at the federal level.

These bills would bar foreign nationals—including Chinese foreign nationals—from purchasing, leasing, or acquiring property in the U.S. Many of these bills include use language that is too vague, and therefore applicable to Americans with dual citizenship or lawful permanent

¹ Keith Aoki, “No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment,” 40 B.C. L. Rev. 37, 38-40 (1998).

² Emma Newcombe, *How States Used Land Laws to Exclude and Displace Asian Americans*, Governing (Nov. 23, 2022), <https://www.governing.com/context/how-states-used-land-laws-to-exclude-and-displace-asian-americans>.

³ James A. Huizinga, “Alien Land Laws: Constitutional Limitations on State Power to Regulate,” 32 Hastings L. J. 251, 256 (1980).

⁴ *Oyama v. California*, 332 U.S. 633 (1948).

⁵ Rose C. Villanor, “Rediscovering *Oyama v. California*: At the Intersection of Property, Race, and Citizenship,” 87 Wash. U. L. Rev. 979, 985-986 (2010).

⁶ *Sei Fujii v. State of California*, 38 Cal.2d 718 (Cal. 1952).

residents. Furthermore, these bills often define covered land as not just (1) agricultural land and (2) critical infrastructure, but also (3) real property which applies broadly to all types of land.

Not only are these land laws discriminatory, but they will have a significant detrimental impact on the American economy. Many states have multiple industries heavily reliant on Chinese nationals such as higher education, research and development, and real estate. The same can be said for other communities targeted by these laws. For example, [H.B. 537](#) in Louisiana also applies to Venezuelans which will lead to negative consequences for the oil and gas industry.

How to Evaluate Land Laws

Consider the following criteria to determine how to frame opposition to a land law:

- Has the legislative body identified the specific national security threat sought to be addressed by the policy?
 - Does this body have the expertise necessary to address the issue?
 - Is this policy response tailored and proportional to that issue?
 - Are other legislative/policymaking bodies better equipped to identify and address the issue?
 - For example, it is the federal government's authority—not a states' authority—to determine matters of U.S. foreign policy as it relates to foreign adversaries.
 - Furthermore, it is primarily the job of the Committee on Foreign Investment in the United States (CFIUS) – not Congress – to review transactions involving foreign investment in U.S. real estate and the implications on national security.
- Have specific hearings/studies been conducted to justify the measure being taken?
 - Have those hearings/studies been measured, collaborative, and bipartisan?
 - Have impacted communities' voices been sought and considered?
 - Generalized concerns expressed about the threat posed by the Chinese government should not be considered sufficient.
 - Hypothetical scenarios about potential control by the Chinese government generally should not be considered sufficient.
- What are the harms that may be felt by Americans and American businesses if the proposed policy is enacted?
If enacted, would these policies specifically harm small businesses? Asian American-owned businesses? Iranian American-owned businesses?
- How could the policy negatively impact American economic competitiveness?
 - If enacted, would the policy harm certain STEM industries' ability to recruit and maintain top talent, specifically when it comes to tech fields?
 - Consider not only the number of working professionals in these fields, but also the number of students that this policy would cover.

- If enacted, would the policy specifically harm U.S. efforts to grow production, manufacturing, R&D capabilities?
- If enacted, what are the other industries that could be harmed such as oil and gas, higher education, real estate, etc.?
- Who would be responsible for enforcing the policy and are they equipped to do so?
 - For example, if a law prohibits the sale of land to a Chinese national or Chinese business, who would be responsible for verifying that an individual is not a Chinese national or Chinese business?
 - Is it possible that that Chinese Americans or Chinese American businesses would be profiled?
- What civil rights mechanisms exist to prevent Chinese/Asian Americans from being discriminated against?
 - What is the likelihood that certain groups would be presumed suspect and forced to prove “innocence”?
 - For example, in many China Initiative cases, inexperienced FBI investigators presumed that individuals were engaged in deceitful conduct rather than practice that may have been considered standard in the industry (e.g., cross-border scientific collaborations)
- What are the other communities that have been caught up in these bills?
 - While some legislation exclusively targets Chinese nationals, other bills explicitly will cause harm to Iranians, Venezuelans, Syrians, etc.
 - The inclusion of other communities in these bills amplifies the potential for racial profiling of Iranian-Americans, Russian-Americans, and the U.S.-based diasporic communities of other covered nations. We stand in solidarity with these groups, and we refuse to call for the broadening of these land laws or otherwise be used as a wedge to pit minorities and immigrants against each other.
- If this policy were to result in discrimination or racial profiling against Chinese/Asian Americans, what transparency, accountability, and oversight mechanisms exist to ensure that such behavior is identified, quantified, addressed, and remedied?
- Have proponents of this policy consulted extensively with the Asian American community, specifically with respect to anticipated discriminatory blowback?
 - If so, have proponents of this policy incorporated that community feedback?

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Use this chart to do a topline legislative analysis of a land law’s immediate potential for harm.

Bill Language	Extremely Harmful	Very Harmful	Harmful
Definition of covered land	“Real property” can apply to “urban lands,” “commercial property” or a combination.	“Critical infrastructure” can apply to land used for water plants, power plants, minerals, or military bases. (See 8 th row in this chart for disaggregated types of ‘critical infrastructure.’)	“Agricultural land” can apply to “farmland” or “agricultural land.”
The number of acres of covered land	Any amount of land.	A limited number of acres.	
Definition of ‘control’	Indirect or partial ownership of covered land.	Direct ownership of covered land.	
Definition of covered entities	Individuals	Companies	Corporate entities
Definition of “alien”	“Nonresident” or “not a citizen of the U.S.”	“Domiciled in a foreign country”	“Not a lawful permanent resident”
Definition of designated country(s)	While some bills covered up to seven foreign countries, other bills cover only China. All definitions of a covered country that include China are extremely harmful to the Asian American community.		
Definition of the CCP	“Foreign Adversaries,” “Members of the CCP,” and Connections to the People’s Liberation Army are all extremely harmful.		
Definition of “critical infrastructure”	“Military installation”	“Military facility”	“Military base”
Radius from “critical infrastructure”	The larger the specified radius, the more potential there is for harm especially for dense urban areas.		
Enforcement mechanisms	Criminal penalties	Civil penalties	Land registration and disclosure requirements
Carve outs	None	Homestead exceptions and carve outs for lawful permanent residents or people granted asylum	