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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

**ILLINOIS OPPORTUNITY
PROJECT,**

Plaintiff,

v.

STEVE BULLOCK, in his official
capacity as governor of Montana, and
MEGHAN HOLMLUND, in her
official capacity as chief of the State
Procurement Bureau,

Defendants.

Case No. 6:19-cv-00056-CCL

STATEMENT OF UNDISPUTED
FACTS SUPPORTING PLAINTIFF'S
THIRD MOTION FOR SUMMARY
JUDGMENT

**STATEMENT OF UNDISPUTED FACTS SUPPORTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

1. On June 8, 2018, Montana Governor Steve Bullock issued Executive Order 15-2018 (“the Order”), a true and correct copy of which was attached as Exhibit A to the First Amended Complaint, Doc. 37, and is available on the Internet on the Governor’s website, https://governor.mt.gov/Portals/16/docs/2018EOs/EO-152018_Disclosure%20Requirement.pdf. (*See* Statement of Stipulated Facts, Doc. 48, at ¶¶ 1, 2.)
2. As director of Montana’s State Bureau of Procurement, Meghan Holmlund is responsible for implementing the Order. *See* MCA § 18-4-221. (*See* Statement of Stipulated Facts, Doc. 48, at ¶ 3.)
3. The Order’s twelfth Whereas clause lists three government interests justifying the order: “to prevent corruption, promote confidence in government, and inform the public of the operations of government.” (First Amended Compl., Doc. 37, Ex. A.)
4. The Order covers all corporations who bid on qualifying contracts, not only those corporations who are awarded the contracts. (First Amended Compl., Doc. 37, Ex. A at Part III.1.)
5. The Order requires disclosure by any bidder corporation of any donation to any entity that has run an electioneering communication in Montana, even if the corporation’s donation went to support issue advocacy in other states or

the entity's general operations. (First Amended Compl., Doc. 37, Ex. A at Part II.2.a.ii.)

6. The Order requires the Montana Department of Administration to post all disclosed information on the Internet. (First Amended Compl., Doc. 37, Ex. A, at Part II.4.) The Department does this by posting to one of its websites, www.transparency.mt.gov. There, under the data set entitled, "Dark Money Spending for Entities Doing Business with the State of Montana," the Department displays the information submitted by all bidders on state contracts pursuant to the executive order, such as the bidders' name, contribution amount, and candidate or referendum supported.
7. The Order does not cite any particular information as to corruption, bid-rigging, or bribery among Montana state contractors.
8. The State Bureau of Procurement which Ms. Holmlund supervises maintains a website with guidance for contractors, an operations manual for state employees, and a webinar on "Dark Money Disclosure Reporting and Requirements," available at <http://sfsd.mt.gov/SPB/Dark-Money>. (See Statement of Stipulated Facts, Doc. 48, at ¶¶ 3, 7.)
9. Time.com, the website of TIME Magazine, ran a story whose headline began, "Steve Bullock hates dark money." Laura Zornosa, *Steve Bullock hates dark money. But a Dark Money Lobbyist Is Helping His Presidential*

Campaign, Time (July 8, 2019), available at <https://time.com/5621952/steve-bullock-dark-money-lobbyist/>.

10. The Washington Post recently ran a story entitled, “For Democratic presidential hopeful Steve Bullock, it’s all about the ‘dark money.’” Michelle Ye Hee Lee, *For Democratic presidential hopeful Steve Bullock, it’s all about the ‘dark money.’* Wash. Post (July 14, 2019), https://www.washingtonpost.com/politics/for-democratic-presidential-hopeful-steve-bullock-its-all-about-the-dark-money/2019/07/13/a8e6362c-9da8-11e9-b27f-ed2942f73d70_story.html.
11. On Nov. 26, 2013, Governor Bullock’s office issued a press release entitled, “Governor Bullock to Dark Money Groups: ‘You’re not welcome here.’” It is available on the Governor’s website, https://governor.mt.gov/Portals/16/docs/112613_DarkMoneyGroupsNotWelcome.pdf.
12. Montana is holding a general election on November 3, 2020. The ballot will include the governor’s office and races for the State Senate and State House. (Statement of Stipulated Facts, Doc. 48, ¶ 8.)
13. Plaintiff Illinois Opportunity Project (“IOP”) is a 501(c)(4) social-welfare organization based in Chicago, Cook County, Illinois. (Besler Decl., Doc. 30, ¶ 1.) It seeks to promote the social good and common welfare by

educating the public about policy that is driven by the principles of liberty and free enterprise. (*Id.*)

14.IOP engages in issue advocacy in Illinois and other states on issues that relate to its mission. It feels strongly that issue advocacy is a protected right under the First Amendment. (Besler Decl., Doc. 30, ¶ 3-5.)

15.IOP wishes to communicate its views on the First Amendment to at least 100 Montanans in advance of the November 2020 general election. (Besler Decl., Doc. 30, ¶ 6.) In particular, it plans to make paid communications by mail to thousands of Montana voters within 90 days of the 2020 general election. (*Id.*) These mailings will include names and pictures of candidates for governor. (*Id.*) The mailings will urge these candidates not to continue Governor Bullock's Executive Order out of respect for privacy, free speech, and the First Amendment. (*Id.*) IOP intends to comply with Montana's campaign finance laws in relation to these mailings. (*Id.*)

16.IOP intends to engage in substantially similar speech in future Montana elections. (Besler Decl., Doc. 30, ¶ 8.)

17.IOP receives support from a variety of sources, including from corporate entities. These corporations may now or in the future wish to bid on business from Montana state government. (Besler Decl., Doc. 30, ¶ 9.)

- 18.IOP also desires to solicit financial support from donors within Montana to support its mission, and these potential donors who would be solicited would include corporations that may now or in the future bid on business with Montana state government. (Besler Decl., Doc. 30, ¶ 10.)
- 19.Currently, IOP's list of members, supporters, and donors is private. (Besler Decl., Doc. 30, ¶ 11.)
- 20.IOP fears that if its members, supporters, and donors are disclosed, they may be subject to official retaliation. (Besler Decl., Doc. 30, ¶ 12.)
- 21.IOP fears that if its members, supporters, and donors are disclosed, they may be subject to retaliation and harassment by intolerant elements in society. (Besler Decl., Doc. 30, ¶ 13.)
- 22.IOP fears that if its members, supporters, and donors are disclosed, individuals and corporations will be less likely to contribute to its mission, and it will experience greater difficulty in fundraising. (Besler Decl., Doc. 30, ¶ 14.)
- 23.IOP fears that that if its members, supporters, and donors are disclosed, the target audiences for its advocacy messages may focus on who is paying for the messages rather than on the ideas presented in the messages themselves. (Besler Decl., Doc. 30, ¶ 15.)

24.IOP believes that the focus of our conversation in the public square should be on ideas and principles rather than sources of funding and sponsors.

(Besler Decl., Doc. 30, ¶ 16.)

25.IOP works on several issues that directly impact public-employee unions, including union reform, pension reform, and school choice. (Besler Decl.,

Doc. 30, ¶ 17.)

26.Based on the experiences of other leaders and organizations that have taken on public-employee unions so directly, IOP fears that its donors may be

subject to retaliation by union interests. (Besler Decl., Doc. 30, ¶ 18.)

27.Based on the experiences of other organizations that have supported economic-liberty candidates who are also supporters of traditional marriage, IOP fears that its corporate donors may be subject to harassment by activists.

(Besler Decl., Doc. 30, ¶ 19.)

Dated: April 17, 2020

Respectfully Submitted,

/s/ Daniel R. Suhr

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*Motion pro hac vice granted

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on Defendants on April 17, 2020, via CM/ECF electronic notice.

/s/ Anita Y. Milanovich
Anita Y. Milanovich