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,	)	
Plaintiff,	)	
v.	)	
LISA M. MADIGAN, Attorney General of the State of Illinois;	)	**Judge**
WILLIAM McGUFFAGE, Chairman of the Illinois State Board of Elections;	)	**Magistrate Judge**
JESSE R. SMART, Vice-Chairman of the Illinois State Board of Elections;	)	**No. 12 CV 05811**
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,	)	
Defendants.	)	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff ILLINOIS LIBERTY PAC, by its attorneys Diane Cohen, Jacob H. Huebert and Peter G. White of the Liberty Justice Center, and for its Complaint against Defendants states as follows:

INTRODUCTION

Plaintiff Illinois Liberty PAC ("Illinois Liberty PAC"), is a pro-liberty political action committee that supports candidates for public office who embrace public policy rooted in the principles of liberty and free enterprise. Illinois Liberty PAC brings this civil rights lawsuit to vindicate its rights to free speech and equal protection under the law and challenges Illinois' campaign finance scheme that disparately treats Illinois Liberty PAC and other nonparty political speakers. Specifically, Illinois law establishes a series of campaign contribution limits on Illinois Liberty PAC and other nonparty political speakers, while exempting Illinois political parties and their leaders from these same limits. This disparate treatment, along with the law's overall scheme that includes party exemptions, loopholes and selective elimination of contribution limits, violates Illinois Liberty PAC's right to equal protection under the law, guaranteed by the Fourteenth Amendment, and its right to free speech, guaranteed by the First and Fourteenth Amendments.

JURISDICTION AND VENUE

1. Illinois Liberty PAC brings this suit pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 to seek relief for state violations of its constitutional rights. This Court therefore has jurisdiction under 28 U.S.C. §§ 1331, 1343 (a)(3) and (4).

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

PARTIES

3. Illinois Liberty PAC exercises its rights to free speech and association by donating funds and providing political and marketing consulting to the candidates it supports. Liberty PAC is a "political action committee" 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.

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

5. 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.

6. 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.

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

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

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

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

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

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

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

FACTS

14. In 2009, the Illinois General Assembly passed Public Act 96-832, the Disclosure and Regulation of Campaign Contribution and Expenditures Act (the "Act"), which establishes a series of limits on what individuals, political action committees ("PACs"), 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 what Illinois Liberty PAC and other nonparties may contribute. 10 ILCS 5/9-8.5(b).

15. The Act limits contributions individuals, PACs and other nonparty political speakers may make to candidates during a general election to $5,000, $50,000, and $10,000 respectively but expressly exempts political party contributions to candidates and other political parties. 10 ILCS 5/9-8.5(b), (c) and (d).

16. 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.

17. 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).

18. The Act also contains a provision that 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).

19. 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).

20. 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.

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

22. Both the bill 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

23. 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).

24. 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.

25. While the Act prohibits officers of Illinois Liberty PAC from forming another PAC, the Act does not, for example, prohibit Speaker 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 Plaintiff

26. All contributions Illinois Liberty PAC has made (and will continue to make if the Act is not enjoined) have been (and will be) in compliance with Illinois law and the contribution limits that restrict PAC contributions contained in the law.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. For these reasons, the Act has injured and continues to injure Liberty PAC. Unless Liberty PAC is relieved of the Act's restrictions on its ability to contribute to candidates, Illinois Liberty PAC will lose its ability to participate as fully as it can and would like to in the 2012 election cycle.

COUNT I

(FOURTEENTH AMENDMENT – EQUAL PROTECTION)

33. Plaintiff Illinois Liberty PAC realleges and incorporates by reference the allegations contained in paragraphs 1 through 32 as if fully set forth herein.

34. The Act treats Illinois Liberty PAC and other nonparty speakers differently from similarly situated political parties.

35. The Act's disparate treatment of Illinois Liberty PAC and other nonparties is neither narrowly tailored nor closely drawn to serve a compelling or important state interest.

36. This disparate treatment burdens Illinois Liberty PAC's First Amendment rights to free speech and equal protection guaranteed by the Fourteenth Amendment of the United States Constitution.

37. Illinois Liberty PAC has no adequate remedy at law for this infringement of its constitutional rights.

COUNT II

(FIRST AND FOURTEENTH AMENDMENTS – FREE SPEECH)

38. Plaintiff Illinois Liberty PAC realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. Preventing corruption or the appearance of corruption is the only government interest that justifies burdening Illinois Liberty PAC's and other speakers' First Amendment rights of free speech.

40. The Act's disparate treatment of Illinois Liberty PAC and other nonparties, exemptions for certain speakers but not others, expiring party contribution limits and selective

elimination of contribution limits evince that the Act's contribution limit scheme does not serve an anticorruption interest.

41. The Act's disparate treatment of Illinois Liberty PAC and other nonparties, exemptions for certain speakers but not others, expiring party contribution limits and selective elimination of contribution limits exemptions for certain speakers and selective elimination of contribution limits are not narrowly tailored nor closely drawn to serve a compelling or important state interest.

42. Illinois Liberty PAC has no adequate remedy at law for this infringement of its constitutional rights.

COUNT III

(ENTITLEMENT TO DECLARATORY RELIEF)

43. Plaintiff Illinois Liberty PAC realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 as if fully set forth herein.

44. For reasons including but not limited to those stated in this Complaint, an actual and live controversy exists between Plaintiff 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.

45. Plaintiff is 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)

46. Plaintiff Illinois Liberty PAC realleges and incorporates by reference the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

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

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

REQUEST FOR RELIEF

Plaintiff Illinois Liberty PAC requests that this Court:

A. Declare that the discriminatory contribution limits in 10 ILCS 5/9-8.5(a)-(d) violate Plaintiff's 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 Plaintiff's 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 discriminate in favor of political parties' speech and against non-parties' speech;

D. Award Plaintiff Illinois Liberty PAC its 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: JULY 24, 2012

Respectfully Submitted,

By: s/Diane S. Cohen
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Jacob Huebert (#6305339)
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VERIFICATION

I, Matthew Besler, declare under penalty of perjury that the allegations in this Complaint are true and correct to the best of my knowledge.

Matthew Besler

Executed on: July 24 2012