

## FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

## BEFORE THE FEDERAL ELECTION COMMISSION

n the Matter of	)	
MindGeek S.A.R.L. f.k.a.	)	MUR: 6678
Manwin Licensing International S.A.R.L.;	)	
Fabian Thylmann	)	
Andrew Link	)	
Froytal Services Limited	)	
No on Government Waste/No on Measure B	)	
—Major funding by Manwin USA	)	
—iviajor junuing by ivialiwin our	,	

## SUPPLEMENTAL STATEMENT OF REASONS OF COMMISSIONER LEE E. GOODMAN

The legal reasoning for my vote in this matter is set forth in the Statement of Reasons issued by Vice Chairman Petersen, Commissioner Hunter and me and in the relevant discussion in the First General Counsel's Report prepared by the Office of General Counsel. I write separately to elaborate on certain points that I considered in reaching my conclusion.

The Federal Election Campaign Act of 1971 (FECA)<sup>1</sup> regulates the financing of elections of candidates for public office. Typically the FECA concerns itself with federal candidate elections. In the case of foreign nationals, the FECA prohibits financial contributions and expenditures in federal, state and local candidate elections. The FECA does not address state and local ballot initiatives and referenda. But California law does.

The California Political Reform Act of 1974<sup>2</sup> regulates state and local ballot initiatives and referenda in California. The law specifically prohibits foreign financial participation in ballot measure campaigns:

No... foreign principal shall make, directly or through any other person, any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure.<sup>3</sup>

<sup>52</sup> U.S.C. § 30101 et seg.

<sup>&</sup>lt;sup>2</sup> Cal. Gov't Code § 81000 et seq.

<sup>&</sup>lt;sup>3</sup> *Id.* § 85320.

The people of California are certainly capable of protecting the integrity of their state and local initiative and referenda process as they see fit. They have decided that they do not want foreign contributions or expenditures to fund advocacy in ballot measure campaigns. The California Fair Political Practices Commission apparently decided not to pursue enforcement of potential violations of California law in this case. <sup>4</sup> That California did not is insufficient justification for the Commission to assert authority outside the lines Congress set for the Commission in the FECA 5

Lee E. Goodman Commissioner

Because the Commission did not have jurisdiction to investigate the alleged facts, I cannot assess whether the allegations had merit or would warrant enforcement by the California Fair Political Practices Commission. It suffices to point out that California law appears to address the allegations and California has had an opportunity to adjudge the facts for itself.

Because Congress did not regulate state and local ballot measure committees or finances in the FECA and no Congressional intent to foreclose state regulation of state and local ballot measures - a field traditionally regulated by the states - has ever been recognized, I concluded that the California law is not preempted in this case. See 52 U.S.C. § 30143 (the FECA provisions "supersede and preempt any provision of State law with respect to election to Federal office"); H.Rep. No. 93-1438, at 100-01 (1974) (Conf. Rep.) (in the FECA, Congress intended to "occupy the field with respect to reporting and disclosure of political contributions . . . to Federal candidates and political committees"); English v. General Elec. Co., 496 U.S. 72, 79 (1990) (field preemption generally applies where a state regulates the "same subject" regulated by Congress, in an area of dominant federal interest, or where Congress has entered a traditional state area and its intent to supersede state laws is "clear and manifest").