Hon. Douglass North
Noted for Hearing: August 10, 2021
No Oral Argument Requested

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

ONEAMERICA VOTES, a Washington Nonprofit et al., Plaintiffs, v. STATE OF WASHINGTON, a political subdivision, et al., Defendants.	Case No. 20-2-14886-5 SEA **UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF PROPOSED AMICUS CURIAE**

INTRODUCTION

The Fred T. Korematsu Center for Law and Equality ("Korematsu Center") respectfully asks the Court for leave to file the *amicus curiae* brief attached hereto as Exhibit A in support of Plaintiffs' Motion for Summary Judgment and opposing Defendant's Motion for Summary Judgment. The Korematsu Center conferred in writing with counsel for the parties before filing this Motion. Both Plaintiffs and Defendant stated that they do not oppose this filing.

IDENTITY AND INTERESTS OF AMICUS CURIAE

The Korematsu Center is a non-profit organization based at Seattle University that works to advance social justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders that authorized the unlawful incarceration of 120,000 Japanese Americans during World War II, the Korematsu Center has a special interest in ensuring that courts understand the historical context for exercises of power affecting disempowered communities, including past attempts to exclude immigrants from social, economic, and political institutions. It also has a particular interest in addressing actions that curtail political expression through the courts, especially litigation designed to vindicate racial and ethnic minorities' constitutional rights. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

REASONS WHY THE MOTION SHOULD BE GRANTED

Although not addressed by rule, this Court retains the discretion to permit *amicus* participation. *Amici* may assist a trial court when their participation brings issues to the table that neither party is able to directly address. In federal court, for example, "[d]istrict courts may consider *amicus curiae* briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Macareno v. Thomas*, 378 F. Supp. 3d 933, 940 (W.D. Wash. 2019) (internal quotations omitted).

The Court should exercise its discretion to permit the Korematsu Center to file the attached *amicus curiae* brief. Counsel for the Korematsu Center are familiar with the scope of

the arguments presented by the parties and will not unduly repeat those arguments. Instead, the Korematsu Center will draw upon its historical expertise to situate Substitute Senate Bill 6152 (SSB 6152) within Washington State's regrettable history of discrimination against minorities and foreign-born residents. In so doing, the Korematsu Center urges the Court to consider how SSB 6152's exclusion of foreign nationals from vital spheres of political participation violates not only Article 1, section 12 of the Washington Constitution, but also this Court's commitment to rectifying past injustices and protecting *all* Washingtonians from state-sponsored discrimination.

CONCLUSION

For these reasons, the Korematsu Center respectfully requests that the Court grant it leave to file the *amicus* brief attached as Exhibit A.

I certify that this brief contains 459 words, in compliance with the Local Civil Rules.

Dated: July 30, 2021

By: */s/ Amanda M. Karl*

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's e-filing system which will serve a copy of this document upon all counsel of record.

DATED this 30th day of July, 2021, at Oakland, California.

/s/ Amanda M. Karl
AMANDA M. KARL

EXHIBIT A

Hon. Douglass North
Noted for Oral Argument:
August 20, 2021 at 1:30 pm

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

ONEAMERICA VOTES, a Washington Nonprofit et al., Plaintiffs, v. STATE OF WASHINGTON, a political subdivision, et al., Defendants.	Case No. 20-2-14886-5 SEA **BRIEF OF THE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Law Review Articles

Legislative History

Other Authorities

INTRODUCTION

The Korematsu Center is keenly aware of the harms that occur when a group is labeled "foreign" and excluded from participating in the nation's and state's civic, social, and economic spheres. Exclusion of Japanese immigrants during the first half of the 20th century led the Supreme Court to declare, without irony, that discrimination against Japanese Americans thwarted their assimilation in the United States such that "Congress and the Executive could reasonably have concluded that these conditions have encouraged the continued attachment of this group to Japan and Japanese institutions." *Hirabayashi v. United States*, 320 U.S. 81, 98, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943). This is but one historical example revealing what happens when fear of foreigners, foreignness, and foreign influence unduly inhibits full participation in our society.

As this Court considers whether Substitute Senate Bill 6152 constitutes unlawful discrimination against hundreds of thousands of foreign-born Washington residents in violation of Article 1, section 12 of the Washington Constitution, the Korematsu Center respectfully urges the Court to evaluate more than the legal precedent advanced by each side. Also relevant is the State's history of discrimination against minorities and foreign-born residents. Against this historical backdrop, the Court should consider the harm that will result from codifying the stereotype that foreign-born residents are disloyal and worthy of suspicion. And it should account for these lessons before condoning a law that requires Washingtonians to certify—under threat of criminal and civil penalties—that no foreign national was "in any way" permitted to take part in a decision regarding whether and how to finance support for a particular candidate or ballot measure. This is the very type of state-sponsored discrimination that begets more discrimination, damages social cohesion, and undermines the legitimacy of representative government.

The State of Washington has only just begun to reckon with the role government has played in perpetuating racial injustice. But Washington's highest court recently emphasized that the legal community is capable of addressing that injustice, "if only we have the courage and the will."[1] It has urged the judiciary to account for our history of discrimination and strike down even the most venerable precedent when it is incorrect and harmful. The Korematsu Center hopes this amicus brief will help the Court as it strives to do just that with respect to SSB 6152.

BACKGROUND

I. Washington has a long history of discrimination against noncitizens.

The State of Washington has a demonstrated history of discrimination against noncitizens, particularly those who are non-white. That Washington courts deemed much of this discrimination legal, offending neither the Fourteenth Amendment's guarantee of equal protection nor the Washington Constitution's Article I, section 12, is of little moment. The discrimination was wrong then, as it is now. This Court has the opportunity to recognize and remedy this injustice at the outset instead of leaving another stain on Washington's history.

A. Washington Territory adopted pro-immigration policies to grow its population and economy.

At first, there were more opportunities in Washington Territory than people to exploit them.[2] "The manifest want of our Territory is population," said Governor Elisha Ferry in 1873, urging the legislature to establish a board of immigration and "procure cheap transportation for all those who desire to come hither."[3]

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[1] Letter from the Wash. State Supreme Court to the Members of the Judiciary and the Legal Cmty. (June 4, 2020), *available at State v. Scabbyrobe,* 16 Wn.App.2d 870, 906–07, 482 P.3d 301, 319 (2021).
[2] Mark L. Lazarus, *An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889*, 12 U. Puget Sound L. Rev. 197, 206 (1987).
[3] *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854-1889*, 12 U. Wash. Pub. Soc. Sci. 1, 179 (1940).

But cheap transportation required labor to build the rails. Although "we have not the surplus hands," Governor Richard Gholson explained in 1859, "the way to a supply of labor both bountiful and cheap, is plain."[4] As Gholson saw it, the solution was to "invite hither" the "myriads of the sallow, but patient and sturdy John Chinamen," who, in exchange for "weld[ing] the last links in the most important highways ever built by man," would earn "protection by our laws," "profitable employment," and "all the aid within the constitutional limits of our power."[5]

To promote population growth, the legislature passed its first "alien land law" in 1864, permitting noncitizens to enjoy the same land ownership rights as U.S. citizens.[6] While decidedly more liberal than successive definitions, even this broad articulation of permitted land ownership had its origins in white supremacy, as "[t]he object of this law was the peopling of the territory with whites in order to displace Native Americans."[7]

B. Animus towards Asians gave rise to unequal legal protections and violence.

Governor Gholson's promise of profitable employment and protection under the territory's laws soon rang hollow. To most Chinese newcomers, the territory was no more than "a hostile place to scrape out a living"[8] as white Washingtonians increasingly channeled economic anxieties against their Chinese neighbors.[9]

In the same year it passed the liberal Alien Land Act of 1864, the legislature levied a tax on all Chinese adults, with the express purpose of "protect[ing] free white labor against

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[4] *Id.* at 72.
[5] *Id.*
[6] Nicole Grant, *White Supremacy and the Alien Land Laws of Washington State*, Seattle C.R. & Lab. Hist. Project U. Wash. (2007), https://depts.washington.edu/civilr/alien_land_laws.htm.
[7] *Id.*
[8] Lazarus, *supra* note 2, at 209.
[9] *Id.*

competition with Chinese coolie labor."[10] The "vein of hatred ran deeper in the 1880s," however, as completion of the railroad resulted in rising unemployment.[11] Indeed, in February 1885, Tacoma Mayor Jacob Weisbach organized a city-wide boycott of Chinese employees and tenants,[12] even though the Chinese generally took on "the nastier jobs in society" while working for much lower pay than white laborers accepted.[13]

Economic exclusion turned to violent displacement in November 1885 when a mob drove the Chinese community out of Tacoma.[14] Unsatisfied with the results of his boycott, Mayor Weisbach ordered all Chinese to leave by November 1, declaring the city "not responsible for any acts of violence which may arise from non-compliance."[15] On November 3, hundreds of white residents descended upon Chinatown, forcing inhabitants to abandon their homes and businesses and depart for Oregon.[16] A few days later, "what remained of the once prominent Chinese community was burned to the ground."[17]

The forced displacement of Chinese people from Tacoma was not an isolated incident. Shortly after the expulsion, writer George Lawson celebrated what he called the "Tacoma method": a replicable strategy for other communities to "expel intruders or exile obnoxious members."[18] Lawson defended the actions of the mob, calling Chinese immigrants "a menace to public health and safety," "hardly amenable to the laws," "a colony of leeches," "indefatigable petty thieves," and "a public curse."[19] The "Tacoma method" was subsequently repeated across

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[10] Act of Jan. 23, 1864, 1864 Wash. Laws 56, *repealed by* Act of Nov. 25, 1869, 1869 Wash. Laws. 351.
[11] Lazarus, *supra* note 2, at 214
[12] Murray Morgan, Puget's Sound: A Narrative of Early Tacoma and the Southern Sound 295 (2018).
[13] Lazarus, *supra* note 2, at 214.
[14] *The Tacoma Method*, University of Puget Sound (2017), https://www.tacomamethod.com/expulsion.
[15] Morgan, *supra* note 12, at 303.
[16] *Tacoma Method*, *supra* note 14.
[17] *Id.*
[18] George Lawson, *The Tacoma Method*, The Overland Monthly, March 1886, at 234.
[19] *Id.* at 235, 239.

Washington, first against Chinese immigrants in Seattle[20] and then against South Asian immigrants in Bellingham two decades later.[21]

Just before Washington achieved statehood, the legislature passed a new alien land law that prohibited those "incapable of becoming citizens of the United States" from owning land.[22] The new law targeted Chinese residents, who under the federal Chinese Exclusion Act were the only resident aliens explicitly precluded by legislation from gaining citizenship.[23]

C. Washington's exclusionary policies persisted in statehood.

Washington became a state in 1889 and wasted no time codifying its exclusionary alien land statute into its constitution.[24] Thirty-two years later, the legislature passed another alien land law, this time to "frustrate the Japanese influx."[25] Legislators were unambiguous about the bill's intent, noting the "alarming situation" that "aliens, and especially Japanese, are acquiring our agricultural lands."[26] This 1921 act prevented ineligible noncitizens not only from owning land, but from renting or leasing it too.[27] It provided further that land held in the names of ineligible noncitizens would escheat to the state without compensation, while criminalizing the knowing transfer of land to ineligible noncitizens.[28] A subsequent amendment further limited noncitizens' landholding rights by preventing children, even those who were citizens by birthright, from holding land for their ineligible parents.[29]

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[20] Carlos A. Schwantes, *Protest in a Promised Land: Unemployment, Disinheritance, and the Origin of Labor Militancy in the Pacific Northwest, 1885-1886*, 13 W. Hist. Q. 373, 384 (1982).
[21] David Cahn, *The 1907 Bellingham Riots in Historical Context*, Seattle C.R. & Lab. Hist. Project U. Wash. (2008), https://depts.washington.edu/civilr/bham_history.htm
[22] Lazarus, *supra* note 2, at 220-21.
[23] Chinese Exclusion Act of May 6, 1882, ch. 126, § 14.
[24] Const. Art. II, § 33 (1889, repealed 1966).
[25] *Id.* at 235.
[26] Grant, *supra* note 6.
[27] Alien Land Bill of Mar. 8, 1921, ch. 50, 1921 Wash. Laws 156, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, RCW § 64.16.005 (2012).
[28] *Id.*
[29] Act of Mar. 10, 1923, ch. 70 § 2, 1923 Wash. Laws 221, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, RCW§ 64.16.005 (2012).

The alien land acts achieved the legislature's exclusionary goals. Between 1920 and 1930, the Japanese population of Washington increased by only 450 people, or two-and-a-half percent[30]—largely because the State had "effectively prevented the Japanese from participating in farming in any meaningful way," cutting off many immigrants' livelihood.[31] In pushing Japanese farmers "further down the agricultural labor 'ladder,'" these alien land acts "affirmed the 'foreign-ness,' and hence, 'disloyalty' of the [Japanese] and their American citizen children, positioning them to be racial scapegoats in the wake of Pearl Harbor."[32] By creating a class of people unable to hold land, the State "sends a message about the status of members of that class as less than worthy."[33] Scholars contend that Washington's social and economic marginalization of the Japanese "served as a material prelude to the[ir] internment."[34]

The State targeted yet another ethnic minority in 1937, when the legislature changed the definition of "alien" to bar Filipinos from land ownership.[35] The Washington Supreme Court struck down this amendment, but only for failure to comply with legislative naming conventions, ignoring the law's hostility to non-white noncitizens. *See De Cano v. State*, 7 Wn.2d 613, 630-31, 110 P.2d 627 (1941). Indeed, the court unflinchingly affirmed that "[i]t has been a long-standing, traditional policy of the United States to limit citizenship by naturalization to members of the white race." *Id.* at 617.

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[30] Lazarus, *supra* note 2, at 236 n.262 (in the previous three decades, Japanese population of Washington had increased by 34%; 230%; and 1,560%, respectively).

[31] Jean Stefancic, Terrace v. Thompson *and the Legacy of Manifest Destiny*, 12 Nev. L. J. 532, 544 (2012).

[32] Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As a Prelude to Internment*, 40 B.C. L. Rev. 37, 63, 66 (1998).

[33] *Id.* at 62.

[34] *Id.*

[35] Given their unique status as "not aliens" under federal law, *Toyota v. United States*, 268 U.S. 402, 411, 45 S. Ct. 563, 69 L. Ed. 1016 (1925), Filipinos were nonetheless ineligible for naturalization unless they served in the military.

Washington's history of discrimination against noncitizens extends beyond land ownership. Ineligibility for citizenship—itself a legislative construct—was used as grounds to exclude foreign-born residents from other areas of civic life. For instance, Takuji Yamashita was denied admission to the Washington state bar—after earning his J.D. from the University of Washington Law School—because he was deemed racially ineligible to become a citizen. *In re Yamashita*, 30 Wash. 234, 235-37, 70 P. 482 (1902). In affirming the state bar's decision, the Washington Supreme Court conceded that Yamashita met all other requirements for the practice of law. *Id.* at 234. But because "no one includes the white or Caucasian with the Mongolian or yellow race," and only white and Black people were eligible for naturalization at the time, the court concluded that it was "clear" Yamashita was ineligible for citizenship, and consequently, entry to the legal profession. *Id.* at 236-37.

D. Washington State begins to reckon with its exclusionary history.

In more recent history, Washington has recognized that "classification[s] based on alienage [are] inherently suspect and subject to close judicial scrutiny." *Herriott v. City of Seattle*, 81 Wn.2d 48, 60, 500 P.2d 101 (1972). Washington voters finally repealed the alien land laws in 1966, but only after two failed attempts.[36] Noncitizens were allowed to practice law starting in 1978. *See Nielsen v. Washington State Bar Ass'n*, 90 Wn.2d 818, 827-28, 585 P.2d 1191 (1978). Takuji Yamashita was admitted to the bar in 2001, 42 years after his death.[37] These acknowledgments are a start, but cannot be the end of the courts' role in rectifying Washington's history of discrimination and exclusion on the basis of race and national origin.

[36] Grant, *supra* note 6.
[37] Wa St Supreme Court Oral Arguments (Mar. 1, 2001), https://www.tvw.org/watch/?eventID=2001031299.

II. SSB 6152 is signed into law, hamstringing political participation by noncitizens and citizens alike.

SSB 6152 prohibits certain foreign-born Washington residents not only from donating to political campaigns, but also from participating in organizations' campaign finance decisions.[38] Specifically, it targets "foreign nationals," which include foreign governments, political parties, and corporations—but also U.S. residents who are not citizens or green-card holders.[39] Thus, under SSB 6152, many of our foreign-born neighbors cannot make any campaign contributions whatsoever or participate in decisions regarding a campaign contribution. What's more, no person, "foreign national" or otherwise, can contribute to a campaign if that contribution was financed "in any part" by a "foreign national," or involved a "foreign national" in the decision-making process "in any way."[40] SSB 6152 further requires campaign contribution recipients to certify that contributions were neither financed by nor involved any "foreign nationals" in the decision to contribute.[41]

Fewer than two months after its introduction, SSB 6152 passed both legislative chambers, leaving little time for thorough debate or comment.[42] On March 25, 2020, Governor Inslee signed SSB 6152 into law.[43] Hardly anyone noticed—and understandably so: a global pandemic had begun during that same two-month period, occupying the attention of most everyone in the state (and nation).

[38] SSB 6152.SL ¶ 16.23-30.
[39] *Id.* ¶ 1.19.
[40] *Id.* ¶ 2.8.
[41] *Id.* ¶ 16.23-30.
[42] Bill History, SB 6152 - 2019-20 https://app.leg.wa.gov/billsummary?BillNumber=6152&Year=2019
[43] *Id.*

Sponsors framed SSB 6152 as part of a crucial effort to "stop[] the flow of foreign money or involvement in our elections" in order to "remove foreign corporate influence."[44] But some lawmakers' comments betray a sense of distrust of foreign-born *individuals*. Representative Mike Pellicciotti urged a yes vote to "to make sure no *foreign nationals* are involved in either the directing or funding of campaigns."[45] Meanwhile, Representative Jim Walsh perpetuated harmful stereotypes about foreigners, implying there is something "dirty" about their participation in our democracy. As he put it on the House floor, "the intent of the bill … is to keep our elections clear and *clean* of undue influence." "The people of the State of Washington," he assured, "'can be confident that their elections are well-run and *cleanly* managed."[46]

ARGUMENT

SSB 6152's sweeping exclusion of foreign-born residents from the political process recalls laws previously used to exclude noncitizens from owning land or becoming attorneys. Although the State of Washington—and especially its courts—have taken steps to rectify its discriminatory history, effectuating SSB 6152 would mark a giant step backward in the State's commitment to avoiding the discriminatory mistakes of its past, harming our entire community.

I. SSB 6152 repeats mistakes of the past by discriminating against foreign-born residents.

The State of Washington has continued to reckon with its history of racial discrimination, including discrimination against noncitizens. Just this year, Washington's

[44] Ben Adlin, *New State Law Could Prevent Political Participation by Immigrants, Lawsuit Says*, S. Seattle Emerald, (Oct. 14, 2020), https://southseattleemerald.com/2020/10/14/new-state-law-could-prevent-political-participation-by-immigrants-lawsuit-says/

[45] *House State Government & Tribal Relations Committee* (Feb. 27, 2020), https://www.tvw.org/watch/?eventID=2020021401 (video at 38:40).

[46] *House Floor Debate* (Mar. 4, 2020), https://www.tvw.org/watch/?eventID=2020031014 (video at 50:05).

highest court vacated the conviction of a Yakama tribal member charged with fishing crimes, recalling its opinion that "[n]either Rome nor sagacious Britain ever dealt more liberally with their subject races than we with these savage tribes, whom it was generally tempting and always easy to destroy, and whom we have so often permitted to squander vast areas of fertile land before our eyes." *State v. Towessnute*, 89 Wash. 478, 482, 154 P. 805 (1916), *recalled by* 197 Wn.2d 574, 578, 486 P.3d 111 (2021) ("We cannot forget our own history, and we cannot change it. We can, however, forge a new path forward, committing to justice as we do so."). The Court likewise overruled a 1960 case that held a cemetery could lawfully deny grieving Black parents the right to bury their infant, and published an open letter that pledged to "develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases," and to administer justice "in a way that brings greater racial justice to our system as a whole." *Garfield Cty. Transportation Auth. v. State*, 196 Wn.2d 378, 390, 473 P.3d 1205 (2020).[47]

But rather than advancing racial justice, SSB 6152 would, if upheld, exclude from the political process hundreds of thousands of foreign-born Washington residents. Despite the diverse backgrounds and perspectives they bring to the community, and despite being governed, taxed, and bound by local elections just like their neighbors, SSB 6152 forbids these residents from participating "in any way" in political advertising, electioneering communications, or any community organization's decision to financially support particular candidates or ballot measures. Moreover, the statute's overbreadth could chill legitimate political participation. Consider a family of mixed immigration status that includes both citizens and noncitizens, and that comingles funds. The statute's sweeping language suggests that the citizen family member might violate the law by making a political contribution from their family's joint bank account.

[47] *See* Letter from Wash. Supreme Court, *supra* note 1.

The State of Washington benefits from the presence of foreign-born residents: H-1B visa holders like Mudit Kakar who offer specialized knowledge and training to Washington businesses; student visa holders like Nayon Park who enrich the academic experience at Washington universities; and undocumented immigrants like Virginia Flores who take on physically demanding and low-paying work that American-born workers consider undesirable but is nonetheless essential to the State's continued prosperity. Much like the foreign-born workers invited to Washington Territory to build the railroads, the foreign-born residents targeted by SSB 6152 were encouraged to join Washington communities with offers of economic opportunity and equal protection of the laws. But once again, the State has failed to live up to its end of the bargain. SSB 6152 is only the latest example of Washington inviting foreigners to relocate for economic reasons, only to later rescind critical civil rights, implement exclusionary policies, and scapegoat them based on their birthplace.

II. SSB 6152 elevates harmful stereotypes to state policy that will perpetuate discrimination.

The exclusionary laws of the past were manifestations of racial hostility and xenophobia that led others to scapegoat the foreign-born. SSB 6152 replicates this dynamic by reviving the harmful stereotype that foreign-born residents are disloyal and should be viewed with suspicion.[48] Foreign-born residents, who took no part in election interference perpetrated by foreign governments, are nevertheless deemed dangerous: only by eliminating them from the political process can Washington keep its elections "clean."[49]

In fact, SSB 6152 goes further than most discriminatory statutes by forcing citizen-residents to ostracize foreign nationals, view them with suspicion, and exclude them from the political process. It requires every person or group who makes a political contribution to certify

[48] *See* Aoki, *supra* note 32, at 66.
[49] *See House Floor Debate*, *supra* note 46.

that no "foreign national" was involved "in any way" with the decision to make that contribution, imposing civil and criminal penalties for those who fail to do so.[50] This onerous certification requirement discourages American-born Washingtonians from communicating with their foreign-born neighbors about political issues, and disincentivizes political organizations from associating with foreign-born residents or elevating them to positions of authority. What's more, the certification requirement could frustrate these organizations' primary missions, if they must now police and audit donations to ensure compliance. To avoid violating SSB 6152, the organization might—consciously or not—discriminate against citizens *and* noncitizens if, for example, it heavily scrutinizes contributors with "foreign"-sounding names.[51] Foreign-born residents not encompassed within SSB 6152—and even U.S. citizens with traits deemed "foreign"—might experience discrimination at the hands of those who can't tell the difference, don't feel comfortable asking about immigration status, or don't want to take any chances when civil and criminal penalties are involved.

SSB 6152 would also engender more discrimination by inhibiting foreign-born residents' ability to effectively lobby their government representatives. Foreign-born residents are particularly likely to experience unlawful treatment in the workplace, at school, and at the hands of law enforcement.[52] Prior to SSB 6152, they could call attention to those ills through political advertising and fundraising for candidates and ballot measures responsive to foreign-

[50] SSB 6152, §§ 1, 3(5), 4(1)(i), 595(d), 6(3)(g), 7(7)(e), 8(1)(b)(iii), 10(1); RCW § 42.17A.750-780.
[51] *See, e.g.*, 143 Cong. Rec. S2619-2624 (daily ed. Mar. 20, 1997) (statement of Sen. Akaka) (explaining how the DNC's decision not to accept *lawful* donations from permanent residents resulted in an internal audit tantamount to "selective harassment of those who happened to have Asian surnames because the DNC and certain Members of Congress "feared the public's reaction to their accepting 'Asian' money.").
[52] Michael Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. Rev. 667, 667 ("Today in the United States, millions of undocumented persons are working long hours for illegally low pay, in workplaces that violate health and safety codes, for employers who defy labor and antidiscrimination laws.").

born residents' unique concerns. But SSB 6152 would curtail that option and leave foreign-born residents vulnerable to increased exploitation.[53]

III. SSB 6152 will cause enduring harm to the community as a whole.

While SSB 6152 directly targets "foreign nationals," it also harms all communities in Washington state. *See Kramer v. Union Free Sch. Dist.,* 395 U.S. 621, 626, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969) ("Any unjustified discrimination in determining who may participate in political affairs … undermines the legitimacy of representative government."). As now-Congressman Jamie Raskin put it: "Moral, social and political community among various groups has never been created in America by isolating people from one another. It is, rather, by including them together in the deliberative political project . . . that a sense of community may be built."[54]

Just as creating a class of people unable to hold land or practice law "sends a message about the status of members of that class as less than worthy," so too does creating a class of people who cannot express themselves whatsoever in the political process.[55] The result is a fractured society rather than an assimilated one, to the detriment of all. The privileged majority loses unique perspectives and social contributions that immigrant populations provide when treated with respect. And the excluded minority are forced into the margins of society, where a growing sense of resentment and disillusionment lead to an increasingly disaffected population and can trigger civil unrest.[56]

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[53] *See* Jamin Raskin*, Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L. Rev. 1391, 1460 (1993) ("The possibilities for exploiting displaced persons are too great if we make capital and labor mobile but political rights immobile.").
[54] *Id.* at 1446.
[55] Aoki, *supra* note 32, at 62.
[56] Raskin, *supra* note 53, at 1467 ("unrest, delinquency, and riot in immigrant communities … illustrate the dangers of excluding large numbers of people from political membership in their communities.").

As we've seen throughout history, fractures in social cohesion can become chasms as distrust builds between the privileged and the excluded. Alien land laws, for instance, paved the way for Japanese internment camps—a shocking departure from our democratic ideals. The Supreme Court justified the government's actions by observing that discriminatory laws had prevented Japanese Americans from fully assimilating, making the government's heightened distrust and further discrimination reasonable and constitutional in the Court's view. *See Hirabayashi*, 320 U.S. at 96 & n.4.

This time, the Court has the power to nip this feedback loop of fragmentation in the bud. We must learn from past mistakes and reject the State's efforts to exclude foreign-born residents from the political process.

CONCLUSION

The Korematsu Center respectfully urges this Court to defang SSB 6152 at the outset. If allowed to stand, the statute would harm foreign-born residents like Plaintiffs by excluding them from participating in political affairs and enshrining in law the harmful stereotype that foreign-born residents are disloyal and worthy of suspicion; it would also damage the fabric of the whole community. If the Washington judiciary's recent expression of regret for past discrimination is to have any meaning, laws like this one must be struck down at their inception.

I certify that this brief contains 4187 words, in compliance with the Local Civil Rules.

Dated: July 30, 2021

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's e-filing system which will serve a copy of this document upon all counsel of record.

DATED this 30th day of July, 2021, at Oakland, California.

/s/ Amanda M. Karl
AMANDA M. KARL