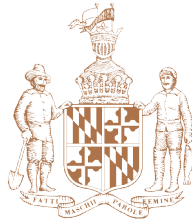


ANTHONY G. BROWN
ATTORNEY GENERAL

CANDACE McLAREN LANHAM
CHIEF OF STAFF

CAROLYN A. QUATROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

DAVID W. STAMPER
DEPUTY COUNSEL

SHAUNEE L. HARRISON
ASSISTANT ATTORNEY GENERAL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 15, 2023

The Honorable Mark N. Fisher
Maryland General Assembly
422 Lowe House Office Building
Annapolis, Maryland 21401
Via email

Re: *House Bill 968 – “Agriculture Land and Programs – People’s Republic of China – Prohibition on Purchase and Participation”*

Dear Delegate Fisher:

You asked for advice on whether House Bill 968 violates the United States Constitution or any other federal law. In my opinion, House Bill 968 does not appear to present any constitutional issues or violate any other federal law.

Article I, § 10 of the United States Constitution, grants power to the federal government to manage the United States’ foreign relations. Interpreting these provisions, the Supreme Court has described the federal governments’ foreign affair power as superior to the states and exclusively residing in the national government.¹ Despite this view, states and other subnational entities, play a prominent role in international affairs. For instance, states regularly enter into written pacts with foreign governments on issues ranging from trade, the environment, and tourism.

In addition to the limitations in Article I, § 10, the Supremacy Clause may limit or preempt states role in foreign affairs. Under the Supremacy Clause, federal statutes and self-executing international agreements preempt conflicting state laws. *Id.* Federal law can expressly or impliedly preempt state law, if preemptive intent is inferred from the language of the federal law’s structure and purpose. Preemption principles can invalidate state laws that undermine the federal government’s diplomatic and foreign policy goals. *Id.* Generally, there are three bases for finding that federal law preempts state law: 1) express preemption, 2) field preemption, and 3) conflict

¹ <https://crsreports.congress.gov/product/pdf/LSB/LSB10808>.

preemption. *See generally New York v. Feldman* 210 F. Supp. 2d 294, 305 (2002). Express preemption is where Congress has expressly preempted state law. *Feldman*, 210 F. Supp. 2d at 305. Field preemption is where Congress has established a comprehensive regulatory scheme intended to occupy a given field. *Id.* at 305. Conflict preemption is where it is impossible for a party to comply with both the state and federal law or the state law is an obstacle to the achievement of federal objectives. *Id.* at 306.

The Dormant Commerce Clause may also limit states' role in foreign affairs. In contrast to preemption, the Dormant Commerce Clause can limit states' power even in the absence of conflict when it comes to foreign commerce or interstate commerce. Under the limitations of the Dormant Commerce Clause, states may not discriminate against, or impose excessive burdens on interstate or foreign commerce unless Congress authorizes them to do so. <https://crsreports.congress.gov/product/pdf/LSB/LSB10808>. States prohibiting foreign ownership of farmland or agricultural property is quite common. States such as Hawaii, Iowa, Minnesota, Mississippi, North Dakota, and Oklahoma have all passed legislation that bans foreign ownership of farmland. Jonathan Hettinger, *Efforts to Restrict Foreign Ownership of US Farmland Grow*, AP News, June 9, 2019, <https://apnews.com/article/laws-bills-mn-state-wire-il-state-wire-champaign-e541895e692545ee80d0fc609cf40011>. Currently, congressional lawmakers are looking to advance language that would ban companies that are from Russia, China, North Korea, and Iran from owning agricultural property. <https://texasfarmbureau.org/congress-wants-to-ban-sale-of-u-s-farmland-to-foreign-countries/>. Further, California legislators have introduced Senate Bill 1084, which prohibits foreign governments from buying, acquiring, leasing, or holding interest in agricultural land in California. Most proponents of banning foreign ownership of farmland believe that farmland is a valuable asset for the United States.

Currently, there is no federal law that prohibits foreign ownership of farmland.² However, there is federal law that requires foreign persons and entities to disclose to the United States Department of Agriculture (USDA), information related to foreign investments and ownership of U.S. agricultural land. *Id.* The USDA implements the provisions of the Agricultural Foreign Investment Disclosure Act, which is a system established nationwide for the collection of information pertaining to foreign ownership of U.S. agricultural land. *Id.*

Considering that there are other states that have already banned the foreign ownership of agricultural land and that such a ban does not seem to conflict with or be preempted by a federal law, it is my view that a bill request to prohibit Chinese businesses, agents associated with Chinese government, and “nonresident aliens” from China, from buying agricultural property in the State or participating in specified State programs, does not appear to pose any constitutional issues.

² <https://crsreports.congress.gov/product/pdf/LSB/LSB10808>.

The Honorable Mark N. Fisher

March 15, 2023

Page 3

I hope this is responsive to your question. Please let me know if you need any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shaunee L. Harrison".

Shaunee L. Harrison
Assistant Attorney General