UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Chamber of Commerce, a Minnesota nonprofit corporation, Plaintiff, vs. John Choi, et al., Defendants.	Court File No. 23-cv-02015 (ECT/JFD) **MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

"[F]oreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government." *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.C. Cir. 2011), *aff'd mem.*, 565 U.S. 1104 (2012). Crafted in harmony with the principle of *Bluman*, the Democracy For The People Act ("Act") was adopted for the non-controversial purpose of protecting Minnesota's democratic self-governance from foreign influence.

The Chamber has brought this action seeking to strike down the Act, but it lacks standing. That issue alone warrants dismissal. If the Court reaches the merits, the Chamber likewise falls short. Foreign actors have sought to influence American elections, including through corporations. Shareholders holding as little as 1% of a corporation's shares can leverage and substantially influence corporations, including causing leadership change. The tools employed by the Act represent the least Minnesota can do and the least intrusive way to prevent foreign influence in Minnesota elections through corporations.

The Court should deny Plaintiff's Motion for Summary Judgment (ECF No. 128), grant State Defendants'[1] motion for summary judgment, and dismiss Plaintiff's Complaint in its entirety.

STATEMENT OF UNDISPUTED FACTS

I. THE DEMOCRACY FOR THE PEOPLE ACT

The Act defines foreign-influenced corporations, restricts them from certain campaign activities, requires certification, and specifies that existing penalties apply.

Under the Act,

> (d) "Foreign-influenced corporation" means a corporation as defined in **paragraph (c), clause (1) or (3),** for which at least one of the following conditions is met:
>
> > (1) a single foreign investor holds, owns, controls, or otherwise has direct or indirect beneficial ownership of **one percent or more** of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation;
> >
> > (2) two or more foreign investors in aggregate hold, own, control, or otherwise have direct or indirect beneficial ownership of **five percent or more** of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; or
> >
> > (3) a foreign investor participates **directly or indirectly** in the corporation's decision-making process with respect to the corporation's political activities in the United States.

Minn. Stat. § 211B.15, subd. 1(d). Corporation, in turn, means "(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out

[1] The State Defendants are George Soule, David Asp, Carol Flynn, Margaret Leppik, Stephen Swanson, and Faris Rashid, collectively "the Board." Margaret Leppik has been replaced on the Board by Dave Kleis. State Defendants will file a letter to that effect, requesting that the Court update the caption.

activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state." Minn. Stat. § 211B.15, subd. 1(c). Because the definition of foreign-influenced corporation is limited to a corporation as defined in paragraph (c) clause (1) or (3), it does not include nonprofit corporations like Plaintiff.

II. THE ACT'S PURPOSE IS TO PROTECT DEMOCRATIC SELF-GOVERNANCE IN MINNESOTA FROM FOREIGN INFLUENCE.

The Act's purpose, as reflected in hours of testimony and floor debate preceding its passage, is clear: protect democratic self-governance in Minnesota from foreign influence. This Court has recognized, and Plaintiff does not dispute, that the Act's purpose is substantiated by a "legislative record [that] includes many references to Minnesota's stated goal of limiting foreign influence." ECF No. 109, at 14; *see also* ECF No. 88, at 7-17.

III. SHAREHOLDER EXERT INFLUENCE OVER CORPORATE DECISION-MAKING ABOUT ELECTORAL SPENDING.

Shareholders influence corporations. A single shareholder with any level of investment is in a position to influence a corporation's expressive activities and its political expenditures. Expert Report of Sarah Haan ("Haan Report") 15.[2] "Corporate law does not constrain the influence of shareholders on a company's decision-making about its political activity, nor does it assign that decision-making to any particular actor within the corporation's organization." Haan Report 15-16; *see also* Deposition of Sarah Haan ("Haan

[2] ECF No. 130-10.

Tr.")[3] 120:5-14 ("there's going to be a lot of variety in the ways that corporations engage in political spending decisionmaking").

Indeed, if the person in the corporation who decides on political spending is low enough in the organizational structure, that person may not be subject to a fiduciary duty, and instead may be subject to pressure to please specific shareholders and keep them happy. Haan Tr. 165:1-167:2. It is possible that a shareholder could encourage a company to support a certain candidate or ballot initiative. Deposition of Richard Grubaugh ("Grubaugh Tr.")[4] 122:5-23:23; Deposition of Deeloh Technologies d/b/a Extempore ("Extempore Tr.")[5] 60:22-61:22; 65:12-21; 82:18-19; Haan Report 21-22.[6] This would be secret. Haan Tr. 193:24-194:18.

A. Informal influence.

Shareholders exert influence in a variety of informal ways, such as talking directly to CEOs or corporate managers. *See* Deposition of SPS Commerce, Inc. ("SPS Tr.")[7] 19:12-20:8, 71:14-20, 75:3-19; *see also* Grubaugh Tr. 92:14-15; Deposition of Lake of the

[3] ECF No. 130-11.

[4] Excerpts of the transcript of the deposition of Richard Grubaugh are attached as Exhibit 2 to the Aug. 9, 2024 Declaration of Janine Kimble.

[5] Excerpts of the transcript of the 30(b)(6) deposition of Extempore are attached as Exhibit 3 to the Aug. 9, 2024 Declaration of Janine Kimble.

[6] Professor Haan is not sure she has ever seen a shareholder proposal that directs the company to make a campaign finance expenditure, adding "[t]hat's not really how this works." Haan Tr. 114:13-16.

[7] Excerpts of the transcript of the 30(b)(6) deposition of SPS Commerce are attached as Exhibit 4 to the Aug. 9, 2024 Declaration of Janine Kimble.

Woods ("LW Tr.")[8] 75:19-77:20. [redacted]. They can also exert influence by selling stock or threatening to sell stock.

Access to the CEO matters. [redacted] When considering political expenditures, CEOs consider constituents, employees, *shareholders,* and to a lesser degree, their customers. SPS Tr. 101:16-102:2.

This informal influence occurs behind closed doors. As Professor Smith acknowledged, there is no transparency when it comes to influence, and there would be no record of any unsuccessful attempts by foreign national shareholders to influence US corporation relating to domestic politics:

> [I]f you had a foreign national shareholder contact a manager of a US corporation and start asking to direct those activities and the manager said can't talk with you about that, we can't do that, that would be an unsuccessful attempt and, I think, would be -- you know, I'm just not sure where unsuccessful attempts are terribly relevant or that we would generally know of those.

Deposition of Bradley Smith ("Smith Tr.")[9] 43:1-9. Professor Smith agreed that there are ways to try to evade detection of campaign finance law violations, and that of course people violate the law. Smith Tr. 46:5-9; 75:14-22; 76:3-77:4. But he did not speculate about whether the reason we would be unaware of unsuccessful attempts is because "it was a

[8] Excerpts of the transcript of the 30(b)(6) deposition of Lake of the Woods Cannabis Company are attached as Exhibit 5 to the Aug. 9, 2024 Declaration of Janine Kimble.

[9] Excerpts of the transcript of the deposition of Bradley Smith are attached as Exhibit 1 to the Aug. 9, 2024 Declaration of Janine Kimble.

private conversation that only two people were privy to," but testified only that we would not be aware of the unsuccessful attempts simply because they were unsuccessful. Smith Tr. 43:10-17.

Professor Haan agreed transparency is lacking. Haan Report 15; Haan Tr. 98:17-99:20. "[W]ithout enlisting corporations to identify their own foreign shareholders, this level of foreign influence could easily go undetected in every corporation that spends money to influence American elections." Haan Report 15; *see also* Haan Tr. 38:19-44:6 (noting lack of transparency and testifying she is aware of at least some political spending oversight committees that had foreign nationals as members). Some shareholders are trying to expand transparency in this space—specifically political spending—precisely because it is so opaque. Haan Tr. 178:4-179:18; Grubaugh Tr. 117:14-22. The impact of this lack of transparency is obvious, especially where the FEC's investigatory process is usually complaint-driven (80%) and a "relatively small percentage" is audit-driven. *See* Smith Tr. 16:12-17:15.

B. Formal Influence.

Many shareholders do not submit formal proposals to encourage change because they already engage the company through phone calls, emails, and visits, (Grubaugh Tr. 87:18-88:6), but they also have influence through formal mechanisms. Shareholders elect the directors, can nominate candidates for the board, and can voice their opinion about management pay. SPS Tr. 57:25-59:7, 88:4-7. Shareholders who own 1% and 5% aggregate can and do submit shareholder proposals. Grubaugh Tr. 34:1-13. Indeed, even shareholders holding less than 1% can garner significant support for their formal proposals.

Grubaugh Tr. 87:14-17, 95:4-12; *see also* Letter by John C. Coates IV ("Coates Ltr."), at 6 (April 21, 2022) [ECF No. 93-1].[10]

Any shareholder owning at least $2,000 of stock for three years can present a shareholder proposal. Haan Report 19; 17 CFR § 240.14a-8(b). $2,000 is significantly less than 1% of the market capitalization of most publicly traded companies. Haan Report 18 & n.52. The power to submit a shareholder proposal provides these shareholders "with significant leverage." Haan Report 18. A shareholder who has power to submit a shareholder proposal can exert influence; and holders of small percentages of stock can sway management or the board; "companies listen to their shareholders." Grubaugh Tr. 96:14-97:6; 112:19-113:23; 114:12-25; Coates Ltr. 6; Haan Tr. 175:5-22. Corporations take shareholder proposals seriously. Grubaugh Tr. 57:13-15, 97:24-98:10; *see also* Haan Report 18 ("[C]orporate managers are sensitive to shareholder proposals and routinely engage with shareholders who bring proposals.").

---

[10] The Coates Letter begins on page 27 of the submission of then-Legal Director of Free Speech for People Ron Fein to the Minnesota Senate. *See* https://assets.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/FSFP%20MN%20FIC%20SF3%20testimony%20Jud%20Cmte%2020230308%20with%20attachments.pdf, *archived at* https://perma.cc/K7FD-ZDTB. The Court did not cite the Coates Letter in its preliminary injunction order. ECF No. 109. This Letter is relevant in explaining how the Act would apply to a corporation and why the thresholds make sense. Indeed, even if it had not been submitted as part of the legislative history of the Act, the Court should still consider it as a legislative fact. Fed. R. Evid. 201 Note (distinguishing legislative facts from adjudicative facts); *see also United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976); *Project Vote v. Kelly*, 805 F. Supp. 2d 152, 180 n.21 (W.D. Pa. 2011). Professor Haan—State Defendants' expert and a corporate law expert like Professor Coates—agrees on many of these points. In short, two corporate law professors explain why 1% and 5% thresholds make sense. Plaintiff presents no corporate law expert.

Shareholders not only share their views, but they create change at companies. Companies are "always" concerned about potential shareholder challenges to their directors. Grubaugh Tr. 57:4-8. Even though shareholder proposals are nonbinding, corporations generally follow them if approved because shareholders can change the board if their proposal is not implemented. Grubaugh Tr. 57:22-58:16, 97:17-23. Companies can even be prompted to makes changes by shareholder proposals that are voted down. Grubaugh Tr. 109:22-111:18.

Shareholder pressure has increased and has created change in areas such as board and corporate activity, and some companies have made changes to the board level to refresh directors and bring in new blood. Haan Report 19; Grubaugh Tr. 56:4-11, 19-25; 62:22-24; 101:6-9. Indeed, companies can change their entire structure in response to shareholder pressure. Grubaugh Tr. 56:4-57:3. There are examples of large-scale changes, for example a change in leadership, that was brought about by foreign owners owning less than 5% of the company. Haan Report 21 (regarding Citigroup). Companies are so concerned about actions by a single shareholder or collective action among shareholders, even among groups as small as 5%, they adopt poison pills—these days to suppress shareholder activism. Haan Report 23-25.

The shareholder's formal right to bring a proposal ensures that they will exercise influence behind closed doors, because most of the activity around a proposal takes place privately, between the individual shareholder and the company's management. For example, companies regularly settle shareholder proposals before they are included in a proxy statement and before the public learns about the proposal—those negotiations are

secret. Haan Report 19-20; Haan Tr. 189:3-190:18; Grubaugh Tr. 104:23-105:1; Grubaugh Tr. 51:14-52:20, 107:20-108:11 (noting he is not involved in negotiations between corporations and shareholders regarding proposals). "The high rate of proposal settlements is important because it suggests that shareholders may exercise considerable influence at public companies that is not visible to other shareholders or the public." Haan Report 20. Because there is no transparency regarding these settlement discussions, virtually anything could be horse traded. Haan Tr. 189:21-190:18.

Topics that shareholders care about vary, but they are increasingly interested in environmental and social concerns, which could also be considered political activities. Grubaugh Tr. 55:6-56:8; 119:21-24. In terms of corporate interests, a corporation could choose to engage with shareholders in pre-proxy statement, closed-doors negotiations to avoid negative press. Grubaugh Tr. 92:20-93:18.

IV. FOREIGN MONEY IS A PROBLEM IN AMERICAN ELECTIONS.

"Foreign actors seeking to influence our political system routinely use corporations to disguise their role and to channel funds." Haan Report 14.

- "Foreign-influenced companies contributed over $163 million to committees in Colorado, Michigan, Minnesota, Montana, New York, and Washington between the start of the two-year 2018 election cycle and the end of 2022." Haan Report 14.
- In 2016, Uber and Lyft spent over $9 million on a ballot initiative in Austin, Texas. Weeks later, Uber disclosed that the Saudi Arabian government had invested $3.5 billion in the company, giving the Kingdom over 5% ownership and a seat on the company's board of directors. Coates Ltr. 3.
- In 2016, Airbnb gave $11 million to a super PAC to influence New York legislative races. Airbnb is partly owned by Moscow-based DST Global. Coates Ltr. 3-4.

- In 2016, APIC, a company controlled by two Chinese citizens, gave $3 million to a super PAC that supported Jeb Bush's run for president. Coates Ltr. 4; Haan Report 14.

- In 2012, a Connecticut-based subsidiary of a Canadian company gave $1 million to a pro-Mitt Romney super PAC. Coates Ltr. 4.

- In 2013, a New Jersey-based subsidiary of a Chinese-owned business contributed $120,000 to Terry McAuliffe's gubernatorial campaign in Virginia. Coates Ltr. 4.

- Professor Coates also identifies contributions to ballot initiatives by foreign-influenced corporations. Coates Ltr. 5.

- In San Diego in 2017, "a businessman was convicted in federal court of unlawfully funneling foreign funding into local elections through third parties and shell corporations in order to support politicians who might support his real estate development plans." City of Seattle, Ordinance 126035, Findings ¶ B.[11]

- In New York in 2019, "four individuals have been indicted on charges stemming from a scheme in which they laundered foreign money into U.S. elections via shell corporations and straw donors." *Id.*

- The United States government concluded the 2016 presidential election was subject to extensive foreign involvement. *Id.* ¶ D.

- The United States government has concluded that Russia, China, Iran, and other foreign actors are engaged in ongoing campaigns to undermine democratic institutions. *Id.* ¶ E.

- The FBI has concluded that foreign influenced operations include "criminal efforts to suppress voting and provide illegal campaign financing." *Id.* ¶ F.

- In fall 2023, U.S. Senator Robert Menendez and his wife, Nadine Menendez, were indicted for accepting hundreds of thousands of dollars in bribes to

[11] Ordinance 126035, City of Seattle, available at http://clerk.seattle.gov/~archives/Ordinances/Ord_126035.pdf, *archived at* https://perma.cc/G8BD-ZYG2. In its preliminary injunction order, the Court discounted the relevance of these findings. Again, the Court should consider this information to be legislative facts, because the Legislature did not need to issue findings and because Minnesota does not need to wait until the conduct occurs here to prohibit it. *Brnovich v. Democratic National Committee*, 594 U.S. 647, 686 (2021).

benefit Egypt, and some of those bribes were routed through foreign-influenced American companies. Haan Report 13-14.

- There are several examples of extensive political spending in Maine by foreign-influenced corporations. State's Bf., *Cent. Maine Power Co. v. Maine Comm'n on Governmental Ethics & Election Pracs.*, ECF No. 47, at 3-6, 19, No. 1:23-CV-00450-NT (D. Me. Jan. 12, 2024), *appeal docketed*, No. 24-1265 (1st Cir.).

"There certainly is reason to suspect there may be much more because, of course, if you're a foreign actor trying to interfere in our elections, you have to do it secretly. . . . [T]here just is a transparency problem." Haan Tr. 108:22-110:14. It makes sense why foreign nationals want to engage through a corporate form, because the advocacy is more effective because there is more money at stake, (*see* Smith Tr. 71:9-19), it is not just their own money, (Haan Tr. 161:17-163:4), and it gives legitimacy to the spending and disguises it, (Haan Tr. 162:9-11).

V. AMERICAN TRADITION SUPPORTS PROSCRIBING FOREIGN MONEY IN AMERICAN ELECTIONS, INCLUDING FOREIGN MONEY ROUTED THROUGH A CORPORATION.

"Minnesota's keen interest in keeping foreign influence out of elections reflects one of the earliest and sharpest impulses of the Founding." Haan Report 10. "'The Constitutions' founders were intensely concerned about the prospect of foreign involvement in American politics.'" *Id.* at 10-11 (quoting Zephyr Teachout, *Extraterritorial Electioneering and the Globalization of American Elections*, 27 BERKELEY J. INT'L L. 162, 168-69 (2009)). For example, with respect to early banks, President Jackson was concerned that the Bank of North America's board of directors could have had interests identified with its foreign stockholders, which would be cause to

"'tremble for the purities of our elections.'" Haan Report 11-12 (quoting Andrew Jackson, "Veto Message—Bank of the United States (July 10, 1832), *reprinted in* THE STATESMANSHIP OF ANDREW JACKSON AS TOLD IN HIS WRITINGS AND SPEECHES (Francis Newton Thorpe, ed.) (N.Y.: The Tandy-Thomas Co., 1909), at 161-62). Further, certain legislative charters from the 1800's, found in charters of bank corporations and for other industries, sometimes prohibited non-resident (foreign) shareholders from voting in corporate elections by proxy, or prohibited foreign citizens from serving as directors. Haan Report 12-13. "These restrictions reflected a concern of public officials that foreign shareholders would seek to influence domestic corporations, and that American law must guard against the effects of such influence." Haan Report 13.

In several American sectors long-standing statutes, regulations, and legal traditions treat foreign companies or foreign-influenced companies differently from domestic companies. Coates Ltr. 3. For example, in "shipping, aircraft, telecom, and financial services, laws governing all of these industries limit or regulate foreign ownership or control." *Id.*; *see also* 47 U.S.C.A. § 310(b)(3). There is no dispute that "the desire to keep foreign influence out of elections reflects one of the earliest and sharpest impulses of the founding." Smith Tr. 46:19-23.

VI. COMPANIES—EVEN PUBLICLY TRADED COMPANIES—CAN SATISFY THE "REASONABLE INQUIRY" STANDARD.

Companies can satisfy the reasonable inquiry standard. *See* Haan Report 26-27; *see also* Haan Tr. 144:23-146:22. Most entities are private and already can and do track shareholder information. Coates Ltr. 10. Public entities have the ability (and are required

to at least annually, as well as for events like mergers, charter amendments, special meeting items, etc.) to ascertain ownership on any arbitrary record date; the ability to make this determination is essential for basic corporate governance, and most public entities use an intermediary to make this determination. Coates Ltr. 11-12. Regarding determinations of whether a shareholder is a foreign owner, most public shares are owned or held through a broker, which may have citizenship requirements, and it is easy to check the foreign status of non-individuals by looking at place of incorporation or principal place of business. Coates Ltr. 12-13.

The "due inquiry" standard is comparable to the law's "reasonable inquiry" standard, which issuers are familiar with from federal securities laws. Coates Ltr. 13-14. This standard imposes "only the customary obligation to make such reasonable inquiry as the corporation would do in any event" and, as a result, the Act "does not impose a meaningful additional information-gathering cost beyond what it would already be required to do under existing law." Coates Ltr. 12–13.

An established industry already helps companies identify shareholders. Companies hire outside professionals, such as proxy solicitors like Plaintiff's expert Richard Grubaugh to help them connect with investors, for example to convince investors to vote a certain way. Grubaugh Tr. 26:3-27:24, 29:20-31:8, 37:7-38:20. These solicitations include contact with foreign shareholders. Grubaugh Tr. 7:17-11. Proxy solicitors obtain identifying information about investors using a variety of tools: they obtain the registered shareholder list from a transfer agent; the list of non-objecting beneficial owners from Broadbridge; and 13F holders via public SEC filings, which include addresses. Grubaugh Tr. 38:25-39:3,

40:10-21. Broadbridge has the ability to send proxy material to all shareholders—even objecting beneficial owners—as of any particular record date. Grubaugh Tr. 40:22-42:7.[12] Share registers can be requested multiple times per year and are available for inspection at annual meetings; Mr. Grubaugh frequently relies on the list in providing proxy services. Grubaugh Tr. 38:25-40:21, 138:2-8, 138:25-139:5, 142:1-144:21. Proxy solicitors provide publicly traded companies with contact information for investors "all the time." Grubaugh Tr. 148:16-22. Although the stock for publicly traded companies is traded daily, it is rare for a 5% stockholder's identity to change daily. Grubaugh Tr. 134:10-14. [redacted]

Mr. Grubaugh offered no opinion about privately held companies. Grubaugh Tr. 25:25-26:2, 128:11-13. It is undisputed that it is not difficult for privately held companies to determine if they are "foreign-influenced" under the Act. Compl. ¶ 50; LW Tr. 94:8-11; Extempore Tr. 44:25-45:4.

[12] Mr. Grubaugh testified that the identities of objecting shareholders are not shared with anyone other than brokerage firms and banks. Grubaugh Tr. 146:20-47:5. Companies can still glean information about objecting beneficial owners based on the brokerage firms that holds their shares. Coates Ltr. 12-13. Or by asking for non-identifying information about citizenship from the intermediaries. Haan Tr. 155:23-156:3. Even assuming the information is completely inaccessible to the company, it is unclear how a "reasonable inquiry" could require a company to obtain and know information that is completely inaccessible to them.

Mr. Grubaugh's expert report states that "it is impossible for publicly traded companies to identify each of their individual shareholders at any given time," (Grubaugh Report 5; *see also id.* at 12), but he is not familiar with the reasonable inquiry standard and was not aware that standard exists in the Act. Grubaugh Tr. 80:9-18.[13]

VII. FACTS DEMONSTRATING THAT PLAINTIFF LACKS STANDING.

Plaintiff argues the statute applies to it, even though it is a non-profit. Plaintiff argues that it transferred money to its political action committee earlier than it would have for fear that it would violate the Act, and now it may incur taxes for the transfer. Pl.'s Bf. 19. That is incorrect. The statute itself—on its face—does not cover non-profits. The Court has already read and interpreted the statute and agrees. ECF No. 109, at 3. If the Chamber incurs taxes on its transfer to its political fund, those liabilities are self-inflicted. So long as funds to the non-profit are "not earmarked for political activity," then they are not affected by the Act. Deposition of Andrew Olson ("Olson Tr.)[14] 50:11-24. The Board's Executive Director agrees. Aug. 8, 2024 Sigurdson Decl. ¶¶ 6-7. A non-profit's acceptance of money to its general treasury, which is not earmarked, is not affected by this Act. General treasury money, which is what all of the Chamber's money is, (Deposition of MN

[13] Counsel for the Chamber drafted 25% of Mr. Grubaugh's report but would not allow him to identify which 25%. Grubaugh Tr. 14:13-15:10. That calls into question the weight the Court should afford his opinions.

[14] Excerpts of the transcript of the deposition of Andrew Olson are attached as Exhibit 6 to the Aug. 9, 2024 Declaration of Janine Kimble.

Chamber of Commerce ("Chamber Tr.")[15] 129:2-3), is money that can be used for many different purposes, Minn. Stat. § 10A.01, subd. 17c, and is not affected by this Act.

Plaintiff identified only three members that it says are affected by the Act. Chamber Ans. Int. 6, 8 & Ans. RFP 8 (ECF No. 130-18). There is no evidence in the record that any of Plaintiff's members made prohibited contributions, independent expenditures, or ballot question expenditures in the past. SPS Tr. 90:2-19, 122:20-124:10; LW Tr. 97:8-12, 103:21-104:17; Extempore Tr. 151:21-152:1. There likewise is no evidence in the record of any of Plaintiff's members presently proposing to prepare budgets and allocate assets that will be used to make prohibited contributions, independent expenditures, or ballot question expenditures, now or in the future. SPS Tr. 100:4-23; 107:24-109:3; LW Tr. 96:20-97:1; Extempore Tr. 40:17-23, 151:13-15. Instead, the language is speculative, such as "would like to." Extempore Tr. 159:21-160:15; SPS Tr. 107:14-23. Multiple companies have indicated they would like to support the Page Amendment, but as it is not on the ballot, the Act does not affect the companies' activities regarding that amendment; there is nothing in the record to indicate the Page amendment will be placed on the ballot imminently.

The Chamber asserts that "at least 100 of the Chamber's members" are foreign-influenced under the Act. Loon Decl. ¶ 11, ECF No. 134. Declarations must be made on personal knowledge. Fed. R. Civ. P. 56(c)(4). Here, the Chamber testified that they did not ask their members if they had foreign influence. Chamber Tr. 80:3-8. Instead, they simply

[15] Excerpts of the transcript of the 30(b)(6) deposition of the Minnesota Chamber of Commerce are attached as Exhibit 7 to the Aug. 9, 2024 Declaration of Janine Kimble.

asked some of their members generally if they would be able to certify that they were not foreign-influenced under the Act. Chamber Tr. 62:20-63:4, 83:6-25, 99:23-100:9. Some members reported to the Chamber that they would be "unable to certify" that they are not foreign influenced under the Act, but the Chamber did not discuss the "reasonable inquiry" standard. Chamber Tr. 58:13-60:2, 62:20-63:4, 65:22-66:9, 67:28-68:4, 82:7-83:2. The Chamber's research—which was not documented and not produced—involved determining which members were corporations or LLCs and then looking at their websites to see if they were publicly traded. Chamber Tr. 84:16-86:6, 105:4-106:22; *see also* Pl. Ans. Int. 3 & 4 (ECF No. 130-18) (refusing to disclose the identity of the 100 members). The Chamber's baseless statements are unworthy of credence.

VIII. Professor Haan's Report and Opinions are Admissible.

Plaintiff argues Professor Haan's opinions are inadmissible, speculative, and should be disregarded. ECF No. 129, at 10. State Defendants respond to Plaintiff's arguments about the admissibility of Professor Haan's report and opinions in their brief opposing Plaintiff's *Daubert* motion (ECF No. 122), and expressly incorporate those arguments herein.

LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute over a fact is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute over a fact is "material" only if its

resolution might affect the outcome under governing substantive law. *Id.* at 248. If the "record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

ARGUMENT[16]

I. PLAINTIFF LACKS ARTICLE III STANDING

State Defendants asserted lack of standing in their Answer. ECF No. 18, at 49. Following the hearing on Plaintiff's Motion for Preliminary Injunction, the Court entered an Order for supplemental briefing. ECF No. 102. In their supplemental memorandum, State Defendants reiterated their request at oral argument that the Court refrain from issuing an order addressing Plaintiff's standing on its own and associational standing. ECF No. 105, at 2. As of the hearing, the parties were engaged in discovery and Plaintiff had not produced any responsive documents to State Defendant's discovery requests. *Id.*

Despite State Defendants' request, the Court evaluated Plaintiff's Article III standing in its Order. ECF No. 109, at 7–8. Without the benefit of a full record, the Court relied on self-serving declarations of CEOs from three member entities to confirm Plaintiff's standing.[17] *Id.* Documents, information, and testimony obtained in discovery conclusively prove that these entities have never made contributions or expenditures

[16] State Defendants will respond to ECF No. 141 in their reply memorandum.

[17] The Court was silent about Plaintiff's standing in its own right and based its confirmation on a theory of associational standing. ECF No. 109, at 7–8.

prohibited by the Act or that any purported plans to do so in the future are purely speculative.

The only purported alleged harm suffered by any of Plaintiff's over 6,300 members are the self-serving declarations from three entities; none of which produced any supporting evidence in discovery.

On its own, Plaintiff fares no better. The only alleged harm to Plaintiff itself is that it may suffer unspecified tax consequences due to a PAC contribution it made in 2023 due to its subjective fear of the Act's enforcement that it would have made in 2024. But the Chamber's harm – to the extent it actually exists – is purely self-inflicted because Act does not apply to non-profit corporations. Plaintiff seeks nothing more than an advisory opinion to quell the subjective, unspecified fears of its members.

State Defendants urge the Court to reconsider its confirmation of Plaintiff's Article III associational standing because the Court's decision was based on an incomplete and underdeveloped factual record. Additionally, the Chamber lacks standing in its own right because it is not a foreign-influenced corporation under the Act.

A. Article III Principles.

If subject matter jurisdiction is lacking, the case must be dismissed. Fed. R. Civ. P. 12(b)(1), (h)(3).

Rather than "rushing to decide [] difficult First Amendment question[s] of first impression," courts in the Eighth Circuit should begin with the threshold jurisdictional question of whether a plaintiff has Article III Standing. *Wallace v. ConAgra Foods, Inc.*, 747 F.3d 1025, 1029 (8th Cir. 2014) (internal quotation and citation omitted). Here, the

Complaint raises an issue of first impression. It is axiomatic "that courts must make every effort to avoid deciding novel constitutional questions" and should only do so when "absolutely necessary to a decision of the case." *Wallace*, 747 F.3d at 1029 (citing *Burton v. United States*, 196 U.S. 283, 295 (1905)). And even where a plaintiff may have alleged sufficient injury to show Article III standing, courts have refrained from "adjudicating abstract questions of wide public significance which amount to generalized grievances pervasively shared and most appropriately addressed in the representative branches. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474–75 (1982) (internal quotation and citation omitted); *see FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) ("In particular, the standing requirement means that the federal courts decide some contested legal questions later rather than sooner, thereby allowing issues to percolate and potentially be resolved by the political branches in the democratic process.").

There is no principle "more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). Indeed, the judicial power defined by Article III is not "an unconditioned authority to determine the constitutionality" of legislative acts and is "not merely a troublesome hurdle to be overcome if possible so as to reach the merits of a lawsuit." *Valley Forge* 454 U.S. at 471, 476. Relevant here, a declaratory judgment that a statute is unconstitutional may provide favorable precedent on an abstract First Amendment issue, but if this were sufficient to satisfy Article III "federal courts would be busy indeed issuing advisory opinions that could

be invoked as precedent in subsequent litigation." *Digit. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958–59 (8th Cir. 2015); *see Valley Forge*, 454 U.S. at 471 ("The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights.") Strong opposition to government action alone is insufficient to confer Article III standing. *All. for Hippocratic Med.*, 602 U.S. at 382 ("An Article III court is not a legislative assembly, a town square, or a faculty lounge."). As a non-profit, Plaintiff is explicitly excluded from the Act. Minn. Stat. § 211B.15 subd. 1(d).

Plaintiff bears the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Standing is more than a pleading requirement; it is an "indispensable part of the plaintiff's case" and as a result "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Id.*

As to Plaintiff's as-applied challenge, "[a] plaintiff generally cannot prevail on an as-applied challenge without showing that the law has in fact been (or is sufficiently likely to be) unconstitutionally applied to [him]." *McCullen v. Coakley*, 573 U.S. 464, 485 n.4 (2014) (emphasis in original).

B. Associational Standing Principles.

Article III standing is much more difficult to establish when a plaintiff, like the Chamber, is not the object of the challenged government action. *Valley Forge*, 454 U.S. at 474; *see Lujan*, 504 U.S. at 562 ("Thus, when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but is ordinarily substantially more difficult to establish.") (internal citation and quotation omitted). Standing under these circumstances "depends on the unfettered choices made by

independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *Lujan*, 504 U.S. at 562.

To demonstrate associational standing, Plaintiff must show: 1) its members would otherwise have standing in their own right; 2) the interests it seeks to protect are germane to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the litigation. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). Plaintiff does not need to establish that every one of its members would have standing to sue individually. Still, it must "make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497–98 (2009). And like an individual, an organization may not establish standing simply due to "the intensity of the litigant's interest or because of a strong opposition to the government's conduct." *All. for Hippocratic Med.*, 602 U.S. at 394 (citation and quotation marks omitted).

Critically, the test is not "whether, accepting the organizations self-description of the activities of its members, there is a statistical probability that some of those members are threatened with concrete injury." *Summers*, 555 U.S. at 497. Further, "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *All. for Hippocratic Med.*, 602 U.S. at 394. Standing does not exist simply because an "organization diverts its resources in response to a defendant's action." *Id.* at 395.

With these principles in mind, State Defendants will explain why the Chamber lacks Article III standing as there has been no injury.

C. Insufficient Injury.

For Article III standing, injury in fact requires "an invasion of a legally protected interest which is (a) concrete and particularized[18] . . . and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. It is well settled that allegations of possible future injury are insufficient to confer Article III standing. *Clapper*, 568 U.S. at 409; *Wallace*, 747 F.3d at 1031 ("Time and again the Supreme Court has reminded lower courts that speculation and conjecture are not injuries cognizable under Article III.")

Imminence is a "somewhat elastic concept, but it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes – that the injury is certainly impending. *Clapper*, 568 U.S. at 409. Imminence is stretched beyond its purpose when a "plaintiff alleges only an injury at some indefinite future time, and the acts necessary to make the injury happen are at least partly within the plaintiff's own control." *Lujan*, 504 U.S. at 564 n.2. Theories of injury like Plaintiff's that rely on a speculative chain of possibilities do not satisfy the requirement that a threatened injury be "certainly impending." *Clapper*, 568 U.S. at 410–11.

The entirety of Plaintiff's alleged harm to itself and its members is either speculative, hypothetical, or objectively unreasonable. First, there is no evidence in the

[18] Particularized means "the injury must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1.

record that any of Plaintiff's members made prohibited contributions or independent expenditures in the past. *Supra* p. 16.

Second, there is no evidence in the record of any of Plaintiff's members presently proposing to prepare budgets and allocate assets that will be used to make prohibited contributions, independent expenditures, or ballot question expenditures, now or in the future. Throughout discovery, Plaintiff failed to identify a single member that made any contributions or expenditures that would be prohibited by the Act and has not produced any concrete evidence that any of its members intend to make any prohibited contributions or expenditures in the future. *Supra* p. 16.

Third, while Plaintiff has presented evidence that it suffered present costs and burdens in the form of potential tax exposure, Loon Decl. ¶ 11, ECF No. 134, this "injury" is insufficient to confer Article III standing because it "improperly waters down the fundamental requirements of Article III." *Clapper*, 568 U.S. at 416 ("Respondent's contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing – because the harm respondents seek to avoid is not certainly impending. In other words, respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.") The Chamber's harm to itself is one of its own making, as it is not even a foreign-influenced corporation under the Act. Additionally, the Chamber's harm may or may not have even been realized (tax implications), and present costs are insufficient in any event. *See In re Murray Energy Corp.,* 788 F.3d 330 (D.C. Cir. 2015) (rejecting a challenge to the EPA's anticipated but not yet final rule restricting carbon

dioxide emissions for lack of standing and denying the plaintiff's theory of standing that it suffered harm in the form of costs incurred in preparation for the anticipated final rule).

In sum, the record is devoid of any evidence of prohibited expenditure or contributions that Plaintiff (a non-profit excluded from the Act) or any of its members have made in the past or would make in the future, but for the Act. And Plaintiff has failed to identify a single member that would be classified as a foreign-influenced corporation that would be, or has been, prevented from making any such contributions or expenditures now or in the future. If the Court were to confer Article III standing based on the record developed in discovery, it would stretch the concept of imminence well beyond its breaking point. Plaintiff has simply failed to show any evidence of concrete, particularized, and actual or imminent harm to itself or its members.

D. Chilling.

Plaintiff also attempts to rely on claims of subject chilling and self-censorship to show harm to itself and its members. Compl. ¶¶ 37–38, 63, 67, 82, 102, 161–62. Plaintiff asserts without evidence that itself and its members' speech has been chilled based on unsupported speculation about the Act's certification requirement and fear of future potential enforcement actions. This alone, however, is insufficient to confer Article III standing and, moreover, has not been borne out in discovery. Companies have means of determining their ownership. *See supra* p. 12-15.

Under certain circumstances, a chilling effect on protected speech alone can constitute a sufficient injury in fact for Article III standing. *Balogh v. Lombardi*, 816 F.3d 536, 542 (8th Cir. 2016). Mere allegations of subjective chill, like we have here, are "not

an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Id.* (internal citation and quotation omitted). A plaintiff cannot establish standing "simply by claiming that [it] experienced a chilling effect that resulted from a governmental policy that does not regulate, constrain, or compel any action on [its] part." *Clapper*, 568 U.S. at 419. The relevant inquiry is "whether a party's decision to chill his speech in light of the challenged statute was objectively reasonable." *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011) (internal citation and quotation omitted). And reasonable chill for pre-enforcement actions requires an intent to engage in a course of conduct affected with a constitutional interest, but prohibited by statute, along with a credible threat of prosecution. *Id.* Logically, this means that a decision to chill speech must have been made in the first instance.

Remarkably, Plaintiff claims that the practical effect of the certification requirement "is that all corporations and limited liability companies will likely take steps to avoid making independent expenditures and thereby avoid exercising their free speech rights," regardless of whether they are foreign-influenced corporations. Compl. ¶ 38. Yet when asked about this allegation by State Defendants, Plaintiff relied solely on the three declarations. Pl. Ans. Int. 6 (ECF No. 130-18). Plaintiff relied on the same three declarations when asked to identify all members that seek to make prohibited expenditures or contributions but are unable to do so because of the Act. Pl. Ans. Int. 8 (ECF No. 130-18). And Plaintiff has no documents evidencing its claim that over one hundred members seek to make prohibited contributions but have not done so because of the Act. Pl. Ans. RFP 8 (ECF No. 130-18).

Plaintiff's descriptions of its members' self-censorship are unsupported by the record. Plaintiff and its members are allegedly fearful of facing fines, penalties, and prosecution for engaging in activities prohibited by the Act and think State Defendants are "expected to prosecute violations." Compl. ¶¶ 8, 65. Plaintiff has failed to name any members that are fearful of prosecution outside of the three entities that submitted declarations. SPS, however, has not changed its operations due to the Act, is not refraining from election related contributions or expenditures prohibited by the Act, and currently has no plans to support or oppose candidates. *Supra* at p. 16; SPS Tr. 114:23-115:20. Lake of the Woods has not engaged in any activities prohibited by the Act at any point in its existence or changed its operations in any way because of the Act. *Supra* at p. 16; LW Tr. 37:2-6. The same goes for Extempore. *Supra* at p. 16; Extempore Tr. 150:2-4. As for the alleged additional unnamed members that purportedly spoke with Plaintiff, they did not explicitly state they were fearful of fines and prosecution; Plaintiff subjectively interpreted their discussions that way. Chamber Tr. 86:25–87:17.

All claims in the record of a subjective chill are based on speculation about future conduct, which is an insufficient injury to confer Article III standing. For instance, when asked what speech has been chilled, Extempore could not point to anything specific other than the possibility of ceasing payment of membership dues and the fact that it *might* want to get involved in political speech in the future. Extempore Tr. 143:7–19, 158:19–161:17. As for Lake of the Woods, hemp-derived THC has been legal in Minnesota since its founding, yet it has never engaged in activities prohibited by the Act and has no evidence of any actual or concrete plans to do so in the future. LW Tr. 82:19–84:14, 100:23–103:20,

108:9–109:15, 110:7–111:2. And when asked about any expenditures SPS would want to make in the future, but believe they would be blocked from making due to the Act, its designee replied that he would "hate to speculate on the future," that he "can't speculate on how we would do it," and that he does not "know what will come, I don't know what the future holds." SPS Tr. 106:5–108:21.

It strains credulity to argue that Plaintiff has Article III standing when the three identified members have never engaged in the Act's prohibited activities and have no actual or concrete plans or intent to do so in the future. There is simply nothing to chill or any evidence of self-censorship.

E. Pre-enforcement Review.

Ultimately, this action boils down to an improper request for pre-enforcement review. Article III standing for pre-enforcement review exists when a plaintiff "has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *St. Paul Area Chamber of Com. v. Gaertner*, 439 F.3d 481, 485 (8th Cir. 2006). Thus, a party seeking pre-enforcement review suffers an adequate injury "when it must either make significant changes to its operations to obey" the statute at issue or "risk a criminal enforcement action by disobeying" the statute. *Minn. Citizens Concerned for Life v. FEC*, 113 F.3d 129, 131 (8th Cir. 1997)

As discussed above, the risk of prosecution and criminal enforcement is zero. Plaintiff is a non-profit and is not subject to the Act's prohibitions. And there is no evidence in the record of any of Plaintiff's members making changes to its operations, much less

significant changes, because of the Act. On the contrary, each of the three identified members testified they have never made any prohibited contributions or expenditures, have not budgeted or allocated assets to make any such contributions or expenditures now or in the future, and have not changed their business operations in any significant way due to the Act. *See supra* p. 16.

The Chamber does not have associational standing where it cannot identify any specific *foreign-influenced* corporation that plans to engage in behavior that would violate the statute. There is no concrete and particularized harm to the Chamber or its members. As for the Chamber, the Act does not apply to it and present costs and burdens related to the Chamber's taxes are insufficient to confer standing. The Chamber and its members do not identify any specific expenditures or contributions they plan to make. As such, the alleged harm is speculative, rather than actual or imminent. And there has been no unreasonable chill where none of the Chamber's members have made any changes to their operations.

II. THE ACT IS NOT PRE-EMPTED.

The Chamber argues the Act is pre-empted by federal law. Pl.'s Bf. 38. This Court already thoroughly addressed this issue on Plaintiff's motion for preliminary injunction. ECF No. 109, at 23-30. That analysis was a question of law only. The cases on which this Court relied are still good law and there is no reason for the Court to disturb its analysis. Since this Court's decision, a federal court in the District of Maine likewise concluded that a state-passed foreign-influence constitutional provision was not pre-empted by federal law, except to the extent it applied to federal candidate elections. *Cent. Maine Power Co.*

v. Maine Comm'n on Governmental Ethics & Election Pracs., No. 1:23-CV-00450-NT, 2024 WL 866367, at *11 (D. Me. Feb. 29, 2024), *appeal docketed*, No. 24-1265 (1st Cir.).[19]

Plaintiff argues the Court may reach a different conclusion at this stage because the Court applies a different standard at the preliminary-injunction stage versus summary judgment stage. Pl. Bf. 38-39. Although technically true, that is worse for Plaintiff. At the preliminary injunction stage, the Plaintiff had to show it was "likely to prevail on the merits." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731–32 (8th Cir. 2008). At this stage, to prevail on its *affirmative* motion for summary judgment, Plaintiff must show more—that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Moreover, there is no indication in the Court's preliminary injunction order that the standard affected the outcome as to the Court's preemption analysis. Instead, the Court read the plain language of the statute and analyzed it in light of case law. Plaintiff fails to explain how a different procedural posture should affect the Court's analysis of the Act.

For completeness, the Board briefly explains the legal bases on which the Court should again conclude the Statute is not pre-empted.

There is a strong presumption against pre-emption. *See Weber v. Heaney*, 995 F.2d 872, 875 (8th Cir. 1993). And the Court should presume that Congress did not intend to

[19] In the Maine case, the court granted plaintiffs' motion for a preliminary injunction and the State appealed. Docket No. 24-1265 (1st Cir.). Plaintiff may argue there is some significance to Defendants' decision not to appeal the preliminary injunction order in this case but there is none. *Sierra Club v. Robertson*, 28 F.3d 753, 756 n.3 (8th Cir. 1994) (the decision whether to immediately appeal an order denying or granting a motion for preliminary injunction "is left to the party's discretion" and the preliminary injunction order can be raised on appeal after final judgment, citing 28 U.S.C. § 1292(a)(1)).

preempt the States' power to regulate matters of local concern. *Holtzman v. Oliensis*, 695 N.E.2d 1104, 1107 (N.Y. 1998) (citing several cases). Congress can pre-empt state laws in one of three ways: (a) expressly through statutory language; (b) implicitly where a state law conflicts with or stands as an obstacle to federal law; or (c) implicitly when it occupies a legislative field and leaves no room for state law. *WinRed, Inc. v. Ellison*, 59 F.4th 934, 941 (8th Cir. 2023) (quoting *Weber v. Heaney*, 995 F.2d 872, 875 (8th Cir. 1993)). Plaintiff does not argue conflict preemption. *See* Pl.'s Bf. 39-41. Neither express nor field preemption has occurred here.

First, the Federal Elections Campaign Act ("FECA") does not expressly preempt the Act because the challenged provisions do not apply to federal candidates for office. FECA expressly pre-empts state law with respect to federal elections only: "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." 52 U.S.C. § 30143(a). "Federal law supersedes state law concerning ... [l]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b)(3). Because the Statute does not cover federal candidates, it is not expressly pre-empted.[20]

[20] The Board agrees with the Chamber that the definition of candidate in Section 211B.01 applies rather than 10A.01. Section 211B.15 states, "*Unless otherwise provided*, the definitions in section 10A.01 also apply to this section." (emphasis added); *see also* Minn. Stat. § 211B.01, subd. 1 ("The definitions in chapter 200 and this section apply to this chapter."). Section 10A.01 provides the definition of any other words in Section 211B.15 not already defined by Sections 211B.01 or, 211B.15, or Chapter 200. Therefore, candidate in 211B.15 means the following: "an individual who seeks nomination or election to a federal, statewide, legislative, judicial, or local office including special districts, school districts, towns, home rule charter and statutory cities, and counties, except candidates for
(Footnote Continued on Next Page)

Second, the Act is not preempted under field preemption. "Field preemption occurs when federal law occupies a 'field' of regulation so comprehensively that it has left no room for supplementary state legislation." *Murphy v. NCAA*, 584 U.S. 453, 479 (2018) (quotation omitted). There is *no* federal law that defines the term "foreign-influenced corporations" or regulates such spending. Congress has not fully occupied the field of campaign finance regulations and there are relatively few federal laws applicable to state and local campaigns. Instead, state and local governments are free to regulate elections for state and local officials. *See* ECF No. 109, at 30.

III. THE ACT SURVIVES FIRST AMENDMENT SCRUTINY.

A. Standard.

The Act contains a contribution and expenditure ban. Minn. Stat. § 211B.15, subd. 4a. Challenges to laws that limit contributions and expenditures are subject to different levels of scrutiny. *See Bluman*, 800 F. Supp. 2d at 285-86. "[R]estrictions on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer

---

president and vice-president of the United States." The definitions in Section 211B.01 and Chapter 200 had already been "provided" for Section 211B.15. Concluding that the definitions in Section 211B.01 and Chapter 200 *do not apply* to Section 211B.15 leaves the words "committee" and "precinct" undefined. They not defined in Section 211B.15 *or* Section 10A.01. But the definitions are found in Section 211B.01 (committee) and Section 200.02 (precinct). The word "committee" is used several times in Section 211B.15 in parts of that Section that are unaffected by the Act. It is illogical to interpret the Act as eliminating the definition of committee and precinct. However, the challenged provisions nevertheless do not apply to federal candidates because there is no indication in the legislative history that the State intended to regulate foreign-influenced corporation spending in federal elections.

to the edges than to the core of political expression." *F.E.C. v. Beaumont*, 539 U.S. 146, 161 (2003). Contribution limits must be closely drawn. *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 385 (2000).

Although expenditure restrictions are usually subject to strict scrutiny, the Court should apply the "closely drawn" test here because the Act involves "participation [by non-citizens] in [a state's] democratic political institutions" or "substantially affects members of the political community." *Foley v. Connelie*, 435 U.S. 291, 295–96 (1978). The distinction between contributions and expenditures is grounded in the nation's anti-corruption interest, not its interest in preventing foreign influence. *Bluman*, 800 F. Supp. 2d at 288 n.3. The applicable standard is not material here, however, because the Act survives both levels of scrutiny.

In order to pass muster under strict scrutiny, a statute must be narrowly tailored to advance a compelling government interest. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 464 (2007) (controlling opinion of Roberts, C.J.).

Plaintiff brings a facial and as-applied challenge. "[C]ourts usually handle constitutional claims case by case, not en masse." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024). Because "'facial challenges threaten to short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways," they are "hard to win." *Id.* (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451, (2008)). "That is true even when a facial suit is based on the First Amendment." *Id.*

A plaintiff can only succeed in a facial challenge by "establish[ing] that no set of circumstances exists under which the Act would be valid," i.e., that the Act is unconstitutional in all of its applications. *United States v. Salerno*, 481 U.S. 739, 745 (1987). To put it another way, "the Government need only demonstrate that [the Act] is constitutional in some of its applications." *United States v. Rahimi*, 602 U.S. __, 144 S. Ct. 1889, 1898 (2024). This is the "'most difficult challenge to mount.'" *Id.* (quoting *Salerno*, 481 U.S. at 745). "An as-applied challenge consists of a challenge to the statute's application only as-applied to the party before the court." *Republican Party of Minn.*, *Third Cong. Dist. v. Klobuchar*, 381 F.3d 785, 790 (8th Cir. 2004).[21]

B. The Act Survives Strict Scrutiny.

1. The Government has a compelling interest in protecting democratic self-governance from foreign influence and the appearance of foreign influence.

Foreign Influence. Minnesota has a compelling interest in protecting its democratic self-governance foreign influence. Foreign investors may leverage ownership in U.S. entities to impact corporate governance to influence corporate political activity inconsistent with principles of democratic self-governance.

Bluman is the persuasive authority on this issue. In *Bluman*, foreign nationals who *resided* and worked in the United States brought a lawsuit against the Federal Election Commission challenging a federal law that prohibited them from making political

[21] Plaintiff pleaded an as-applied challenge in the Complaint. Compl. ¶ 92. State Defendants move for summary judgment as to all claims, including the as-applied challenge. Plaintiff did not move for summary judgment on its as-applied claim. *See generally* Pl.'s Bf. (not referring to an as-applied challenge).

contributions. *Bluman*, 800 F. Supp. 2d at 282-83. Writing for a three-judge panel of the District Court, Justice Kavanaugh, then-Circuit Judge, held that the statute did not violate the First Amendment. *Id.* at 292. The United States Supreme Court affirmed the decision without opinion. 565 U.S. 1104 (2012). By affirming the decision, the United States Supreme Court made *Bluman* binding precedent, until the Supreme Court declares otherwise. *See Hicks v. Miranda*, 422 U.S. 332, 344 (1975).

In *Bluman*, then-Judge Kavanaugh began by acknowledging the national debate spurred by the First Amendment implications of campaign finance laws. *See Bluman*, 800 F. Supp. 2d at 286 (citing *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); *Bukley v. Valeo*, 424 U.S. 1 (1976)). He then stated, "[t]his case does not implicate those debates. Rather, this case raises a preliminary and foundational question about the definition of the American political community and, in particular, the role of foreign citizens in the U.S. electoral process." *Id.* He noted that the Supreme Court has long upheld laws (at the local, state, and federal level) that exclude foreigners from "activities that are part of democratic self-government." *Id.* at 283, 286-87. In short, "the government may exclude foreign citizens from activities 'intimately related to the process of democratic self-government.'" *Id.* at 287 (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)).

"Independent expenditures and other forms of campaign finance are essential to the modern electoral process and therefore fall within this category." (Haan Report 10.) "'[E]xclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of political

self-definition.'" *Bluman*, 800 F. Supp. 2d at 287 (quoting *Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982)). The court then declared what it called

> a straightforward principle: It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis 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, 800 F. Supp. 2d at 288; *see also U.S. v. Singh*, 979 F.3d 697, 710-11 (9th Cir. 2020) (the compelling interest applies to state and local elections); *OneAmerica Votes v. State*, 518 P.3d 230 (Wash Ct. App. 2022) (citing *Bluman*, applying First Amendment precedent, and concluding state law that banned political contributions by foreign nationals was constitutional).

Bluman is consistent with *Citizens United*, which itself rested in large part on the premise that U.S. entities are "associations of citizens." *Citizens United*, 558 U.S. at 349; *see also Bluman*, 800 F. Supp. 2d at 289 (noting that the only four justices in *Citizens United* who spoke to the issue indicated that "the government obviously has the power to bar foreign nationals from making campaign contributions and expenditures") (citing *Citizens United*, 558 U.S. at 420-21). The Act simply makes sure entities contributing to our political process are, indeed, associations of U.S. citizens. And as a practical matter, it makes no sense to ban direct spending by foreign nationals but not indirect spending by the exact same foreign nationals through domestic entities. In *United States v. Singh*, for example, the Ninth Circuit concluded that a foreign national could not use his United

States-based company to funnel money into United States elections. 979 F.3d at 720-21. It was akin to a straw donation. *Id.*

In a similar case, which is now on appeal at the First Circuit, the court concluded the State of Maine had a compelling state interest in limiting foreign government influence in state and local elections. *Cent. Maine Power Co.*, 2024 WL 866367, at *12. The court further assumed without deciding that limiting foreign government interest in referenda elections is a compelling interest. *Id.*; *see also id.* at *10 (in the pre-emption analysis, observing that "'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[,]'" *quoting Bluman*, 800 F. Supp. 2d at 288, and noting "[t]he State, however, has an equally strong interest in regulating its own state and local elections").

This Court has already recognized "Minnesota's compelling interest to prevent foreign nationals from participating in our national political process extends to preventing foreign nationals—including foreign shareholders of domestic corporations—from controlling or exercising influence over a corporation's election-expenditures." ECF No. 109, at 15. But *Bluman* calls for a broader interest. In *Bluman*, the court explained the government 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*, 800 F. Supp. 2d at 288. Bluman wanted to contribute $100 to three candidate campaigns and pay to print flyers to distribute. *See Bluman*, 800 F. Supp. 2d at 285; Decl. of Benjamin Bluman, ECF No. 19-2, *Bluman v.*

Federal Election Comm'n, No. 10-1766 (D.D.C. Jan. 10, 2011). The Government in *Bluman* did not need to show that the contribution or flyers would *actually influence* the candidate or voters. Instead, as money can influence candidates and as donating to campaigns in and of itself is a core part of democratic self-government, the law was upheld. Here, too, the State's right extends to preventing foreign money in elections (directly or indirectly and through corporations) to protect democratic self-governance from foreign influence.

As noted above, there are several examples of foreign influence in elections, including through corporations. *Supra* p. 9-11. Minnesota does not need to wait for it to happen here to do something about it. *Brnovich v. Democratic National Committee*, 594 U.S. 647, 686 (2021).

Appearance of Foreign Influence. So too does the State have a compelling interest in protecting democratic self-government from the appearance of foreign influence. The appearance of foreign influence sows mistrust in American democracy. Haan Report 9. The court concluded in *Bluman* that preventing foreign influence in elections is a notable exception to the otherwise strict rule that election spending restrictions must target *quid pro quo* corruption. *See McCutcheon v. F.E.C.*, 572 U.S. 185, 192 (2014); *Bluman*, 565 U.S. 1104. Just like the Court has decided that preventing the *appearance* of *quid pro quo* corruption is a compelling government interest, *Buckley*, 424 U.S. at 27 (appearance of corruption), this Court should conclude the *appearance* of foreign influence is a compelling government interest. This is consistent with the history and tradition in our nation of being suspicious of foreign influence in elections. *See supra* p. 11-13; *see also Singh*, 979 F.3d

at 709 ("[S]uspicions of foreign influence in American elections remained a pervasive concern.").

It would be hard to fight foreign influence in elections if the State cannot prevent the appearance of foreign influence because it is secret. *See supra* p. 4-6, 8-9; *see* Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 PENN. L REV. 119, 135 (2004) ("[T]he unique position of "appearance of corruption" in the campaign finance jurisprudence has more to do with the difficulties of proving actual corruption, we think, than the importance of the state interest in combating such negative perceptions. . . . Proving actual corruption is very difficult."); *see also Shrink Mo.*, 528 U.S. at 390 (voters' belief that wealthy donors exert undue influence "could jeopardize the willingness of voters to take part in democratic governance"); *see also* Haan Tr. 119:8-23.

Professor Smith cites a 2004 study showing that in spite of campaign finance reform, the lack of confidence in the system of representative government is intractable and has psychological roots. Smith Report 24 (citing Persily, *supra*). That article's authors explained the limitation of their data:

> Although we believe that public perception of corruption has almost nothing to do with activity actually taking place in the campaign finance system, and we are convinced that campaign finance reform will have no effect on public perception of corruption, we cannot prove either argument.
>
> . . . . [W]e cannot dispel the good-government notion that campaign finance reform would have an effect on such attitudes if only the state were able to begin clamping down on campaign expenditures (a path the case law now closes off) or if the state were able to enact a generous public funding system that might make other contributions less relevant (a path closed off by political realities).

> Finally, at several times we note the irony that the share of the population perceiving corruption declined even as soft money skyrocketed and that the share increased after passage of the soft money ban. Although we find that perverse outcome to be quite important, we cannot eliminate the possibilities that fewer people would have viewed government as corrupt had soft money always been banned, or that even more people today might view government as corrupt had Congress not banned soft money.

Persily, *supra*, at 123-24. Professor Smith acknowledged that one cannot prove or disprove that more campaign finance regulation—such as the Act—would improve citizens' confidence in elections and their democracy. *See* Smith Tr. 59:7-21 (regarding public perception of corruption). Minnesota has a compelling interest in protecting democratic self-governance in Minnesota from foreign influence and the appearance of foreign influence.

2. On its face and as-applied, the Democracy for the People Act is narrowly tailored to protect democratic self-governance from foreign influence and the appearance of foreign influence.

Generally, "[a] narrowly tailored [statute] is one that actually advances the state's interest (is necessary), does not sweep too broadly (is not overinclusive), does not leave significant influences bearing on the interest unregulated (is not underinclusive), and could be replaced by no other regulation that could advance the interest as well with less infringement of speech (is the least-restrictive alternative)." *Republican Party of Minn. v. White*, 416 F.3d 738, 751 (8th Cir. 2005).

a. The Democracy for the People Act actually advances the state's interest in preventing foreign participation in democratic self-governance and the appearance of foreign participation.

To be necessary, "[t]here must be a direct causal link between the restriction imposed and the injury to be prevented." *United States v. Alvarez*, 567 U.S. 709, 725 (2012). Defining the term "foreign-influenced corporation" to include corporations satisfying one or more of three conditions stated in the Act actually advances the state's interest. The Act is a mechanism to prevent any influence by foreign investors in election spending by corporations. All shareholders, including foreign shareholders, who hold 1% of a company, have influence over their decision-making. *See supra* p. 3-9. That can occur through formal and informal mechanisms. *See supra* p. 3-9. As there are no laws governing how corporations can make political spending decisions, and there is no transparency in the process, the Act is the only mechanism to prevent influence. *See supra* p. 4-6, 8-9. The third definition of foreign-influenced corporation—a corporation where "a foreign investor participates directly or indirectly in the corporation's decision-making process with respect to the corporation's political activities in the United States—targets the exact conduct intended to be addressed.

b. The Democracy for the People Act is not overbroad.

The Democracy for the People Act is not overbroad. Courts should "vigorously enforce[] the requirement that a statute's overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *U.S. v. Williams*, 553 U.S.

285, 292 (2008). There are three definitions of foreign-influenced corporation. The Court should consider each in turn.

1% Single Investor.

The single-investor 1% threshold is not overbroad for several reasons. Minn. Stat. § 211B.15, subd. 1(d)(1). First, even minority shareholders can exert significant influence over a company. *See supra* p. 3-9. This can occur in non-transparent ways. *See supra* p. 3-9. Indeed, the fact of a foreign shareholder may influence contributions even if that foreign shareholder says nothing to the corporation. Haan Report 21-22.

Although *Bluman* could be read to permit restrictions on election activities of corporations with *any* equity held by foreign investors, the Democracy for the People Act is limited to ownership that denotes influence. For decades, the ability to present a shareholder proposal occurred at 1% ownership. In September 2020, the threshold became even lower–$2,000. Financial CHOICE Act of 2017, H.R. 10 (115th Cong.), § 844; *see also SEC, Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8,* 84 Fed. Reg. 66,458 (Dec. 4, 2019); 17 C.F.R. 240.14a-8(b). The rationale for the SEC to eliminate the 1% threshold was in part because ownership levels *much lower* than 1% exerted a great deal of influence. *Id.* at 66,464.[22] That was borne out in discovery in this case. *Supra* at p. 3-8. The following chart reflects relative ownership:

[22] The reason 1% shareholders don't use the shareholder proposal process to connect with the board is because 1% is such a high amount of power; investors with that amount of ownership can easily get executive-suite management on the phone. *See* Coates Ltr. 7-8.

The following table compares the proposed dollar thresholds as a percentage of market value as of December 2018 for the S&P 500 Index constituents and May 2019 for the Russell 3000 Index constituents: [60]

Registrant	$2,000 Threshold as a percentage of market value	$15,000 Threshold as a percentage of market value	$25,000 Threshold as a percentage of market value
Largest Registrant in the S&P 500 Index	0.0000003	0.0000019	0.0000032
500th Registrant in the S&P 500 Index	0.0001	0.0005	0.0009
3,000th Registrant in the Russell Index	0.0013	0.0098	0.0164

Id.

Discovery confirmed that the ability to present a shareholder proposal can create substantial leverage. *See supra* at p. 8-9. Even the ability to threaten a proposal can get C-suite attention and exert indirect influence. *See supra* at p. 8-9. Indeed, many of the most active investors own less than 1% of the market capitalization of the companies they influence (e.g., NY and CA public employee pension funds). Coates Ltr. 8. Moreover, corporate law decisions reflect that ownership amounts of as low as 10% reflect *control*, so influence must be much lower. Haan Report 23.

Second, the Democracy for the People Act affects few companies. Compl. ¶ 41. Only three companies have been identified in discovery. And the Chamber's estimation of "100 members" cannot be credited. *See supra* p. 16-17. "As of 2012, more than five million corporations filed U.S. income tax returns. Only about 4,000 corporations were listed on a

U.S. stock exchange." Coates Ltr. 10; *see also* Grubaugh Tr. 137:23-138:1. Even if a majority of publicly traded companies is affected, there is no evidence that any large majority of private companies are affected.

Third, the rights of the company to speak in elections derive from the rights of its shareholders. *See Citizens United*, 558 U.S. at 349 (referring to associations of citizens). An association that is not an association of citizens does not have the rights of an American citizen. Citizens still have several ways to participate in elections, through volunteering for campaigns, to making political contributions already allowed under the law, to forming a political action committee. Smith Tr. 62:14-63:16.

Fourth, the secrecy of political influence in corporations likewise supports adoption of the 1% threshold. *See supra* p. 3-9. Professor Smith testified that although people generally follow the law and most campaign finance violations he was familiar with were inadvertent (e.g., a person not realizing there was an aggregate contribution limit, or an entity submitting a disclosure late), there was a startling lack of awareness of campaign finance laws among members of the public. Smith Tr. 41:1-6, 56:10-15.

5% aggregate. The aggregate-investor threshold is not overbroad. Minn. Stat. § 211B.15, subd. 1(d)(2). It is widely understood that shareholders owning 5% and working together exert enormous influence over companies. *See supra* p. 8. They so concern corporations that corporations have created poison pills to thwart their impact. *See supra* p. 8.

Decision-making. The decision-making definition is narrowly tailored. Minn. Stat. § 211B.15, subd. 1(d)(3). It targets the exact conduct the Act seeks to prevent—influence by foreign investors in election-related decision making.

c. The Democracy for the People Act is not underinclusive.

The Chamber argues that the Act is underinclusive because it does not affect spending by unions. (ECF No. 129, at 36.) But "a 'statute is not invalid under the Constitution because it might have gone farther than it did.'" *Buckley*, 424 U.S. at 105, *cited in Bluman*, 800 F. Supp. 2d at 292 (quoting *Roschen v. Ward*, 279 U.S. 337, 339 (1929)); *see also Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 879 (8th Cir. 2012) (affirming denial of preliminary injunction regarding law that subjected corporations to more stringent regulations than unions). Instead, a targeted approach denotes careful tailoring.

Unions and other non-profits generally do not have investors so there is nothing analogous to investors in for-profit corporations. There is no common governance structure that suggests or implies influence by persons that provide funding to a union or non-profit. A shareholder who can submit a proposal can exert substantial influence over a corporation. *See supra* p. 7-10. There is no evidence in the record that merely being a member of a union confers influence the way a shareholder does. Likewise, the fiduciary duties of non-profit board members also differ greatly from private company boards that seek to please shareholders.

Professor Smith identified four examples of unions spending money in elections. Smith Report 19-21. But Smith is not an expert on unions, and no one presented any

opinion about election decision making at unions, nor that unions have anything comparable to the ownership structure of a corporation.

In its preliminary injunction order, the Court concluded that the definition of foreign investor is problematic because it includes the phrase an "individual outside of the United States," which could mean the same investor may not be a foreign investor if they are visiting the United States. ECF No. 109, at 21. But the statute appears to be geared towards where a person lives. It is reasonable for the test to be location—i.e., where someone lives—because that is information that the company can generally access. *See supra* p. 12-15; *see also* Smith Tr. 51:11-19 ("[M]ost people who live outside of the United Staes are foreign nationals."). It is implausible that the company would know on the date of a contribution that the only shareholder who makes the company a foreign-influenced corporation is vacationing in the United States.

d. The Act is the least restrictive means.

Although the FEC already prohibits foreign nationals from indirectly influencing federal, state, and local elections, there are compelling reasons to believe it is not effective. The FEC relies largely on complaints to begin investigations. *See* Smith Tr. 16:12-17:15. But there is a startling lack of knowledge of campaign finance law among members of the public. *See* Smith Tr. 41:1-6, 56:10-15. [redacted] Moreover, a federal regulatory scheme that is largely driven by complaints will have little impact where the is an appalling lack of transparency about corporate election

spending. *See supra* p. 6. For example, Professor Haan knows that some companies have foreigners on their political decision-making committees but was unable to probe further regarding how decision making takes place. Haan Tr. 38:19-44:6. Additionally, there is ample evidence to demonstrate that foreign nationals seek to influence American elections, including specifically through corporate entities. *See supra* p. 9-11. The Act is the least restrictive means to ensure foreign nationals do not participate in democratic self-governance by contributing to elections through corporations.

C. The Act is "closely drawn."

In the alternative, if the Act does not survive strict scrutiny, it is closely drawn and should be upheld. *See Shrink Mo.*, 528 U.S. at 387-88. This is a "relatively complaisant review." *Beaumont*, 539 U.S. at 161. A contribution limit fails this standard if it prevents candidates "from amassing the resources necessary for effective campaign advocacy." *Randall v. Sorrell*, 548 U.S. 230, 248 (2006) (citation and quotation marks omitted). Here, there remain several different ways for citizens to participate in elections. And the vast majority of companies are not affected by the Act.

******

As discussed above, the Act survives First Amendment scrutiny. Another problem with Plaintiff's facial challenge is that there are plainly legal applications under the law. *See Salerno*, 481 U.S. at 745 (Plaintiff must show that the Act is unconstitutional in all of its applications). For example, companies completely or majority-owned by foreign nationals or foreign sovereigns are defined as foreign-influenced under the law and it is permissible to prohibit them from influencing Minnesota elections.

IV. IF THE COURT CONCLUDES SECTION 211B.15, SUBD. 1(D)(1) & 1(D)(2) ARE UNCONSTITUTIONAL, IT SHOULD SEVER THEM.

"The issue of severability is one of state law." *Dakota, Minnesota & E. R.R. Corp. v. S. Dakota*, 362 F.3d 512, 518 (8th Cir. 2004) (citing *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996)).

In Minnesota, laws are generally severable. Minn. Stat. § 645.20. They are severable "[u]nless there is a provision in the law that the provisions shall not be severable." *Id.* If any provision is found to be unconstitutional, the remaining provisions are valid (a) unless the court finds the valid provisions to be so "essentially and inseparably connected with, and so dependent upon, the void provisions," that the court cannot presume the legislature would have enacted the valid provisions without the void provisions or (b) unless the valid provisions, "standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." *Id.*

Here, there is no statement that the provisions are not severable. Therefore, this issue turns on the next two elements. Subdivision 1(d)(3) can survive without (d)(1) or (d)(2). The Legislature chose to define "foreign-influenced corporation" in a disjunctive manner. If the definition in (d)(3) holds, the remainder of the statute can be implemented. Indeed, the remainder of the statute does not treat foreign-influenced corporations that meet the criteria stated in (d)(1) and (d)(2) differently. For example, had the Legislature called out a specific type of "foreign-influenced corporation" later in the statute, it could mean the Legislature was paying particularly close attention to that type. Here, that is not the case. The Court can and should look at the statute itself to conclude (d)(1) and (d)(2) are severable.

If the Court severs, the statute will operate in a fashion the Court has already intimated would be constitutional. ECF No. 109, at 22. That is, there would be a certification that a foreign investor does not participate directly or indirectly in the corporation's decision-making process with respect to the corporation's political activities in the United States, as of the date the contribution or expenditure was made. This standard mirrors the language of a federal regulation, although that is not a certification provision. *See* 11 C.F.R. § 110.20(i), *cited in* FEC Adv. Op. 2006-15, at 2 (May 19, 2006) [ECF No. 130-13].

CONCLUSION

For the foregoing reasons, State Defendants respectfully request that the Court deny Plaintiff's motion for summary judgment, grant State Defendants' motion for summary judgment, and dismiss Plaintiff's Complaint in its entirety.

Dated: August 9, 2024

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/ **Janine Kimble**
JANINE KIMBLE (#0392032)
MATT MASON (#0397573)
NATHAN HARTSHORN (#0320602)
Assistant Attorneys General

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1415 (Voice)
(651) 297-7206 (TTY)
janine.kimble@ag.state.mn.us

ATTORNEYS FOR STATE DEFENDANTS

|#5836612-v3