UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Chamber of Commerce, a Minnesota nonprofit corporation, Plaintiff, v. John Choi, in his official capacity as County Attorney for Ramsey County, Minnesota; George Soule, in his official capacity as Chair of the Minnesota Campaign Finance and Public Disclosure Board; David Asp, in his official capacity as Vice Chair of the Minnesota Campaign Finance and Public Disclosure Board; Carol Flynn, in her official capacity as Member of the Minnesota Campaign Finance and Public Disclosure Board; Margaret Leppik, in her official capacity as Member of the Minnesota Campaign Finance and Public Disclosure Board; Stephen Swanson, in his official capacity as Member of the Minnesota Campaign Finance and Public Disclosure Board; and Faris Rashid, in his official capacity as Member of the Minnesota Campaign Finance and Public Disclosure Board, Defendants.	Civil No. 0:23-cv-02015 Hon. Eric C. Tostrud

BRIEF OF *AMICUS CURIAE* CLEAN ELECTIONS MINNESOTA IN SUPPORT OF STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

SUMMARY OF ARGUMENT

In barring foreign-influenced corporations from spending in Minnesota elections, Minn. Stat. § 211B.15 advances Minnesota's compelling state interest in preserving its democratic self-government.[1] *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012). The Minnesota Chamber of Commerce's effort to block the law is based on two flawed premises: (1) that all corporate entities have the same constitutional right to spend in U.S. elections, and (2) that states are powerless to prevent foreign interests from interfering in our elections through their influence over U.S. corporations in which they hold significant ownership. Both premises are contrary to well established precedent and common sense.

If a corporation seeks to invoke First Amendment protections to evade political spending limitations, the initial inquiry must be whether that corporation is an "association[] of citizens." *Citizens United v. FEC*, 558 U.S. 310, 349, 354, 356 (2010). Foreign-influenced corporations—the only corporations subject to this law's spending prohibition—plainly are not.

The state's interest in preserving its democratic self-government from foreign interference has been recognized not just as compelling, but as uniquely important. *See Bluman*, 800 F. Supp. 2d at 288. The Minnesota law advances this compelling interest because it bars political spending by corporations significantly owned by foreign entities that are federally prohibited from spending *any* money in U.S. elections.

[1] No portion of this brief was prepared by counsel for a party, and no monetary contribution was received.

Finally, Minn. Stat. § 211B.15 is narrowly tailored to advance the state's interest because it excludes only those corporations whose foreign owners hold sufficient stake to wield influence over the corporation, and does not extend to non-profit, non-corporate entities that have no owners at all.

ARGUMENT

I. MINNESOTA HAS A COMPELLING INTEREST IN PREVENTING FOREIGN INTERFERENCE IN ELECTIONS.

A. Foreign citizens and entities may be excluded from the process of democratic self-government.

In 2011, a three-judge panel of the U.S. District Court for the District of Columbia, led by then-D.C. Circuit Judge Brett Kavanaugh (sitting by designation), upheld a long-standing federal law that prohibited *any* foreign national from "directly or indirectly" spending on U.S. elections. *Bluman*, 800 F. Supp. 2d at 284; 52 U.S.C. § 30121(a). The Court held that the law—even when applied to a long-term legal resident, and even when applied to vanishingly small expenditures—is constitutional. The Supreme Court affirmed. *Bluman*, 800 F. Supp. 2d 281, *aff'd*, 565 U.S. 1104 (2012).

When it comes to activities "intimately related to the process of democratic self-government," the Supreme Court has routinely affirmed laws excluding foreign citizens. *See Bluman*, F. Supp. 2d at 287 (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)). Such laws are constitutional because foreign citizens have no constitutional right to participate in U.S. elections, and because preserving democratic self-government is not merely a compelling state interest, but also a uniquely important obligation: "a State's historical power to exclude aliens from participation in its democratic political institutions

[is] part of the sovereign's obligation to preserve the basic conception of a political community." *Id.* at 287-88 (citing *Foley v. Connelie*, 435 U.S. 291, 295-96 (1978)) (alteration in original). Analyzing Supreme Court precedent,[2] *Bluman* explained:

> [I]t 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.

Id. at 288 (emphasis added).[3] The government's authority and obligation in this area means that "government entities, when exercising the functions of government, have wider latitude in limiting the participation of noncitizens." *Id.* (quoting *Ambach v. Norwick*, 441 U.S. 68, 99 (1979)).

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[2] This line of cases has justified laws restricting the activities of foreign citizens living within the United States, who have significantly greater stake than foreign-influenced corporations in the wellbeing of American society, even where those activities are more tangential to democratic self-government than election spending. *See, e.g.*, *Cabell v. Chavez–Salido*, 454 U.S. 432 (1982) (affirming law barring foreign citizens from working as probation officers); *Ambach v. Norwick*, 441 U.S. 68 (1979) (affirming law barring foreign citizens from teaching in public schools unless they intend to apply for citizenship); *Foley v. Connelie*, 435 U.S. 291 (1978) (affirming law barring foreign citizens from serving as police officers).

[3] "[F]oreign citizens outside U.S. territory do not possess rights under the U.S. Constitution." *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 591 U.S. 430, 433 (2020). While foreign citizens *within* the United States enjoy some constitutional rights, *see, e.g.*, *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 270–271 (1990) (the right to due process), those rights do not extend to protect their participation in activities related to democratic self-governance. *See Bluman*, F. Supp. 2d at 287-88.

The Minnesota law is fully consistent with and justified by *Bluman*'s determination that the government may "exclude foreign citizens" and solely "reserve 'participation in its democratic political institutions' for citizens of this country." *Id.* at 287 (citing *Foley*, 435 U.S. at 295-96).

1. *Citizens United* does not grant foreign-influenced corporations unchecked power to spend money in U.S. elections.

The Minnesota Chamber of Commerce ("Plaintiff" or "the Chamber") looks to the Supreme Court's earlier decision in *Citizens United* for permission to ignore *Bluman*'s rationale and outcome. ECF No. 129 at 2-3, 25-26, 30-32. *Citizens United* provides the Chamber with no such coverage. Its theory would require this court to assume that all corporate entities have the same constitutional right to spend in elections as U.S. citizens. They do not and nothing in *Citizens United* supports such a conclusion.

In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court determined that the First Amendment right to make independent political expenditures extends to corporations that are "associations of citizens." *Id.* at 349, 354, 356, 364-65. Restrictions on the political spending of those *citizens* or *associations of citizens* must be weighed against a separate government interest: that of preventing corruption or the appearance of corruption. *Id.* at 357 (concluding that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.").

Citizens United did not concern foreign nationals, foreign corporations, corporations with meaningful foreign ownership, or other foreign-influenced entities. To the contrary, the Supreme Court expressly left that question for another day. *Id.* at 362

("We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political process.") (citation omitted).[4]

It answered that question nearly two years later when the Supreme Court affirmed *Bluman*. Then-Judge Kavanaugh confirmed that "***Citizens United* is entirely consistent with a ban on foreign contributions and expenditures**." *Bluman*, 800 F. Supp. 2d at 289 (emphasis added). Indeed, the *Bluman* decision "does not implicate those debates" raised in *Citizens United*, or other "First Amendment issues raised by campaign finance laws" in previous decades. *Id.* at 286 (citing *Citizens United*, 558 U.S. 310). That is because the government has a compelling interest to preserve democratic self-government against encroachment of foreign interests and money—an interest at issue in *Bluman* and here, but not in *Citizens United*.

The present case is not about limiting spending in elections to prevent corruption between U.S. citizens.[5] It is about protecting Minnesota's democratic self-government

[4] Plaintiff misinterprets this reference. ECF No. 129 at 32. It was not an observation by the Supreme Court on the constitutionality of laws before it, but rather dicta about the type of issue that *Citizens United* was not addressing. *Citizens United* does not grant foreign-influenced corporations a license to participate in core activities related to democratic self-governance; it expressly declined to address whether the government has a compelling interest in limiting foreign influence over the political process. It is not a persuasive authority here.

[5] This court already correctly rejected Plaintiff's assertion that "the 'professed intent to limit 'foreign influence' in domestic elections is a pretext' to limit corporate spending in elections," noting that "the legislative record includes many references to Minnesota's stated goal of limiting foreign influence." ECF No. 109 at 13-14 (citing to ECF No. 60 at 9, 26; ECF No. 88 at 14-16).

from foreign participation. Political spending by foreign entities goes to the heart of our democratic self-government, where governments have "wide[] latitude" to act. *Id.* at 288 (quoting *Ambach*, 441 U.S. at 75). If the state's compelling interest in preserving democratic self-government allows for the total prohibition of *any* political spending by foreign individuals, including long-term legal residents of our country, then surely it must allow Minnesota to close the legal door that would otherwise allow unlimited funds to be spent by corporations influenced by foreign investors.

The Chamber nevertheless presents *Citizens United* as a shield that provides coverage to foreign-influenced corporations that are, at best, a mixed bag association of foreign and U.S. citizens. But *Citizen United* expressly and repeatedly limited its analysis to corporations consisting of "associations of citizens." *Citizens United*, 558 U.S. at 349, 354, 356. No association of citizens is affected by the Minnesota law.

Read together, *Bluman* and *Citizens United* identify the inquiries relevant here. First, the court must ask whether the corporation in question is an *association of citizens*. Here, the affected corporations plainly are not. Therefore, the second inquiry—whether the state has established a compelling state interest—looks to the state's obligation to protect democratic self-government. That heightened obligation is of such "special significance . . . that governmental entities, when exercising the functions of government, have wider latitude in limiting the participation of noncitizens." *Bluman*, F. Supp. 2d at 288 (quoting *Ambach*, 441 U.S. at 75). The third inquiry, discussed *infra*, is whether the law is narrowly tailored.

2. Minnesota has a compelling state interest in preserving democratic self-government.

Corporations substantially owned and influenced by foreign entities can and do spend unlimited amounts of money on U.S. elections, ECF No. 147 at 9-11, undermining Minnesota's democratic self-government. Minnesota has a compelling interest in protecting its democracy and "wide[] latitude" to do so. *Id.*

a) *Corporations are responsive to foreign stakeholders' goals.*

Plaintiff's assumption that foreign influence occurs only in deliberate and specific moments of "influence or control over a corporation's election expenditures," largely disregards the critical role of growing foreign investments in U.S. corporations.[6] Today, over 40% of American corporate equity lies in the hands of foreign investors.[7] These shareholders are often prominent and influential. Take, for instance, the three largest corporations in America: Walmart, Amazon, and ExxonMobil.[8] Each company is significantly owned by Norway's official oil investment account (Norges Bank Investment

[6] ECF No. 129 at 7.

[7] In 1982, only five percent of all corporate equity in the United States came from foreign investments. By 2015, that figure had quadrupled to twenty percent. Just four years later, it doubled again; by 2019, the figure hovered around forty percent of all corporate equity in the country. John C. Coates, IV, Ronald Fein et al., *Quantifying Institutional Block Ownership, Domestic and Foreign, At Publicly Traded U.S. Corporations*, Harv. L. Sch. John M. Olin Ctr. Discussion Paper No. 888 (Dec. 20, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957; Steve Rosenthal & Theo Burke, *Who's Left to Tax? US Taxation of Corporations and Their Shareholders*, Urban-Brookings Tax Policy Ctr., paper presented at N.Y.U. (Oct. 27, 2020), https://bit.ly/3uLjVqE.

[8] Khristopher J. Brooks, *Fortune releases list of top 10 biggest U.S. companies*, CBS News (June 5, 2023), https://www.cbsnews.com/news/fortune-500-list-biggest-companies-walmart-amazon-apple/.

Management), with stakes high enough to land the foreign government-investor a seat on each company's list of "top institutional holders."[9] As then-chief executive officer of ExxonMobil pointedly explained in describing the role of a CEO in a global corporation, "I'm not a U.S. company and I don't make decisions based on what's good for the U.S."[10]

Multinational corporation executives do not wait for a call from a top shareholder or investor before advancing that entity's interest, including via election spending. Corporate executives largely "think like shareholders,"[11] and are attuned to and motivated by their major investors.[12] They have a fiduciary duty toward their shareholders. Moreover, a displeased top shareholder could wreak havoc on the corporation's value.[13] Take Uber:

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[9] *Amazon.com Inc*, CNBC, https://www.cnbc.com/quotes/AMZN?qsearchterm=amazon (last visited Aug. 16, 2024); *Walmart Inc*, CNBC, https://www.cnbc.com/quotes/WMT?qsearchterm=walmart (last visited Aug. 16, 2024); *Exxon Mobil Corp*, CNBC, https://www.cnbc.com/quotes/XOM?qsearchterm=exxonmobil (last visited Aug. 16, 2024); Norges Bank Investment Management, https://www.nbim.no/en/ (last visited Aug. 16, 2024) ("The fund's formal name is the Government Pension Fund Global.").

[10] Bernard Vaughan, *Global Power of ExxonMobil Spotlighted in New Coll Book*, Reuters (Apr. 27, 2012), https://www.reuters.com/article/books-exxonmobil-idUSL2E8FQP6B20120427.

[11] Over the past 30 years, U.S. corporations have shifted from being management-driven to shareholder-driven, leaving "substantial reason to believe that managers and directors today largely 'think like shareholders.'" Edward B. Rock, *Adapting to the New Shareholder-Centric Reality*, 161 U. Pa. L. Rev. 1907, 1910 (2013), *available at* https://scholarship.law.upenn.edu/faculty_scholarship/457/.

[12] The shareholder-centric theory of corporate governance suggests that corporations prioritize the maximization of investor profits before considering the interests of others, such as management, employees, or social responsibility initiatives. *See* Robert J. Rhee, *A Legal Theory of Shareholder Primacy*, 102 Minn. L. Rev. 1951 (2017), *available at* https://ssrn.com/abstract=2938806.

[13] Take, for example, Lehman Brothers. The investment bank's collapse in 2008 ignited a global financial crisis so severe that investors, seeing a "sinking ship," pulled out in troves,

the Public Investment Fund— the investment wing of the Saudi Arabian government and one of Uber's largest stakeholders—holds $72.8 million worth of Uber shares; its withdrawal would be enormously damaging to the company.[14]

b) *Minnesota need not point to specific examples of foreign participation in corporate decision-making.*

States are entitled to protect their elections from threats without waiting for the threat to occur at home. *See Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021) (with regard to concerns of fraud, states are "not obligated to wait for something similar to happen closer to home"). Minnesota recognizes the ways in which corporations that spend in elections are directly and indirectly influenced by their powerful foreign stakeholders.[15] It has every reason to prevent foreign influence in its elections and is

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including the "backtracking of major hedge investors." *Lehman Brothers- A Fall From Grace*, Corporate Financial Institute, https://bit.ly/3WIOsnd (last visited Aug. 16, 2024).

[14] *Uber Technologies Inc*, CNBC, https://www.cnbc.com/quotes/UBER?tab=ownership (last visited Aug. 16, 2024); Simon Clark, *Saudi Wealth Fund May Be the World's Least Transparent*, Wall Street Journal (Nov. 1, 2016), https://www.wsj.com/articles/saudi-wealth-fund-may-be-worlds-least-transparent-1477997912.

[15] Foreign entities have in the past influenced U.S. corporations. For example, U.S. Senator Robert Menendez was convicted of public corruption when he and his wife routed hundreds of thousands of dollars through a foreign-influenced U.S. corporation to benefit the Arab Republic of Egypt. Sealed Indictment, *United States v. Robert Menendez et al.*, 23 Crim. 490 (S.D.N.Y. 2023), at ¶ 1. He was convicted on all counts. *Statement of U.S. Attorney Damian Williams on the Convictions of U.S. Senator Robert Menendez and New Jersey Businessmen*, Department of Justice (July 16, 2024), https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-convictions-us-senator-robert-menendez-and-two. In 2015, two Chinese owners of a private U.S. company directed the company to contribute $1 million to a super PAC supporting Jeb Bush. Michelle Ye Hee Lee, *Pro-Jeb Bush super PAC improperly accepted $1.3 million from Chinese-owned company, FEC says*, Wash. Post (Mar. 11, 2019), https://www.washingtonpost.com/politics/pro-jeb-bush-super-pac-improperly-accepted-13-million-from-chinese-owned-company-fec-says/2019/03/11/954de630-4436-11e9-aaf8-4512a6fe3439_story.html.

entitled to "take action . . . without waiting for it to occur and be detected within its own borders." *Id*.

Indeed, it would be difficult for Minnesota to "detect within its own borders" the full extent of foreign interference in elections because influence, in general, rarely creates a paper trail. *See, e.g.*, *Citizens United*, 558 U.S. at 455 (Stevens, Ginsburg, Breyer and Sotomayor, J.J., concurring in part and dissenting in part) (arguing that corporate independent expenditures in fact generate *quid pro quo* corruption even though "[p]roving that a specific vote was exchanged for a specific expenditure has always been next to impossible . . . ."). Those conversations are held, and decisions are made, in conference rooms and on phone calls, and are not on public record. *See, e.g.*, *Wagner v. FEC*, 793 F.3d 1, 20 (D.C. Cir. 2015) ("[L]ess direct evidence is required when, as here, the government acts to prevent offenses that 'are successful precisely because they are difficult to detect.'") (quoting *Burson v. Freeman*, 504 U.S. 191, 208 (1992)); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009) ("The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules."). But corporate practices are well established, Minnesota is well aware of the money and influence that powerful stakeholders wield, and is entitled to protect itself from foreign interference via U.S. corporate election spending.

c) *Minnesota may limit the risk of foreign interference in elections.*

The Chamber's reasoning that the law is invalid because the state has not demonstrated that minority foreign shareholders regularly "exercise influence or control

over a domestic corporation's election expenditures in Minnesota" would invalidate the federal statute upheld in *Bluman*. ECF No. 129 at 14. The *Bluman* court did not require the government to demonstrate that the foreign citizen—who was lawfully living in the United States—was influenced in his spending by his interests as a foreign citizen, rather than his interests as a lawful U.S. resident— or that spending in general by noncitizen U.S. residents is influenced by such considerations. Rather, *Bluman* presumed that even foreign citizens who live in the U.S. "by definition have primary loyalty to other national political communities, many of which have interests that compete with those of the United States." *Bluman*, 800 F. Supp. 2d at 291. In other words, *Bluman* recognized that the government may protect democratic self-government against the risk that foreign citizens will spend on U.S. elections to advance foreign, rather than U.S., interests. By the same reasoning, Minnesota is entitled to protect its democratic self-government from the risk that foreign-influenced corporations will spend to advance foreign interests, including those of their foreign shareholders.

A foreign investor will advance its own interests, not those of Minnesota or its citizens.[16] Foreign shareholders will demand bottom line growth, unmitigated by a

[16] Ltr. from Professor John Coates to California Assemb. Lee at 2 (Jan. 5, 2024) (citing *Bluman*, 800 F. Supp. 2d at 287) ("Foreign nationals have a different set of interests than their U.S. counterparts . . . . Few dispute the idea that a given government may properly seek to limit foreign influence over, in the words of the U.S. Supreme Court, "activities 'intimately related to the process of democratic self-government.'" There is nothing particularly surprising or pernicious about this fact. Foreign and domestic interests predictably diverge."), *available at* https://freespeechforpeople.org/wp-content/uploads/2024/03/2024-coates-letter.pdf.

balancing interest in U.S. society.[17] Corporations will act in the interest of their major shareholders. And Minnesota may protect its own democratic self-government from the encroachment of foreign money and influence via U.S.-based multinational corporations that spend in its elections.

II. THE MINNESOTA LAW IS NARROWLY TAILORED.

A. Minn. Stat. § 211B.15 is not overinclusive.

The Chamber's argument that the Minnesota law's thresholds—1% for a single investor, 5% in the aggregate—infringe on the rights of citizens and domestic companies, *see* ECF No. 129 at 32, misconstrues both the law and the avenues for corporate speech that remain available to true "associations of citizens." *Citizens United*, 558 U.S. at 349, 354, 356.

First, the Chamber wrongly presumes that all corporate entities have the same constitutional right to spend in U.S. elections. But it is well established that corporations in general do not enjoy the same constitutional protections as U.S. citizens. *See Consol. Edison Co. of New York v. Pataki*, 292 F.3d 338, 347 (2d Cir. 2002) ("Nevertheless, not all constitutional protections apply to corporations or apply as fully as they do to natural persons."). Certain corporate entities are constitutionally limited even in the sphere of political spending and speech. Municipal corporations, for example, have no First Amendment rights, although in most cases they are associations exclusively of U.S.

[17] *See, e.g.*, Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 Geo. L.J. 439 (2001), ("[C]orporate law should principally strive to increase long-term shareholder value.").

citizens. *See, e.g., Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009). Not-for-profit corporations organized under 26 U.S.C. § 501(c)(3) are restricted from influencing legislation or engaging in political activity. *See Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 546 (1983). *Citizens United* did not abrogate these principles; as discussed *supra*, it found only that certain corporations that are "associations of citizens" may not be prohibited from making independent expenditures on the basis of their corporate identity. *Citizens United*, 558 U.S. at 349, 354, 356. Its holding does not extend to corporations that are not "associations of citizens."

Second, even when a corporation is afforded constitutional protections, those rights are limited and often *less* than the protections afforded to foreign U.S. residents. *Compare Braswell v. United States*, 487 U.S. 99 (1988) (corporations have no Fifth Amendment protection against self-incrimination), *with United States v. Balsys*, 524 U.S. 666, 671 (1998) (resident noncitizens are "persons" entitled to Fifth Amendment protection against self-incrimination); *also compare Strategic Def. Int'l, Inc. v. United States*, 745 F. Supp. 2d 1214, 1235 (M.D. Fla. 2010) (holding that a corporate entity "has no constitutional right to testify" at trial), *with Zadvydas v. Davis*, 533 U.S. 678, 679 (2001) ("[T]he Due Process Clause applies to all persons in the United States, including aliens . . . ."); *see also Bluman*, 800 F. Supp. 2d at 286-87 (listing of constitutional rights afforded to foreign citizens in the United States).

Third, under the Minnesota law, U.S. owners of foreign-influenced corporations still enjoy all their First Amendment rights to engage in a political election. They can donate to candidate campaigns or pay to print political flyers in the park as any other citizen might

do. They might even form a corporation with other U.S. citizens that then spends *its* general treasury funds on elections, or they might establish a political action committee made up of U.S. citizens that engages in political spending. The Minnesota law focuses solely on preventing the threat posed to American self-government when foreign-influenced corporations spend their general treasury funds in state elections.

U.S. shareholders cannot "export their own First Amendment rights" to the foreign entities with which they associate. *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 591 U.S. 430, 436-38 (2020) (rejecting constitutional challenge to statute that imposed speech-related funding conditions on foreign entities that were affiliated with American organizations). Foreign investors of U.S. corporations are not entitled to greater constitutional rights by virtue of their affiliation with U.S. citizens.

Fourth, corporations with meaningful foreign ownership do not enjoy *greater* constitutional protection than what is ordinarily afforded to foreign nationals in activities of democratic self-governance. Such a proposition misconstrues the constitutional standing of both foreign nationals and corporations. And it is particularly true where, here, the Minnesota law addresses a far greater danger to self-government than the one posed by the *Bluman* plaintiffs. Their potential as individuals to influence a U.S. election was limited and in stark contrast to the risk posed by foreign-influenced corporations whose foreign owners hold stakes worth tens of millions of dollars—or more—and who wield at least that in political spending power. If the government is entitled to ban U.S. noncitizen residents from printing political fliers to hand out in a park, it follows *a fortiori* that it may prevent foreign citizens, governments, and corporations from

influencing our elections through massive expenditures by foreign-influenced corporations.

Minnesota has put forth significant evidence that the law's thresholds are appropriate given the ownership stake that enables shareholders to individually or in the aggregate wield influence over a corporation's spending decisions.[18] Summary judgment should be granted in favor of Minnesota. In the alternative, there is at least a question of material fact regarding the extent to which corporations exert influence at or above the law's thresholds, rendering this question not proper for summary judgment disposition.

B. Minn. Stat. § 211B.15 is not underinclusive.

The Minnesota law is not underinclusive. First, Minnesota is not obligated to foresee and shut down, in a single law, every single avenue for foreign money to enter its elections. *See Bluman*, 800 F. Supp. 2d at 291 (in rejecting an underinclusive argument that the statue does not *also* prohibit foreign political spending related to ballot initiatives, the court acknowledged that "Congress may proceed piecemeal in an area"). Second, the Minnesota law intentionally and reasonably limits the spending of corporations that have owners, which are structurally and legally distinct from non-owned associations.[19]

[18] ECF No. 147 at 3-11, 41.

[19] Unions are democratic collectives composed of members that negotiate contracts with employers with regards to wages, hours, and terms and conditions of employment. 29 U.S.C.A. § 152(5); *see also* James O Castagnera and Kenneth A. Sprang, Comment, *Proof of Internal Union Election Practices*, 62 Am. Jur. Proof of Facts 3d 107 (updated July 2024). A not-for-profit, while not itself composed of members and strictly prohibited from political activity, also has no owner, and "none of its earnings may inure to any private shareholder or individual." 26 U.S.C. § 501(c)(3); *see also Exemption Requirements – 501(c)(3) Organizations*, Internal Revenue Service,

Plaintiff claims that "[i]f the State was truly interested in decreasing foreign influence in elections, it would have also restricted labor unions as well." ECF No. 129 at 36. But the structure and regulation of unions both blunt the risk of foreign influence in union political activity for several reasons.

First, unions have dues-paying members, not owners, who cannot exert outsized influence over any other member. Union members are each afforded one vote in elections, including the election of those responsible for political spending decisions.[20] In contrast, corporate stakeholder voting power is typically *pro rata* with purchased shares, giving the largest corporate stakeholders greater formal and informal influence to steer company decisions.[21]

Second, those who pay union dues have the right to know about and *decline* participation in union political activities, blunting the risk that the union will represent

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https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations (last updated Jan. 29, 2024).

[20] No one union is alike, although they generally tend to follow a similar dues-paying structure. *Union Dues*, National Labor Relations Board, https://www.nlrb.gov/about-nlrb/rights-we-protect/whats-law (last visited Aug. 16, 2024). Some state laws allow employers and unions to enter into security agreements, which requires that all employees pay union dues, including 'nonmembers' that object to full union membership. *Employer/Union Rights and Obligations*, National Labor Relations Board, https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights/employer-union-rights-and-obligations (last visited Aug. 16, 2024); *see* also James O Castagnera and Kenneth A. Sprang, Proof of Internal Union Election Practices, 62 Am. Jur. Proof of Facts 3d 107 ("The administration of the local is carried on by its officers and the executive board, subject to ratification by the membership.").

[21] Colleen A. Dunlavy, *Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights*, 63 Wash. & Lee L. Rev. 1347 (2006), *available at* https://scholarlycommons.law.wlu.edu/wlulr/vol63/iss4/4.

interests that do not reflect the views of those who pay its dues. Federal law prohibits unions from expending fees on political causes that fee-paying nonmembers find objectionable. 29 U.S.C. § 158(a)(3); *see also Commc'ns Workers of Am. v. Beck*, 487 U.S. 735, 745-47 (1988) (citing *Machinists v. Street*, 367 U.S. 740 (1961)) (unions may not spend on activities over objections of dues-paying nonmembers)); *Knox v. Serv. Emps. Intl. Union Local 1000*, 567 U.S. 298, 312 (2012) (opt-out system creates "a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree"). Corporate shareholders may not opt-in or -out of corporate expenditures and often have no way to determine who or what influenced a company decision.

Even if a union has an international parent union, its role is limited and distinct. They are separate entities from their local affiliates, whose political spending decisions are typically made independent of the parent.[22]

Third, unions are subject to strict federal regulation and disclosure law. Labor unions must disclose any "direct or indirect disbursements" related to political activities over $5,000 in any federal, state or local elections, including donations made to 501(c)(4)

[22] *See, e.g.*, *Thompson v. Hebdon*, 7 F.4th 811, 824 (9th Cir. 2021) (in distinguishing political parties from labor unions, political parties "are subsidiaries of a parent entity," whereas "[d]ifferent labor unions, by contrast, are different entities."). For example, the local Service Employees International Unions (SEIU) for government workers in Oregon includes in its bylaws provisions that establish a distinct 'political action committee' responsible for questions of political spending, its funds which "shall be kept separate from all other Union funds and shall not be commingled at any time." *See, e.g.*, *SEIU Local 503, Oregon Public Employees Union Bylaws*, SEIU503 at 38 (last revised Nov. 21, 2023), *available at* https://seiu503.org/wp-content/uploads/2024/06/2023-Bylaws-rev-11-21-23-1.pdf.

organizations.[23] In contrast, U.S. corporations can donate unlimited and undisclosed amounts to 501(c)(4) groups.[24] Union political spending therefore is highly unlikely to be subject to undue or undisclosed foreign election influence; the same cannot be said of foreign-influenced corporate political spending.

III. CONCLUSION

For the foregoing reasons, the Chamber's motion for summary judgment should be denied and the State's motion for summary judgment granted.

[23] *See, e.g., LM-2 Form Instructions*, Department of Labor at 27, https://www.dol.gov/agencies/olms/reports/forms/lm-1-lm-2-lm-3-lm-4*)* (last visited Aug. 16, 2024).

[24] Liz Kennedy & Sean McElwee, *Do Corporations & Unions Face the Same Rules for Political Spending?*, Demos (July 23, 2014), https://www.demos.org/research/do-corporations-unions-face-same-rules-political-spending.

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