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

ILLINOIS LIBERTY PAC, a Political Action Committee registered with the Illinois State Board of Elections, and EDGAR BACHRACH,	)	
Plaintiffs,	)	
v.	)	
LISA M. MADIGAN, Attorney General of the State of Illinois; WILLIAM McGUFFAGE, Chairman of the Illinois State Board of Elections; JESSE R. SMART, Vice-Chairman of the Illinois State Board of Elections; HAROLD D. BYERS, Member of the Illinois State Board of Elections; BETTY J. COFFRIN, Member of the Illinois State Board of Elections; ERNEST L. GOWEN, Member of the Illinois State Board of Elections, JUDITH C. RICE, Member of the Illinois State Board of Elections; BRYAN A. SCHNEIDER, Member of the Illinois State Board of Elections; and CHARLES W. SCHOLZ, Member of the Illinois State Board of Elections, all in their official capacities,	)	**Judge Gary Feinerman** **Magistrate Judge Susan E. Cox** **No. 12 CV 05811**
Defendants.	)	

FIRST AMENDED VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Illinois Liberty PAC and Edgar Bachrach, by their attorneys Diane Cohen, Jacob H. Huebert and Peter G. White of the Liberty Justice Center, for their First Amended Verified Complaint against Defendants state as follows:

INTRODUCTION

1. Plaintiffs seek to have sections of the Illinois Disclosure and Regulation of Campaign Contribution and Expenditures Act (the "Act"), 10 ILCS 5/9-8.5(b)-(d), declared unconstitutional facially and as applied to them, and to have the Court permanently enjoin Defendants' enforcement of these provisions of the Act under the First and Fourteenth Amendments to the U.S. Constitution.

2. Plaintiffs challenge the Act because it limits the campaign contributions of Plaintiffs and other nonparty political speakers, but arbitrarily exempts political parties and their leaders from these same limits. The Act also arbitrarily limits campaign contributions by individuals to half the amount that corporations, labor organizations, and other associations may contribute. This discriminatory scheme impermissibly burdens Plaintiffs' First Amendment rights and fails to serve a constitutionally permissible purpose. In addition, the Act's provisions that make the elimination of contribution limits on all speakers dependent on whether self-funded candidates enter a race and spend a certain amount of money, or on whether a certain amount of independent expenditures are made in a race, show that the limits themselves do not serve an anticorruption interest, but instead serve the impermissible purposes of favoring political parties and their leaders over Plaintiffs and all other speakers.

JURISDICTION AND VENUE

3. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 and § 1988 to seek relief for state violations of their constitutional rights. This Court therefore has jurisdiction under 28 U.S.C. §§ 1331, 1343 (a)(3) and (4),2201 and 2202.

4. Venue is proper under 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff Illinois Liberty PAC exercises its rights to free speech and association by donating funds and providing political and marketing consulting to the state candidates it supports. Illinois Liberty PAC is a "political action committee" ("PAC") as defined by Illinois law, 10 ILCS 5/9-1.8, because it accepts contributions and makes expenditures on behalf of or in opposition to candidates for public office in an aggregate amount exceeding $3,000 during a 12-month period.

6. Plaintiff Edgar Bachrach is an individual who exercises his rights to free speech and association by making contributions to PACs and candidates he supports. (*See* Bachrach Decl. Att. 1.)

7. Defendants enforce the Illinois statutes that Illinois Liberty PAC and Bachrach challenge in this action. They are sued in their official capacities and are proper persons to defend the interest of the State in this action.

8. Defendant Lisa Madigan is the Attorney General of the State of Illinois and maintains an office in Cook County, Illinois. General Madigan and the State's Attorneys, have the power to prosecute violations of the challenged provisions under 10 ILCS 5/9-25.2.

9. Defendant William McGuffage is the Chairman and a member of the Illinois State Board of Elections ("the Board"), which maintains an office in Cook County. The Board receives complaints of campaign-finance-law violations under 10 ILCS 5/9-20. The Board is empowered to hold preliminary hearings to determine whether complaints of violations have "justifiable grounds" under 10 ILCS 5/9-21. The Board holds public hearings and may impose fines, report violations to the Attorney General or the appropriate State's Attorney, and seek

injunctions and enforce civil penalties in the Illinois state circuit courts. *See* 10 ILCS 5/9-3, 21, 23, 24, 25.2, 26.

10. Defendant Jesse R. Smart is the Vice Chairman and a member of the Board.

11. Defendant Bryan A. Schneider is a member of the Board.

12. Defendant Betty J. Coffrin is a member of the Board.

13. Defendant Harold D. Byers is a member of the Board.

14. Defendant Judith C. Rice is a member of the Board.

15. Defendant Charles W. Scholz is a member of the Board.

16. Defendant Ernest L. Gowen is a member of the Board.

FACTS

17. In 2009, the Illinois General Assembly passed Public Act 96-832, which establishes a series of limits on the contributions that individuals, political action committees, corporations, unions, and other associations can make to candidates for state elective office in Illinois. The law also contains some limits on what political parties can contribute to candidates, but these limits only apply in primary elections and are substantially higher than the limits on Illinois Liberty PAC, Bachrach, and other nonparties. 10 ILCS 5/9-8.5(b).

18. The Act limits contributions nonparty political speakers may make to candidates during a general election: individuals may give $5,000; PACs may give $50,000; and other nonparty political speakers, including corporations, labor organizations, and other associations, may give $10,000. Political parties, however, are expressly exempted from any limitations: they may contribute unlimited amounts to candidates. 10 ILCS 5/9-8.5(b), (c) and (d).

19. The Act limits contributions to PACs: individuals, corporations, labor organizations, and associations may give $10,000; political party committees may give $20,000; and other PACs may give $50,000. 10 ILCS 5/9-8.5(d).

20. The only limits the Act places on political party contributions to candidates apply solely during primary elections. However, these limits in a statewide race are forty times the amount that individuals may contribute – $200,000 versus $5,000 – and four times the amount PACs can make – $200,000 versus $50,000. 10 ILCS 5/9-8.5(b).

21. Currently there are limits on what a party can receive in a primary election – $50,000 from a candidate and $50,000 from another party – but the Act eliminates these limits entirely effective July 1, 2013. 10 ILCS 5/9-8.5(c). While there are limits on what individuals, PACs and other nonparties can contribute to political parties, parties may receive unlimited contributions from candidates and other political parties. 10 ILCS 5/9-8.5 (b), (c).

22. The Act also eliminates all contribution limits in a race if a self-financed candidate spends more than $250,000 for a statewide race or more than $100,000 for any other elective office. 10 ILCS 5/9-8.5(h).

23. In July 2012, an amendment to the 2009 Act was passed that eliminated all contribution limits in a race if an independent expenditure committee spends more than $250,000 (for a statewide race) or more than $100,000 (for any other elective office). 10 ILCS 5/9-8.5(h-5).

24. The Act does not eliminate contribution limits based on what a political party spends in any race, including when a political party spends more than $250,000 in a statewide race or more than $100,000 in any other race.

25. At the time the law and its amendments were enacted, political party spending in races had far surpassed the limits that the Act imposes on nonparty contributors.

26. Both the 2009 Act and 2012 amendments thereto were passed on party-line votes, with Democrats, including the House Speaker and Senate Leader, supporting the bill, and most Republicans, including the House and Senate Minority Leaders, opposing it.

Political Parties as Defined under the Act

27. Political parties are referred to as "political party committees" under the Act and include the state and county central committees of a political party, a legislative caucus committee, and a committee formed by a ward or township committeeman of a political party. 10 ILCS 5/9-1.8(c). A "legislative caucus committee" is a committee established for the purpose of electing candidates to the General Assembly by the person elected President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, Minority Leader of the House, or a committee established by 5 or more members of the same caucus of the Senate or by 10 or more members of the same caucus of the House. 10 ILCS 5/9-1.8(c). All of these party committees are empowered to give unlimited contributions to candidates (with the limited exception for primary election campaigns as noted above). 10 ILCS 5/9-8.5(b).

28. The Act expressly prohibits individuals and other groups of persons (*e.g.*, committees, associations, corporations) from forming more than one political action committee. 10 ILCS 5/9-2(d). The Act does not prohibit a public official or candidate for public office from serving as the officer of both a candidate committee and another committee, such as a party or legislative committee, nor does it prohibit an individual from serving as an officer of multiple party committees.

29. While the Act prohibits officers of Illinois Liberty PAC from forming another PAC, the Act does not, for example, prohibit Speaker of the House Michael Madigan from serving as the Treasurer of his own candidate committee, Friends of Michael J. Madigan, while also serving as the chairman of two party committees, the Democratic Party of Illinois and the Democratic Majority. Further, the Act's statutory scheme expressly ensures that the Speaker can make unlimited contributions from his candidate committee to the party committees he chairs, and then make unlimited contributions from his political parties to candidates. 10 ILCS 9-8.5 (c), (b).

Injury to Plaintiffs

30. All contributions Illinois Liberty PAC and Bachrach have made (and will continue to make if the Act is not enjoined) have been (and will be) in compliance with Illinois law and the Act's contribution limits that restrict PAC and individual contributions.

31. But for the contribution limits in the Act, Illinois Liberty PAC is ready, willing and able to make contributions to candidates in excess of what the Act allows.

32. But for the contribution limits in the Act, Illinois Liberty PAC is ready and willing to accept donations from others in excess of what the Act allows.

33. But for the contribution limits in the Act, Illinois Liberty PAC would have the freedom to direct its in-kind and monetary contributions in a manner that best advances its principles and strategic purposes. Instead, the law prohibits Illinois Liberty PAC from contributing amounts that comport with its strategic decisions on allocating its resources in supporting candidates.

34. But for the contribution limits in the Act, Illinois Liberty PAC would not be forced to alter its contribution decision making. For example, the Act's contribution limits force Illinois Liberty PAC to make smaller contributions to candidates than it wishes and sometimes decline to contribute at all if a smaller contribution would not make an impact in a race.

35. But for the contribution limits in the Act, Illinois Liberty PAC could make larger contributions to the candidates it supports. Instead of being forced to make small, incremental, contributions, it could make more substantial contributions that could significantly impact an electoral race, much as political parties can impact a race with their unlimited contributions.

36. During the 2012 election cycle, Bachrach has contributed the maximum amount allowable, $5,000, to the Citizens for Babcock state senate candidate committee and $10,000 to Illinois Liberty PAC. But for the Illinois Act, Bachrach would contribute at least $10,000 to the Citizens for Babcock candidate committee and more than $10,000 to Illinois Liberty PAC in the current election cycle, and he will do so if the law is enjoined and/or struck down.

37. For these reasons, the Act has injured and continues to injure Illinois Liberty PAC and Bachrach. Unless Illinois Liberty PAC and Bachrach are relieved of the Act's restrictions on their ability to contribute to candidates, they will lose their ability to participate as fully as they can and would like to in the 2012 election cycles.

COUNT I

(FOURTEENTH AMENDMENT – EQUAL PROTECTION)

38. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. Under the Fourteenth Amendment to the U.S. Constitution, Plaintiffs have the right to equal protection under the law, especially where, as here, unequal treatment under the law burdens the exercise of the fundamental right to free speech under the First Amendment.

40. A classification that burdens a fundamental right, including the rights to free speech and association, must be narrowly tailored to serve a compelling state interest. *Plyler v. Doe*, 457 U.S. 202, 217-18 (1982).

41. The Act treats Plaintiffs and other nonparty speakers differently from similarly situated political parties and their leaders by imposing disparate contribution limits on them. 10 ILCS 5/9-8.5(b)-(d).

42. The Act favors political parties and burdens the speech of Plaintiffs and other nonparties because it limits contributions *from and to* PACs, and from individuals and nonparty political committees, unless a candidate's self-funding or an independent expenditures in a race exceed a statutorily prescribed amount, but it does not limit party contributions to candidates in general elections under any circumstances, nor does political party spending in excess of statutory limits trigger the elimination of limits on PACs, individuals and all other parties. 10 ILCS 5/9-8.5(b), (h), (h) (5).

43. The Act treats Plaintiff Bachrach differently from similarly situated nonparty speakers, namely corporations, labor organizations and associations, by imposing more stringent limits on individual contributions to candidates, PACs and parties. 10 ILCS 5/9-8.5(b)-(d).

44. By allowing corporations, labor unions, and associations to contribute double the amounts that individuals may contribute to candidates, PACs and parties, the Act favors those

organizations' speech over individuals' speech. The Act also favors candidates whose support derives from those organizations over candidates whose support derives from individuals.

45. The discrimination against particular political speakers violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. *See Citizens United v. FEC*, 130 S.Ct. 876, 899 (2010) (state may not "impose restrictions on certain disfavored speakers"); *cf. Buckley v. Valeo*, 424 U.S. 1, 31-32 (rejecting challenge to limits alleged to favor incumbents where all candidates faced the "same limitations" and the record lacked evidence of "invidious discrimination").

46. Allowing corporations, labor organizations and associations to contribute double the amounts that individuals contribute increases the appearance of corruption and therefore does not serve any anticorruption interest. *See Russell v. Burris*, 146 F.3d 563, 572 (8th Cir. 1998). ("If any contribution is likely to give rise to a reasonable perception of corruption, it would be from an entity permitted to contribute two and a half times the amount that others are allowed to contribute.")

47. The First Amendment stands against campaign finance regulations that discriminate against disfavored speakers. *Citizens United v. Federal Election Comm'n*, 130 S.Ct. 876, 899 (2010).

48. "Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others." "Political speech must prevail against laws that would suppress it, whether by design or inadvertence." *Citizens United*, 130 S.Ct. at 898-99.

49. Because it is improper to discriminate against corporations that engage in political speech by treating them less favorably than individuals, it is at least as improper to treat

individuals' political speech less favorably than that of corporations. *See Citizens United*, 130 S.Ct. at 898.

50. The Act's limits that treat Plaintiffs and other nonparty political speakers less favorably than political parties are neither narrowly tailored nor closely drawn to serve a compelling or important state interest.

51. The Act's limits that treat Bachrach less favorably than corporations, labor organizations and associations are neither narrowly tailored nor closely drawn to serve a compelling or important state interest.

52. This disparate treatment violates Plaintiffs' right to equal protection guaranteed by the Fourteenth Amendment of the United States Constitution.

53. Plaintiffs have directly suffered and will continue to suffer irreparable injury to their right to equal protection of the law. Plaintiffs have no adequate remedy at law for this infringement of their constitutional rights.

COUNT II

(FIRST AND FOURTEENTH AMENDMENTS – FREE SPEECH)

54. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 53 as if fully set forth herein.

55. Under the First and Fourteenth Amendments to the U.S. Constitution, *Buckley*, 424 U.S. 1, and its progeny, including *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007), and *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806, 2824 (2001), a state cannot burden individuals' or groups' rights to speak freely without a compelling state interest justifying such a burden.

56. The Act's scheme cannot withstand strict, exacting or intermediate scrutiny because the scheme advances impermissible purposes. *Buckley*, 442 U.S. at 16-18.

57. The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. *Citizens United*, 130 S.Ct. at 898.

58. Preventing quid pro quo corruption or the appearance of corruption is the only government interest that justifies burdening Plaintiffs' and other political speakers' First Amendment rights to free speech.

59. The Act's disparate treatment of Plaintiffs and other nonparties, favoritism to political parties and their leaders, and tethering of the exercise of free speech to whether and how much noncorrupting speech enters a race, trigger strict scrutiny because these provisions impose a special and significant burden on the exercise of core free speech rights. *Bennett*, 131 S.Ct at 2818.

60. The Act's failure to properly safeguard against the dangers of circumvention through unlimited party-to-candidate committee contributions, and candidate committee-to - party contributions, demonstrate that it is not narrowly tailored or closely drawn to advance a government interest. *Randall v. Sorrell*, 548 U.S. 230, 258-59 (2006).

61. The Act's contribution limits "prevent challengers from mounting effective campaigns against incumbent office holders" and threaten the integrity of the electoral process because they "reduc[e] democratic accountability," and are thus "danger signs" that the Act is closely drawn and therefore in violates the First Amendment. *Randall*, 548 U.S. at 248-49.

62. The Act's scheme of disparate treatment of Plaintiffs and other nonparties, exemptions for certain speakers but not others, expiring party contribution limits and selective

elimination of contribution limits evinces that the Act's contribution limits do not serve an anticorruption purpose but instead serve the impermissible purpose of favoring political parties and their leaders over Plaintiffs and all other speakers.

63. The Act's scheme of disparate treatment of Plaintiffs and other nonparties, exemptions for certain speakers but not others, expiring party contribution limits, exemptions for certain speakers and selective elimination of contribution limits is not narrowly tailored or closely drawn to serve a compelling or important state interest of preventing quid pro quo corruption or the appearance thereof because they undermine the legitimacy of any contribution limits.

64. Making Plaintiffs' exercise of free speech dependent on the speech of others, namely whether self-funded candidates or entities that make independent expenditures spend a statutorily prescribed amount in a race, undermines the legitimacy of all of the Act's contribution limits. Such a scheme evinces that the limits fail to serve any anticorruption purpose but instead their purpose is to "implement[] governmental judgments about which speech should be permitted to contribute to the outcome of an election" and when. *See Bennett*, 131 S.Ct at 2826.

65. "In a democracy, campaigning for office is not a game. It is a critically important form of speech . . . [t]he guiding principle is freedom – the 'unfettered interchange of ideas' – not whatever the State may view as fair." *Id*., citing *Buckley*, 424 U.S. at 14.

66. The Act imposes a substantial burden on the speech of PACs and individuals, which is not justified by a compelling or sufficiently important state interest.

67. The Act's disparate contribution limits on individuals, PACs, corporations, unions, associations and political party committees impermissibly burden Plaintiffs' free speech rights.

68. Plaintiffs have directly suffered and will continue to suffer irreparable injury to their free speech rights under the First Amendment. Plaintiffs have no adequate remedy at law for this infringement of their constitutional rights.

COUNT III

(ENTITLEMENT TO DECLARATORY RELIEF)

69. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 68 as if fully set forth herein.

70. For reasons including but not limited to those stated in this Complaint, an actual and live controversy exists between Plaintiffs and Defendants. The parties have genuine and opposing interests; these interests are direct and substantial; and a judicial determination of the parties' controversy will be final and conclusive.

71. Plaintiffs are therefore entitled to a declaratory judgment that the Act is unconstitutional, as well as such other and further relief as may follow from entry of such a declaratory judgment.

COUNT IV

(ENTITLEMENT TO INJUNCTIVE RELIEF)

72. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71 as if fully set forth herein.

73. For reasons including but not limited to those stated in this First Amended Complaint, Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing and/or threatened irreparable harm to their constitutional rights. They have a likelihood of success on the merits of their constitutional claims, and the public interest and equities favor issuing an injunction barring enforcement of the Act's contribution-limit scheme.

74. Plaintiffs are therefore entitled to a preliminary and permanent injunction prohibiting Defendants from enforcing the provisions of the Act that violate Plaintiffs' constitutional rights, as well as such other and further relief as may follow from entry of such injunctive relief.

REQUEST FOR RELIEF

Plaintiffs Illinois Liberty PAC and Bachrach request that this Court:

A. Declare that the discriminatory contribution limits in 10 ILCS 5/9-8.5(a)-(d) violate Plaintiffs' right to equal protection under the law under the Fourteenth Amendment to the United States Constitution;

B. Declare that the discriminatory contribution limits in 10 ILCS 5/9-8.5(a)-(d) violate Plaintiffs' right to free speech under the First and Fourteenth Amendments to the United States Constitution;

C. Preliminarily and permanently enjoin Defendants from enforcing 10 ILCS 5/9-8.5(a)-(d) in its entirety or, in the alternative, from enforcing the provisions of 10 ILCS 5/9-8.5(a)-(d) that impermissibly favor the speech of political parties over Plaintiffs' and all nonparty speech and the provisions that impermissibly favor the

speech of corporations, labor organizations and associations over the speech of individuals;

D. Award Plaintiffs their attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

E. Grant further relief as this Court deems just and proper.

DATED: AUGUST 24, 2012

Respectfully Submitted,

By: s/Diane S. Cohen
Diane S. Cohen (#6199493)
Jacob Huebert (#6305339)
Peter G. White (#6294072)
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CERTIFICATE OF SERVICE

I, Diane S. Cohen, an attorney, hereby certify that Plaintiffs' First Amended Complaint was filed on August 24, 2012, through the Court's CM/ECF system. Parties of record may obtain a copy of the paper through the Court's CM/ECF system.

By:

/s/ Diane S. Cohen