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

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

DEFENDANTS' LOCAL RULE 56.1
STATEMENT OF UNDISPUTED MATERIAL FACTS

EXHIBIT LIST

Exhibit A – Deposition of Dr. Marcus Osborn

Exhibit B – Deposition of Matthew Besler

Exhibit C – Deposition of Kyle McCarter

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[1] (collectively, "Defendants"), by their attorney, pursuant to Local Rule 56.1(a)(3) submit this statement of material facts as to which there is no genuine dispute and which entitle Defendants to judgment as a matter of law. The deposition transcripts and exhibits cited to in this statement are attached hereto.[2]

Parties, Jurisdiction and Venue

1. Plaintiff's Illinois Liberty PAC, Edgar Bachrach and Kyle McCarter bring suit pursuant to 42 U.S.C. § 1983 alleging certain contribution limits imposed by the Illinois Disclosure and Regulation of Campaign Contributions and Expenditures Act, Ill. Pub. Act 96-832, as amended in 2012 Pub. Act 947-766 (the "Act"), violate the First Amendment and the Fourteenth Amendment's Equal Protection Clause. Doc. 65 at ¶ 1 and Motion to Dismiss Memorandum Opinion and Order ("MTD Order"), Doc. 96 at p. 1.

2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343 (a)(3) and (4), 2201 and 2202. Venue is proper under 28 U.S.C. § 1391(b). Doc. 65 at ¶¶ 4-5.

3. Plaintiff Illinois Liberty PAC is a "political action committee" ("PAC") as defined by Illinois law (10 ILCS 5/9-1.8) that has made monetary contributions to political candidates and

[1] William McGuffage is no longer the Chairman of the Illinois State Board of Elections and has been replaced by Jesse R. Smart. Charles W. Scholz is now the Vice Chairmen. Judith C. Rice is no longer a member of the Illinois State Board of Elections. Cassandra B. Watson has replaced her on the Board and has been automatically substituted into this action pursuant to Federal Rule of Civil Procedure 25(d).

[2] These facts are undisputed only for purposes of the Defendants' Motion for Summary Judgment. Defendants reserve the right to dispute these facts for all other purposes, including trial.

would make additional monetary contributions to political candidates in excess of what is currently allowed by the Act. Doc 65 at ¶¶ 6, 39-42.

4. Plaintiff Edgar Bachrach is an individual who has made monetary contributions to PACs and political candidates he supports and who would make additional monetary contributions to political candidates in excess of what is currently allowed by the Act. Doc. 65 at ¶¶ 7, 44.

5. Plaintiff Kyle McCarter is an Illinois State Senator, currently serving in the General Assembly who seeks to fundraise from individuals and groups in excess of the limits provided in the Act. Doc. 65 at ¶ 8, 45.

6. Defendant Lisa Madigan is the Attorney General of the State of Illinois sued in her official capacity. Doc. 65 at ¶¶ 10-11.

7. Defendant Jesse R. Smart is the Chairman of the Illinois State Board of Elections ("the Board") sued in his official capacity. Doc. 65 at ¶¶ 10, 12.

8. Defendant Charles W. Scholz is the Vice Chairman of the Board sued in his official capacity. Doc. 65 at ¶¶ 10, 13.

9. Defendants Bryan A. Schneider, Betty J. Coffrin, Harold D. Byers, Cassandra B. Watson, and Ernest L. Gowen are members of the Board sued in their official capacity. Doc. 65 at ¶¶ 10, 14-19.

Background

10. The only remaining issue before the Court is whether legislative caucus committees as defined in 10 ILCS 5/9-1.8(c) are sufficiently similar to political party committees, making the Act's treatment of them constitutionally permissible. MTD Order at 6-7.

11. Plaintiffs allege the Act impermissibly treats legislative caucus committees similar to political party committees for the purposes of campaign contribution limits. Doc. 65 at ¶¶ 51-52.

12. Plaintiffs allege the Act's favorable treatment of legislative caucus committees is improper and violates their rights because: 1) Plaintiff Illinois Liberty PAC can contribute less to candidates than legislative caucus committees may contribute and 2) Plaintiff McCarter would prefer to receive money from independent groups and individuals instead of being dependent on legislative caucus committees for fundraising. Doc. 65 at ¶¶ 39, 41-43, 45; MTD Order at p. 7.

Dr. Marcus Osborn's Report

13. In support of their claim, Plaintiffs attached as an exhibit to their Amended Complaint the expert report of Dr. Marcus Osborn, which they later supplemented on July 18, 2014. Defendants' Motion to Strike Plaintiffs' Expert ("Motion to Strike") Ex. A, Doc. 116-2.

14. Dr. Osborn's report is the sole buttress of Plaintiffs' claim that legislative caucus committees are unlike political party committees and constitutionally must be treated differently. Doc. 65 at ¶¶ 31-34.

15. According to Dr. Osborn's report, legislative caucus committees manage the institutional authority provided to legislative leaders and play a crucial role in the legislative policymaking process unlike political parties, whose primary purpose is to simply elect candidates to office. Doc. 65 at ¶¶ 31-34.

Testimony of Dr. Marcus Osborn

16. Dr. Osborn was deposed by Defendants' attorneys on September 15, 2014. Ex. A (Deposition of Dr. Marcus Osborn).

17. Dr. Osborn testified that legislative caucus committees in Illinois have two goals: to promote the Speaker or President in the legislature and to expand the party. Ex. A at 29:17-22 and 32:17-22.

18. Political parties also seek to shape policy. Ex. A. at 30:21-23.

19. Dr. Osborn did not analyze or collect data comparing the policy driven goals of any legislative caucus committee to its associated political party. Ex. A. at 31:6-11.

20. In drafting his expert report, Dr. Osborn did not compare legislative caucus committees in Illinois to legislative caucus committees in other states. Ex. A. at 27:10-18.

21. Dr. Osborn does not know which states, if any, have legislative caucus committees similar to Illinois. Ex. A. at 26:15-27:9.

22. Dr. Osborn did not compare legislative caucus committees in Illinois with their federal counterpart, congressional campaign committees. Ex. A. at 52:22-53:4.

23. Dr. Osborn did not collect or analyze data on congressional campaign committees. Ex. A. at 53:12-16.

24. Dr. Osborn was not aware of how many legislative caucus committees existed in Illinois during the 2012 election cycle. Ex. A. at 33:4-7.

25. There were six legislative caucus committees in Illinois at the time of the 2012 Election. Defendants' Motion to Exclude Plaintiff's Expert, Doc. 116 at 6.

26. Dr. Osborn believes legislative caucus committees in Illinois operate more like Leadership PACs, defined by federal law. Doc. 116-2 at 1; Ex. A at 27:21-28:1.

27. Dr. Osborn bases this opinion on the structure of the Illinois system and the presumption that it operates consistent with the literature he cites within his report. Ex. A at 30:3-19.

28. A person does not need to be an incumbent to form a Leadership PAC. Ex. A at 29:2-11.

29. Dr. Osborn analyzed and included data from two legislative caucus committees in his expert report: the Senate Victory Fund and Democratic Majority. Both are headed up by members of the Democratic Party. Ex. A. at 33:8-35:4; 42:19-24; 52:5-11.

30. Dr. Osborn discounted data from the Illinois House Republican committee because it was more likely to show a purely expansionist strategy. Ex. A. at 33:8-34:12.

31. Dr. Osborn did not compare the Democratic Victory Fund contribution patterns with any Democratic Party committee contributions. Ex. A. at 35:5-14, 43:16-44:2; 49:7-50:4.

32. Dr. Osborn did not compare the Democratic legislative caucus committee contribution patterns with contribution patterns of the Illinois Democratic Party. Ex. A. at 43:21-23.

33. Financial participation in general elections indicates an expansionist strategy. Ex. A at 40:7-20.

34. In the 2012 general election the Democratic Majority Committee utilized primarily an expansion strategy. Doc. 116-2 at 7.

35. The Democratic Majority Committee participated in 52 primary election contests in 2012. Dr. Osborn's report cited the top five contributions made by Democratic Majority Committee in the primary and the top five contributions made by Democratic Majority Committee in the general election. Doc. 116-2 at 7.

36. Dr. Osborn's report focuses on two specific contributions to what Dr. Osborn deemed "safe" seats for the Democratic Party in the general election, in his opinion refuting any claim that the contributions furthered an expansionist agenda as would be seen from a political party. The only variable considered in determining that the seat was "safe" was the ultimate margin of victory in the general election. Ex. A at 38:4-39:2.

37. In the 2012 election cycle, the Democratic Victory Fund focused almost exclusively on the general election. The Democratic Victory Fund's approach is reflective of a caucus expansion strategy. Ex. A 36:10-15, Doc. 116-2 at 6.

38. Dr. Osborn believes the data from the five largest general election contributions of the Senate Victory Fund included in his report reflect a dual strategy of expanding the party and promoting the agenda of the President of the Senate. Ex. A at 37:5-16.

39. Of the five races he examined, two were considered close elections and an additional one was in the margins. Ex. A at 36:10-37:4.

40. Dr. Osborn did not qualitatively look at each individual race. Ex. A at 37:7-23.

41. Dr. Osborn did not examine whether the Democratic or Republican parties financially participated in the same elections as caucus committees. Ex. A at 39:12-25.

42. Dr. Osborn did not conduct any interviews. Ex. A at 42:25-43:3.

43. Dr. Osborn did not review any voting records of Illinois legislators. Ex. A at 46:7-9.

44. Legislative candidates may only receive contributions in a given election cycle from one caucus committee. Ex. A at 45:7-11.

45. Dr. Osborn relies on academic literature to support his opinions. Ex. A at 27:1-13 and 30:5-19.

46. All of the literature cited in his report was written prior to the 2010 enactment of legislative caucus committees in Illinois. Ex. A at 54:13-66:24.

47. Not a single article cited by Dr. Osborn examined Illinois' system. Ex. A at 66:21-24.

Testimony of Matthew Besler

48. Matthew Besler testified on behalf of Plaintiff Liberty PAC as a 30(b)(6) witness; Mr. Besler was deposed by Defendants on June 13, 2014. Ex. B (Deposition of Matthew Besler).

49. Mr. Besler understands the role of legislative caucus committees to be electing candidates to the general assembly. Ex. B at 49:5-12.

Testimony of Kyle McCarter

50. Kyle McCarter is an Illinois State Senator who does not want to be dependent on legislative caucus committees or political parties for campaign contributions. Ex. C (Deposition of Kyle McCarter, taken in two parts) at Part 1 p. 41:11-17.

51. Senator McCarter is not familiar with the term "legislative caucus committee." Ex. C at Part 1 p. 45:2-10.

52. Senator McCarter could not give any examples of legislative leaders using "organizational rewards and punishments including rewarding or punishing candidates through the provision or withholding of electoral support through their legislative caucus committees" because he cannot "judge the intention of their actions." Ex. C at Part 1 p. 50:3-8.

Dated: December 12, 2014

Respectfully submitted,

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