

**Testimony of
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For

**Interim Hearing on
“Maintaining Election Security, Protecting Texas Land and Assets, and Banning Delta 8
and 9”**

**Texas Senate
State Affairs Committee
May 29, 2024**

Introduction

This written testimony is submitted on behalf of Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”), a national non-profit organization founded in 1991 dedicated to advancing civil and human rights for Asian Americans. We strive to empower Asian American and Pacific Islander communities across the country by bringing local and national constituencies together and advocating for federal policy that reflects the needs of Asian Americans and promotes a fair and equitable society for all. Advancing Justice | AAJC is the leading national advocate for immigration and anti-racial profiling policy on behalf of the Asian American community, and in this capacity, we work to address targeting of Asian Americans and immigrants.

We work closely with our Community Partners Network, a national collaboration of nearly 300 community-based organizations in 37 states and the District of Columbia to increase regional and local capacity to elevate Asian American, Native Hawaiian and Pacific Islander (“AANHPI”) community voices nationwide.

As a founding member of the Asian Americans Advancing Justice (Advancing Justice) national affiliation, we partner with our affiliates — Advancing Justice | Asian Law Caucus, Advancing Justice | Atlanta, Advancing Justice | Chicago, and Advancing Justice | Los Angeles — to extend the reach of our programming and enhance the impact of our collective work. Advancing Justice | AAJC also serves as a co-chair for the National Council for Asian Pacific Americans, a coalition of 37 Asian American Pacific Islander national advocacy organizations. We are also a member of the Board of Directors of the Leadership Conference on Civil and Human Rights, comprised of over 200 national organizations working together to promote and protect the civil and human rights of all Americans.

Out of the three listed priorities in the interim hearing notice, this testimony is limited to the topic of protecting ‘Texas Land and Assets.’

Resurgence of Discriminatory Land Laws Across the Country

For years now, Advancing Justice | AAJC has been closely monitoring states' efforts to restrict foreign investment in the United States, including in the state of Texas, and the subsequent impact on the AAPI community. We have observed a disturbing resurgence of xenophobic legislation on both the state and the federal level that seeks to restrict purchases and acquisitions of land by individuals or corporations from certain countries, including but not limited to China, aka a 'land law.' As of May 2024, Advancing Justice | AAJC has tracked at least 27 states that have introduced or pre-filed a version of a land law.¹ Other organizations also monitoring land law legislation report an even higher number due to slightly different parameters for what they are tracking.

Already, civil rights organizations have stepped up to fight this type of discrimination. Florida, which enacted its own land law in May 2023, currently faces two separate lawsuits from the American Civil Liberties Union and Advancing Justice | AAJC.²

Land Laws in Texas

In November 2022, Senator Lois Kolkhorst (R) introduced then S.B. 147 in response to what certain lawmakers perceived to be threats to the U.S. electrical grid.³ S.B. 147 underwent meaningful and substantive changes as it progressed through the Texas state legislature. The initial version of S.B. 147 would have barred Chinese, Iranian, North Korean, and Russian citizens from purchasing or acquiring real property.⁴ After advocates raised concerns that lawful permanent residents or dual citizens would have been harmed, lawmakers amended the language to include exceptions for those two groups as well as limiting the types of affected land to agricultural land, minerals, timber, and mines. As the bill sponsor herself admitted, later versions of the bill would need to have "crystal clear" language with specific exceptions for different protected classes.⁵ The language describing the countries was also changed to defer to the Annual Threat Assessment provided to the Director of National Intelligence. However, there remained trepidation among advocates related to the bill's applicability to people who are not U.S. citizens or lawful permanent residents, such as asylum seekers or those in Texas on employment-based or student visas.

It is critical to note that, in response to S.B. 147, realtors and those in the real estate profession raised concerns about the burden that a proposed law would have on those selling property in

¹ AAJC Land Law Database, <https://www.quorum.us/spreadsheet/external/KscrjHCRzvqUdRtMcgpX/>.

² *Chinese Immigrants Urge Appeals Court to Block Florida's Discriminatory Housing Law*, April 18, 2024, <https://www.aclu.org/press-releases/chinese-immigrants-urge-appeals-court-to-block-floridas-discriminatory-housing-law>; see also *Historic Legal Battle Unveiled Against Discriminatory Florida Housing Law SB 264*, May 6, 2024, <https://www.advancingjustice-aajc.org/press-release/historic-legal-battle-unveiled-against-discriminatory-florida-housing-law-sb-264>.

³ Edgar Chen, "With New 'Alien Land Laws' Asian Immigrants Are Once Again Targeted by Real Estate Bans," *Just Security*, May 26, 2023, <https://www.justsecurity.org/86722/with-new-alien-land-laws-asian-immigrants-are-once-again-targeted-by-real-estate-bans/>.

⁴ A Bill to be Enacted, S.B. 147, 88th Leg. (2022).

⁵ *Kolkhorst to Lay Out SB 147 Before Senate State Affairs*, February 28, 2023, <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:20b4e904-e921-4657-b465-9931e185fca0>.

Texas. When the Senate committee held a hearing in March 2023 on S.B. 147, groups such as the Texas Mortgage Bankers Association and the Texas Association of Builders, as well as others, testified against the bill.⁶

Finally, we must remember that S.B.147 was not the first time that Texas considered a state land law.⁷ In fact, Texas previously passed three versions of a land law in 1891, 1892, and 1921. The last version was formally repealed by the Texas state legislature in 1965 because it imposed “discriminatory restrictions.”⁸ These previous iterations were all driven by xenophobia and anti-Asian racism.

Why Land Laws are Discriminatory

Advancing Justice | AAJC is deeply concerned by the resurgence of land laws. Though they are ostensibly designed to protect U.S. agricultural land, real property, and critical infrastructure from malign foreign influence, in reality, they not only fail to address legitimate threats in a targeted and proportional manner, but also raise serious concerns regarding the balance of national security equities with civil rights, federal pre-emption, and other issues related to building and maintaining a robust local economy.

Relevant History of Land Laws

Modern-day land laws harken back to older, racist legislation first enacted in the late 1800’s that sought to prevent Asian immigrants from purchasing or even leasing property for the purposes of stopping their communities from permanently settling in the U.S. The history of land laws therefore cannot be divorced from policies such as the Immigration Act of 1917 or Chinese Exclusion Act of 1882.⁹ 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.¹⁰

These land laws had a demonstrable and tangible economic impact on Asian immigrants in the United States. In California, for example, Japanese immigrants saw a 47% decrease in total acres farmed in 1922-1924 as compared to 1918-1920, and a 23% decrease in the total number of farms owned by Japanese immigrants living in California during that period.¹¹

Relevant case law has addressed the discriminatory impact of land laws as it pertains to foreign citizens. In *Oyama v. California* (1948), the U.S. Supreme Court declared that alien land laws were

⁶ *Hearing on S.B. 147 Before the S. Comm. On State Aff.*, 2023 Leg., 88th Sess. (Tx. 2023)(Witness List)

⁷ Alien Land Law, Tex. State Historical Ass’n (Nov. 1, 1994), <https://www.tshaonline.org/handbook/entries/alien-land-law>.

⁸ *Alien Land Law*, Tex. State Historical Ass’n (Nov. 1, 1994), <https://www.tshaonline.org/handbook/entries/alien-land-law>.

⁹ *Oyama v. California*, 332 U.S. 633 (1948).

¹⁰ James A. Huizinga, “Alien Land Laws: Constitutional Limitations on State Power to Regulate,” 32 *Hastings L. J.* 251, 256 (1980).

¹¹ Masao Suzuki, *Important or Impotent? Taking Another Look at the 1920 California Alien Land Law*, 64 *J. of Econ. Hist.* 125, 130-131 (2004).

unconstitutional as applied to Americans citizens, though did not explicitly overturn alien land laws as applied to foreign individuals.¹² 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*.¹³ In that case, the Court found that the land law was enacted as an “instrument for effectuating racial discrimination” and thus violated the Equal Protection Clause of the 14th Amendment.

Land Laws Today

The Asian American community is no stranger to how the government has pushed through harmful and discriminatory legislation under the guise of national security. Such racial profiling and violent exclusion occurred in the 19th and 20th centuries, and continues into the present day—from the murder of Vincent Chin in 1982 to the murders of Sikh Americans and the racial profiling of Muslim Americans in a post-9/11 environment. It is critical that this country recognize its problematic treatment of Asian Americans and immigrants as perpetual foreigners and national security threats based on race, ethnicity, and national origin. Not only has this mistreatment resulted in stigmatization of our communities, but it also undermines our efforts to compete economically on the world stage, and calls into question the credibility of our democratic institutions.

Land laws often define covered land to include agricultural land. Such land law language plays into the harmful rhetorical narrative that the Chinese Communist Party (CCP) is attempting to purchase or otherwise acquire the American heartland. While it may be the case that some Chinese-owned businesses have an interest in obtaining U.S. agricultural land, the threat that this poses to U.S. food production and cascading supply chains is greatly exaggerated. According to the Congressional Research Service, the USDA reports that foreign persons and entities held an interest in 40.8 million acres of U.S. agricultural land in 2021, accounting for 3% of total privately owned land (this includes agricultural land and nonagricultural land). Furthermore, five countries account for approximately 62% of all foreign-owned U.S. agricultural land in 2021. As a share of all foreign-owned acres, these were Canada (31%, mostly forestland), the Netherlands (12%), Italy (7%), the United Kingdom (6%), and Germany (6%). Other countries with holdings in excess of 500,000 acres were Portugal, France, Denmark, Luxembourg, Mexico, Switzerland, the Cayman Islands, Japan, and Belgium. Largely absent in this list of top foreign investors is China. According to the same report by the Congressional Research Service, in 2022, Chinese Food manufacturer Fufeng Group bought 300 acres of land near the Grand Forks Air Force Base in North Dakota with intentions to build a corn mill; not including this purchase, USDA found that China accounted for 383,935 acres, or mere 0.9% of total foreign-owned U.S agricultural land as of year-end 2021.¹⁴

It is also important to note that some land laws include overly punitive criminal and civil penalties. This language similarly fails to address national security concerns and instead contributes to an overall environment of fear for the Asian immigrant and Asian American communities which have already endured the China Initiative and a spike in anti-Asian hate during the COVID-19 pandemic.

¹² *Oyama v. California*, 332 U.S. 633 (1948).

¹³ *Sei Fujii v. State of California*, 38 Cal.2d 718 (Cal. 1952).

¹⁴ Congressional Research Service, Foreign Ownership and Holdings of U.S. Agricultural Land, Updated January 24, 2023, . [IF11977 \(congress.gov\)](https://www.congress.gov/IF11977).

Lastly, we must not lose sight of the fact that land laws stand to harm local economies. Instead of protecting the U.S., these bills hurt Americans and the American economy. Real estate agents are not experts on citizenship or immigration law, and these laws could either chill the sale of property, or worse, lead to discriminatory selection of potential buyers based on perceived citizenship. It is difficult enough for people of color to avoid discrimination in the housing market without adding immigration status discrimination into consideration.

Recommendations

Before any land law is passed out of this committee, it is critical that members here engage in rigorous debate to more specifically define what problem a land law might potentially address, and subsequently, take this interim period (and beyond) to conduct the committee's own research and hear from expert witnesses as to whether a land law would in fact accomplish those goals. Given the prevalence of land laws across the country, as well as the persistence with which similar such legislation is appearing at the federal level, it is notable that very little data can be found to suggest that land laws would be an effective means by which to protect the state against foreign control of land or even defend against foreign espionage attempts. Meanwhile, history that *is* readily available when it comes to land laws suggests that the collateral damage to AAPI communities that would result from a land law would indeed be immense.

The national security, economy, and welfare of Texans require this committee's deep study and attention—anything less than that would be a disservice to the state. Right now, land laws remain an unrefined and overly simplistic response to the expansive threat posed by our foreign adversaries. This subject is worthy of sophisticated study—and we have seen that when policy decisions are made with haste, they often fail to consider whether that proposed solution is sustainable in the long term, much less what the secondary or tertiary outcomes might be. For example, land laws that single out people from specific countries of origin not only lead to racial profiling of Asian Americans and Asian immigrants, but also place the burden on certain industry professionals—such as real estate agents—to ensure they are complying with industry standards.

At the bare minimum, land laws should be extremely limited in scope and, if enacted, such laws should actually address and counteract demonstrated threats, as opposed to serve as an overreaction to xenophobic stereotypes. As such, restrictions should be limited to foreign companies and explicitly state that such coverage cannot be applied to individuals.

Conclusion

In the wake of COVID-19, the Asian American community has faced violent and harmful backlash, including numerous hate crimes and hate incidents. Research shows that Americans are most likely to name 'China' as the nation's greatest enemy, which further contributes to anti-Asian sentiment. While the Asian American community is not naive that the Xi Jinping regime is an affront to democratic ideals and human rights, the Chinese people and those of Chinese descent should not be conflated with that regime. As such, the current crop of land laws is neither an appropriate nor

a constructive policy remedy. Vague, overbroad land acquisition restrictions that could apply to entire nationalities implicate individuals and institutions outside of the scope of the actual bad actors and their machinations. And such laws will only result in a backlash against Asian Americans and other American immigrant communities.¹⁵

Instead, Texas should be in the business of welcoming foreign citizens and immigrants in a way that does not unfairly target certain groups or invite a harmful, discriminatory backlash on the communities already present in the state. A large part of that involves facilitating cultural exchange for the purposes of preventing misunderstanding between the CCP and the U.S. government and diffusing further escalatory rhetoric.

As individuals who represent and are a part of these targeted communities, Asian Americans are not naïve that “foreign adversaries” can pose a threat to the U.S. Some members of our community have fled the conditions in their country of origin intentionally, choosing to come to the U.S. because of the promise of freedom and the ideal of a country united, not by race or national origin, but by democratic principles. They’ve chosen America for the promise of opportunity, but some lawmakers want to greet them with harsh, unwelcoming laws based on bigotry that do not concretely or constructively address any legitimate threats. The very people who are seeking America’s best are the ones who will be most harmed by these bills.

This committee has an opportunity to approach the issues raised in this hearing in a nuanced manner that effectively addresses any real economic and national security concerns while giving due consideration to the history of exclusion and alienation that our community has faced. We look forward to continued engagement with this legislature on these important issues.

¹⁵ *Id.*; Asian Americans Advancing Justice | AAJC, National Security Messaging Guidance, June 8, 2023, <https://www.advancingjustice-aaajc.org/publication/national-security-messaging-guidance>.