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.

No. 23-CV-02015 (ECT/JFD)

[PROPOSED] BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("Chamber") submits this brief in support of Plaintiff the Minnesota Chamber of Commerce ("Minnesota Chamber").[1] The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. As a preeminent national business association, the Chamber has a strong interest in defending the corporate free speech rights recognized by the U.S. Supreme Court in *Citizens United v. FEC*, 558 U.S. 310 (2010), from assault by political actors.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.87 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief.

that helps manufacturers compete in the global economy and create jobs across the United States. The NAM frequently files briefs in cases impacting manufacturers' interest, including in First Amendment cases.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court preliminarily enjoined Section 211B.15 because "[t]he challenged provisions are not narrowly tailored in the sense our Constitution requires." Order Granting Mot. for Prelim. Inj. 3, Dkt. No. 109 (Dec. 20, 2023). That was the correct decision, and all subsequent developments have confirmed that the statute cannot stand. Because this litigation remains of significant importance to the Minnesota and national business communities, *amici* submit this brief to reassert the concerns raised in the Chamber's *amicus* brief (Dkt. No. 86) submitted in support of Plaintiff's motion for a preliminary injunction, and to apprise the Court of subsequent developments in the law.

The United States Supreme Court did not write *Citizens United* to be a "constitutional Maginot Line, easily circumvented by the simplest maneuver." *Bank Markazi v. Peterson*, 578 U.S. 212, 247 (2016) (Roberts, C.J., and Sotomayor, J., dissenting). Yet amended Minnesota Statute § 211B.15 is a transparent attempt to override that case's unequivocal holdings. The *Citizens United* Court held that the Free Speech Clause "has its fullest and most urgent application to speech uttered during a campaign for political office," that "restrictions distinguishing among

different speakers" are "[p]rohibited," and that free-speech protection "extends to corporations." *Citizens United*, 558 U.S. at 339, 340, 342. Of particular importance here, the Court held that prohibitions on protected corporate political speech are unconstitutionally "overbroad" when they are "not limited to corporations or associations that were created in foreign countries or funded predominantly by foreign shareholders." *Id.* at 362.

As was the case at the preliminary injunction stage, that resolves this case: Section 211B.15 undeniably prohibits political speech by corporations that are neither created in foreign countries nor funded predominantly by foreign shareholders. So long as a foreign investor owns just *one percent* of a corporation's equity, or the corporation has five percent foreign investment in aggregate, Section 211B.15 bans that corporation from various forms of core political speech. A corporation with ninety-nine percent domestic shareholders and one percent foreign shareholders is not funded "predominantly" by foreign shareholders. *Citizens United*, 558 U.S. at 362. As this Court correctly recognized, "One percent is a far cry from predominantly." Order Granting Mot. for Prelim. Inj. 15. Section 211B.15 is therefore "overbroad," *Citizens United*, 558 U.S. at 362, and must be held unconstitutional on its face.

Section 211B.15 prohibits three forms of campaign speech that receive the utmost constitutional protection. First, Section 211B.15 Subdivision 4a(a)(1)

prohibits "expenditure[s]" in candidate campaigns. But a "ban on corporate independent expenditures to support candidates" is in all but the rarest circumstances "unconstitutional." *Citizens United*, 558 U.S. at 347. Second, Section 211B.15 Subdivision 4a(a)(2) prohibits "contributions or expenditures to promote or defeat a ballot question." But "[w]hatever may be the state interest … in regulating and limiting contributions to or expenditures of a candidate or a candidate's committees," "there is no significant state or public interest in curtailing debate and discussion of a ballot measure." *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299 (1981). And third, Section 211B.15 Subdivision 4a(a)(3), (4) prohibits contributions to political committees and political funds. But "[i]n light of [*Citizens United*]," "contributions to groups that make only independent expenditures" cannot be prohibited. *SpeechNow.org v. FEC*, 599 F.3d 686, 694 (D.C. Cir. 2010).

Even though these restrictions each prohibit forms of the Constitution's most fundamental speech rights, the purported compelling state interest on the other side is nothing but a fig leaf for *Citizens United* defiance. Minnesota continues to purport to rely on an overbroad interest in preventing election corruption by foreign actors. And that interest continues to fail strict scrutiny. For one, federal law already effectively prevents election corruption by foreign actors: the Federal Election Campaign Act (FECA) and Federal Election Commission (FEC or Commission)

regulations prohibit foreign nationals from directly or indirectly making or influencing contributions or independent expenditures in federal, state, and local elections. *See* 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(i). Second, Section 211B.15's thresholds for identifying supposedly foreign-influenced corporations are set so low that the provision can only be understood as a broad-based attack on corporate political speech rather than a targeted strike on foreign influence. Indeed, the think tank that first proposed Section 211B.15's thresholds estimates that about *ninety-eight percent* of all S&P 500 companies fall under its definition of "foreign influenced." Third, Section 211B.15's enactors candidly observed that the statute's aim is to legislatively annul *Citizens United* and reduce the speech of all corporations. Between Section 211B.15's text and the legislators' own statements, there is no mystery about what Section 211B.15 exists to do. And even following the Court's determination that Section 211B.15 likely violates the First Amendment, Order Granting Mot. for Prelim. Inj. 23, 33, Minnesota adduced no evidence of a compelling state interest.

Moreover, Section 211B.15 will chill the lawful political speech of those corporations falling outside its extreme thresholds because many of those corporations will not be able to verify their precise percentage of foreign ownership every time they wish to speak. Section 211B.15 Subdivision 4b requires corporations to certify that they are not foreign influenced within seven business

days of any contribution or expenditure. But publicly traded corporations' equity numbers fluctuate constantly and are difficult, if not impossible, to determine. Requiring corporations to inventory their equity breakdown any time they want to engage in political speech impermissibly burdens that speech—to the point that even corporations falling outside Section 211B.15's already extreme thresholds may refrain from speaking at all.

In short, little about this litigation has changed since the Court concluded that Plaintiff was likely to succeed on the merits of its claim. Minnesota has not carried its burden to establish that the statute is narrowly tailored to serve a compelling state interest: its true purpose continues to be to circumvent the Supreme Court's *Citizens United* decision and prohibit corporate political speech. This Court should make permanent its injunction against this blatant defiance of the Constitution and of binding Supreme Court precedent.

ARGUMENT

I. FEDERAL LAW DIRECTLY AND EFFECTIVELY ADDRESSES FOREIGN INFLUENCE IN U.S. ELECTIONS

The principles that guided this Court at the preliminary injunction stage remain applicable here. As the Chamber submitted as *amicus* at that stage (Dkt. No. 86), existing federal law effectively curtails foreign influence over U.S. elections without violating the binding First Amendment precedent of *Citizens United*. This

legislative and regulatory context continues to support this Court's conclusion that Plaintiff is likely to succeed on the merits.

Lower courts have interpreted the Constitution to permit Congress to "bar[] foreign nationals from contributing to our election processes." *United States v. Singh*, 979 F.3d 697, 710 (9th Cir. 2020).[2] Consistent with this authority, FECA and the FEC's implementing regulations have comprehensively protected federal, state, and local elections from foreign interference for nearly fifty years. *See, e.g.*, *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (chronicling the legislative history behind FECA's foreign national prohibition, including its antecedent provision in the Foreign Agents Registration Act).

This body of federal law is demonstratively effective. Research commissioned by Congress has consistently found that the current "public record reveals little evidence that foreign money has intruded into U.S. campaigns systematically or decisively," even though the same corporations Minnesota now bans from contributing have been permitted to do so for decades consistent with federal law. R. Sam Garrett, *Foreign Money and U.S. Campaign Finance Policy*, Cong. Rsch. Serv., Mar. 25, 2019, tinyurl.com/yr8brtms; *see also* Order Granting

[2] But the Supreme Court itself has reserved the question. *See Citizens United*, 558 U.S. 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.").

Mot. for Prelim. Inj. 18 (the Board has not "identified any examples of foreign influence in Minnesota elections").

Congress arrived at the same conclusion after conducting years of extensive factfinding to justify its asserted interest in restricting foreign national participation in electoral campaigns. These efforts began in the 1960s during the so-called Fulbright Hearings that documented efforts by members of the Filipino sugar industry, among others, to funnel campaign contributions to Members of Congress. *See* FEC's Mem. of Points and Authorities in Support of Its Mot. to Dismiss at 3, *Bluman v. FEC,* Civ. No. 10-1776 (D.D.C. filed Dec. 21, 2010) ("*FEC Bluman Mem.*"); *Activities of Nondiplomatic Representatives of Foreign Principals in the United States: Hearings Before the Senate Comm. on Foreign Relations*, 88th Cong. (1963). Congress revisited the issue when it investigated Watergate—a scandal that included a foreign national element—and the Buddhist temple scandals of the mid-1990s, which resulted in 427 subpoenas, 32 days of hearings, and 1,500,000 pages of documents for review. *See FEC Bluman Mem.* at 4–9 & n.4. In other words, Congress has created and then "repeatedly and carefully refined the foreign national prohibition in response to attempts to circumvent it [with a] historical record and legislative history [that was] real, concrete, and sufficient to show that [the foreign national ban was justified]." *Id.* at 22 (internal quotation marks omitted).

The result is a federal law that prohibits foreign nationals from "directly or indirectly" engaging in a broad array of activities, including the making of:

- contributions or donations in connection with a federal, state, or local election;
- contributions or donations to a political party, including the federal and non-federal accounts of a state, district, or local party committee;
- expenditures or independent expenditures in connection with any federal, state, or local election;[3]
- disbursements for electioneering communications;[4] and
- donations to presidential inaugural committees.

52 U.S.C. § 30121; 11 C.F.R. §110.20.

Furthermore, federal law also prohibits foreign nationals from directing, dictating, controlling, or further participating in the decisionmaking process of a corporation's federal *or* non-federal election activities. *See* 11 C.F.R. § 110.20(i). Decisions off limits to foreign nationals include "the making of contributions, donations, expenditures, or disbursements in connection with elections for any

[3] An "independent expenditure" is a communication that expressly advocates for the election or defeat of a candidate but that is not coordinated with a candidate or political party. *See* 52 U.S.C. § 30101(17).

[4] An "electioneering communication" is a broadcast, cable, or satellite communication that refers to a clearly identified candidate for federal office, is distributed within 30 days of a primary or 60 days of a general election, and is targeted to the relevant electorate. 52 U.S.C. § 30121(f).

federal, state, or local office or decisions concerning the administration of a political committee." *Id.* Federal law further augments these prohibitions by banning foreign persons from providing "substantial assistance" in connection with any of the above. *Id.* § 110.20(h).

Over the course of many years, hearings, and debates, Congress and the FEC also carefully identified the individuals and entities that should be classified as "foreign nationals" and subject to the ban. Those covered are:

(1) a foreign government;

(2) a foreign political party;

(3) an individual who is neither a U.S. citizen nor a green card holder; and

(4) a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

Id. (citing the definition of "foreign principal" in 22 U.S.C. § 611(b)). This definition notably excludes a business association organized under the laws of, or having its principal place of business in, the United States.

On several occasions, Congress and the FEC debated whether to subject U.S. subsidiaries of foreign corporations to the ban, with particular emphasis on whether the law should include a U.S. entity that was owned or controlled at least fifty percent—notably, not one percent or five percent, as the Legislature has done here—

by a foreign entity. *See Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69,928, 69,943 (Nov. 19, 2002) (summarizing the legislative history). But when this question was raised before the FEC, Republicans, Democrats, and even some pro-regulatory campaign finance reform advocates "strongly urged the Commission *not* to extend the prohibition on foreign national involvement to the activities of foreign-owned U.S. subsidiaries." *Id.* (emphasis added). They labelled such an idea "controversial," Letter of The Campaign Legal and Media Center to FEC Acting Asst. Gen. Counsel Mai Dinh, Sept. 13, 2002, tinyurl.com/5dsujtrr,[5] and untethered to "an issue that needed to be addressed," Letter of Senators Harry Reid and John Ensign to FEC Acting Ass't Gen. Counsel Mai Dinh, Sept. 13, 2002, tinyurl.com/428c8a33. Indeed, as the bipartisan letter of Senators Reid and Ensign underscored, "[e]xisting law and Commission rules are fully adequate to keep foreign corporations from contributing to federal election campaigns through their U.S. subsidiaries, and there was never any suggestion to the contrary during the long efforts to enact campaign finance reform." *Id.*[6]

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[5] *See also* Letter from Senator John McCain, Senator Russ Feingold, Representative Christopher Shays, and Representative Marty Meehan to FEC Acting Ass't Gen. Counsel Mai Dinh, Sept. 13, 2002, tinyurl.com/mr3drr5u (urging the Commission to not regulate "contributions by foreign-controlled U.S. corporations, including U.S. subsidiaries of foreign corporations").

[6] In its initial amicus brief (Dkt. No. 98 at 11–12), the Campaign Legal Center ("CLC") mischaracterized the Chamber's statement that "[o]n several occasions, Congress . . . debated whether to subject U.S. subsidiaries of foreign corporations to the [foreign national] ban." Without evidence, CLC claimed that the Chamber

Rather than adopt a wholesale prohibition on U.S. subsidiaries participating in federal, state, and local elections, the FEC balanced the competing interests and determined that the foreign national prohibition should *not* apply to the U.S. subsidiaries provided the following criteria are met:

- the "domestic corporation is a discrete entity incorporated under the laws of any state within the United States, and its principal place of business is within the United States;"
- the "foreign parent does not finance election-related contributions or expenditures either directly or through the subsidiary, including through subsidizing the subsidiary's business operations, unless the subsidiary can demonstrate by a reasonable accounting method that it has sufficient funds from its own domestic operations to make any contributions or expenditures;" and
- all "decisions … are made by U.S. citizens or permanent residents."

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asserted that one of those occasions was during debates over the Bipartisan Campaign Reform Act of 2002. But the Chamber said no such thing. Instead, citing to the FEC's rulemaking, the Chamber noted that such debates had occurred in 1992 and 1998. *See* Dkt. No. 86 (citing 67 Fed. Reg. 69,928, 69,943 (Nov. 19, 2002) (describing debates over the Congressional Campaign Spending Limits and Election Reform Act of 1992 and the 1998 debate over the Bipartisan Campaign Reform Act)). CLC's arguments thus discredit its own position rather than the Chamber's.

FEC, *Foreign Nationals*, tinyurl.com/5n7n8yf6 (summarizing the applicable precedent); *see also* FEC Adv. Op. 2006-15 (TransCanada) at 3 (reviewing the "long line of 'advisory opinions over more than two decades that have affirmed the participation of such subsidiaries in elections in the United States … so long as there is no involvement of foreign nationals in decisions regarding such participation'"). This rule remains in effect nationally.

The balance that Congress and the FEC achieved has adequately addressed potential foreign influence in U.S. elections. There is little evidence that foreign-controlled corporations—much less those that are merely "foreign-influenced" under the Legislature's low thresholds at issue here—are subverting American democracy. To the extent that one-off situations have arisen, the Commission has taken an active role in identifying, policing, and punishing potential violations—even directing the agency's professional staff to prioritize cases that involve allegations of foreign influence. *FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition*, Sept. 18, 2018, tinyurl.com/5b72ut29 ("*FEC Foreign Influence Report*").

Among its more recent enforcement cases, the Commission issued $940,000 in fines—one of the FEC's highest-ever penalties—in a matter involving a Chinese-owned company that made contributions to a federal political committee. *See* Press Release, *BREAKING: Record Fines Imposed Totaling $940,000 for Foreign*

Interference in Presidential Election by Chinese Corporation, Campaign Legal Ctr., Mar. 11, 2019, tinyurl.com/37r44ube. The Commission has sanctioned others involved in similar (but rare) matters. *See FEC Foreign Influence Report*; Conciliation Agreement in Matter Under Review 2892 (Tetsuo Yasuda and Yasuo Yasuda), tinyurl.com/4k4zfd6w; FEC, *Foreign Nationals*.

In short, federal law—and the FEC's rigorous enforcement of it—is still working effectively to keep foreign influence out of Minnesota and national elections. The federal regulatory scheme has effectively protected federal, state, and local elections for over 50 years. Moreover, as the Court correctly pointed out, Minnesota has "fail[ed] to explain why [federal] regulation, focused on the source of the foreign influence rather than banning corporations' political speech, is insufficient to advance" the State's purported interest. Order Granting Mot. for Prelim. Inj. 22. The robust background of federal regulation and enforcement is as relevant to the Court's consideration of Minnesota's claimed compelling state interest as it was when it concluded that Plaintiff was likely to succeed on the merits.

II. SECTION 211B.15 BLATANTLY DEFIES *CITIZENS UNITED*

Despite this robust federal protection for elections at all levels of government and a lack of any evidence showing foreign penetration of elections in Minnesota, the Minnesota Legislature enacted amendments to Section 211B.15 purportedly to combat election corruption by foreign actors. This Court concluded at the

preliminary injunction stage that Section 211B.15 likely flouted the First Amendment rights recognized in *Citizens United*. That conclusion was correct, and subsequent developments in the law have only reinforced it.

In *Citizens United*, the Supreme Court held that political-speech bans on corporations that are not "created in foreign countries or funded predominantly by foreign shareholders" are unconstitutional. 558 U.S. at 362. The Court noted that it did not need to reach the question of whether the government has a compelling interest in limiting foreign influence over the political process. *Id.* Even if it does, the Court observed, that interest cannot be invoked to ban the speech of domestic corporations that are not predominantly foreign-funded. *Id.*; *see also Agency for International Development v. Alliance for Open Society, Inc.*, 140 S. Ct. 2082, 2087 (2020) (explaining that "separately incorporated organizations are separate legal units with distinct legal rights" and therefore foreign affiliates of American companies "remain legally distinct from the American organizations" for First Amendment purposes); Order Granting Mot. for Prelim. Inj. 3 (explaining that "preventing the exercise of First Amendment-protected political speech by a corporation with foreign shareholders, without more, does not alone represent a compelling interest").

Section 211B.15 runs headlong into this holding, and Minnesota has failed to distinguish it since this Court issued preliminary relief. Section 211B.15's speech

bans are not limited to corporations created in foreign countries. Nor are they limited to corporations funded predominantly by foreign shareholders. As Yale Law School Dean Heather Gerken—who has elsewhere expressed opposition to *Citizens United*[7]—has observed, the word "predominantly" "indicate[s] that foreign nationals must own at least 50% of [a] company's shares, perhaps substantially more than 50%." Testimony of Heather Gerken 11, U.S. Sen. Committee on Rules and Administration, (Feb. 2, 2010) ("Gerken Testimony"). One percent is not remotely close. *See* Order Granting Mot. for Prelim. Inj. 15 ("One percent is a far cry from predominantly."). While *Citizens United* "indicate[d] that any regulation aimed at foreign nationals should be appropriately tailored," Gerken Testimony 11, Section 211B.15 is not tailored at all.

This Court recognized all this in its December 20, 2023 order granting Plaintiff's motion for preliminary injunction. There is no support, this Court explained, for the idea that corporations lose First Amendment protection "merely because a foreign national purchases some share or interest." Order Granting Mot. for Prelim. Inj. 10. No case holds that a corporation "ceases to be 'American' by virtue of any quantum of foreign ownership." *Id.*

[7] Heather K. Gerken, *Boden Lecture: The Real Problem With Citizens United: Campaign Finance, Dark Money, and Shadow Parties*, 97 Marq. L. Rev. 903 (2014).

Another Court has since agreed. Following this Court's order last December, the United States District Court in Maine concluded that *Citizens United* prohibits even a statute limiting the political speech of domestic corporations with foreign *government* ownership. *Cent. Maine Power Co. v. Maine Comm'n on Governmental Ethics & Election Pracs.*, 2024 WL 866367 (D. Me. Feb. 29, 2024). The statute enjoined in that case would bar foreign governments and foreign government-influenced entities (those that a foreign government owns five percent or more of) from spending on Maine's elections. *See id.* at *2. To support that ban, the statute includes prohibitions on solicitation or assistance activities, disclosure requirements, and affirmative duties on the media to ensure they do not publish barred communications. *See id.* Violations would be punishable by money penalties or imprisonment. *See id.*

The Maine statute is closer to constitutional permissibility than the one here because it addresses the ownership of foreign governments rather than foreign individuals. But the Maine court concluded that "a 5% foreign [government] ownership threshold would prohibit a substantial amount of protected speech" and "cannot [be] reconcile[d]" with *Citizens United*. *Id.* at *14. The five percent threshold "would deprive the United States citizen shareholders—potentially as much as 95% of an entity's shareholders—of their First Amendment right to engage

in campaign spending." *Id.* If that statute is not constitutional, then Minnesota's is not even close.

Section 211B.15's unconstitutionality is underscored by its enactors' blatant attempt to circumvent Supreme Court precedent. Section 211B.15 is overbroad: it is not a targeted attack on foreign influence but rather a broadside against all corporate political speech. That is no conjecture; the evidence is clear. Section 211B.15 enacts thresholds proposed by the Center for American Progress, a Washington, D.C. think tank dedicated to "bold" and "progressive" ideas that takes "creative approaches" to policymaking, Center for American Progress. About Us, americanprogress.org/about-us. Center for American Progress has called *Citizens United* a "disastrous decision" that "triggered a flood of political spending," Center for American Progress, *RELEASE*, Jan. 16, 2020, tinyurl.com/asxmjrj9, and advocates for "a constitutional amendment" to "reverse" what it calls "the Supreme Court's misguided decision." *Id.* Section 221B.15 amounts to an effort to reverse the decision by legislation rather than by constitutional amendment.

When adopting the Center for American Progress's proposed legislation, Minnesota legislators themselves left no doubt that Section 211B.15 is inclusive of corporate election speech writ large, in open defiance of *Citizens United*. A primary drafter stated that the bill is a response to "practically unlimited [election] spending" that the "*Citizens United* decision" "opened the floodgates on." *Third Meeting*

Before the H. Comm. Elections, Fin., and Pol'y, 2023 Leg., 93rd Sess. (Minn. 2023) (Statement of Rep. Zack Stephenson) (video recording beginning at 00:02:12), https://tinyurl.com/45rrmvwr. Another legislator explained that "the stated goal of the bill" is to "get political spending out of elections," including "independent expenditures" protected by "*Citizens United*." *Floor Sess.*, 2023 Sess. (Minn. 2023) (Statement of Senator Liz Boldon) (video recording beginning at 06:17:10), https://tinyurl.com/3r6b9wx9. Each of these intended applications of Section 211B.15 confirms this Court's preliminary conclusion that the statute fails the tailoring requirements of strict scrutiny.

Section 211B.15 is purposefully overbroad because it bans the election speech of enormous swaths of American companies. The Center for American Progress estimates that the statute covers ninety-eight percent of S&P 500 companies and twenty-eight percent of smaller publicly traded companies—estimates that this Court credited in its order granting preliminary relief. Center For American Progress, Fact Sheet, Nov. 21, 2019, tinyurl.com/4pcxhwdr; *see* Order Granting Mot. for Prelim. Inj. 19. A statute banning the political speech of even ten percent of all American natural persons would be flagrantly unconstitutional. The Minnesota Legislature may not think that American corporations deserve the same constitutional protection, but "[t]he [Supreme Court] has … rejected the argument that political speech of corporations or other associations should be treated

differently under the First Amendment simply because such associations are not 'natural persons.'" *Citizens United*, 558 U.S. at 343. The Legislature lacks the power to nullify the Supreme Court's holding.

Section 211B.15 bans forms of speech to which the First Amendment "has its fullest and most urgent application." *Id.* at 339. Section 211B.15 Subdivision 4a(a) prohibits supposedly "foreign influenced" companies from making (1) independent expenditures, (2) contributions or expenditures related to ballot questions, and (3) contributions to political committees. Each of those forms of speech is at the core of First Amendment protection. *See Citizens United*, 558 U.S. at 347 (expenditures); *Citizens Against Rent Control*, 454 U.S. at 299 (contributions and expenditures related to ballot measures); *SpeechNow*, 599 F.3d at 694 (contributions to political committees). And Section 211B.15 requires companies to certify that they do not fall within the statutory definition of "foreign influenced" *every time they want to speak* about an election through one of those prohibited forms of speech.

Requiring a government certification for each act of political speech places a draconian burden on that speech, and this element of Section 211B.15 merits the Court's additional consideration on summary judgment. As the Court recognized, Section 211B.15's certification requirement cannot achieve its purported purpose because the statute's definition of a foreign investor is both over and underinclusive. Order Granting Mot. for Prelim. Inj. 19, 21–22. And the burden it imposes is

pronounced because it requires companies to immediately certify information that may be difficult or impossible to obtain. As dissenting legislators observed, most companies cannot know their stock ownership within the period Section 211B.15 requires, which "makes it impossible for any publicly traded company to ever file the certificate of compliance under the statute." *Fifteenth Meeting Before the H. Comm. on Judiciary Finance and Civil Law*, 2023 Leg., 93rd Sess. (Minn. 2023) (Statement of Rep. Harry Niska) (video recording beginning at 01:05:30), https://tinyurl.com/mrx66mpr; *see also* Gerken Testimony at 11 (because "corporations often find it difficult to identify their own shareholders," any restrictions "must take into account what sort of disclosure can be reasonably expected of corporations" and "[it] may be necessary to target certain regulations at foreign shareholders rather than corporations as such"). Even the law's most ardent supporters concede that compliance is "tricky," presents "obstacle[s and] difficulties," Statement of Rep. Zack Stephenson, *supra*, and that "it may not be possible for every corporation to verify the U.S. or foreign national status of all of its shareholders with complete confidence," Letter of Ron Fein, Legal Director of Free Speech for People, to the Minn. Senate, Feb. 13, 2023, tinyurl.com/xzfdrdut.

The result is that Section 211B.15 will also chill the speech of companies even if they do not fall within Section 211B.15's extremely aggressive thresholds. Speech prohibitions "have the potential to chill, or deter, speech outside their boundaries."

Counterman v. Colorado, 600 U.S. 66, 75 (2023). That is because a speaker "may be unsure about the side of a line on which his speech falls," or "may worry that the legal system will err, and count speech that is permissible as instead not," or "may simply be concerned about the expense of becoming entangled in the legal system." *Id.* The Constitution forbids such speech restrictions because they result in "self-censorship of speech," a "cautious and restrictive exercise of First Amendment freedoms." *Id.* (cleaned). Section 211B.15's thresholds go far beyond the Constitution's limits on their own, and the chilling effect caused by its extraordinary certification requirement pushes it even further out of bounds.

In sum, the Court was correct in its conclusion that Section 211B.15 likely failed to withstand First Amendment scrutiny. The facts, precedent, and policy considerations underlying the Court's grant of preliminary relief are equally applicable on summary judgment, and support issuance of a permanent injunction.

CONCLUSION

The Court should grant Plaintiff's motion.

Respectfully submitted,

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Dated: August 2, 2024

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.	No. 23-CV-2015 (ECT/JFD)

LOCAL RULE 7.1 CERTIFICATE OF COMPLIANCE

I, Nur Ibrahim, certify that the memorandum titled *Brief of the Chamber of Commerce of the United States of America and National Association of*

Manufacturers as Amici Curiae in Support of Plaintiff's Motion for Summary Judgment complies with Local Rule 7.1(f).

I further certify that, in preparation of the above document, I used the software *Microsoft® Word for Microsoft 365 MSO (Version 2302)*, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count, except for the caption, signature-block text, and certifications of compliance.

I further certify that the above document contains the following number of words: 4848.

Respectfully submitted,

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