United States Court of Appeals
For the Eighth Circuit

No. 22-1238

WinRed, Inc.

Plaintiff - Appellant

v.

Keith M. Ellison, in his official capacity as Attorney General for the State of Minnesota; Letitia James, in her official capacity as Attorney General for the State of New York; William Tong, in his official capacity as Attorney General for the State of Connecticut; Brian E. Frosh, in his official capacity as Attorney General for the State of Maryland

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: October 18, 2022
Filed: February 7, 2023

Before SMITH, Chief Judge, BENTON and SHEPHERD, Circuit Judges.

BENTON, Circuit Judge.

The district court[1] dismissed WinRed, Inc.'s request for a declaratory judgment and preliminary injunction. This court "review[s] de novo the grant of a motion to dismiss for failure to state a claim . . . , accept[ing] the factual allegations in the complaint as true and draw[ing] all reasonable inferences in the plaintiff's favor." ***Rydholm v. Equifax Info. Servs.***, 44 F.4th 1105, 1108 (8th Cir. 2022). Having jurisdiction under 28 U.S.C. §§ 1291 and 1331, this court affirms.

I.

WinRed, a "conduit" political action committee (PAC), centralizes donations to Republican-affiliated candidates and committees. WinRed helps them set up a WinRed.com webpage where donors contribute. WinRed collects and distributes the earmarked contributions. WinRed.com's technical and maintenance services are at least partly performed by a separate entity, WinRed Technical Services, LLC (WRTS). The relationship between WinRed and WRTS is not clear, but this court accepts WinRed's affidavit that it operates exclusively in the domain of federal elections. **R. Doc. 24** at ¶ 6.[2] *See* ***Tholen v. Assist Am., Inc.***, 970 F.3d 979, 982 (8th Cir. 2020) (standard of review).

As a federal PAC, WinRed must comply with the Federal Election Campaign Act (FECA). **52 U.S.C. §§ 30101** *et seq.* Originally passed in 1971, FECA consolidated federal election law, setting uniform requirements for many aspects of federal elections. *See* FEC, *The First 10 Years* 1–2 (Apr. 14, 1985), *available at* https://www.fec.gov/resources/cmscontent/documents/firsttenyearsreport.pdf (last visited Dec. 12, 2022). Congress amended FECA in 1974, creating the Federal Election Commission (FEC) to enforce the act, promulgate rules, and issue advisory

[1]The Honorable John R. Tunheim, then Chief Judge of the United States District Court for the District of Minnesota, now United States District Judge for the District of Minnesota.

[2]Documents from the district court case, *WinRed, Inc. v. Ellison*, No. 21-1575-JRT-BRT (D. Minn. Jan. 26, 2022), will be cited as "R. Doc."

opinions about FECA's scope and application. ***FEC v. Democratic Senatorial Campaign Comm.***, 454 U.S. 27, 37 (1981). FECA and its regulations require WinRed register with the FEC, regularly disclose certain data, and include certain disclaimers on its public communications. **52 U.S.C. §§ 30103**, **30104**; **11 C.F.R. §§ 110.11**, **108.7**. The parties do not dispute that WinRed has always complied with its FECA obligations.

According to news reports, WinRed's involvement in the 2020 election angered some donors and overdrafted others. The reports accused Donald Trump and other WinRed candidates of "steer[ing] supporters into unwitting donations" with pre-checked recurring-donation checkboxes. See Shane Goldmacher, *How Trump Steered Supporters into Unwitting Donations*, **N.Y. Times**, Apr. 3, 2021, *available at* https://www.nytimes.com/2021/04/03/us/politics/trump-donations.html (last visited Dec. 23, 2022); Evie Fordham, *Trump Campaign and Allies Refund $122M to WinRed Donors: Report*, **FoxNews**, Apr. 4, 2021, *available at* https://www.foxnews.com/politics/trump-campaign-refund-winred-donors-2020 (last visited Dec. 23, 2022). According to one report, donations would be repeatedly withdrawn from consumers' accounts unless they "wade[d] through a fine-print disclaimer and manually uncheck[ed] a box to opt out," a process complicated by "lines of text in bold and capital letters that overwhelmed the opt-out language." **N.Y. Times**, *Unwitting Donations*, *supra*. Consumers complained to WinRed, campaigns, banks, credit card companies, and law enforcement entities like the FEC and state attorneys general. *See* ***id.***

Attorneys General from Minnesota, Connecticut, Maryland, and New York launched a joint investigation. On April 29, 2021, the New York Attorney General, on behalf of the four Attorneys General, sent WinRed a letter expressing concern about consumers being "charged for regular contributions that they did not intend and could not afford." **Letters Between Attorneys General and WinRed**, **R. Doc. 1-1** at 2 [hereinafter "Joint AG Communication"].

The letter noted the offices' "significant experience with pre-checked solicitations"; expressed a belief that such practices "can be inherently misleading"; and explained: "For that reason, various state and federal laws specifically require businesses to provide clear and conspicuous disclosures to consumers before an automatic renewal or additional purchase can take effect." ***Id.*** It requested documents and information "[i]n order to better understand WinRed's practices and ensure that consumers in [the four represented] states are not subject to deceptive or unlawful solicitation practices." ***Id.***

WinRed declined to comply with the request. It claimed that because WinRed is a PAC engaged only in federal elections, its fundraising practices are governed exclusively by FECA, not state law. ***Id.*** at 6–7. When the Attorneys General reasserted authority to investigate and enforce their state consumer-protection laws, WinRed sued in federal court. It sought a declaratory judgment and permanent injunction preventing the Attorneys General from (1) "investigat[ing] WinRed's activities with respect to contributions"; and (2) "bring[ing] a deceptive-practice action against it for those activities." **Complaint**, **R. Doc. 1** at ¶ 7.

The Attorneys General then issued subpoenas and civil investigative demands (CIDs). Minnesota's CID asserted that Attorney General Keith M. Ellison had reasonable grounds to believe that WinRed violated Minnesota Statutes sections 325F.69 (Prevention of Consumer Fraud) and 325D.44 (Deceptive Trade Practices). **Demand for Answers to Interrogatories and Request for Documents**, **R. Doc. 24-1** at 1 [hereinafter "Minnesota CID"]. Specifically, General Ellison believed WinRed had "use[d] certain practices with the tendency or capacity to deceive consumers, or to create a likelihood of confusion or misunderstanding, including WinRed's use of pre-checked boxes or similar options to lock-in donations on a recurring basis." ***Id.***

The CID made ten document requests, many focused on pre-checked recurring-donation boxes, the webpages that contained them, and any disclosures or

disclaimers from the webpages.[3] WinRed sought to preliminary enjoin enforcement of the subpoenas and CIDs.

The Attorneys General moved to dismiss for lack of personal jurisdiction and failure to state a claim. The U.S. District Court for the District of Minnesota found that it lacked personal jurisdiction over the out-of-state Attorneys General and granted their motion to dismiss. It then granted the Minnesota Attorney General's motion to dismiss, finding that FECA does not preempt Minnesota's consumer-protection law as applied to WinRed. **R. Doc. 51**. WinRed appeals only the Minnesota decision.

II.

WinRed ask this court to declare General Ellison's investigation preempted and enjoin it.

Preemption claims typically focus on state laws or enforcement actions, not investigations. *See* ***Cipollone v. Liggett Grp., Inc.***, 505 U.S. 504, 516 (1992) ("[S]tate law that conflicts with federal law is without effect."), *citing* ***M'Culloch v. Maryland***, 17 U.S. (4 Wheat.) 316, 427 (1819). *Cf.* ***Bunning v. Kentucky***, 42 F.3d 1008, 1012 (6th Cir. 1994) (an ostensible investigation could be preempted because it "constituted an attempt to impose [Kentucky law]").

Federal law's supremacy can render state investigations unlawful in one of two ways. First, federal law might provide a substantive right to be free from state

[3]Document Request 4, for example, requested "[d]ocuments representing WinRed's website as it appears to donors and other users[] for all web pages that WinRed has hosted or used to solicit donations that included a pre-checked box for recurring or additional donations, including all disclosures made to potential donors about recurring donations and any other text and images that accompany the pre-checked boxes."

investigation. *See* ***Major League Baseball v. Crist***, 331 F.3d 1177, 1181 (11th Cir. 2003). WinRed does not make this claim.

WinRed argues instead that federal law insulates it from potential enforcement actions, and *state* law prohibits investigations where no enforcement action could be brought. It acknowledges that Minnesota law authorizes investigations when General Ellison has "reasonable ground to believe that any person has violated, or is about to violate, [Minnesota's consumer-protection] laws." **Minn. Stat. § 8.31** Subd. 2.[4] But it claims that FECA immunizes its federal fundraising-related activities from state-law sanction. And because FECA preempts applying Minnesota consumer-protection laws to WinRed's conduct, the argument goes, "as a matter of law, General Ellison can have no 'reasonable ground to believe' that [WinRed] is violating his State's law." WinRed concludes that the investigation is unlawful. *See* **WinRed's Reply Brief** at 8 ("[W]ithout a 'reasonable ground to believe' that WinRed, Inc. is violating Minnesota law, General Ellison has no authority whatsoever to investigate WinRed, Inc.'s federal fundraising-related practices for a potential violation of Minnesota law."); ***id.*** ("WinRed, Inc. is not challenging General Ellison's ability to impose one remedy instead of another. WinRed, Inc.'s point, in contrast, is that FECA preempts General Ellison from imposing any *liability* whatsoever based on WinRed, Inc.'s federal fundraising-related activities."); ***id.*** at 7–8 ("WinRed, Inc.'s argument . . . is premised on General Ellison's determination that there *currently* exists a 'reasonable ground to believe'

[4]Because a Minnesota statute requires General Ellison to have "a reasonable ground to believe" a law was violated, Minnesota law determines what constitutes a "reasonable ground" *See* ***Progressive N. Ins. Co. v. McDonough***, 608 F.3d 388, 390 (8th Cir. 2010) ("This court is bound by decisions of the highest state court when interpreting state law."). The Minnesota Supreme Court would find that General Ellison has no reasonable belief of a Minnesota law violation if FECA, through preemption, renders Minnesota law "without effect." ***Cipollone***, 505 U.S. at 516. *See* ***Am. Tower, L.P. v. City of Grant***, 636 N.W.2d 309, 312 (Minn. 2001) ("Where the legislature's intent is clearly discernable from plain and unambiguous language, . . . courts apply the statute's plain meaning.").

that WinRed, Inc.'s federal fundraising-related practices might give rise to State consumer-protection liability."); **WinRed's Opening Brief** at 21 ("Because WinRed, Inc.'s activities are fully consistent with *federal* law, as vetted by *federal* regulators, General Ellison's *state* consumer-protection enforcement would add to, and therefore conflict with, the unified system of federal campaign-finance regulation that Congress created."). *See also* ***Major League Baseball***, 331 F.3d at 1188 (holding that "an investigation predicated solely upon legal activity does not pass muster" because Florida law "requires that the Attorney General 'suspect' that a violation has taken place before an investigation may commence").[5]

Two questions remain: First, what Minnesota law does General Ellison claim to "reasonably believe" WinRed violated? Second, does FECA preempt application of Minnesota law to WinRed's allegedly violative conduct?

III.

General Ellison is investigating potential violations of Minnesota's consumer-protection law. That law prohibits "any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice" and defines "deceptive practice" to include misrepresenting certain facts or engaging in "any other conduct which similarly creates a likelihood of confusion or of misunderstanding." **Minn. Stat. § 325F.69**; **Minn. Stat. § 325D.44**.

[5]This court's jurisdiction is not in doubt. Whether state action is preempted by a federal statute "presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve. ***Shaw v. Delta Air Lines***, 463 U.S. 85, 96 n.14 (1983). *See also* ***Bunning***, 43 F.3d at 1011 (finding a district court's jurisdiction to enjoin an investigation "clear").

Minnesota consumer-protection law does not, as WinRed claims, mandate disclaimers[6] on fundraising sites. To start, the statutory text contains no disclaimer requirement. ***Id.*** *See also* ***Manselle v. Krogstad (In re Krogstad)***, 958 N.W.2d 331, 334 (Minn. 2021) (statutory interpretation begins with the statutory text).

WinRed gives two reasons to look beyond the statutory text. Neither succeeds. It first claims that the initial letter sent on General Ellison's behalf by the New York Attorney General is an "admission" that "[Minnesota] state law specifically requires businesses to provide clear and conspicuous disclosures" before enrolling them in automatic donations.

This misreads the initial letter. In the key paragraph WinRed emphasizes, the Attorneys General say:

> Our offices have significant experience with pre-checked solicitations and other forms of "negative option" marketing to consumers. We believe that such solicitations can be inherently misleading, and result in consumers making unwanted and unintended purchases. For that reason, *various state and federal laws* specifically require businesses to provide clear and conspicuous disclosures to consumers before an automatic renewal or additional purchase can take effect, and define the failure to do so as a deceptive practice.

Joint AG Communication at 2 (emphasis added)

[6]This opinion uses the term "disclaimers" to mean additional bits of information contained alongside communications. This usage comports with 11 C.F.R. § 110.11, which discusses "disclaimers" that must be included on political advertisements. General Ellison sometimes uses the word "disclosures" instead, which might cause confusion with FEC-mandated disclosures of receipts and expenditures. *See* **11 C.F.R. 108.7**.

Contrary to WinRed's interpretation, the letter does not purport to describe Minnesota law. It just makes a general statement about "various state and federal laws" that require disclaimers. ***Id.***

That is not the only reason to reject WinRed's claim that General Ellison "expressly tied his investigation" to disclaimers through the initial letter. He neither penned nor signed it. In fact, neither of the documents bearing his seal—the second joint Attorneys General letter and Minnesota's CID—mentions any state mandate to use "clear and conspicuous" disclaimers.

WinRed implies a second reason to believe disclaimer mandates underly General Ellison's investigation. General Ellison *must* be investigating a disclaimer law, the reasoning goes, because his CID demands to see WinRed's disclaimers. *See* **Minnesota CID** at 9 (asking to see "WinRed's website as it appears to donors . . . including all disclosures made to potential donors about recurring donations"); ***id.*** at 10 (requesting "any representations about the use of pre-checked boxes or other methods for securing recurring donations [and] the disclosures made to donors about the use of recurring donations"); ***id.*** (requesting "user interface testing, user stories, or analyses of the content and layout of solicitations using pre-checked donation boxes").

WinRed overreads the CID. General Ellison's request to see any included disclaimers does not establish that Minnesota law mandates disclaimers. Investigations can cover disclaimers without a mandatory-disclaimer law. Clear and conspicuous disclaimers about auto-recurring donations might have legitimated otherwise-illegal solicitation tactics. But that would be because disclaimers prevent the "confusion" and "misunderstanding" that Minnesota prohibits. **Minn. Stat. § 325D.66**. And General Ellison's request to see WinRed's disclaimers is a way to explore whether WinRed illegally caused confusion.[7]

[7]Consider a hypothetical law that prohibits lying about the metallic composition of commemorative coins. If consumers complained that a fraudster

Minnesota law does not require disclaimers.[8] It prohibits "misrepresent[ing], misleading," or using "deceptive practices . . . [that] create[] a likelihood of confusion or of misunderstanding." **Minn. Stat. § 325F.69**; **Minn. Stat. § 325D.44**. FECA preempts General Ellison's investigation only if it prohibits Minnesota from enforcing its deceptive-practice ban against WinRed's online solicitations.

IV.

The Supremacy Clause designates federal law as "the supreme Law of the Land." **U.S. Const.** art. VI, cl. 2. "[S]tate law must yield" when Congress intends to preempt it. ***Crosby v. Nat'l Foreign Trade Council***, 530 U.S. 363, 372 (2000).

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distributed brochures advertising "REAL GOLD COINS" but instead delivered cheap brass ones, an attorney general could investigate. The attorney general could first obtain the brochures, maybe with a CID. A thorough and fair CID would also request "all disclaimers made to potential customers." After all, maybe the complaining consumers simply overlooked something—maybe the brochure did not say "REAL GOLD COINS" but instead read "REAL GOLD COINS* *(appearance of real gold only, actual coins are brass)." If that were the case, the seller would not have lied about the coins' metallic composition and would not have violated the law.

The fact that including disclaimers would have made an otherwise illegal advertisement legal does not transform the anti-lying law into a disclaimer mandate. Nor would an investigatory request for disclaimers imply that the law is a disclaimer mandate—asking for disclaimers would be a good-faith inquiry into the legality of the seller's advertisement.

[8]To the extent WinRed seeks to enjoin only General Ellison's future ability to impose disclaimer requirements, rather than his entire investigation, that claim is not ripe, as the separate opinion correctly notes. Disputes about "future events that may never occur" are "not fit for judicial decision." ***Gonzalez v. United States***, 23 F.4th 788, 791 (8th Cir. 2022) (quotation marks omitted), *quoting* ***Texas v. United States***, 523 U.S. 296, 300 (1998). Disclaimer mandates may never occur. Minnesota law does not require them, and WinRed does not allege that General Ellison has directed it to include disclaimers. If he does so, WinRed can challenge that directive through appropriate channels. *See* ***Gonzalez***, 23 F.4th at 791(dismissing an unripe claim).

See also ***New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.***, 514 U.S. 645, 655 (1995) ("[P]re-emption claims turn on Congress's intent.").

As relevant here, Congress can preempt state law in one of three ways: (1) expressly though statutory language like a preemption clause; (2) implicitly when a state law "conflict[s] with" or stands as an obstacle to federal law; or (3) implicitly by "occup[ying] a legislative field," leaving no room for state law. ***Weber v. Heaney***, 995 F.2d 872, 875 (8th Cir. 1993), *citing* ***Cipollone***, 505 U.S. at 516 *and* ***Jones v. Rath Packing Co.***, 430 U.S. 519, 525 (1977).

Interpreting an express preemption provision, this court "focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." ***Watson v. Air Methods Corp.***, 870 F.3d 812, 817 (8th Cir. 2017), *quoting* ***Puerto Rico v. Franklin Cal. Tax-Free Tr.*** 136 S.Ct. 1938, 1946 (2016). For implied preemption, courts apply a presumption against preemption in "field[s] traditionally occupied by the States." ***Altria Grp., Inc. v. Good***, 555 U.S. 70, 77 (2008). *See also* ***Freightliner Corp. v. Myrick***, 514 U.S. 280, 288 (1995) (explaining that an express preemption clause "supports a reasonable inference" that Congress "did not intend to pre-empt other matters").

A.

FECA does not expressly preempt General Ellison's investigation. Its express preemption clause supersedes "any provision of State law with respect to election to Federal office." **52 U.S.C. § 30143** (2020) (formerly codified at 2 U.S.C. § 453 (1974)). FEC regulation defines the statute's scope. **11 C.F.R. § 108.7**. It categorizes state law into three preempted areas and six non-preempted areas:

> (b) Federal law supersedes State law concerning the—
>
> 1) Organization and registration of political committees supporting Federal candidates;

2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

(c) The Act does not supersede State laws which provide for the
1) Manner of qualifying as a candidate or political party organization;
2) Dates and places of elections;
3) Voter registration;
4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;
5) Candidate's personal financial disclosure; or
6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in [a different provision].

Id. Congress repeatedly reviewed and declined to displace this regulation. ***Weber***, 995 F.2d at 87. Courts consider the FEC's category-based preemption regulation as definitive evidence of the scope of FECA's preemption clause. *See, e.g.*, ***Weber***, 995 F.2d at 876 (finding the regulation tantamount to "a further express preemption" and "persuasive evidence that [the agency's] interpretation is the one intended by Congress"); ***Bunning***, 42 F.3d at 1012 ("The interpretive regulation, 11 C.F.R. § 108.7, sets forth the statute's preemptive scope in accordance with the statute's plain language and its legislative history."), *citing* **H.R. Doc. No. 95-44**, 95th Cong., 1st Sess. 51 (1977) (report—which is a near carbon-copy of the FEC's final rule—of the House Committee that authored the preemption clause); ***Teper v. Miller***, 82 F.3d 989, 995 (11th Cir. 1996) (calling the regulation "more definitive[] evidence of Congress's intent" than decontextualized statutory language). *See also* ***D.S.C.C.***, 454 U.S. at 37 ("[T]he [FEC] is precisely the type of agency to which deference should presumptively be afforded.").

Minnesota's consumer-protection law fits into the fourth category of statutes not superseded by FECA, laws prohibiting "false registration, voting fraud, theft of ballots, and similar offenses." **11 C.F.R. § 108.7**(c)(4).

In a 1981 advisory opinion, the FEC confirms that the phrase "similar offenses" in this category is construed broadly enough to cover Minnesota's consumer-protection law. **FEC Advisory Op. 1981-27** (July 2, 1981). There, the FEC opined that a city's littering prohibition still applied to political flyers even though the city could not mandate an anti-littering warning be printed on the flyers. ***Id.*** at 2. Citing subsection (c)(4)'s prohibition on fraudulent voting, registration, and "similar offenses," the FEC "ma[de] clear" that state and local regulations like the anti-littering ordinance were "outside the purview of [FECA's preemption clause], since they do not relate to identifying the sponsor of the advertising and thus are not integral to the disclosure purpose that undergirds [FECA's disclaimer requirements]." ***Id.***

If "similar offenses" encompasses anti-littering ordinances, as the advisory opinion indicates, then it also includes anti-deceptive-practices laws, which are even more "similar" to the fraudulent conduct expressly identified in 11 CFR 108.7(c)(4).

WinRed proposes a new category of preempted conduct—preemption whenever state law regulates a federal PAC's "engage[ment] in federal fundraising-related activity."

This proposal is textually unsupported. The regulation cabins preemption to two narrow finance-related categories: "[d]isclosure of receipts and expenditures" and "[l]imitation on contributions and expenditures regarding Federal candidates and political committees." **11 C.F.R. § 108.7(b)(2)–(3)**. It does not bring everything fundraising-related under FECA's umbrella. *Cf.* ***Galliano v. U.S. Postal Serv.***, 836 F.2d 1362, 1371 (D.C. Cir. 1988) (Ruth Bader Ginsburg, J.) (finding some solicitations for political contributions outside of FECA's exclusive domain).

WinRed's "fundraising-related" standard is also too broad. A PAC's "engag[ing] in federal fundraising-related activity" cannot remove it from all state regulation. That position would permit "requesting" donations at gunpoint—so long as the money went to a federal election—because FECA does not prohibit assault. True, WinRed expresses "no concern" with being subject to state tort law. But its broad interpretation of the preemption regulation would immunize it from many generally applicable state laws. Minnesota's deceptive-practice prohibition is not preempted by 11 C.F.R. § 108.7.

Alternatively, WinRed urges this court to ignore the FEC's regulation and adopt a narrow, literal reading of the preemption clause. FECA's preemption clause supersedes "any provision of State law with respect to election to Federal office." **52 U.S.C. § 30143**. Emphasizing "with respect to," WinRed argues that because its investigated conduct "concerns" and "relates to" federal elections, the preemption clause applies.

WinRed is right to begin with the statutory text, but it is wrong to end there. *See* ***United States v. Jungers***, 702 F.3d 1066, 1069 (8th Cir. 2013) (affirming that this court "look[s] beyond" statutory text when application of the plain language "will produce a result demonstrably at odds with the intentions of its drafters"), *citing* ***United States v. Ron Pair Enters.***, 489 U.S. 235, 242 (1989).

This court has already rejected WinRed's reading. In *Reeder v. Kansas City Board of Police Commissioners*, it held that FECA does not preempt a statute prohibiting Missouri police officers from donating to federal campaigns even though the state prohibition fell within a literal reading of the preemption clause. ***Reeder***, 733 F.2d 543, 545 (8th Cir. 1984). The *Reeder* court was explicit: "some state laws that could be characterized as coming within the preemption provision, if read literally and broadly, remain valid." ***Id.***

A later case confirmed that looking beyond the plain language is appropriate when "the state law in question [is] close to the boundaries of the domain preempted

by FECA, and whether the law was preempted would depend on whether that section was read broadly or narrowly." ***Weber***, 995 F.2d at 876. Here, WinRed proposes a broad reading that this court has already rejected. The narrower—and better—reading sticks to the FEC's categorical delineation. *See* **11 C.F.R. § 108.7**.

Replacing *Reeder* and *Weber*'s sharp analysis with WinRed's blunt interpretation makes no sense. Striking down *all* state laws "with respect to" federal elections would raise constitutional concerns. *See, e.g.*, **U.S. Const.** art. I, § 4, cl. 1 (requiring state legislatures determine the "Times, Places and Manner" of federal elections); ***U.S. Term Limits v. Thornton***, 514 U.S. 779, 832 (1995) ("The Framers intended the Elections Clause to grant States authority to create procedural regulations."), *citing* 2 **Records of the Federal Convention of 1787**, 240 (M. Farrand ed. 1911) (statement of James Madison) *and* **The Federalist No. 60** (Alexander Hamilton); ***Cal. Democratic Party v. Jones***, 530 U.S. 567, 572 (2000) ("States have a major role to play in structuring and monitoring the election process, including primaries."). Nor is WinRed's reading mandatory. A statute's meaning, the Supreme Court shows, can be narrower than its broadest literal reading. *See, e.g.*, ***Am. Needle, Inc. v. NFL***, 560 U.S. 183, 189 (2010) ("[E]ven though, read literally, [the Sherman Act] would [prohibit] the entire body of private contract, that is not what the statute means.").

FECA does not expressly preempt General Ellison's investigation.

B.

That FECA does not expressly preempt General Ellison's investigation "supports an inference" that implied preemption does not apply. ***Freightliner***, 514 U.S. at 289. Nonetheless, this court must assess WinRed's implied preemption arguments. ***Id.***

The first type of implied preemption, conflict preemption, does not require enjoining General Ellison's investigation. Conflict preemption voids state laws

when (1) "compliance with both federal and state regulations is a physical impossibility," or when (2) "the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ***Arizona v. United States***, 567 U.S. 387, 399 (2012) (quotation omitted).

Complying with both FECA and Minnesota's consumer-protection law is not a physical impossibility. FECA does not require WinRed to mislead or deceive consumers. *See* **Minn. Stat. § 325F.69**.

Nor does Minnesota law stand as an obstacle to FECA's purpose. According to the Supreme Court, "[t]he primary purpose of FECA was to limit *quid pro quo* corruption and its appearance." ***McCutcheon v. FEC***, 572 U.S. 185, 197 (2014). *Accord* ***Buckley v. Valeo***, 424 U.S. 1, 26 (1976). WinRed has not shown how Minnesota's consumer-protection law facilitates *quid pro quo* corruption and its appearance.

WinRed instead argues that FECA's purpose is "[t]o ensure that federal elections are administered uniformly across the Nation." WinRed is correct in a limited sense. FECA seeks national uniformity *in the areas where it preempts state law*. That is why legislators and regulators discussing FECA's preemption clause—WinRed's best authority—often emphasized national uniformity. *See* **H.R. Doc. No. 95-44**, 95th Cong., 1st Sess. 51 (1977); **FEC Advisory Op. 2006-24** at 10. The preemption clause's purpose—preempting a subset of state laws—does not imply a grand statutory design to enforce uniformity writ large. *See* ***Freightliner***, 514 U.S. at 288 ("[A]n express definition of the pre-emptive reach of a statute implies . . . that Congress did not intend to pre-empt other matters.").

Most importantly, WinRed's national-uniformity obstacle-preemption claim starts with the premise that Minnesota law mandates specific disclaimers. That premise, as discussed above, is wrong. Conflict preemption does not prevent General Ellison from investigating under Minnesota's consumer-protection law.

C.

"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***, 138 S.Ct. 1461, 1480 (2018) (quotation omitted). Federal statutes that "provide a full set of standards" and "obligations" can be understood to "also confer a federal right to be free from any other . . . requirements." ***Id.*** at 1481, citing ***Arizona***, 567 U.S. at 401.

FECA does not "occupy the field" of donor-protection laws. The FEC says that, when it comes to recurring donations, FECA has not even entered the field. *See* ***D.S.C.C.***, 454 U.S. at 37 ("[D]eference should presumptively be afforded [to the FEC]."). In a 2018 matter under review, the FEC opined that a complaint alleging four unauthorized withdrawals of recurring donations "fail[ed] to identify a violation of the Federal Election Campaign Act." *Trump Make America Great Again Committee*, **Matter Under Review (MUR) 7255** (FEC Jan 25, 2018). *See also Ted Cruz for Senate*, **MUR 7201** (FEC Jan. 26, 2018) (no FECA violation for charging recurring donations despite promising not to). The FEC confirmed FECA's inapplicability to recurring-donation boxes in a 2021 set of legislative recommendations. FEC, *Legislative Recommendations of the Federal Election Commission 2021*, Agenda Document No. 21-24-A1 (May 6, 2021) at 12–13 (last visited Dec. 12, 2022), *available at* https://www.fec.gov/resources/cms-content/documents/legrec2021.pdf. There, it requested Congress amend FECA to, for the first time, create recurring-contribution consent and disclaimer requirements. ***Id.***

FECA's silence does not demonstrate a congressional intent to forbid any and all federal-election-related consumer protections. *See* ***Freightliner***, 514 U.S. 288 (an express preemption clause implies no preemption in other areas).

Other courts confirm that FECA does not crowd out anti-deception state laws. The D.C. Circuit drew a clear line between identity-disclaimer and honesty-promoting requirements in *Galliano v. USPS*. 836 F.2d at 1370. The court contrasted identity-disclaimers, which FECA alone may regulate, with "allegedly false statement[s]," which it described as "representations not specifically regulated by FECA" and thus amenable to regulations by other entities. ***Id.*** Then-judge Ruth Bader Ginsburg, writing for the court, explained that federally exclusive identity-disclosure requirements "were meant to provide a safe haven to candidates and political organizations with respect to those organizations' names and sponsorship." ***Id.***

No court has found that Congress also intended FECA's silence on deceptive practices to constitute a similar "safe haven" to PACs with respect to "fraud, misrepresentation, [and] deceptive practices." **Minn. Stat. § 325F.69**. *See also* ***Galliano***, 826 F.2d at 1371 ("No provisions of FECA set standards for [false claims about fundraising prowess] and there is no reason to believe that the silence of that legislation was meant to exempt uncovered statements from all regulation."); **FEC Advisory Op. 1981-27** (July 2, 1981) (describing an anti-littering law as "outside [FECA's] purview").

WinRed argues that FECA's imposition of identity-disclaimer requirements implies "a federal right to be free from any other . . . requirements." ***Murphy v. NCAA***, 138 S. Ct. 1461, 1481 (2018) (quotation omitted). But again, this is not a case solely about disclaimer requirements. And because it is not, Minnesota's deceptive-practices prohibition applies to WinRed and General Ellison can investigate whether WinRed violated it.

V.

WinRed accuses General Ellison of a political "fishing expedition," which he denies. Accusations aside, WinRed may not be without recourse. Minnesota courts can limit overbroad CIDs. *See* ***Roberts v. Whitaker***, 178 N.W.2d 869, 877 (Minn.

1970) ("[A] government agency is not licensed to engage in a general fishing expedition into the affairs of private parties on the mere hope that some useful information will be disclosed."). Even if an investigation has political valence, this court will not undermine Minnesota's sovereign prerogatives. *Cf.* ***Major League Baseball***, 331 F.3d at 1181 (noting that state courts can enforce state-law limits on a subpoena's scope).

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WinRed errs from the start by attacking a disclaimer mandate where none exists. Minnesota's consumer-protection law prohibits deceptive practices, and federal law does not preempt Minnesota's enforcing it against WinRed. Because an enforceable state law underlies General Ellison's investigation, the investigation may proceed.

The judgment is affirmed.

SHEPHERD, Circuit Judge, writing separately.

I write separately because I believe that this case is not ripe for judicial review, and thus, we lack jurisdiction. Further, I write to express my concern with the breadth of the Minnesota Attorney General's (AG) Civil Investigative Demand (CID).

WinRed does not and could not argue that federal law preempts *every* state law that would otherwise apply to it, just because it is a federally registered conduit PAC. Instead, the crux of WinRed's preemption claim is that "[t]he *disclaimers* it must include while serving as a conduit for federal political contributions . . . fall directly within the heartland of FECA-regulated and FEC-enforced activity." Because, according to WinRed, Minnesota cannot mandate disclaimers beyond those required by federal law, the AG's investigation is preempted.

However, this argument puts the cart before the horse. Indeed, the Minnesota laws which the AG cites in the CID as the basis for his investigation—the Minnesota Consumer Fraud Act and Minnesota Deceptive Trade Practices Act—say nothing about mandated disclaimers. See Minn. Stat. §§ 325F.69, 325D.44. And for the reasons set forth in Section III of the Court's opinion, Minnesota law does not mandate disclaimers. As discussed in the AG's brief, then, the only way Minnesota may require additional disclaimers is through a potential remedy at the end of an enforcement action which has not yet taken shape. Even then, additional disclaimers are only one potential remedy the AG may pursue. The AG, instead, may seek restitution for consumers, a prohibition of the use of pre-checked recurring donations boxes, or nothing at all.

"A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Texas v. United States, 523 U.S. 296, 300 (1998) (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81 (1985)). At this stage, WinRed's preemption claim is not yet ripe for review because it is based on the speculative chance that the AG may eventually require WinRed to provide additional disclaimers. Cf. Arizona v. United States, 567 U.S. 387, 414-15 (2012) (rejecting preemption challenge as premature because "it would be inappropriate to assume [that the provision subject to state enforcement] will be construed [by state officials] in a way that creates a conflict with federal law"); Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Local, 468 U.S. 491, 512 (1984) (refusing to reach preemption question because state agency never actually imposed the sanction that would have given rise to preemption issue). I would thus dismiss this appeal and defer judicial review until the AG's investigation and enforcement processes have played out and it is clear whether there is a concrete controversy over disclaimers.

Although the AG's investigation must be allowed to move forward, I am concerned with the breadth of the CID. It requests an extraordinary amount of sensitive information from a political organization, some of which has a tenuous relationship, at best, with the AG's investigation. For example, the CID seeks "[a]ll

[d]ocuments showing the conversion rate of website donors who made recurring donations in the *absence* of a pre-checked recurring donation box," and the identities of "all political committees, parties, and candidates (and any other clients) for whom WinRed has used pre-checked recurring or additional donation boxes." R. Doc. 24-1, at 39 (emphasis added). Because political speech and association is at the very core of the First Amendment's protections, see Buckley v. Valeo, 424 U.S. 1, 14-15 (1976), the AG should exercise caution moving forward, as WinRed has important rights at stake. Cf. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 462 (1958) ("Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."); Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2388 (2021) ("[D]isclosure requirements can chill association '[e]ven if there [is] no disclosure to the general public.'") (second and third alterations in original) (quoting Shelton v. Tucker, 364 U.S. 479, 486 (1960)).
