

Foreign Ownership of U.S. Real Property: Developments in *Shen v. Simpson*

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As described in [this CRS Legal Sidebar](#), lawmakers have considered and promoted various legislative options to restrict ownership of land by certain foreign entities. One such law, [Florida's SB 264](#), establishes certain land ownership restrictions pertaining to foreign entities associated with certain countries of concern. This country list includes the People's Republic of China (PRC), the Russian Federation, and the Islamic Republic of Iran, among others. SB 264 creates further restrictions specifically for the PRC and associated entities.

In February 2024, the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) granted, in part, a motion for an injunction pending appeal filed by a group of PRC citizens and a Florida corporation challenging SB 264 on various grounds. The scope of the ruling is limited, with the court restricting SB 264 from being enforced against two of the plaintiffs while the court reviews a lower court decision against such an enforcement limitation against all of the plaintiffs while their case proceeds in court. In reaching this decision, however, the court concluded that the plaintiffs would likely prevail in their argument that SB 264 is preempted by federal law. This Legal Sidebar summarizes the status of this action and potential related considerations for Congress.

Enforcement of SB 264 Against Two Plaintiffs Preliminarily Enjoined Pending Appeal

Following Florida's passage of SB 264, several plaintiffs, including PRC citizens with interests in Florida property, challenged the state law on [various grounds](#), including violations of equal protection under the U.S. Constitution and [preemption](#) under "federal regimes governing foreign affairs, foreign investment, and national security." After the federal district court [denied](#) a preliminary injunction motion to ban enforcement of SB 264 against the plaintiffs during the pendency of their legal challenge, the plaintiffs appealed to the Eleventh Circuit. The Eleventh Circuit's February 2024 [order](#) granting, in part, the plaintiffs' motion for an injunction pending appeal grounds the court's reasoning in the belief that plaintiffs showed "a substantial likelihood of success" as to the claim that portions of SB 264 are preempted by [50 U.S.C. § 4565](#), including the [Foreign Investment Risk Review Modernization Act of 2018](#) (FIRRMA). These laws authorize the activities of the Committee on Foreign Investment in the

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United States (CFIUS), an [interagency executive branch committee](#) charged with reviewing certain transactions, such as mergers and acquisitions, for national security risk where there is a foreign acquirer of a U.S. entity. The court also concluded that the plaintiffs satisfied other injunction factors but expressed that this type of “[extraordinary equitable relief](#)” is appropriate only where the filing party would experience a harm that cannot be fixed. Here, the court determined that two of the plaintiffs qualified for such relief because they have recent and pending real estate transactions.

The circuit court’s four-page order concluded that the plaintiffs would likely succeed in their preemption challenge, but it did not detail the basis for this determination. Although the court did not explain the reasons for its conclusion, it approvingly cited [Supreme Court](#) and [Eleventh Circuit](#) decisions finding state laws unenforceable when they undermined the discretion federal law afforded the President in the realm of foreign affairs. The plaintiffs cited these cases when arguing that CFIUS preempts portions of SB 264. The lower court was not persuaded by these arguments when it denied plaintiffs’ preliminary injunction request, [reasoning](#) that the CFIUS regime meaningfully differs from the federal laws at issue in those earlier cases, and further deciding that states’ long-standing regulation of land acquisition by foreign nationals counseled against construing CFIUS to preempt laws like SB 264.

The order did not address the plaintiffs’ [equal protection](#) challenge to the statute, but one circuit judge wrote a concurrence arguing that relief also should have been granted based on those claims. The concurrence [emphasized](#) that the Fourteenth Amendment to the Constitution “protects citizens and non-citizens alike.” The U.S. Department of Justice [supported](#) the plaintiffs’ equal protection arguments in this case.

Along with the Eleventh Circuit’s decision to grant an injunction pending appeal prohibiting enforcement of SB 264 against two individual plaintiffs until the circuit court’s review of the lower court’s decision, the Eleventh Circuit also agreed to review the lower court decision on an expedited basis, with oral arguments scheduled for [April](#). As the case proceeds, the reviewing panel “[will be better positioned to determine the issues presented on appeal.](#)”

Considerations for Congress

Congress has [considered](#) various types of legislative action to address foreign ownership of U.S. land. The plaintiffs in *Shen v. Simpson* argue that portions of SB 264 are preempted by laws establishing CFIUS authorities. Application of CFIUS authorities turns on the establishment of jurisdiction (covered real estate), after which CFIUS may review the transaction in question for national security purposes. Some lawmakers may feel that CFIUS’s jurisdiction does not reach all land purchases in which lawmakers have an interest, such as land that lacks proximity to a military installation or critical infrastructure but may have some other value. Others may feel that a narrow scope of CFIUS review is appropriate for a legal framework that can restrict purchase and ownership of real property.

Real estate is not the only market in which states have sought to limit participation by certain foreign entities. [Recent challenges to Montana’s TikTok ban illustrate](#) how state legislation foreclosing foreign participation in varied state markets may prompt litigation. The ultimate results of these suits may provide additional insight into the degree of federal exclusivity in these realms.

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