**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| Illinois Liberty PAC | ) | |
| Plaintiff, | ) | No. 12 C 5811 |
| | ) | |
| v. | ) | |
| | ) | Hon. Judge Feinerman |
| Lisa Madigan, *et al.*, | ) | |
| Defendants. | ) | |

**DEFENDANTS' REPLY IN FURTHER SUPPORT**
**OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants LISA MADIGAN, Illinois Attorney General, JESSE R. SMART, Chairman of the Illinois State Board of Elections, CHARLES W. SCHOLZ, Vice Chairman of the Illinois State Board of Elections, and HAROLD D. BYERS, BETTY J. COFFRIN, ERNEST L. GOWEN, CASSANDRA B. WATSON and BRYAN A. SCHNEIDER, all Members of the Illinois State Board of Elections (collectively, "Defendants"), by their attorney, hereby submit this reply in further support of their motion for summary judgment and state as follows:

## ARGUMENT

As a preliminary matter, it is necessary to address Plaintiffs' improper response to Defendants' 56.1 Statement of Material Facts. Many of Plaintiff's "responses" to Defendants' facts violate Rule 56 and should be struck by the Court.

Local Rule 56.1 "is designed, in part, to aid the district court, 'which does not have the advantage of the parties' familiarity with the record and often cannot afford to spend the time combing the record to locate the relevant information,' in determining whether a trial is necessary." *Delapaz v. Richardson,* 634 F.3d 895, 899 (7th Cir. 2011) (citation omitted). The purpose of Local Rule 56.1 "is to identify the relevant admissible evidence supporting the material facts, not to make factual or legal arguments." *Parker v. Side by Side, Inc.*, No. 12 CV

7204, 2014 WL 2932211, at *1 (N.D.Ill. June 27, 2014). Local Rule 56.1(b) requires the party opposing summary judgment to submit a *concise* response to each of the moving party's statements. *See* L.R. 56.1(b)(3). The responses should not consist of evasive or argumentative "denials that do not fairly meet the substance of the material facts asserted." *Bordelon v. Chicago School Reform Bd. of Trustees*, 233 F.3d 524, 528 (7th Cir. 2000); *see also Malec v. Sanford*, 191 F.R.D. 581, 584 (N.D.Ill. 2000) ("a Rule 56.1(b)(3)(A) response is not the place for purely argumentative denials"). The opposing party's statement must support any denial with "specific references to the affidavits, parts of the record, and other supporting materials relied upon." L.R. 56.1(b)(3). Unless an opposing party controverts the facts in this manner, "all material facts set forth in the movant's statement are deemed admitted." *Bordelon*, 233 F.3d at 527; *see also Cichon v. Exelon Generation Co., L.L.C.*, 401 F.3d 803, 809–10 (7th Cir. 2005) ("a district court does not abuse its discretion when….the court chooses to ignore and not consider the additional facts that a litigant has proposed"). "The court need not 'wade through improper denials and legal argument in search of a genuinely disputed fact.'" *Am. Hardware Mfrs. Ass'n v. Reed Elsevier, Inc.*, No. 03 CV 9421, 2010 WL 55708, at *1 (N.D.Ill. Jan. 4, 2010) (citing *Bordelon*, 233 F.3d at 529).

Plaintiffs 56.1(b)(3) responses to Defendants' Statement of Material Facts are repetitive, evasive, and argumentative. Plaintiffs claim to agree with facts but then argue against the very same facts. Plaintiffs responded "undisputed" to Defendants' paragraphs 10, 35 and 37 and then proceeded to *dispute* those statements. Additionally, Plaintiffs delay or impede the Court by arguing against facts Plaintiffs admit are true. As one example, paragraph 28 of Defendants' Statement of Facts asserted "[a] person does not need to be an incumbent to form a Leadership PAC." (Def. 56.1 Stmt. of Facts at ¶ 28). Plaintiffs' response to paragraph 28 launches into an

argumentative point carrying over to the next page and concluding with "Plaintiffs' do not dispute the proposition that one need not be an incumbent to form a federal Leadership PAC." (Pl. 56.1 Response at ¶ 28).

As another example, Defendants' paragraph 26 asserts that "Dr. Osborn believes legislative caucus committees in Illinois operate more like Leadership PACS, defined by federal law." (Def. 56.1 Stmt. of Facts ¶ 28). Plaintiffs responded stating "Dr. Osborn testified that legislative caucus committees in Illinois operate more like Leadership PACS at the federal level because…", (Pl. 56.1 Response at ¶ 26), and then go on to explain why Dr. Osborn believes this parallel. Both sides agree to what Dr. Osborn believed and instead of agreeing with the statement, Plaintiffs waste time by offering irrelevant explanations. Paragraph 18 of Defendants' Statement of Facts states "Political parties also seek to shape policy." (Def. 56.1 Stmt. of Facts at ¶ 18). Plaintiffs begin their response by talking about Dr. Osborn, who is not even mentioned in Defendants' paragraph 18, and conclude with "parties are engaged in influencing policy, not necessarily making policy." (Pl. 56.1 Response at ¶ 28). Defendants' paragraph 18 used the word "shape," not "make," and the relatively minor difference between "shape" and "influence" is an argumentative point not appropriate for 56.1(b)(3) responses. *See Malec v. Sanford,* 191 F.R.D. 581, 584 (N.D. Ill. 2000) ("a Rule 56.1(b)(3)(A) response is not the place for purely argumentative denials"); *see also* Pl. 56.1 Response ¶¶ 40, 47 (additional redundant responses that echo the Defendants' statements). Plaintiffs miss the point of 56.1(b)(3) responses, which is to simplify and clarify matters for the Court, and rather than narrowing the focus of the case to disputed issues, they burden the court with irrelevant arguments and unnecessary explanations.

Plaintiffs' responses to Defendants' Statement of Material Facts are argumentative and unnecessary. Their responses do not conform with the requirement of Local Rule 56.1(b)(3),

which requires concise statements. Plaintiffs failed to controvert the facts in the required manner and Defendants request that the challenged statements of facts be deemed admitted as true, specifically ¶¶ 10, 12, 14, 15, 18, 21, 22, 24-28, 30, 33, 35-37, 39, 40, 47, 49, 51. *See Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 632 (7th Cir. 2009) ("When a responding party's statement fails to dispute the facts set forth in the moving party's statement in the manner dictated by the rule, those facts are deemed admitted for purposes of the motion."); *Cichon v. Exelon Generation Co., L.L.C.,* 401 F.3d 803, 809–10 (7th Cir.2005); *Bordelon v. Chicago Sch. Reform Bd. of Trustees*, 233 F.3d 524, 527 (7th Cir. 2000).

**I. Plaintiffs recycle the same previously rejected arguments.**

Plaintiffs once again recycle the same argument from their motion for preliminary injunction and response to Defendants' motion to dismiss: that the burden lies with the Defendants and the Defendants have not "proved" the constitutionality of the Act. They are wrong on both counts. In so arguing that Defendants have the burden and have failed to carry it, Plaintiffs ignore Defendants' briefs during the preliminary injunction and motion to dismiss stages as well as the Court's rulings on each. Both Defendants' briefs and the Court's prior rulings clearly indicate that Defendants' have satisfied any burden they may have. Plaintiffs refuse to acknowledge this fact, and instead regurgitate the identical argument regarding burden from their Response to Defendants' Motion to Dismiss. *See* Doc. 87 at 7.

Plaintiffs' Response to Defendants' motion for summary judgment ("Pl. Resp.") misstates the nature the evidentiary burden and ignores the Court's directions in its motion to dismiss memorandum. Plaintiffs suggest it is the Defendants' burden to show the Act's limits are narrowly tailored to prevent corruption. Pl. Resp. at 2. They further allege that Defendants must present "evidence" of the statute's constitutionality, and not just conjecture. *Id.* Plaintiffs ignore

this Court's findings regarding whether the limits in place in the Act advance the government's interest in preventing *quid pro quo* corruption:

> Supreme Court precedent conclusively establishes that appropriate limitations on campaign contributions advance the government's interest in preventing *quid pro quo* corruption or the appearance thereof. *See Citizens United v. FEC*, 558 U.S. 310, 357 (2010); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 390-93, 397 (2000); *Buckley*, 424 U.S. at 26-27. And Supreme Court precedent likewise establishes that the challenges considered at the preliminary injunction stage and renewed here are without merit because the limitations in question are closely drawn to advance that interest. 902 F. Supp. 2d at 1120-26. ***There would be no point to the parties developing and court considering evidence on those matters.***

March 3, 2014 Motion to Dismiss Memorandum Opinion and Order at 6 (***emphasis added***). The Court could not have made it clearer. The Defendants have satisfied their burden as to the First Amendment claim. Plaintiffs' argument regarding the alleged burden of the Defendants has been well settled. Their argument was rejected by the Court. It carries no weight at the summary judgment stage and should be disregarded by the Court.

Even if the Court had not definitively ruled on the issue, Defendants have provided ample support for the Act's campaign contribution limitations. Plaintiffs lament the Act's PAC contribution limitations are "just $50,000." However, as Courts have noted, "restrictions on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression." *FEC v. Beaumont*, 539 U.S. 146, 161 (2003) (*citing FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 455 (2001) (*"Colorado II"*)). In determining whether a challenged contribution limitation is "closely drawn," a court must look to whether the restriction "was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." *Nixon v. Shrink Missouri Gov. PAC*, 528 U.S. 377, 397 (2000). In

conducting this analysis, courts grant "a measure of deference to the judgment of the legislative body that enacted the law." *Davis v. FEC*, 554 U.S. 724, 737 (2008) (citations omitted).

In their response to Plaintiffs' motion for preliminary injunction, Defendants discussed how, before the new law was enacted, former Governor Blagojevich received thirty donations of $100,000 from a litany of wealthy PACs, unions, and corporations as evidence of the perception of possible corruption. *See* Doc. 39 at 7. The brief further discusses Blagojevich's attempt to sell President Obama's Senate seat, before discussing how the contribution limitations of the Act are significantly higher than campaign contribution limits upheld by the Supreme Court. *Id*. at 2, 8. *Cf. Buckley*, 424 U.S. at 35 (upholding $1,000 group contribution limit) *with Randall*, 548 U.S. at 238, 253 (striking down PAC contribution limit of $400 for statewide offices, among others). *Id*. at 8. In their motion to dismiss reply, Defendants also highlight the legislative history of the Act, which was attached as an exhibit to Plaintiffs' motion for preliminary injunction. *See* Doc. 90 at 13. As the Supreme Court noted in *Nixon*, "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Nixon,* 528 U.S. at 379. "*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible." *Id*. Defendants previously provided enough evidence to satisfy their burden and Plaintiffs' argument to the contrary is incorrect.

**II. Plaintiffs misstate the remaining issue.**

Plaintiffs repeatedly argue that Defendants have not cited any evidence that distinguishes legislative caucus committees from PACs. This argument misstates the remaining issue, which was clearly enumerated by the Court: whether legislative caucus committees are sufficiently

similar to *political parties*. *See* Doc. 96 at 6. Defendants are not tasked with providing a litany of differences between legislative caucus committees and PACs. The Act clearly defined the two entities differently, which is reason enough. *See* 10 ILCS 5/9-1.8(c)-(d). As the previous briefs have discussed, legislative caucus committees are defined the same way political parties are defined. *See* Defendants' Memorandum in Support of their Motion for Summary Judgment ("Def. Memo") at 6-7. Courts have justified the favorable treatment of political parties. *Id*. at 6. Defendants' prior briefs have enumerated the similarities between political parties and legislative caucus committees as well as the reduced appearance or reality of corruption of those entites. *See* Doc. 39 at 19-20, Doc. 78 at 7-9, Doc. 90 at 8-10, Doc. 125 at 5-12 and Doc. 131 at 2-6.

Plaintiffs again misstate the remaining issue when they argue "Defendants fail to address the actual constitutional issue, which is whether legislative caucus committees pose so little threat of corruption, relative to PACs, that the two types of entity should not be subjected to similar contribution limits." Pl. Resp. at 6. Nowhere in the Court's memorandum opinion is the remaining issue even remotely framed this way. Plaintiffs continue to beat this dead horse in an attempt to take the focus off their weak and unsubstantiated position. Plaintiffs have no "evidence" that legislative caucus committees lead to the appearance or existence of *quid pro quo* corruption on the same level as PACs. The reasons they cite in their memo are nothing more than unsupported conjecture. Despite being given ample time to conduct discovery, Plaintiffs offer nothing more than the report of Dr. Osborn, which was drafted before their initial complaint was filed and is unpersuasive for the reasons Defendants have previously argued. *See* Docs. 116, 129.

As Defendants discussed in their opening brief and their response to Plaintiffs' memorandum in support of their motion for summary judgment, the similarities between

legislative caucus committees and political parties are clearly defined. The Act defines legislative caucus committees significantly differently than it does PACs. Legislative caucus committees are defined as committees established for electing candidates from the same party as either the legislative leader that heads the committee or five or more members of the legislature. 10 ILCS 5/9-1.8(c). PACs have a much broader definition, which includes "electioneering activities" and does not require the members to be elected officials. 10 ILCS 5/9-1.8(d). As Justice Thomas discussed in his dissent in *Colorado II*, it is not clear, or perhaps even possible, for a political party to corrupt one of its members. *Colorado II*, 533 U.S. at 476-77. Plaintiffs do not account for incumbents, and therefore the leaders and members of legislative caucus committees, having to maintain the support of their party and ultimately the voters. While a PAC can spend its money on whom and what it pleases without regard to public scrutiny, legislative caucus committees ultimately answer to their party and the voters, who have the power to remove leaders from their position if they believe the leader is not adequately representing the interests of their constituents. Political parties and legislative caucus committees are composed of candidates and officeholders. By virtue of their membership, candidates have already adopted their party's agenda. As a result, regardless of the contributions they receive from the political party or legislative caucus committee, the candidate is already aligned with the party's positions, and, consequently, the contributions carry a significantly reduced appearance or reality of *quid pro quo* corruption. The same cannot be said for PACs.

**III. Plaintiffs fail to prove the worth of Dr. Osborn's report.**

Plaintiffs once again confuse the remaining issue. Again they incorrectly argue about burden. Completely ignoring case law and the Court's prior rulings, Plaintiffs waste the Court's time with a previously rejected argument repackaged under a different heading. Ironically,

Plaintiffs accuse Defendants of confusing the issue and not providing any evidence to support their position when it is Plaintiffs whose brief is littered with assertions lacking citations and partisan talking points classified as "facts." Dr. Osborn's report, which Defendants have proven to be of no merit, is devoid of evidence or reason. In fact, Dr. Osborn has more excuses than he does answers. If Dr. Osborn failed to consider something relevant, he has an excuse for that – but not a very convincing one.

Defendants have shown Dr. Osborn's report should be disregarded by the Court in its deliberations on the remaining issue. *See* Docs. 116, 129. Plaintiffs argue that Defendants must have their own expert to refute Dr. Osborn's testimony. They then argue the only remaining issue is a legal one. If the remaining issue is a legal one, then there is no need for Defendants to present factual evidence contradicting Dr. Osborn, as Dr. Osborn's report has no weight. Defendants have sufficiently argued the remaining legal issue by using case law and statutory definitions to prove legislative caucus committees are sufficiently similar to political parties.

Many of the "undisputed facts" Plaintiffs discuss in their response have been addressed by Defendants in previous briefs. It is noteworthy that the blanket assertions of Dr. Osborn are not supported by even one example of a legislative leader using a caucus committee to advancd his personal interests over his party's. Plaintiffs do not cite to one instance in which a candidate was strong armed by a leader to vote for the leader's agenda instead of the party's agenda. Plaintiffs do not cite one example of a legislative leader using a legislative caucus committee for the leader's "betterment." Instead, Dr. Osborn speaks in sweeping generalities. Generalities that he supports with "literature" that he rarely cites to in his report. Literature that does not examine Illinois and was written before the Illinois law was enacted.

Plaintiffs discuss the "exclusivity provision" of the Act, again ignoring the Court's finding on the topic:

> A legislative candidate may not accept contributions from more than one legislative caucus committee. 10 ILCS 5/9-8.5(b). If that prohibition were not in place, numerous legislative caucus committees could be set up to accept outside contributions and to channel those contributions to candidates, effectively evading the limitations on contributions to candidates, which are outlined below.

October 5, 2012 Preliminary Injunction Memorandum Opinion and Order at 3. Plaintiffs next attempt to justify Dr. Osborn's analysis by referencing the laundry list of excuses he has for why his report did not address the relevant issues. In their response, Plaintiffs admit Dr. Osborn cherry picked data, arguing the purpose of his report was to "highlight" evidence that the Democratic party ***may*** be engaging in contribution strategies that are not exclusively focused on expansion of the party. Dr. Osborn was not able to come up with concrete examples of the appearance or existence of corruption. His report contains little to no discussion of the similarities and differences between legislative caucus committees and political parties. Even with an opportunity to conduct additional discovery and amend their expert report, Plaintiffs chose to submit only a minimally revised version of Dr. Osborn's original report, which primarily addresses the Act's structure and how it increases the "opportunities for corruption," an issue the Court already decided. Instead of following the Court's instructions and providing "a more complete record" and "focused presentation" on the similarities between legislative caucus committees and political parties, Plaintiffs spend dozens of pages attempting to resurrect their previously rejected argument about corruption. They have failed to create a genuine issue of material fact with regard to legislative caucus committees being dissimilar enough from political parties so as to require different treatment.

## CONCLUSION

For the reasons set forth above, Defendants motion for summary judgment should be granted with regard to Plaintiffs remaining claim and this case should be dismissed with prejudice.

Respectfully submitted,

/s/ *Colin B. White* ___
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