IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MINNESOTA CHAMBER OF COMMERCE, Plaintiff, v. JOHN CHOI, et al., Defendants.	Case No. 23-cv-02015 (ECT/JFD)

BRIEF OF AMICUS CURIAE CAMPAIGN LEGAL CENTER IN SUPPORT OF DEFENDANTS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Dated: December 4, 2023

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INTERESTS OF AMICUS CURIAE

Amicus curiae Campaign Legal Center ("CLC") is a nonpartisan nonprofit organization working for a more transparent, inclusive, and accountable democracy. CLC has a longstanding, demonstrated interest in the constitutionality and efficacy of campaign finance and political disclosure laws, including those limiting the impact of foreign spending in American elections.[1]

CLC submits this brief because it is concerned that claims of federal preemption, like those asserted by Plaintiff Minnesota Chamber of Commerce (the "Chamber") here, will be deployed against efforts by states to shield their own elections from the influence of foreign money. Plaintiff's preemption argument must be weighed against the backdrop of over two dozen measures passed by states and municipalities nationwide to protect their elections from such pressures and to thereby fulfill their "obligation "to preserve the basic conception of a political community." *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973) (citations and internal quotations omitted).

SUMMARY OF ARGUMENT

The Chamber's motion for preliminary injunction focuses largely on its First Amendment challenge to the Democracy for the People Act (the "Act"), Minnesota's recently-enacted restrictions on campaign contributions and expenditures by foreign-owned corporations in state candidate and ballot measure elections. *See* Minn. Stat. § 211B.15, subd. 4a-4b. But the Chamber also argues that Federal Election Campaign Act ("FECA") preempts the Act, resting on the extraordinary proposition that, contrary to all principles of federalism, Congress can implicitly "nullify the States' powers over [state] elections which they had before the Constitution was

[1] No person or entity other than CLC and its counsel made a monetary contribution to this brief's preparation or submission.

adopted and which they have retained throughout our history." *Oregon v. Mitchell*, 400 U.S. 112, 123–26 (1970) (opinion of Black, J.). *See* Plaintiff's Mot. for Prelim. Inj. ("Pl's Br."), ECF No. 60, at 33-36. Although CLC agrees with state defendants that the Chamber has no basis for its First Amendment claims,[2] CLC will address only the Chamber's preemption claims in this *amicus* submission.

Federal preemption can be either "express," where Congress "define[s] explicitly the extent to which its enactments pre-empt state law," *English v. General Elec. Co.*, 496 U.S. 72, 78 (1990), or "implied," although there is an "inference" that "that Congress [does] not intend to pre-empt . . . matters" that its "express definition" of preemption does not reach, *see Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995). The Chamber alleges that FECA both expressly preempts the Act because the Act regulates federal elections, and implicitly preempts the Act because the Act conflicts with FECA even with respect to its regulation of Minnesota *state* elections. Neither argument succeeds.

First, as the Chamber concedes, FECA expressly preempts state laws only "with respect to election to Federal office." 52 U.S.C. § 30143. In order to assert an express preemption claim, the Chamber must therefore resort to a strained and unsustainable reading of the Act in an attempt to extend its reach beyond elections for state office. But the state defendants have disavowed any interpretation of the Act that would encompass federal elections, and plaintiff's contrary reading is simply in error.

The Chamber also fails to show implied preemption because its compliance with the Act in no way conflicts with its compliance with federal law, or more specifically, with 52 U.S.C. §

[2] CLC joins the state defendants' arguments defending the constitutionality of the Act, *see* Defs.' Opp. to Pl's Mot. for Prelim. Inj., ECF No. 88, at 2333.

30121, FECA's ban on foreign money. Nor can the Chamber show that FECA has—or even could—"occupy the field" of *state* elections, which would run counter to both the text and purposes of FECA and our federalist system of government. Indeed, the Federal Election Commission ("FEC"), the federal agency authorized to implement and enforce FECA, has repeatedly stated that that FECA does not preempt state laws governing only state elections. The courts have agreed. *See infra* at 8 n.7.

For these reasons, plaintiff's preemption claims should be rejected and its motion for preliminary injunction denied.

ARGUMENT

I. Federal Law Does Not Preempt State Laws that Exclusively Regulate State Elections.

A. The Federal Election Campaign Act and Implementing Regulations

The central objective of the Federal Election Campaign Act is to regulate and require disclosure of "contributions" and "expenditures" made "for the purpose of influencing any election for Federal office." *See* 52 U.S.C §§ 30101(8)(A), (9)(A). Accordingly, FECA states that its provisions and any regulations prescribed under its provisions "supersede and preempt any provision of State law with respect to election to Federal office." 52 U.S.C § 30143.

Section 30143 does not purport to impact state laws with respect to elections for state office. The FEC, through regulation, has further clarified this point, stating that FECA supersedes state law with respect to only three enumerated categories of campaign activity: (1) the "[o]rganization and registration of political committees supporting *Federal* candidates"; (2) "[d]isclosure of receipts and expenditures by *Federal* candidates and political committees; and (3) "[l]imitation[s] on contributions and expenditures regarding *Federal* candidates and political committees." 11 C.F.R. § 108.7(b) (emphasis added).

The express intent and overwhelming focus of FECA's preemption provision is to ensure uniform federal regulation of the financing of *federal* elections. According to committee reports on the 1974 Amendments to FECA, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in *Federal* races, the conduct of *Federal* campaigns, and similar offenses, but does not affect the States' rights" as to state election issues such as voter fraud. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974) (emphasis added). The legislative history also indicates that federal law occupies the field with respect to the disclosure of contributions to and expenditures by federal candidates and political committees, but does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections. *Id*. at 100-101. *See also* FEC Adv. Op. 1993-14 (Aug. 13, 1993) at 3, https://www.fec.gov/files/legal/aos/1993-14/1993-14.pdf (finding that FECA preempted a state law requiring reporting from *federal* account of political committee but "caution[ing]" that state was not precluded "from imposing some restrictions" on committee if it "were to engage in non-Federal election activity"); FEC Adv. Op. 1986-27 (Aug. 21, 1986) at 3, https://www.fec.gov/files/legal/aos/1986-27/1986-27.pdf (noting FECA did not "preempt state law" with respect to "registration and reporting of non-Federal accounts or state committees").

The federal foreign money ban is unique in FECA because it restricts campaign contributions and expenditures both in federal elections *and* in state and local elections. Section 30121 prohibits "foreign nationals" from "directly or indirectly" making a contribution or an expenditure "in connection with a Federal, State, or local election." 52 U.S.C. § 30121(a)(1). *See also* 11 C.F.R. § 110.20.

Section 30121 defines "foreign nationals" to include, *inter alia*, a "foreign principal, as such term is defined by section 611(b) of Title 22." *Id.* § 30121(b). In turn, Section 611(b) defines "foreign principal" to include:

> (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

22 U.S.C. § 611(b). Neither FECA nor section 611(b) of Title 22 address the status of domestic corporations organized under the laws of the United States and operating *within* the United States, but that are owned in whole or part by foreign nationals.

Section 30121 is the only FECA provision that applies to non-federal elections, and has been challenged as exceeding Congress's authority; it was recently upheld by the Ninth Circuit but not because the Court of Appeals found that Congress has any interest in, or authority over, the financing of state or local election activity, but instead because the prohibition involved "the exercise of [Congress'] immigration and foreign relations powers." *United States v. Singh*, 979 F.3d 697, 710 (9th Cir. 2020). Indeed, even as it upheld Section 30121, the Court of Appeals acknowledged that Supreme Court precedent affirmed that the Constitution generally "preserve[d] to the States the power . . . to establish and maintain their own separate and independent governments." *Id.* (quoting *Oregon*, 400 U.S. at 124). But it found that Section 30121 remained a legitimate exercise of Congress's constitutional authority because it did not purport to "regulate state elections as they relate to *citizens of the United States*." *Id.* (emphasis added).

The FEC too has recognized that Section 30121 lies at the outermost limits of Congress's power to legislate on the financing of state election activity, an "area[] involving traditional state

authority." Stmt. of Reasons of Chair Broussard ("Broussard Stmt."), MURs 7523 & 7512, at 3, https://www.fec.gov/files/legal/murs/7523/7523_28.pdf; *see also id.* (noting that "the foreign national prohibition already operates as a general exception to the Commission's regulatory authority because, unlike other provisions of the Act, which generally regulate federal campaign finance, the prohibition touches state and local campaign finance activities."). For these reasons, the FEC declined, for instance, to find that Section 30121 governed spending in state *ballot measure* elections, explaining that the Commission was "sensitive to the unique balance of power between the federal government and the states" and therefore would not extend FECA beyond its explicit terms.[3] *Id*. (citing and quoting *Rapanos v. United States*, 547 U.S. 715, 738 (2006) to require "clear congressional intent where agency action would result in an expansion of federal regulation into activities involving traditional state authority"). *See also* Stmt. of Reasons of Vice Chairman Petersen and Comm'rs Hunter & Goodman, MUR 6678 (Apr. 20, 2015), at 2, https://www.fec.gov/files/legal/murs/6678/15044372963.pdf ("The Commission has no authority to . . . interpose itself as arbiter of who can participate in state and local ballot initiatives.").[4]

[3] *See* FEC Adv. Op. 1989-32 (Jul. 2, 1992) at 3, https://www.fec.gov/files/legal/aos/1989-32/1989-32.pdf ("The Commission has stated that contributions or expenditures relating only or exclusively to ballot referenda issues, and not to elections to any political office, do not fall within the purview of the [FECA]."); FEC Adv. Op. 1984-62 (Mar. 21, 1985) at 1 n.2, https://www.fec.gov/files/legal/aos/1984-62/1984-62.pdf (same). *See also* FEC Adv. Op. 1984-41, at 2 (Oct. 12, 1984), https://www.fec.gov/files/legal/aos/1984-41/1984-41.pdf (federal foreign spending ban did not reach ads that mentioned "no candidate for political office, no political party, no incumbent Federal officeholder, no past or future Federal election").

[4] This Statement arose in a earlier administrative proceeding in which the FEC had taken no action with respect to allegations that foreign nationals had violated Section 30121 by financing a ballot measure campaign in a California state election. Vote Certification, MUR 6678, https://www.fec.gov/files/legal/murs/6678/15044372942.pdf. One Commissioner issued a statement justifying this outcome by noting that California had banned foreign money in ballot measure elections and that the California Fair Political Practices Commission could have pursued enforcement. Suppl. Stmt. of Reasons of Comm'r Goodman ("Goodman Stmt."), MUR 6678 (May 1, 2015), at 2, https://www.fec.gov/files/legal/murs/6678/15044372967.pdf. Thus, far from

B. FECA does not expressly preempt the Act.

The Chamber's express preemption argument fails for the simple reason that the Act does not regulate federal elections, and FECA only expressly preempts state laws "with respect to election to Federal office." 52 U.S.C. § 30143.

The Chamber does not—and cannot—assert that FECA's preemption clause expressly supersedes the Act insofar as the Act restricts foreign corporate contributions and expenditures in *state* elections. Instead, the Chamber attempts to manufacture a connection between the Act and federal elections, alleging that the Act relies on a provision that broadly defines "candidate" to encompass elections for state *and* federal office, *see* Pl's Br. at 5 (citing Minn. Stat. § 211B.01, subd. 3). This reading contravenes both the Act's text and legislative purposes.

The challenged provision at Section 211B.15 provides that "[f]or purposes of *this section*, the terms defined in this subdivision have the meanings given. Unless otherwise provided, the definitions in section 10A.01 also apply to this section." Minn. Stat. § 211B.15, subd. 1 (emphasis added). Because Section 211B.15 does not itself define the term "candidate," the definition of "candidate" in section 10A.01 applies, which is limited to candidates for state office. Minn. Stat. § 10A.01, subd. 10 ("'Candidate' means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge."). The Chamber's attempt to import a definition from a different section of the chapter, Minn. Stat. § 211B.01, thus cannot be squared with the text of the Act.

Further, even if there were some ambiguity in the Act, state defendants here have disavowed plaintiff's capacious interpretation of the candidates covered by the Act. In any event,

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suggesting that FECA preempted state law, this Commissioner had argued that the responsibility to take enforcement action should lie with the state.

as state defendants point out, *see* Defs.' Opp. at 19-20, courts should construe laws in a manner consistent with legislative intent and that eschews finding preemption or overbreadth where such findings can be avoided. *See WinRed, Inc v. Ellison*, 581 F. Supp. 3d 1152, 1167 (D. Minn. 2022), *aff'd* 59 F.4th 934 (8th Cir. 2023) (noting "strong presumption against preemption" and that courts should narrowly construe the language of FECA's preemption clause) (quoting *Weber v. Heaney*, 995 F.2d 872, 875 (8th Cir. 1993)).

In short, the Act does not purport to regulate federal elections; plaintiff is attempting to conjure up an express preemption concern where there is none.

C. FECA does not conflict with the Act, nor "occupy the field" of state elections.

Plaintiff's argument for implied federal preemption of the Act's regulation of state elections fares no better.

As the Eighth Circuit has explained, implied preemption can take two forms. The first, conflict preemption, may occur when (1) "compliance with both federal and state regulations is a physical impossibility," or when (2) "the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *WinRed, Inc. v. Ellison*, 59 F.4th 934, 944 (8th Cir. 2023) (quoting *Arizona v. U.S.*, 567 U.S. 387, 399 (2012)). The second form of implied preemption, field preemption, "occurs when federal law occupies a field of regulation so comprehensively that it has left no room for supplementary state legislation." *Id.* (internal quotations omitted).

Plaintiff's argument for implied preemption, even at the most basic level, is on a precarious footing given that courts apply a presumption *against* preemption as to state laws regulating "field[s] traditionally occupied by the States." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008). A field more squarely and uniquely within the purview of state authority than the regulation of state election campaigns is difficult to imagine, as recognized by the FEC. *See supra* Section I.A.

Applying this presumption, courts will find that a federal statute preempts the historic powers of the states only when it is the "clear and manifest" purpose of Congress to do so. *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (noting presumption against federal preemption and correlative "plain statement rule" for Congressional intent) (internal quotation marks omitted). Here, of course, Congress has evinced no intention to occupy the field of state elections, much less included a "plain statement" in FECA that federal law preempts state laws regulating state elections.

1. Conflict preemption

The Chamber compounds its problems by misinterpreting the standard for conflict preemption. Plaintiff suggests conflict occurs when a state "prohibits" campaign activity in state elections that "federal law would permit," *see* Pl's Br. at 35, but instead the test is whether "compliance with both federal and state regulations is a physical *impossibility*," *WinRed*, 59 F.4th at 944 (emphasis added). A regulated party—like the Chamber—clearly *can* comply both with Section 211B.15 of Minnesota law and Section 30121 of FECA. It need only ensure that it does not spend donations from "foreign-influenced corporations," *see* Minn. Stat. § 211B.15, subd. 1(d), in state candidate and ballot measure elections. That plaintiff would simply *prefer* to evade Minnesota's stricter law hardly makes dual compliance "a physical impossibility."

Nor does the Act countermand the "purposes and objectives of Congress" in enacting Section 30121. *WinRed*, 59 F.4th at 944. The federal foreign money ban represents Congress's "judgment" that "barring foreign nationals from contributing to our election processes" was necessary to "protect the country's political processes after recognizing the susceptibility of the elections process to foreign interference." *Singh*, 979 F.3d at 710–11. Otherwise put, the United States has "a compelling interest" "in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S.

political process." *Bluman v. FEC*, 800 F. Supp. 2d 281, 283 (D.C. Cir. 2011), *aff'd mem.*, 565 U.S. 1104 (2012). Thus, if anything, the Act *advances* Congress's compelling interests by preventing the circumvention of Section 30121, which, by its terms, seeks to prevent not only "direct" contributions but also "indirect" contributions by foreign nationals. 52 U.S.C. § 30121(a)(1). The Act targets precisely such "indirect" foreign contributions, namely money passed through domestic corporations under foreign ownership into American elections.

Plaintiff suggests that the Act nonetheless "subverts the purposes of the federal scheme determined by Congress and the FEC" but does not elaborate on the purpose of this "scheme" nor explain how it is undermined by the Act. Pl's Br. at 36. Indeed, it is untenable to allege that Congress even designed any particular "scheme" for regulating campaign spending by foreign-owned domestic corporations when it passed and amended Section 30121 and its predecessors. All such enactments predated *Citizens United v. FEC*, 558 U.S. 310 (2010), and up until that decision, no corporation—regardless of its share of foreign ownership—was permitted to make contributions or expenditures from its treasury funds to influence federal elections.[5] *See* 52 U.S.C. § 30118(a). Corporations were permitted to make contributions and expenditures through "separate segregated funds," i.e. highly regulated political action committees ("PACs"), but these PAC were limited to soliciting funds from a restricted class of employees and officers, none of whom could be foreign nationals. *See, e.g.*, *Corporations and Labor Organizations*, FEC, at 32, https://www.fec.gov/resources/cms-content/documents/policy-guidance/colagui.pdf. Thus prior to *Citizens United*, Congress did not face the specter of foreign-owned corporations directly spending

[5] The Supreme Court in *FEC v. Massachusetts Citizens for Life, Inc. ("MCFL")*, 479 U.S. 238 (1986), also drew an exemption from FECA's corporate expenditure ban for certain non-profit corporations that did not accept money from for-profit corporations or have shareholders. Spending by such "MCFL corporations" represented only a small percentage of total spending in federal elections.

their treasury funds in federal elections without the failsafe of the PAC structure: FECA therefore cannot be interpreted as evincing any legislative "scheme" with respect to this new path cleared for foreign money to enter U.S. elections. *See also* Eugene D. Mazo, *Our Campaign Finance Nationalism*, 46 Pepp. L. Rev. 759, 811 (2019) ("After *Citizens United*, the political activities of a U.S. subsidiary of a foreign corporation, like the political activities of any other U.S.-based corporation, were no longer restricted to making contributions to candidates through PACs."); Karl Evers-Hillstrom and Raymond Arke, *Following Citizens United, foreign-owned corporations funnel millions into US elections*, OpenSecrets.org (March 22, 2019), https://www.opensecrets.org/news/2019/03/citizens-united-foreign-owned-corporations-put-millions-in-us-elections/.

Amicus curiae U.S. Chamber of Commerce claims that Congress had specifically debated the regulation of U.S. subsidiaries of foreign parents when it amended the foreign money ban as part of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), *see* U.S. Chamber Br., ECF No. 86, at 8-9, suggesting that Congress has therefore set a deliberate policy on this issue. But as confirmed by the FEC rulemaking that *amicus* U.S. Chamber itself cites, there was no legislative history indicating that Congress had even seriously considered this question. Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,943 (Nov. 19, 2002) (declining to adopt rule because no "evidence of Congressional intent to broaden the prohibition on foreign national involvement to cover [U.S. subsidiaries of foreign corporations]"). *See also* Letter from Senators McCain and Feingold, and Representatives Shays and Meehan to FEC (Sept. 13, 2002) at 3, https://sers.fec.gov/fosers/showpdf.htm?docid=3199 ("The Commission asks whether BCRA addresses contributions by foreign-controlled U.S. corporations, including U.S. subsidiaries of

foreign corporations. It does not.").[6] And, regardless of the existence of any such debate, it is clear that Congress *did not* in fact amend Section 30121 to address this question, leaving the matter open for states to address.[7]

2. Field Preemption

The Chamber does not make any argument specific to field preemption beyond noting that "[i]f federal law leaves 'no room for supplementary state regulation,' then a state may not supplement the federal requirements." Pl's Br. at 34 (quoting *Weber v. Heaney*, 793 F. Supp. 1438, 1443 (D. Minn. 1992)). It is not surprising that plaintiff has declined to press field preemption. No serious claim can be made that Congress intended to "occupy the field" of *state* elections such that there is "no room" for Minnesota's oversight of its own democratic processes. As both the FEC and the courts have recognized, state campaign financing is an area "traditionally," if not uniquely, within state authority. *See* Broussard Stmt. at 3.[8]

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[6] *Amicus* U.S. Chamber also suggests that CLC submitted comments in this rulemaking opposing a rule to address campaign activity by foreign-owned corporations on substantive grounds, U.S. Chamber Br. at 9, but instead CLC had expressed concern that "BCRA's legislative history does not reveal any intent that the Commission visit this specific issue." Comments from Campaign Legal and Media Center Re: Notice 2002-14 (Sept. 13, 2002) at 4, https://sers.fec.gov/fosers/showpdf.htm?docid=3190. To focus on an issue not raised by Congress, CLC noted, would distract from "the Commission's significant, ongoing BCRA-related workload (including a number of other unfinished BCRA rulemakings)." *Id*.

[7] Plaintiff references a FEC advisory opinion that addressed spending in state elections by domestic subsidiaries of foreign firms, Pl's Br. at 35 (citing FEC Adv. Op. 2006-15 (May 19, 2006)), suggesting that this meant Congress and the FEC had already spoken to this issue. But the FEC had been asked this question exactly because FECA did *not* address spending in U.S. elections by an "American subsidiary" with "foreign ownership." *Id*. Instead FECA had largely obviated this possibility by simply prohibiting expenditures by all corporations in *federal* elections—prior to *Citizens United*. It was only because some states did not likewise ban corporate expenditures in state elections that these states had left their elections open to spending by foreign-owned domestic corporations, which were not covered by Section 30121. The FEC thus had to consider this state spending precisely because Congress had not legislated on this particular issue.

[8] Reflecting this principle, courts have declined to find federal preemption of state campaign finance laws insofar as the laws regulate state elections, as a comparison of two recent cases reviewing New Mexico's campaign finance law makes clear. *Republican Party of New Mexico v.*

To be sure, Section 30121 is the unusual FECA provision that applies to state and local elections as well as federal elections. But it is untenable to argue that FECA consequently "occupies the field" with respect to the regulation of foreign spending in state elections, and the Chamber does not attempt to do so. States undeniably have an interest in shielding their elections from foreign influence and political corruption. *See OneAmerica Votes v. State*, 518 P.3d 230, 247 (Wash Ct. App. 2022) ("[Washington] State's interest in prohibiting foreign nationals from making political contributions and the corresponding interest in prohibiting citizens or domestic organizations from using money from foreign nationals to make such contributions is a compelling one."). That Congress has been permitted to legislate with respect to certain activities by foreign nationals in state and local elections *Singh*, at 979 F.3d at 710, does not somehow "federalize" the "field" of state self-governance. To hold otherwise would damage state sovereignty and undercut the states' retained authority under the Constitution over their own elections. *Oregon*, 400 U.S. at 126. *See also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (noting that "the [Supreme] Court has recognized that States retain the power to regulate their own elections").

Confirming the vitality of these state interests, twenty-three states have enacted laws limiting campaign contributions or expenditures by foreign nationals in state elections, the majority of which apply to spending by foreign corporations, among other foreign nationals. *See* Nat'l Conf. for State Legislatures ("NCSL"), *Campaign Finance Regulation: State Comparisons*, at "Contribution Limits to Candidates" (last updated Oct. 24, 2022),

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King, 850 F. Supp. 2d 1206, 1215 (D.N.M. 2012), *aff'd* 741 F.3d 1089 (10th Cir. 2013), found that a state political party was likely to succeed on merits of its claim that New Mexico's limits on the contributions it could receive for use in federal campaigns was preempted by FECA. Conversely, *Republican Party of New Mexico v. Torrez*, 2023 WL 5310645 (D.N.M. 2023), found that New Mexico's related limit on contributions between party committees was not preempted by FECA insofar as this limit applied only to funds used for state election campaigns.

https://www.ncsl.org/elections-and-campaigns/campaign-finance-regulation-state-comparisons.[9] Indeed, many states have gone substantially beyond the scope of FECA's foreign money ban. As the FEC recently noted in declining to find that Section 30121 applied to state ballot measure elections, seven states have extended their ban on foreign campaign spending to ballot measure elections. *See* Broussard Stmt. at 4 n.21 (citing Cal. Gov't Code § 85320; Colo. Rev. Stat. § 1-45-107.5; Md. Code, Election Law § 13-236.1; Nev. Rev. Stat. § 294A.325; N.D. Cent. Code § 16.1-08.1-03.15; S.D. Codified Laws § 12-27-21; Wash. Rev Code § 42.17A.417).[10] Far from suggesting that these state laws are preempted, FEC Commissioners instead have indicated that they represent a lawful attempt to fill in the gaps of FECA. *Id*. *See also* Goodman Stmt., *supra* n.4; Ellen L. Weintraub, *Op-Ed: Taking On Citizens United*, N.Y. Times, March 30, 2016, https://www.nytimes.com/2016/03/30/opinion/taking-n-citizens-united.html (FEC Commissioner Weintraub calls on "[s]tates [to] require entities accepting political contributions from corporations in state and local races to make sure that those corporations are indeed associations of American citizens — and enforce the ban on foreign political spending against those that are not").

Minnesota is also not alone in addressing spending by corporations with foreign ownership, another gap in Section 30121. The state of Maine, as well as the cities of Seattle, Washington, and

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[9] Alaska Stat. § 15.13.068; Cal. Gov. Code § 85320(a); Colo. Rev. Stat. § 1-45-103.7(5.3); Fla. Stat. § 106.08(12)(b); Haw. Rev. Stat. § 11-356; Idaho Code Ann. § 67-6610d; Ind. Code § 3-9-2-11; Iowa Code § 68A.404(2)(c); La. Stat. Ann. § 18:1505.2(M); Md. Code, Election Law § 13-236.1; Mo. Const. Art. XIII, § 23(3)(16); Miss. Code Ann. § 23-15-819; Mont. Code Ann. § 13-37-502; Neb. Rev. Stat. § 49-1479.03; Nev. Rev. Stat. § 294A.325; N.H. Rev. Stat. Ann. § 664:5(VI); N.J. Stat. Ann. § 19:44A-8.1(e); N.Y. Elec. Law § 14-107(3); N.D. Cent. Code § 16.1-08.1-03.15; Ohio Rev. Code § 3517.13; S.D. Codified Laws § 12-27-21; Wash. Rev. Code § 42.17A.417; W. Va. Code § 3-8-5g.

[10] Since this 2021 FEC ruling, four additional states have enacted laws to prohibit foreign spending in state ballot measure elections and referenda. *See* Maine Question 2, Prohibit Foreign Spending in Elections Initiative (2023), to be codified at 21-A MRSA § 1064; Fla. Stat. § 106.08(12)(b); Idaho Code Ann. § 67-6610d; Neb. Rev. Stat. § 49-1479.03.

Portland, Maine, have similarly banned campaign contributions and expenditures in their elections by corporations meeting a prescribed threshold of foreign ownership. *See* Maine Question 2, Prohibit Foreign Spending in Elections Initiative (2023), to be codified at 21-A MRSA § 1064; *see also* Seattle, Wash., Mun. Code §§ 2.04.010, 2.04.370, 2.04.400; Portland, Me., Mun. Code §§ 9-91, 9-92, 9-93.

Further, the notion that FECA could have "occupied the field" here is undercut by the fact that FECA—and the section of Title 22 that FECA references—are silent with respect to the campaign expenditures of foreign-owned domestic corporations: Congress has clearly "left room" for states to address this spending. Indeed, as explained in *supra* Section I.C.1, Congress was not contemplating campaign expenditures coming from the treasuries of *any* corporations in federal elections prior to *Citizens United*. Almost as a matter of historic necessity, FECA does not speak to this question. And where FECA does not address issues of foreign campaign spending, it is incumbent upon states to fill in these gaps, as the FEC itself recognized in its advisory opinions on foreign spending in state ballot measure elections.

Finally, finding field preemption of state election laws here—particularly absent any "plain statement" in FECA on the question of campaign spending by foreign-owned domestic corporations—would undercut federalism and do damage to state and local democracy. If states are barred from testing different types of campaign finance systems, they will not function as the "laboratories" of democracy that our federalist system anticipates, depriving the country of the potential gains from such innovation. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Advocating for federal preemption of state campaign finance laws, as plaintiff does here, undermines the project of self-governance, inhibiting the expression of local

values and preferences and undercutting citizens' ability to ensure their government remains responsive to local constituencies.

CONCLUSION

For these reasons, CLC respectfully urges the Court to reject plaintiff's preemption claims and to deny its motion for preliminary injunction.

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