No. 16-3585

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ILLINOIS LIBERTY PAC, *et al.*,

Plaintiffs-Appellants,

v.

LISA MADIGAN,
Attorney General of Illinois, in her official capacity, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois
Case No. 12 C 5811
The Honorable Gary Feinerman, Judge Presiding

SEPARATE APPENDIX OF PLAINTIFFS-APPELLANTS

Jacob H. Huebert
Jeffrey M. Schwab
LIBERTY JUSTICE CENTER
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
(312) 263-7668

Counsel for Plaintiffs-Appellants, Illinois Liberty PAC, Edgar Bachrach, and Kyle McCarter

SEPARATE APPENDIX

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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; EDGAR BACHRACH; and KYLE MCCARTER,	)	
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.	)	

SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Illinois Liberty PAC, Edgar Bachrach and Kyle McCarter, by their attorneys Diane Cohen and Jacob H. Huebert of the Liberty Justice Center, for their Second Amended Complaint against Defendants state as follows:

INTRODUCTION

1. Plaintiffs seek to have provisions of the Illinois Disclosure and Regulation of Campaign Contribution and Expenditures Act (the "Act"), declared unconstitutional facially and as applied to them, and to have the Court permanently enjoin Defendants' enforcement of the unconstitutional provisions of the Act under the First and Fourteenth Amendments to the U.S. Constitution.

2. The Act establishes a set of temporal and differential campaign contribution limits that apply to individuals, political action committees, corporations, and candidates, and which are dependent on whether independent expenditures or candidate self-funding occurs. At the same time, the Act places contingent limits on the campaign contributions of individuals, political action committees and others, and it authorizes the creation of special fundraising channels that allow senior legislative leaders, namely the Speaker of the House, Senate Majority Leader, and the House and Senate minority leaders, to raise money and make unlimited contributions. The Act not only represents "business as usual" in Illinois, it "makes matters worse," because "[o]ther limits on contributions are meaningless when Party Leaders can continue to give unlimited amounts of cash to their chosen candidate." Ill. H.R., 96th Gen. Assemb.-81st Legis. Day, at 130-31 (October 29, 2009). (Exh. 1.)

3. While courts tend to examine campaign contribution limits piecemeal, it is the combination of regulations in the Illinois Act – the temporal limits, the existence of loopholes and creation of exemptions for legislative leaders – which evinces that the purpose of the scheme is not to prevent corruption or the appearance thereof. Though the Act was enacted under the

guise of fighting corruption in Illinois politics, the Act actually creates structures that enhance the potential for corruption and the appearance thereof, not prevent it.

JURISDICTION AND VENUE

4. 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.

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

PARTIES

6. 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.

7. Plaintiff Edgar Bachrach is an individual who exercises his rights to free speech and association by making contributions to PACs and candidates he supports.

8. Plaintiff Kyle McCarter is a resident of Lebanon, Illinois, a citizen of the United States, and an Illinois State Senator, currently serving in the General Assembly, representing the 51st District. He exercises his rights to free speech and association by running for elected office, fundraising in order to run a competitive campaign, and spending contributions he receives to support his candidacy. McCarter plans to run for reelection during the 2013-14 election cycle, but he does not want to be dependent on receiving campaign contributions from either a

legislative caucus committee or a political party in order to be able to amass the funds needed to run a competitive race. Instead, McCarter would like to be able to amass enough resources to run a competitive race by fundraising from individuals and groups in excess of what the Act allows him, so as to maintain his independence from, and not be dependent on, party and legislative caucus money.

9. In this lawsuit, Plaintiffs are committed to enforcing the First and Fourteenth Amendments, and they intend to expose how the Act's arbitrary and irrational scheme creates an electoral system worse than would otherwise exist free from such regulation.

10. Defendants enforce the Illinois statute 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.

11. 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.

12. 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.

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

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

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

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

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

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

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

FACTS

20. 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).

21. 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.

22. The Act limits contributions that nonparty political speakers, such as Plaintiffs Illinois Liberty PAC and Bachrach, may make to candidates, and thus limits what candidates such as Plaintiff McCarter can receive, 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 and legislative caucus

committees, however, are expressly exempted from any limitations: they may contribute unlimited amounts to candidates. 10 ILCS 5/9-8.5(b), (c) and (d). (*See* Exh. 2.)

23. The Act also limits contributions to PACs: individuals, corporations, labor organizations, and associations may contribute $10,000 to PACs; political party and legislative caucus committees may contribute $20,000 to PACs; and PACs and candidate committees may contribute $50,000. 10 ILCS 5/9-8.5(d).

24. The only limits the Act places on political party and legislative caucus committee contributions to candidates apply during primary elections. However, these limits in a statewide race are forty times the amount that individuals such as Plaintiff Bachrach may contribute – $200,000 versus $5,000 – and four times the amount PACs such as Plaintiff Illinois Liberty PAC can contribute – $200,000 versus $50,000. 10 ILCS 5/9-8.5(b).

25. Currently there are limits on what a party and legislative caucus committee 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 and legislative caucus committees, parties and legislative caucus committees may receive unlimited contributions from candidates and other political parties (although caucus committees cannot receive contributions from other caucus committees). 10 ILCS 5/9-8.5 (b), (c).

The Act's limits are temporal and dependent on third-party speech

26. The Act 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). The Act also eliminates all contribution limits in a race if an

individual's or committee's independent expenditures exceed $250,000 (for a statewide race) or $100,000 (for any other elective office). 10 ILCS 5/9-8.5(h-5).

27. Accordingly, under the Act, the right of individuals, PACs, candidates and other nonparties to engage in free speech through making and/or receiving campaign contributions is dependent on the conduct of third parties.

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

29. At the time the law and its amendments were enacted, political party and legislative leader spending in races consistently surpassed the amounts that trigger the elimination of all contribution limits when a self-funded candidate or independent expenditure exceeds the same amounts. (*See* Exh. 3.)

Political Parties as Defined under the Act

30. 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). Party committees are empowered to give unlimited contributions to candidates (with the limited exception for primary election campaigns as noted above in ¶¶ 24, 25). 10 ILCS 5/9-8.5(b).

Legislative Caucus Committees

31. The Act defines a "legislative caucus committee" as 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). Legislative caucus 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).

32. While the Act designates legislative caucus committees as political party committees, legislative caucus committees are different from other political party committees. For example, unlike political party committees, whose primary purpose is to simply elect candidates to office, legislative caucus committees manage the institutional authority provided to the legislative leaders who create them and also play a crucial role in the legislative policymaking process. Further, while the Act authorizes the creation of these legislative caucus committees for the purpose of electing candidates to the General Assembly, it does not limit their contributions to this purpose.

33. "Legislative caucus committees" allow legislative leaders to establish special campaign committees that give them special fundraising channels and advantages over other speakers, including Plaintiffs, to collect unlimited amounts of money from political parties and candidate committees, raise funds from political action committees and other special interest groups, and contribute those funds to candidates, in contravention of the limits that apply to others, including Plaintiffs. (*See* Exh. 4 at p. 14; *see also* Osborn, Exh. 5.)

34. Thus, while the Act limits the contributions of some speakers on the one hand, in drafting the Act, legislators ensured that there was superior fundraising and contribution power protected and preserved for legislative leaders.

35. In order to enforce policymaking discipline and prevent challengers to their leadership, legislative leaders can use organizational rewards and punishments, including rewarding or punishing candidates through the provision or withholding of electoral support through their legislative caucus committees.

How the Act disparately treats political party, legislative caucus and other committee membership

36. 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 candidate from serving as the officer of both a candidate committee and other committees simultaneously, such as a party and legislative caucus committee, nor does it prohibit an individual from serving as an officer of multiple party committees or legislative caucus committees. (Exh. 4, committees created by the Act.)

37. 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 a party committee, the Democratic Party of Illinois, and a legislative caucus committee, 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 committee and legislative caucus committee that he chairs, and then make

unlimited contributions from these committees to candidates, including himself. 10 ILCS 9-8.5 (c), (b); *see also* Exhs. 2-4.

Injury to all Plaintiffs

38. All contributions Illinois Liberty PAC and Bachrach have made (and will continue to make if the Act is not enjoined), and contributions McCarter has accepted and will continue to accept, have been and will continue to be in compliance with Illinois law and the Act's contribution limits.

Injury to Illinois Liberty PAC

39. 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.

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

41. 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, just as legislative caucus committees are allowed to do. Instead, the law prohibits Illinois Liberty PAC from contributing amounts that comport with its strategic decisions on allocating its resources in supporting candidates.

42. 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 to decline to contribute at all if a smaller contribution would not make an impact in a race.

43. 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 the competitiveness of an electoral race, as legislative caucus committees and political parties can do in races through their ability to make unlimited contributions.

Injury to individual contributor Edward Bachrach

44. During the 2012 election cycle, Bachrach contributed the maximum amounts allowable, $5,000 to a state senate candidate committee and $10,000 to a political action committee. But for the Act, Bachrach would have contributed in excess of what the Act allowed to the state senate candidate committee and to the political action committee. Bachrach would like to do the same in the 2013-2014 election cycle, that is contribute in excess of the contribution limits that apply to a candidate committee (or committees) and political action committee (or committees) of his choosing.

Injury to candidate McCarter

45. The Act's contribution limits prevent candidates from mounting effective campaigns because candidates such as Plaintiff McCarter must accept the reciprocal duties and obligations that come from accepting party and legislative caucus money, or strike out on their own and attempt to amass the resources necessary to mount a competitive race without party or legislative caucus money support. But for the Act's provisions that limit the amounts of contributions candidates may receive from individuals, corporations, labor organizations, associations and PACs, Plaintiff McCarter would seek to raise funds and accept contributions in excess of what the Act allows.

46. For these reasons, the Act has injured and continues to injure Illinois Liberty PAC, Bachrach, and McCarter. Unless Illinois Liberty PAC and Bachrach are relieved of the Act's restrictions on their ability to contribute to candidates and/or PACs, and McCarter is relieved of the Act's restriction on his ability to amass the resources he needs to run a competitive campaign, they will lose their ability to participate as fully as they can and would like to in the 2013-14 election cycle.

COUNT I

(FIRST AND FOURTEENTH AMENDMENT- FREE SPEECH AND ASSOCIATION)

47. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 46 as if fully set forth herein.

The Act fails to serve a proper purpose and, therefore, cannot withstand any scrutiny

48. Under the First and Fourteenth Amendments to the U.S. Constitution, *Buckley v. Valeo*, 424 U.S. 1 (1976), 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.

49. 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.

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

51. The Act's scheme of favoritism to legislative leaders through the authorization of legislative caucus committees, as well as to political parties to make unlimited contributions to candidates and legislative caucus committees, and its tethering of the exercise of free speech and association to third-party conduct, *i.e.*, 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.

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

53. The Act is engineered to entrench the power of legislative leaders through the creation of legislative caucus committees.

The Act's expendable limits in response to per se noncorrupting speech evince its improper purpose

54. The Act's scheme of 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 legislative leaders through the authorization of legislative caucus committees, as well as political parties and their leaders, over Plaintiffs and all other speakers.

55. 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 the Act's contribution limits.

56. The Act is built on the premise that the potential for corruption through campaign contributions disappears when independent political speech reaches a particular amount in a race.

57. If the Act's purpose were truly aimed at preventing quid pro corruption or the appearance thereof, the scheme would not be eliminated when faced with noncorrupting speech.

58. If the Act were not aimed at protecting political parties, then the Act's limits would be eliminated when party speech exceeds $250,000 in statewide races and $100,000 in all other races.

59. Temporal contribution limits "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.

The Act's contribution limits on individuals versus corporations unconstitutionally treat similarly situated speakers differently

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

61. 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 and fails to serve an anticorruption purpose.

62. The Act favors candidates whose support derives from corporations, labor unions and associations over candidates, such as Plaintiff McCarter, whose support derives from individuals.

63. 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*, 424 U.S. at 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").

64. "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.

65. 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.

The Act is not narrowly tailored nor closely drawn to serve an anti-corruption purpose

66. In the alternative, even if the scheme advances a permissible purpose, the Act is not narrowly tailored or closely drawn to serve that purpose. The Act fails to properly safeguard against the dangers of corruption and/or circumvention by allowing political parties and legislative leaders through "legislative caucus committees," to accept contributions and make unlimited contributions and thereby evade the limits that apply to Plaintiffs.

67. 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.

68. The Act identifies certain preferred speakers, taking the right to speak from some and giving it to others, depriving the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. *See Citizens United*, 130 S. Ct. at 898-99.

69. The Court should not defer to the legislature's judgment on the scope of the corruption threat and the constitutionality of responses thereto because the political leaders who enacted the Act were motivated by protecting their hold on power. *See Randall v. Sorrell*, 548 U.S. 230, 270 n.2 (2006) (Thomas, J., concurring).

70. Deference to legislative intent must yield to the First Amendment in any event. *Citizens United*, 130 S. Ct. at 911 ("When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy.").

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

COUNT II

(ENTITLEMENT TO DECLARATORY 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 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.

74. 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 III

(ENTITLEMENT TO INJUNCTIVE RELIEF)

75. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

76. For reasons including but not limited to those stated in this Second 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.

77. Plaintiffs are therefore entitled to an 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, Bachrach and McCarter request that this Court:

A. 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;

B. Declare that temporal limits fail to serve any anti-corruption purpose;

C. Enjoin Defendants from enforcing 10 ILCS 5/9-8.5(a)-(d) in its entirety;

D. In the alternative, enjoin Defendants from enforcing the provisions of 10 ILCS 5/9-8.5(a)-(d) that create specialized political action committees that impermissibly favor the speech of legislative caucuses over all nonparty speech, including Plaintiffs';

E. Enjoin Defendants from enforcing the provisions that impermissibly favor the speech of corporations, labor organizations and associations over the speech of individuals;

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

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

DATED: MAY 10, 2013

Respectfully Submitted,

By: s/Diane S. Cohen
Diane S. Cohen (#6199493)
Jacob Huebert (#6305339)
Attorneys for Plaintiffs

Liberty Justice Center
190 S. LaSalle Street, Ste. 1630
Chicago, Illinois 60603
(312) 263-7668

CERTIFICATE OF SERVICE

I, Diane S. Cohen, an attorney, hereby certify that Plaintiffs' Second Amended Complaint was filed on May 10, 2013, 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

EXHIBIT 5

Review of Illinois Campaign Finance System

By Dr. Marcus Osborn

May 10, 2013

KUTAK ROCK LLP

SUITE 300
8601 NORTH SCOTTSDALE ROAD

SCOTTSDALE, ARIZONA 85253-2742

480-429-5000
FACSIMILE 480-429-5001

www.kutakrock.com

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REVIEW OF ILLINOIS CAMPAIGN FINANCE SYSTEM: ELECTORAL GAMING AND INSIDER INFLUENCE

PREPARED BY DR. MARCUS OSBORN

MAY 10, 2013

Introduction

Prior to the enactment of the Illinois campaign finance law changes, elected officials in Illinois where under pressure to do something about corruption in Illinois politics (Garcia 2009). The written testimony of Kent Redfield (2009) to the Joint Committee on Government Reform on March 16 highlights some the political pressure legislators were facing to do something about corruption in Illinois politics. In response, the Illinois Legislature passed new campaign finance restrictions that set limits on individual, corporate, political action committee and political party contributions. The need for the new restrictions was based on the idea that Illinois needed to "clean up" politics and reduce the influence of money in decision making. Unfortunately, the regulatory structure that Illinois adopted did not create any meaningful new protections against corruption and it produced structures that enhanced the potential for corruption. The campaign finance limitations that were developed were temporal in nature so if external independent groups or self-financed candidates made large contributions the limits disappeared. The legislation limited individual, political action committee and corporate contributions, and at the same time authorized special fundraising channels that allowed senior legislative leaders to make unlimited contributions.

The Illinois campaign finance system maintains differential campaign contribution limits depending on whether the contributor is an individual, a political action committee or a corporation. Under the Illinois campaign regulatory system, the contingent campaign contribution limits are removed during an election if an independent expenditure or self-funded candidate makes a large triggering contribution. As a result, the legislation only concerns itself with potentially corrupting contributions when there is no significant independent or self-funding candidate expenditure occurring. Magically, the legislation appears to be built on the premise that the potential for corruption through campaign contributions disappears only when two types of political participants speak with significant resources. This mid-election change of heart about the need for campaign contribution limits calls into question the entire anti-corruption basis of the Illinois campaign finance regulatory system.

In addition to the temporal regulation of campaign contributions, the legislation also provides new tools for favored incumbents and establishment lawmakers to create campaign structures that appear to institutionalize the relationship between campaign contributions and legislative policymaking. This structure further degrades any of the purported anti-corruption elements of the law. Despite the apparent attempt to limit interest group influence with new temporal campaign contribution limits, the 2009 legislation endowed certain legislators with tools that additionally facilitate the solicitation of campaign contributions from the very interests that lobby them the most. These tools allow them to exploit their incumbency and positional status within the Legislature. So while the legislation limited contributions on the one hand, they ensured that there was superior fundraising/contribution flexibility through other mechanisms controlled by members of the Legislature.

While on its face the Illinois campaign finance statutes cap individual, corporate and political action committee contributions as a mechanism to theoretically limit interest group influence, the reality is that they simply create more options to move campaign contributions around. This is accomplished in such a way as to maximize the favored incumbent advantage by allowing senior legislative members to control special campaign committees (Legislative Caucus Committees). This authority is especially concentrated in the hands of those in the Legislature with the most institutional power. The Legislative Caucus Committee structure produces relative campaign finance advantages over other campaign contributors and concentrates the political power of a select group of legislative leaders. This document describes how this structure works and why runs counter to anti-corruption underpinnings. Political action committees, individuals, and corporations not associated with legislative leadership are placed in a disfavored position because they face a stiffer regulatory environment than Legislative Caucus Committees. The Illinois law provides structural advantages to some types of contributions while it limits others. This document describes the manner in which the newly authorized campaign structures actually create enhanced opportunities for corruption and the appearance of corruption.

Background on Legislative Caucuses

Before describing the increased potential for corruption that is generated by legislatively managed caucus committees, it is important to describe the role that party caucuses have within a legislative body. Legislative caucuses are different than political parties because they are organized not just around a political party but they are structured to manage the operations of a legislative body. In legislative bodies across the United States, it is common for members of the two major parties to create legislative caucuses to coordinate legislative activity. Party-based legislative caucuses create the structure for legislative operations, divide up policy work and facilitate the adoption of policy positions. This is different than political parties whose exclusive purpose is simply to elect candidates to office.

In addition to their legislative work, members of legislative caucuses will commonly work together to attempt to expand their numbers through elections. Legislative caucuses commonly have both an electoral purpose and a policymaking/legislative operation purpose as well. The leaders of the Democrat and Republican caucuses are provided with institutional authority, can make legislative committee assignments, have the ability to direct legislative staff and manage the day-to-day operations of the Legislature. So while caucuses are typically organized by political party status or around specific topical

interests, legislative caucuses play an influential role in the policymaking process. They manage the institutional authority provided to the Legislature and coordinate the actions of members in the policymaking process.

In case of the majority party, the leaders of Senate and House of Representatives caucuses also assume significant ministerial/operational functions for the entire body. As a result, the Speaker of the House and the Senate Presidents have a political responsibility for guiding the electoral expansion of their caucus but also have significant formal legislative decision making power. This authority includes the ability to make committee assignments, schedule bills for hearing, staffing and the overall management of the legislative operations. These leadership positions are highly sought after by legislative members because Speaker of House and the Senate President maintain significant power and influence over the legislative policy making. In order to maintain these positions, leaders must not only ensure there are adequate numbers of party members in the Legislature, but also ensure those members that get elected also support their election as leader. In order to enforce policymaking discipline and prevent challenges to their leadership status by members within their own caucus, caucus leaders can use organizational rewards/punishments as well as provide electoral support to candidates.

Caucus Committee Background

The provisions of the Illinois campaign finance law as they relate to "Political Party Committees" and the subset of political party committees, "Legislative Caucus Committees", are structurally designed to enhance interest group influence. This is accomplished by providing a structural mechanism for interest groups and relevant legislative committee members to cement their policymaking and campaign finance relationship. If the goal of the underlying campaign contribution statute was to limit the appearance of corruption, the authorization to create a "political party committee," directly tied to Senatorial and House Caucus Committees, undermines this attempt by creating an environment and structure for influence peddling. Therefore, the authorizing regulatory system permitting the development of Legislative Caucus Committees runs counter to the supposed anti-corruptive intent of Illinois's campaign finance law.

Section 10 ILCS 5/9-1.8(c) allows for the creation of "Legislative Caucus Committees" for the use in providing campaign contributions and support for members of their caucus. Under the law, "Legislative Caucus Committees" are committees directed by Legislative leadership (President of the Senate, Minority Leader of Senate, Speaker of the House of Representatives, Minority Leader of the House of Representatives) or a committee established by 5 or more members of a Senate Caucus or 10 or more members of a House Caucus. It is interesting that political parties who do not have party members in the Legislature or have too few legislators to authorize the creation of the caucus are unable to avail themselves of this fundraising tool.

Legislative Caucus Committees are considered political party committees and are provided substantial contribution advantages over competing political voices. Legislative Caucus Committees can provide unlimited contributions directly to candidates in the General Election and are only limited to $125,000 per Senate candidate and $75,000 per House of Representatives candidate in the partisan primaries.

This is a substantial contribution advantage over the fundraising restrictions faced by individual donors ($5,000 limit), corporations ($10,000 limit) and political action committees ($50,000 limit). So for a contributor that may want to make contributions to support candidates running against a Legislative Caucus Committee supported candidate, there is significant regulatory asymmetry between the contribution capacity of political action committees, corporations or individuals as compared to the Legislative Caucus Committee.

Generally, the political committees associated with Legislatures are managed by legislative leadership and implement strategies to maximize or protect the organizational influence of their leaders (Clucus 1992). So while Legislative Caucus Committees are related to political party building, they are additionally focused on supporting the individual political and legislative ambitions of their leaders. These committees are not just a source of resources for the betterment of the legislative caucus members; they are important tools to preserve and expand the power of the individual legislative leaders.

The academic literature has generally treated political parties as a counterbalance to the influence of interest groups. Generally, political parties are viewed as organizations that attempt to maximize the number of elected positions while interest groups are viewed as political participants making contributions designed to maximize the influence of their specific interest group (Thompson and Cassie, 1992; Thompson, Cassie and Jewell 1993). It is generally understood that political action committees pursue access strategies while parties typically pursue an electoral strategy (Ramsden 2002). The value of a strong political party committee is that it provides money to party-supported candidates and it redirects funds from political action committees to challengers (Dow 1994).

In traditional party fundraising, special interest contributions to political parties are bundled with other contributions from citizens and other groups. As a result, subclasses of the political party donors are unable to amass a concentration of the contributions to create undue influence over the party. Parties are in the business of maximizing their electoral fortunes of party candidates and they will pursue strategies to support challengers and favored incumbents. Unfortunately, the design of caucus committees makes them operate like political action committees because they are focused on the betterment of their organizers. As a result, caucus committees should not be viewed as a mitigation tool against the concentration of interest group influence because they do not operate like traditional parties. They operate like individualized political action committees that are sponsored by legislators.

Illinois Campaign Finance Statutes Provide Special Fundraising Mechanisms for Legislative Party Leaders

In Illinois the Speaker of the House, Senate President and respective minority leaders of the Senate and House have been endowed with a special statutory fundraising power that provides them with unique fundraising tools that bolster their ability to influence legislation and maintain their leadership status. These tools also provide for a highly efficient mechanism to solicit and distribute interest group contributions. When Illinois designed its campaign finance structure under the guise of reducing the potential for corruption, it included provision 9-1.8 C. to allow a select few individuals (Speaker of the

House, Minority Leader, Senate President, Senate Minority Leader) with the exclusive authority to individually create "caucus committees":

> (c) "Political party committee" means the State central committee of a political party, a county central committee of a political party, a legislative caucus committee, or a committee formed by a ward or township committeeman of a political party. For purposes of this Article, a "**legislative caucus committee**" **means 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 of Representatives**, or a committee established by 5 or more members of the same caucus of the Senate or 10 or more members of the same caucus of the House of Representatives.

This statute provides special authority to four members of the Legislature to create individualized political action committees that do not require the participation of other legislators. This statute creates "personalized political action committees" that can provide unlimited campaign contributions in the general election and can even distribute significant levels of campaign funds in partisan primary elections. These committees can direct funds in partisan primaries despite the fact that these committees are organized under the campaign finance statutes as political party committees which should be focused on general election activities. Leaders of these statutorily designated caucus committees have the ability to donate in a partisan primary up to $125,000 for Senate races and $75,000 in House of Representatives primaries. This capacity to donate is significantly higher than the $5,000 individual, $10,000 corporate or $50,000 political action committee limitations. So these "personal political action committees" create significant contribution advantages against potentially countervailing campaign contributors like political action committees, corporations and individual contributors. Thus, the Senate President and the Speaker of the House can give more money to candidates that support their interests than competing interests. This statutorily provided capacity helps to solidify their individual status as a legislative leader because the threat of using campaign funds in a primary and general election is a powerful tool to ensure that legislators follow legislative leadership.

Caucus Committees should be treated differently than political party committees because caucus committees are extensions of the leaders that organize them and are designed to enhance of the influence of their leaders as policymakers inside of the legislative body. In theory "Political Party Committees" are designed to expand the party representation in the Legislature. On the other hand, the Caucus Committee is focused on supporting the agenda of the leaders that control the committees. While the goals of political parties and caucus committees overlap, the potential for protectionist behavior by the legislative leader makes them different.

However, the "Caucus Committee" statutes provide an enhanced ability to direct significant campaign contributions in the primary election. This authority supports the argument that the authorization of caucus committees was designed to enhance legislative leaders' ability to protect their leadership position by allowing them the capacity to significantly influence primary elections. Providing the four top legislative caucus leaders with the ability to direct significant campaign contributions creates enhanced

influence over members of their caucus because the leaders can individually determine which incumbents receive significant financial support in the primary and general elections.

As described earlier, in Illinois the President of the Senate and Speaker of House of Representatives are provided with a special ability to form "Legislative Caucus Committees" which endows them with a fundraising advantage not available to citizens and outside interests. Given their substantial organizational power with their respective bodies they are well-positioned to solicit funds from organized interests with businesses at the Capitol. As individual political actors, the ability to create caucus committees is valuable as it provides these legislators with the capacity to reward or punish members of their own caucus in furtherance of their individual goals. The ability to provide unlimited contributions in the general election and sizable contributions in the primary is both a huge carrot and large hammer of organizational control.

Caucus Committee Structure Creates Enhanced Opportunities for Corruption

In addition to the four highest party leaders in the Legislature, the campaign finance statutes allow for sub-groups of legislators with significant legislative power based on the jurisdiction of their legislative leadership position or their participation on a standing legislative committee to form specialized fundraising committees under the guise of promoting the party's interest. While "Legislative Caucus Committees" are organized as a sub-set of political party committees, they are different than political parties. While some may argue that providing political parties with an unlimited capacity to provide contributions to legislative candidates in the name of the larger political party is justified, the inclusion of a Legislative Caucus Committee into the definition of a political party committee blurs the purity of the purpose of these party-oriented committees. A Legislative Caucus Committee is not just about advancing a political party's agenda, these committees are also focused on maximizing the political and policymaking needs of the caucus legislative leaders. It is this second purpose that creates an opportunity for corruption that is institutionalized by the Illinois campaign finance law.

Unfortunately, the caucus committee system of fundraising is structured in a way to maximize the relationship between the interest groups and legislators. This is accomplished by creating a subclass of political party fundraising committees that are designed to make them more susceptible to interest group influence and capture. Appendix One (Democrat Majority Legislative Caucus Committee) presents a listing of the campaign contributions to the Democrat Caucus Committees. A review of the contributors highlights that the overwhelming majority of the contributions come from political action committees and corporations. These are the very interests that are the most likely to have issues before the Legislature. What appears significantly absent from this list of contributors are a broad-cross section of donors that one would expect from traditional political party contributions.

The donors to the Senate Democrat Victory Fund and Democrat Majority Legislative Caucus Committee come from a concentrated group of special interests with heavy contributions being generated by PACs associated with organized labor and business trade associations. This is not surprising given that the leaders of these caucus committees are the same individuals who have institutional authority over the legislative process. Legislatively managed caucus committees create an elevated risk for corruption

because the leaders of the caucus committees have both policymaking authority and the ability to influence elections. Traditional political parties are exclusively focused on winning elections, Legislative Caucus Committee tie policymaking and fundraising together in close proximity. Moreover, the individuals leading Legislative Caucus Committees can utilize them to preserve their leadership status.

In addition to providing the legislature's most senior members with special fundraising ability, the definition of Legislative Caucus Committee allows for a majority of members of a standing legislative committee who have significant influence over a regulated industry or appropriations to form a committee. These Legislative Caucus Committees can be organized around standing legislative committees and are authorized to distribute campaign funds to members within their caucus. As a result, legislative leadership can setup a series of the Legislative Caucus Committees in addition to the Legislative Caucus Committees directed by the Speaker and the President to create additional fundraising opportunities for legislative leaders. This system can expand influence vertically within the caucus from the Speaker of the House and Senate President down to their team of appointed legislative committee chairs.

The ability to manage a well-funded Legislative Caucus Committee can increase the level of organizational influence of the members of the fundraising committee by assisting other legislators in their campaign fundraising needs. For example, the contributions raised by a Legislative Caucus Committee organized around key legislative standing committees like the Energy, Environment, Judiciary and Labor and Commerce committees can be utilized to solicit funds from the interests lobbying each committee. These funds would then be used to fund the campaigns of other caucus members who support the legislation being championed by the committee-oriented Legislative Caucus Committee. Thus, the members of interest groups contribute to a Legislative Caucus Committee associated with the committee they lobby. Then those resources are used to support caucus members outside of the committee who are likely to support the legislation endorsed by both the caucus committee members and their associated interest groups. The special authorization of these caucus committees institutionally ties legislative decision making with fundraising.

The interest group literature commonly describes the relationship between interest groups, regulators and specific legislative committees that have jurisdiction over the regulated and regulators as iron triangles or policy subsystems (Thurber 1990). In these systems, the legislators and regulators can become captured by the interest groups who are able to generate substantial influence over the policymakers regulating their industry. In these systems, interest groups provide policy information, political intelligence and campaign contributions which help to secure a positive regulatory environment for the industry. The ability of legislators to create "Legislative Caucus Committees" appears to be specifically designed to enhance these relationships by providing a systematic means for the legislative committee members to raise funds from the very stakeholders most impacted by their policy decisions. In designing this system, the Legislature failed to enact even the most basic protections against tying contributions to the policymaking by authorizing contributions to these committees even during legislative deliberations.

According to campaign finance reports filed with the Illinois Board of Elections that are provided in Appendix Two on August 17, 2012, SEIU Healthcare Il PAC contributed $47,000 dollars and SEIU Illinois Council PAC Fund contributed $50,000 to the to the Democrat Majority caucus committee. These contributions corresponded to the convening of a Special Legislative Session on pension reform. The proximity of the contributions to legislative action highlights one of the problems with caucus committees and a heightened appearance of corruption. One of the basic ways that many states have limited the appearance of corruption from these types of systems is to restrict the ability of lobbyists/interest groups to fundraise during the legislative session. The idea is that during the legislative session campaign contributions from interest groups are too proximate to the legislative decisions being made. According to the National Conference of State Legislatures 14 states have banned any contributions to legislators during the legislative session, and 14 states limit lobbyist contributions while the legislature is working (www.NCSL.org). While there are session fundraising limits in the Illinois system, these limits are so mild as to provide little protection against undue influence.

Illinois's campaign finance law limits political fundraising during the legislative session, but this restriction only applies to fundraising in Sangamon County, which houses the state capitol in the City of Springfield. The law does not restrict the solicitation of the campaign contribution during the legislative session in areas outside of Sangamon County. Legislative Caucus Committees who want to fundraise during the legislative session can move their events outside of the Springfield/Sangamon county area. This restriction is scant protection against the potential for influence peddling. When the very interests that have legislative issues pending are invited to a fundraiser promoting the Legislative Caucus Committee organized around a legislative standing committee associated with their industry, the opportunity for the appearance of corruption is at a maximum. This is especially true if the interest groups who are contributing know that their campaign investment will be directed to influence other candidates who support legislation favorable to their interests.

There is an interesting feature of the Illinois campaign finance statute which is the limitation on legislative candidates' ability to receive contributions from only one caucus committee. Legislative candidates are restricted to receiving contributions from only one caucus committee which provides "exclusive rights" to the first caucus committee to contribute. Future contributions from a Legislative Caucus Committee during that cycle can only be made by the Legislative Caucus Committee that made the early contribution. This exclusivity feature consolidates the power of the legislative leaders by potentially crowding out other competing contributions from other Legislative Caucus Committees. As a result, a legislator who wants to challenge the Speaker or President for organizational leadership will not only have to convince their colleagues that they can do a better job as a leader but they must overcome the enormous fundraising advantages that legislative leaders are empowered with. The Legislative Caucus Committee provisions of the Act appear to be specifically designed to enhance the relative power of the Speaker of the House and the Senate President at the determent to competition within the caucus.

An individual, political action committee or corporation who wants to support challengers that are not protected by this system faces regulatory impediments through differential contribution limits. The

individual, corporate and political action committee contribution limits restrict the ability of these classes of political participants from competing on a dollar-for-dollar basis against the institutionalized support of Legislative Caucus Committees. Legislative Caucus Committees operate like a "Super PAC" because they are provided with substantial fundraising and contribution advantages. In the primary election, individuals, corporations and political action committees face a system where Legislative Caucus Committees are given substantial fundraising advantages with higher primary contribution limits. These advantages for the Legislative Caucus Committees grow in the General Election, as the Legislative Caucus Committees can contribute unlimited contributions.

The purpose for this type of institutionalized fundraising system which directly ties legislators to a subset of contributors, runs counter to the traditional value of political parties and their ability to limit concentrated interest group influence. The Legislative Caucus Committee system of fundraising augments the interest group/legislator relationship it does not diminish. This is because it concentrates contributions in a few Caucus Committees and then provides these committees with substantial political advantages over countervailing interests. Even without Legislative Caucus Committees, there are still many opportunities for political parties to create true political party committees at the state, county and local levels instead of directing fundraising activities to an institutionalized subset of the party.

Conclusion

A review of elements of Illinois' campaign finance system identifies a number of significant issues that impact the integrity of elections and legislative process by creating structures that increase the potential for corruption and the appearance of corruption. The triggered elimination of the campaign contribution highlights a disparity in the law where contributions are thought of as being potentially corrupt and in need of regulation until a triggering activity occurs. The Illinois campaign regulatory system creates mechanisms that enhance the authority of the existing legislative leadership by providing them access to fundraising tools that are unavailable to potentially competing interests. The regulatory system provides contribution advantages to political parties and then extends those advantages to Legislative Caucus Committees. The benefits provided to Legislative Caucus Committees are unwarranted because they operate more like political action committees than party committees.

Caucus Committees dangerously tie the institutional authority of legislators to fundraising. The special regulatory status of the Legislative Caucus Committee provides an ample environment to create overly close fundraising and policymaking relationships. The risk of corruption is amplified because of the lack of general election contribution limits on Legislative Caucus Committees and the contribution restrictions that are placed on potentially countervailing political action committees, corporations and individuals who may be supporting opposing candidates. The deck is unbalanced in terms of regulatory requirements to allow those in the Legislature with the most organizational authority to also have the best campaign tools. This is a self-protecting that is likely to result in a consolidation of power, not a robust electoral environment.

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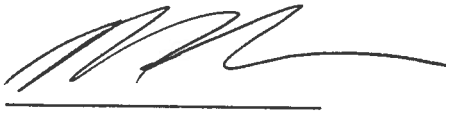
Background on the Author

I have approximately 20 years of experience in legislative advocacy and campaigns, the latter of which includes extensive experience participating in, organizing and overseeing political fundraising events and activities. Currently, I am currently employed by Kutak Rock LLP as a Government Relations Specialist. Prior to my employment at Kutak Rock LLP, I served as Deputy Director of Government and Public Affairs at R&R Partners and h. In my professional roles, I have represented businesses, trade associations and government agencies before the legislative and executive branches of government in Arizona. Since 1992, I have been active in numerous ballot measures and state legislative campaigns as an advisor. In these roles, I have advised clients on campaign fundraising. I have studied fundraising strategies and methods for well over a decade; additionally, in order to enhance the competitiveness of candidates whom I advise. My Ph.D. qualifications in the field of Public Administration also embraces theories of tactics and strategies in political campaigns and fundraising. I currently serve as an Adjunct Professor at Northern Arizona University in the Masters of Administration Program.

I earned a Master's Degree and a Ph.D. in Public Administration from Arizona State University where my graduate training included work in policy analysis and public management. Additionally, I have undergraduate degrees in Political Science and History from the University of Arizona. I have recently published a book chapter "Governors Lobbying and the Legislature: Evidence from a Pilot Study" in Interest Groups & Lobbying: Volume One-The United States, and Comparative Studies. My dissertation, (2003) Information or Money? Primary Influence of Arizona Legislator Information Source Reliance and a related conference paper titled, An Examination of the Effectiveness of Publicly-Funded Elections at Reducing Interest Group Influence: Lessons Learned from Arizona and Guidance for State Policymakers focused on the impact that PAC and lobbyist contributions had upon interest group influence in Arizona after the passage of the Citizen's Clean Election Act. These academic works applied both qualitative and quantitative analysis, which are each generally-accepted methodologies in the fields of political Science, public administration, interest group influence.

My work has been accepted at academic conferences, including those organized by the Strategic Management Society, Midwest Political Science Association and the Association for Public Policy Analysis and Management. My expertise in the fields of political science, public administration, interest group influence and policy analysis is also based on my professional experience in lobbying and working as a consultant for political campaigns. Finally, I served as an expert witness on the prevailing side in the *Arizona Free Enterprise Club vs. Bennett*.

This Report is respectfully submitted with the understanding that I reserve the right to alter my opinions in this matter if additional information or facts are discovered or disclosed to me subsequent to preparation of this document.



Signed this 10th day of May 2013

Appendix One

Democrat Majority Legislative Caucus Committee Campaign Finance Filings

Records of all individual donations, in-kind contributions, transfers and other receipts received by the Democratic Majority legislative caucus committee from January 1, 2013, through May 8, 2013.[1]

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[1] Includes all donations, in-kind contributions, transfers and other receipts reported to the Illinois State Board of Elections as of May 8, 2013.

Source:
http://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByCommittees.aspx

Contributed By	Amount	Received By	Description	Vendor Name	Vendor Address
Ameren Illinois P.O. Box 66892 St. Louis, MO 63166	$15,000.00 3/26/2013	Individual Contribution **Democratic Majority**			
Chicago Fire Fighters Local 2 Political Cmte Fund 440 W. 43rd St. Chicago, IL 60609	$5,000.00 5/2/2013	Transfer In **Democratic Majority**			
Foresight Energy LLC 211 N. Broadway, Ste 2600 St. Louis, MO 63102	$5,000.00 5/7/2013	Individual Contribution **Democratic Majority**			
National Tobacco Company, L.P. 5201 Interchange Way Louisville, KY 40229	$3,500.00 5/2/2013	Individual Contribution **Democratic Majority**			
Chicago & Cook Co. Building & Construction Trades Council PAC 150 N. Wacker Dr., Ste 1850 Chicago, IL 60606	$3,000.00 3/26/2013	Transfer In **Democratic Majority**			
Chicago Land Operators Joint Labor-Management PAC 6200 Joliet Road Countryside, IL 60525	$3,000.00 3/6/2013	Transfer In **Democratic Majority**			
CHIPP Political Account 1401 Hampton Ave, 3rd Floor St. Louis, MO 63139	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Cook County College Teachers Union COPE 208 W. Kinzie St.	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			

Chicago, IL 60654					
Credit Union PAC 1807 W. Diehl Rd. P.O. Box 3107 Naperville, IL 60566-7107	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Curry-Ryan, Julie 4804 Fletcher Lane Mt. Zion, IL 62549 Occupation: Lobbyist Employer: Curry & Associates	$3,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Dent-IL-PAC P.O. Box 5120 Springfield, IL 62705-5120	$3,000.00 5/7/2013	Transfer In **Democratic Majority**			
Fraternal Order of Police Chicago Lodge No. 7 1412 W. Washington Blvd. Chicago, IL 60607	$3,000.00 3/26/2013	Individual Contribution **Democratic Majority**			
Freeborn & Peters LLP 311 S. Wacker Dr., Ste 3000 Chicago, IL 60606	$3,000.00 3/26/2013	Individual Contribution **Democratic Majority**			
Government Navigation Group, Inc. 401 W. Edwards, Ste 1 Springfield, IL 62704	$3,000.00 5/7/2013	Individual Contribution **Democratic Majority**			
IBEW Local 15 6330 Belmont Rd., Ste 1 Downers Grove, IL 60516	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
IBEW Local 51 PAC 301 E. Spruce St. Springfield, IL 62703	$3,000.00 3/5/2013	Transfer In **Democratic Majority**			
IBEW PAC Voluntary					

Fund 900 Seventh St, N.W Washington, DC 20001	$3,000.00 4/10/2013	Transfer In **Democratic Majority**			
IBEW PAC Voluntary Fund 900 Seventh St, N.W Washington, DC 20001	$3,000.00 5/2/2013	Transfer In **Democratic Majority**			
ICMOA PAC (Illinois Coin Machine Operators Association) 3201 Old Jacksonville Rd Springfield, IL 62711	$3,000.00 5/7/2013	Transfer In **Democratic Majority**			
Illinois Chiropractic Society PAC P.O. Box 9493 Springfield, IL 62791	$3,000.00 3/26/2013	Transfer In **Democratic Majority**			
Illinois Hotel-Motel PAC (I.H.M.P.A.C.) 5A Lawrence Square Springfield, IL 62704	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Illinois Pipe Trades PAC Account 534 S. 2nd St., Ste 311 Springfield, IL 62701	$3,000.00 4/10/2013	Transfer In **Democratic Majority**			
Illinois State AFL-CIO Committee of Political Education 534 S. 2nd St. Ste 200 Springfield, IL 62701	$3,000.00 5/7/2013	Transfer In **Democratic Majority**			
Independent Insurance Agents of Illinois PAC 4360 Wabash Ave. Springfield, IL 62711	$3,000.00 4/3/2013	Transfer In **Democratic Majority**			
M. Werner Consulting 282 South Cass Street Virginia, IL 62691	$3,000.00 5/7/2013	Individual Contribution **Democratic Majority**			

Merck & Co., Inc. One Merck Drive Whitehouse Station, NJ 08889-3400	$3,000.00 3/26/2013	Individual Contribution **Democratic Majority**			
Mid-Central Illinois District Council of Carpenters #1 Kalmia Way Springfield, IL 62702	$3,000.00 3/26/2013	Transfer In **Democratic Majority**			
MidAmerican Energy Company P.O. Box 3006 Sioux City, IA 51102	$3,000.00 3/15/2013	Individual Contribution **Democratic Majority**			
Midwest Generation EME, LLC 3 MacArthur Place, Ste 100 Santa Ana, CA 92707	$3,000.00 4/3/2013	Individual Contribution **Democratic Majority**			
North Central IL Laborers' District Council PAC 4208 W. Partridge Way, Unit 2 Peoria, IL 61615	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Operating Engineers Local 318 Action Fund 3310 Water Tower Road Marion, IL 62959	$3,000.00 4/10/2013	Transfer In **Democratic Majority**			
Operating Engineers Local 399 PEF 2260 S. Grove St. Chicago, IL 60616	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Operating Engineers Local 965 PAC 3520 E. Cook St. Springfield, IL 62702	$3,000.00 3/26/2013	Transfer In **Democratic Majority**			

Policemen's Benevolent & Protective Association of Illinois PAC 435 W. Washington Springfield, IL 62702	$3,000.00 3/6/2013	Transfer In **Democratic Majority**			
Quantum Crossings, LLC 111 E. Wacker Dr., Ste 990 Chicago, IL 60601	$3,000.00 4/3/2013	Individual Contribution **Democratic Majority**			
Reitz, Friends of Dan 816 Windy Way Steeleville, IL 62288	$3,000.00 4/19/2013	Transfer In **Democratic Majority**			
SEIU HealthCare IL IN PAC 2229 S. Halsted Chicago, IL 60608	$3,000.00 3/15/2013	Transfer In **Democratic Majority**			
Sidley Austin LLP 1 South Dearborn Chicago, IL 60603	$3,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Sprinkler Fitters Local 281 PEF 11900 S. Laramie Ave. Alsip, IL 60803	$3,000.00 3/6/2013	Transfer In **Democratic Majority**			
Strickiln & Associates 20 S. Clark St., Ste 2900 Chicago, IL 60603	$3,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Tooling and Manufacturing Assn (TMA) PAC 1177 S. Dee Road Park Ridge, IL 60068	$3,000.00 4/3/2013	Transfer In **Democratic Majority**			
TRK-PAC Midwest Truckers Association 2727 N. Dirksen	$3,000.00 5/7/2013	Transfer In **Democratic Majority**			

Parkway Springfield, IL 62702					
UTU PAC (United Transportation Union) North Olmstead, OH 44070	$3,000.00 5/2/2013	Transfer In **Democratic Majority**			
Attorney's Title Guaranty Fund, Inc. 2102 Windsor Place Champaign, IL 61820	$2,500.00 3/15/2013	Individual Contribution **Democratic Majority**			
Community BANC PAC Community Bankers Association 901 Community Drive Springfield, IL 62703	$2,500.00 5/2/2013	Transfer In **Democratic Majority**			
DeVry, Inc. 3005 Highland Parkway Downers Grove, IL 60515	$2,500.00 5/7/2013	Individual Contribution **Democratic Majority**			
Petroleum PEC 112 W. Cook St. P.O. Box 12020 Springfield, IL 62791	$2,500.00 4/3/2013	Transfer In **Democratic Majority**			
Brosnahan, Citizens for James D. P.O. Box 718 Oak Lawn, IL 60454	$2,000.00 3/15/2013	Transfer In **Democratic Majority**			
Giorgi Vella, Barbara 3202 Windsong Court Rockford, IL 61114 Occupation: Attorney Employer: Self	$2,000.00 3/15/2013	Individual Contribution **Democratic Majority**			
Good Government Council IL Asphalt Pavement Assn. 241 N. 5th St. Springfield, IL 62701	$2,000.00 5/2/2013	Transfer In **Democratic Majority**			

Strategic Government Solutions 2341 Catherine St. Northbrook, IL 60062	$2,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
ATU COPE Voluntary Account 5025 Wisconsin Ave NW Washington, DC 20016	$1,500.00 5/7/2013	Transfer In **Democratic Majority**			
Hack, Susanne 4705 Pelican Nest Springfield, IL 62711	$1,500.00 4/10/2013	Individual Contribution **Democratic Majority**			
HNTB Holdings, Ltd. PAC 715 Kirk Drive Kansas City, MO 64105	$1,500.00 5/7/2013	Transfer In **Democratic Majority**			
Illinois League of Financial Institutions PEC 133 S. 4th St., Ste 206 Springfield, IL 62701	$1,500.00 3/26/2013	Transfer In **Democratic Majority**			
Illinois State's Attorneys Assoc PAC P.O. Box 115 Springfield, IL 62705-0115	$1,500.00 5/7/2013	Transfer In **Democratic Majority**			
Pugh, Coy & Associates, LLC 5821 S. Calumet Chicago, IL 60637	$1,500.00 4/10/2013	Individual Contribution **Democratic Majority**			
Pugh, Coy & Associates, LLC 5821 S. Calumet Chicago, IL 60637	$1,500.00 3/15/2013	Individual Contribution **Democratic Majority**			
Sheet Metal Workers Local 218 Political Action League 2855 Via Verde	$1,500.00 4/3/2013	Transfer In **Democratic Majority**			

Springfield, IL 62703					
Teamsters Local 627 7101 N. Allen Rd. Peoria, IL 61614	$1,500.00 3/15/2013	Individual Contribution **Democratic Majority**			
Thomas M. Nolan & Associates 1135 Ashland Ave. River Forest, IL 60305	$1,500.00 5/7/2013	Individual Contribution **Democratic Majority**			
University Public Issues Committee (UPIC) P.O. Box 62 Evanston, IL 60204	$1,500.00 3/15/2013	Transfer In **Democratic Majority**			
Steamfitters Local 353 PEC 6304 W. Development Dr. Peoria, IL 61604-5293	$1,200.00 3/15/2013	Transfer In **Democratic Majority**			
Admiral Parkway, Inc. 1000 Columbia Centre Dr Columbia, IL 62236	$1,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
American Council of Engineering Companies of IL PAC 5221 S. 6th St. Rd, Ste 120 Springfield, IL 62703	$1,000.00 5/2/2013	Transfer In **Democratic Majority**			
Auto Club Group (The) Corporate Disbursements 1 Auto Club Drive Dearborn, MI 48126	$1,000.00 4/3/2013	Individual Contribution **Democratic Majority**			
Boilermakers Local 1 PAC 2941 S. Archer Ave. Chicago, IL 60608	$1,000.00 4/3/2013	Transfer In **Democratic Majority**			
Continental Airlines Inc.					

Empl Fund for a Better America PAC 1600 Smith St., 16th Floor HQSEO Houston, TX 77002	$1,000.00 5/2/2013	Transfer In **Democratic Majority**			
Guzzardo, George J. 1400 W. Adams Rd. Macomb, IL 61455 Occupation: Owner Employer: Guzzardo Entertainment, Inc.	$1,000.00 5/7/2013	Individual Contribution **Democratic Majority**			
Howard Kenner Government Consulting 727 E. 60th St. Chicago, IL 60637	$1,000.00 3/15/2013	Individual Contribution **Democratic Majority**			
Illinois American Water Company PAC 100 N. Water Works Dr. Belleville, IL 62223	$1,000.00 3/6/2013	Transfer In **Democratic Majority**			
Illinois Farm Bureau Activator 1701 Towanda Ave. P.O. Box 2901 Bloomington, IL 61702	$1,000.00 3/6/2013	Transfer In **Democratic Majority**			
Illinois Medical Eye-PAC 10 W. Phillip Rd., Ste 120 Vernon Hills, IL 60061	$1,000.00 4/19/2013	Transfer In **Democratic Majority**			
Illinois Oil & Gas Assoc Inc. 824 Fairfield Rd Mount Vernon, IL 62864	$1,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Illinois Veterinary Medical PAC c/o George Richards 2722 N. Vermillion St. Danville, IL 61832	$1,000.00 3/26/2013	Transfer In **Democratic Majority**			
Johnson, Jack 1313 W. Wolfram, #2					

Chicago, IL 60657 Occupation: Senior VP Employer: Chicago Convention & Tourism Board	$1,000.00 4/10/2013	Individual Contribution **Democratic Majority**			
Kane Consulting 601 W. Monroe St. Springfield, IL 62704	$1,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Kreloff, Michael 1926 Waukegan Rd., Ste 310 Glenview, IL 60025 Occupation: Attorney Employer: Self	$1,000.00 3/15/2013	Individual Contribution **Democratic Majority**			
Primera Engineers, Ltd. 100 S. Wacker Dr., Ste 700 Chicago, IL 60606	$1,000.00 5/2/2013	Individual Contribution **Democratic Majority**			
Saputo's Italian Foods, Inc. 8th & Monroe Street Springfield, IL 62701-1915	$1,000.00 4/10/2013	Individual Contribution **Democratic Majority**			
Sheet Metal Workers Local Union No. 73 PAC 4550 Roosevelt Rd. Hillside, IL 60162	$1,000.00 3/15/2013	Transfer In **Democratic Majority**			
Teamsters Local 710 PAC Fund 4217 S. Halsted St. Chicago, IL 60609	$1,000.00 5/7/2013	Transfer In **Democratic Majority**			
Varnagis, Philip F. 11250 Endicott Court Orland Park, IL 60467 Occupation: retired Employer: N/A	$1,000.00 3/5/2013	Individual Contribution **Democratic Majority**			
IBEW Local 34 PAC					

400 N.E. Jefferson Ave., Ste 409 Peoria, IL 61603	$900.00 3/6/2013	Transfer In **Democratic Majority**			
Brotherhood of Locomotive Engineers & Trainmen PAC FUND 1370 Ontario Street Cleveland, OH 44113-1702	$600.00 3/26/2013	Transfer In **Democratic Majority**			
Civiltech Engineering, Inc. 450 E. Devon Ave., Ste 300 Itasca, IL 60143	$600.00 3/5/2013	Individual Contribution **Democratic Majority**			
Frang, Larry 4524 Santa Clara Drive Springfield, IL 62711 Occupation: Economist Employer: Illinois Municipal League	$600.00 3/5/2013	Individual Contribution **Democratic Majority**			
Illinois Nurses Association PAC 107 W. Cook, Ste E Springfield, IL 62704	$600.00 3/6/2013	Transfer In **Democratic Majority**			
Plumbers Local 137 COPE Fund 2880 E. Cook St. Springfield, IL 62703	$600.00 3/5/2013	Transfer In **Democratic Majority**			
Plumbers Local 63 PAC 116 Harvey Court East Peoria, IL 61611	$600.00 3/15/2013	Transfer In **Democratic Majority**			
Trucking Industry PAC PAC of Illinois Trucking Assn 7000 S. Adams St., Ste 130 Willowbrook, IL 60527	$600.00 3/26/2013	Transfer In **Democratic Majority**			
WES-PAC (West Central					

IL Building & Construction Trades Council) 400 N.E. Jefferson Ave., Ste 403 Peoria, IL 61603	$600.00 3/15/2013	Transfer In **Democratic Majority**			
Akton Realty Corporation 5406 W. Devon Ave., Ste 204 Chicago, IL 60646	$500.00 3/26/2013	Individual Contribution **Democratic Majority**			
Chicagoland Chamber of Commerce PAC 200 E. Randolph St., Ste 2200 Chicago, IL 60601	$500.00 3/5/2013	Transfer In **Democratic Majority**			
Rednour, Sr., John 298 Hayes Ave. DuQuoin, IL 62832	$500.00 3/26/2013	Individual Contribution **Democratic Majority**			
Illinois Political Active Letter Carriers P.O. Box 561 Orland Park, IL 60462	$450.00 3/6/2013	Transfer In **Democratic Majority**			
Marchesi, James M. 983 Clocktown Dr., Apt A Springfield, IL 62704	$450.00 3/5/2013	Individual Contribution **Democratic Majority**			
Bedore, Ed 220 Maple Grove Springfield, IL 62712-9527	$300.00 3/15/2013	Individual Contribution **Democratic Majority**			
Carey, David E. 13592 Delaney Road Huntley, IL 60142	$300.00 3/15/2013	Individual Contribution **Democratic Majority**			
Denny Jacobs & Associates 3511 - 8th Street	$300.00	Individual Contribution			

East Moline, IL 61244	3/6/2013	**Democratic Majority**			
Don Moss & Associates, Inc. 310 E. Adams St. Springfield, IL 62701	$300.00 3/5/2013	Individual Contribution **Democratic Majority**			
Hartke, Charles A. 22021 E. 1500th Ave. Teutopolis, IL 62467	$300.00 3/5/2013	Individual Contribution **Democratic Majority**			
Hickman, Charles 2442 Tall Oaks Dr. Elgin, IL 60123	$300.00 3/15/2013	Individual Contribution **Democratic Majority**			
Hurst-Rosche Engineers, Inc. 1400 E. Tremont St. P.O. Box 130 Hillsboro, IL 62049	$300.00 3/5/2013	Individual Contribution **Democratic Majority**			
IBEW Local 193 Cmte for Responsible Govt Fund 3150 Wide Track Drive Springfield, IL 62703	$300.00 3/15/2013	Transfer In **Democratic Majority**			
IBEW Local 364 Political Action Fund 6820 Mill Rd. Rockford, IL 61108-2504	$300.00 3/15/2013	Transfer In **Democratic Majority**			
Illinois Coal Association Committee on Affirmative Leadership 212 S. 2nd St. Springfield, IL 62701	$300.00 3/5/2013	Transfer In **Democratic Majority**			
Illinois Pork Producers Association - State Pork PAC 6411 S. 6th St. Rd. Springfield, IL 62712	$300.00 3/26/2013	Transfer In **Democratic Majority**			

James, Dorothy 28205 Brookhill Farmington Hills, MI 48334	$300.00 3/6/2013	Individual Contribution **Democratic Majority**			
Malone, Daniel B. 6544 S. Knox Ave. Chicago, IL 60629	$300.00 3/6/2013	Individual Contribution **Democratic Majority**			
McGowan, Edward 8220 South Nueport Dr Willow Springs, IL 60480	$300.00 3/6/2013	Individual Contribution **Democratic Majority**			
Planned Parenthood Illinois Action PAC 1000 E. Washington St. Springfield, IL 62703	$300.00 3/6/2013	Transfer In **Democratic Majority**			
Special Education Administrators PAC 5151 W. 149th St. Oak Forest, IL 60452	$300.00 3/26/2013	Transfer In **Democratic Majority**			
Walsh, Thomas J. 4117 Harvey Avenue Western Springs, IL 60558	$300.00 3/5/2013	Individual Contribution **Democratic Majority**			
ACEPAC (Adult & Continuing Education PAC) 3305 Mackinaw Lane Springfield, IL 62711	$150.00 3/26/2013	Transfer In **Democratic Majority**			
ACEPAC (Adult & Continuing Education PAC) 3305 Mackinaw Lane Springfield, IL 62711	$150.00 3/26/2013	Transfer In **Democratic Majority**			

Appendix Two

Campaign Finance Reports for the Democrat Majority

SCHEDULE A-1

REPORT OF CAMPAIGN CONTRIBUTIONS
OF
$1000 or more

FILED
8/18/2012 03:06:29 PM
FOR OFFICE USE ONLY
IDENTIFICATION NO.
23189
11

Democratic Majority
1201 S Veterans Pkwy, Ste C
Springfield, IL 62704-6342

ITEMIZED RECEIPTS FULL NAME, MAILING ADDRESS, AND ZIP CODE	RECEIPT TYPE	DATE RECEIVED	AMOUNT OF EACH RECEIPT
SEIU HealthCare IL IN PAC 2229 S. Halsted Chicago, IL 60608	Transfers In	8/17/2012	$47,000.00
SEIU Illinois Council PAC Fund 111 E. Wacker Dr., Ste 2500 Chicago, IL 60601	Transfers in	8/17/2012	$50,000.00

Name and address of person submitting this report if other than the committee's candidate or treasurer:

Sarah Nelson
1201 S. Veterans Pkwy
Springfield, IL 62704

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,	)	12 C 5811
Plaintiffs,	)	Judge Feinerman
vs.	)	
LISA M. MADIGAN, Attorney General 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,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Illinois Liberty PAC brought this official capacity suit under 42 U.S.C. § 1983 against the Attorney General of Illinois and the Chairman, Vice-Chairman, and members of the Illinois State Board of Elections, alleging that certain contribution limits imposed by the Illinois Election Code violate the First Amendment and the Fourteenth Amendment's Equal Protection Clause. Doc. 1. The provisions challenged by the original complaint limit the amount that political action committees ("PACs") may contribute to a candidate; those provisions do not limit PAC contributions to independent expenditure committees or independent expenditures by PACs themselves. Illinois Liberty moved for a preliminary injunction, Doc. 6, and the court set an

expedited briefing schedule and a hearing date of August 27, 2012, Doc. 14. On August 24, three days before the hearing date, Illinois Liberty and a second plaintiff, Edgar Bachrach, filed an amended complaint, which adds a challenge to provisions of the Illinois Election Code limiting the amount that individuals may contribute to candidates and PACs; like the provisions challenged by the original complaint, these additional provisions do not limit an individual's contributions to independent expenditure committees or independent expenditures by individuals themselves. Doc. 27. On the hearing date itself, Illinois Liberty filed a motion to withdraw its preliminary injunction motion. Doc. 28. The court granted the motion to withdraw and, at Plaintiffs' request, set an expedited briefing schedule for a new preliminary injunction motion. Doc. 31. Plaintiffs filed their motion three days later. Doc. 32. Briefing on the motion closed on September 19, 2012. Doc. 42. The motion is denied.

Background

The provisions challenged here were enacted in 2009 as part of the Illinois Disclosure and Regulation of Campaign Contributions and Expenditures Act, Ill. Pub. Act 96-832, as amended in 2012, Ill. Pub. Act 97-766. The provisions recognize three classes of political contributors: (1) individuals; (2) political committees; and (3) corporations, labor unions, or other associations. 10 ILCS 5/9-8.5(b). There are several different types of political committees, including candidate political committees, political party committees, PACs, and independent expenditure committees. 10 ILCS 5/9-1.8(a). A candidate political committee is the candidate himself or any group that accepts contributions or makes expenditures on his behalf. 10 ILCS 5/9-1.8(b). Because a candidate can have only one candidate political committee, 10 ILCS 5/9-2(b), the

candidate and her political committee are practically indistinguishable and will be referred to together as the "candidate."

A political party committee is the state, county, or ward/township committee of a political party. 10 ILCS 5/9-1.8(c). Any group whose candidate received over five percent of the total vote cast in the State or a subdivision thereof in the previous general election is recognized as a political party in the next election in the corresponding geographical area. 10 ILCS 5/7-2. A party can have only one political party committee in any geographical area. 10 ILCS 5/9-2(c). For example, there can be only one Republican party committee for Illinois, one for Cook County, and one for each ward/township within Cook County. For ease of reference, the term "political party" will refer to a political party and its affiliated committees.

A legislative caucus committee—defined as a "committee established for the purpose of electing candidates to the General Assembly"—is a type of political party committee. 10 ILCS 5/9-1.8(c). Legislative caucus committees may be formed by the majority and minority leaders of the House and Senate, or by a committee of five state senators or ten state representatives. *Ibid*. An example of a legislative caucus committee is the Democratic Majority, a committee whose purpose is to elect Democratic candidates to the Illinois House. Doc. 7-4 at 7. 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.

A PAC is a group of people or an organization (except candidates and political party committees) that accepts contributions, makes expenditures, and/or makes electioneering communications that relate to a political race and exceed $3000 in a twelve-month period. 10 ILCS 5/9-1.8(d). A given group or organization may form only one PAC. 10 ILCS 5/9-2(d). Illinois Liberty is a PAC. Doc. 27 at ¶ 5; Doc. 34-2 at ¶ 4. Independent expenditure committees are similar to PACs, except they can make only independent expenditures and not contributions. 10 ILCS 5/9-1.8(f). Illinois law does not prohibit a given group or organization from forming multiple independent expenditure committees.

The Act limits the amounts that certain contributors may contribute to a candidate: an individual may give $5000; a corporation, labor union, or other association may give $10,000; and a PAC or other candidate may give $50,000. 10 ILCS 5/9-8.5(b). Political parties may contribute unlimited amounts to a candidate during a general election. 10 ILCS 5/9-8.5(b). During a primary election, political parties are subject to a $200,000 limit for contributions to a candidate for statewide office; a $125,000 limit for state senate elections, some judicial elections, and some county elections; a $75,000 limit for state representative elections, some judicial elections, and some county elections; and a $50,000 limit for all other elections. *Ibid.* All contribution limits are lifted for a race if a self-funding candidate, individual, or independent expenditure committee spends over a designated threshold, which is $250,000 for statewide races and $100,000 for other races. 10 ILCS 5/9-8.5(h) & (h-5). When the limits are lifted for a race, all candidates in that race may accept unlimited contributions from any source. *Ibid.*

The Act imposes limits on contributions to political parties. During an election cycle, a political party may accept only $10,000 from an individual, $50,000 from a PAC, and $20,000

from a corporation, labor organization, or association. 10 ILCS 5/9-8.5(c). A political party may accept only $50,000 from another political party committee or a candidate during the primary election; that restriction is set to expire on July 1, 2013, when political party committees will be able to accept unlimited contributions from candidates and other political party committees. 10 ILCS 5/9-8.5(c-5). Contributions to PACs are limited as well. During an election cycle, a PAC may accept $10,000 from an individual, $50,000 from another PAC or a candidate, and $20,000 from a corporation, labor union, association, or political party. 10 ILCS 5/9-8.5(d).

The Act imposes no limits on contributions to independent expenditure committees. 10 ILCS 5/9-8.5(e-5). In *Personal PAC v. McGuffage*, __ F. Supp. 2d __, 2012 WL 850744 (N.D. Ill. Mar. 13, 2012), the court invalidated the Act to the extent that it limited contributions to PACs that make only independent expenditures. That decision was not appealed. Illinois Liberty is not a PAC that makes only independent expenditures. Doc. 27 at ¶ 5 ("Plaintiff Illinois Liberty PAC exercises its rights to free speech and association by donating funds … to the state candidates it supports.").

A political committee that receives a prohibited contribution is subject to a civil penalty of up to 150% of the contribution, 10 ILCS 5/9-8.5(j), and a civil fine of up to $5000 or $10,000 depending on who committed the violation, 10 ILCS 5/9-23. It is a Class A misdemeanor for a candidate or the treasurer of a political committee to accept a contribution exceeding the applicable limit. 10 ILCS 5/9-25.2.

Discussion

Although Plaintiffs' papers reference several of the Act's provisions, they directly challenge only the limits on the amounts that individuals and PACs can contribute to a candidate

and the amounts individuals can contribute to a PAC. Plaintiffs claim that if the limits were not in place, Illinois Liberty and Bachrach would contribute more to particular candidates than the allowable limits ($50,000 and $5,000, respectively), and Bachrach would contribute more to Illinois Liberty than the allowable limit ($10,000).

The law governing consideration of preliminary injunction motions is as follows:

> To obtain a preliminary injunction, the moving party must show that its case has "some likelihood of success on the merits" and that it has "no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied." *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011). If the moving party meets these threshold requirements, the district court "must consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied." *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001). The district court must also consider the public interest in granting or denying an injunction. *Id*. In this balancing of harms conducted by the district court, the court weighs these factors against one another "in a sliding scale analysis." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). "The sliding scale approach is not mathematical in nature, rather 'it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.'" *Ty, Inc.*, 237 F.3d at 895-96 (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 12 (7th Cir. 1992)). Stated another way, the district court "sit[s] as would a chancellor in equity" and weighs all the factors, "seeking at all times to 'minimize the costs of being mistaken.'" *Abbott Labs.*, 971 F.2d at 12 (quoting *Am. Hosp. Supply Corp. v. Hosp. Prods. Ltd.*, 780 F.2d 589, 593 (7th Cir. 1986)).

Stuller, Inc. v. Steak N Shake Enters., Inc., __ F.3d __, 2012 WL 3631632, at *2 (7th Cir. Aug. 24, 2012). "[I]n First Amendment cases, the likelihood of success on the merits will often be the determinative factor." *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012) (internal quotation marks omitted). "This is because the 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,' and the quantification of

injury is difficult and damages are therefore not an adequate remedy." *Ibid*. (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)) (some quotation marks omitted).

I. Likelihood of Success on the Merits

As noted above, Plaintiffs submit that the challenged contribution limits violate the First Amendment and the Equal Protection Clause.

A. First Amendment

The First Amendment principles governing this case are settled. "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of our system of government. As a result, the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2816-17 (2011) (internal quotation marks and citation omitted). "Ever since *Buckley* [*v. Valeo*, 424 U.S. 1 (1976),] however, the Supreme Court has drawn a distinction between restrictions on *expenditures* for political speech and restrictions on *contributions* to candidates." *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 152 (7th Cir. 2011) ("*WRTL*"); *see also Ariz. Free Enter.*, 131 S. Ct. at 2817. Restrictions on expenditures "represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech," *Buckley*, 424 U.S. at 19, and thus are subject to strict scrutiny, *see Ariz. Free Enter.*, 131 S. Ct. at 2817; *WRTL*, 664 F.3d at 153. By contrast, "a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication," *Buckley*, 424 U.S. at 20, and thus is subject to a "relatively complaisant [standard of] review," *FEC v. Beaumont*, 539 U.S. 146, 161 (2003). The standard provides that contribution limits are

"generally permissible if the government can establish that they are 'closely drawn' to serve a 'sufficiently important interest.'" *WRTL*, 664 F.3d at 152 (quoting *Buckley*, 424 U.S. at 25); *see also Ariz. Free Enter.*, 131 S. Ct. at 2817; *Davis v. FEC*, 554 U.S. 724, 737 (2008). Applying that more lenient level of scrutiny, the Supreme Court has upheld "government-imposed limits on contributions to candidates, caps on coordinated party expenditures, and requirements that political funding sources disclose their identities." *Ariz. Free Enter.*, 131 S. Ct. at 2817 (internal citations omitted).

The Supreme Court has identified only one "sufficiently important interest" that can justify contribution limits—the prevention of *quid pro quo* corruption or the appearance thereof. *See Citizens United v. FEC*, 130 S. Ct. 876, 903-11 (2010); *WRTL*, 664 F.3d at 152; *Green Party of Conn. v. Garfield*, 616 F.3d 189, 199 (2d Cir. 2010). The so-called "anti-circumvention" principle provides that this interest may be advanced by prophylactic measures designed to halt the evasion of valid contribution limits. *See FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001) ("*Colorado II*") ("all Members of the Court agree that circumvention is a valid theory of corruption"); *United States v. Danielczyk*, 683 F.3d 611, 618 (4th Cir. 2012) (observing that *Citizens United* did not abrogate the anti-circumvention rationale); *Ognibene v. Parkes*, 671 F.3d 174, 195 n.21 (2d Cir. 2011) (same); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1125 (9th Cir. 2011) (same); *Green Party of Conn.*, 616 F.3d at 199 (same). For instance, the government may prevent an individual who already contributed the maximum amount to a particular candidate from channeling additional funds to that candidate through entities like PACs. *See Beaumont*, 539 U.S. at 155 ("recent cases have recognized that restricting contributions by various organizations hedges against their use as conduits for circumvention of

valid contribution limits") (internal quotation marks and alterations omitted); *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 203 (1981) (Blackmun, J., concurring) ("contributions to [PACs] may be limited … as a means of preventing evasion of the limitations on contributions to a candidate").

1. The Challenged Limits Considered in Isolation

Plaintiffs take pains to make clear that they are not arguing that the contribution limits on individuals and PACs, standing alone, are too low. Doc. 42 at 4-5. That said, and to place Plaintiffs' actual arguments in context, it is helpful to examine whether the challenged limits, considered in isolation, are likely to survive First Amendment scrutiny.

The Act's $5,000 limit on an individual's contributions to a candidate and the $50,000 limit on a PAC's contributions to a candidate are typical, higher than some and lower than others, of the limits imposed by other States. *See* National Conference of State Legislators, State Limits on Contributions to Candidates, 2011-12 election cycle ("State Contribution Limits Survey") (Sept. 30, 2011), *available at* www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012.pdf (last visited Oct. 5, 2012). Those limits are routine campaign finance regulations of the sort that the Supreme Court regularly upholds. *See Beaumont*, 539 U.S. at 163 (holding that a complete ban on contributions to federal candidates by corporations may, consistent with the First Amendment, be applied to nonprofit advocacy corporations); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 395-97 (2000) (upholding a $1,075 limit on individual and PAC contributions to candidates for statewide office in Missouri); *Buckley*, 424 U.S. at 23-29 (upholding a $1,000 limit on individual and PAC contributions to candidates for federal office); *see also Thalheimer*, 645 F.3d at 1124 (holding that *Citizens United* did not implicitly overrule *Beaumont*). The same holds for the Act's $10,000 limit on an individual's contributions to a

PAC. *See Cal. Med. Ass'n*, 453 U.S. at 195-99 (upholding a $5,000 limit on individual contributions to federal multicandidate political committees, which are PACs that receive contributions from fifty or more individuals and contribute to five or more candidates).

In *Randall v. Sorrell*, 548 U.S. 230 (2006), the Court struck down Vermont's extremely low limits on what individuals, PACs, and political parties could contribute to candidates—$400 for candidates for statewide office, $300 for state senate candidates, and $200 for state house candidates. The contribution limits challenged here well exceed the limits invalidated in *Randall*, and even exceed the limits upheld in *Shrink*, *California Medical Association*, *Beaumont*, and *Buckley*. Based on the markers set down by the Supreme Court, it is highly likely that the Act's contribution limits, standing alone, would survive First Amendment scrutiny.

2. Whether Exempting Political Parties from the Limits on Contributions to Candidates Renders Them Invalid

Plaintiffs contend that the Act violates the First Amendment by exempting political parties, but not individuals and PACs, from the limits on contributions to candidates. Plaintiffs' submission is not foreclosed by the fact that the Act's contribution limits on individuals and PACs, standing alone, are likely valid. Speech restrictions that are valid when considered in isolation may nonetheless be found unconstitutional if they impermissibly disfavor certain content, viewpoints, or speakers. *See R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 383-86 (1992). "Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are interrelated: Speech restrictions based on the identity

of the speaker are all too often simply a means to control content." *Citizens United*, 130 S. Ct. at 898-99 (citations omitted); *see also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 659 (1994) ("Regulations that discriminate among media, or among different speakers within a single medium, often present serious First Amendment concerns."). Moreover, exemptions from a speech restriction can render it fatally underinclusive and can cast doubt on the government's justification therefor. *See Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2740 (2011); *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002); *City of Ladue v. Gilleo*, 512 U.S. 43, 51-53 (1994).

The question here is whether the First Amendment prohibits campaign finance laws that favor political parties over individuals and PACs. To support their affirmative answer to the question, Plaintiffs cite *Colorado II*, *supra*, which upheld a federal law limiting a political party's coordinated expenditures—deemed to be the functional equivalent of direct contributions to a candidate, *see* 533 U.S. at 445-56—with its candidates for the United States Senate. The Court held that the limits were justified by what the government contended were the risks of corruption posed by unlimited party contributions to candidates. *See id*. at 445-65. From the premise that the government's concern about party-related corruption can provide a sufficient justification under the First Amendment for limits on party contributions to candidates, Plaintiffs conclude that the First Amendment *requires* that parties be subject to the same limits as individuals and PACs.

Plaintiffs' conclusion does not follow from its premise and cannot be reconciled with prevailing campaign finance precedents. It must be remembered that in *Colorado II*, the limits on a party's coordinated expenditures in Senate campaigns—anywhere between $67,560 and

$1,636,438, depending on state population, *see id*. at 439 n.3—dwarfed the limits on individual and PAC contributions to Senate candidates, *see id*. at 442 n.7 (noting that the law imposed a $1,000 limit on individual contributions and a $5,000 limit on PAC contributions to a federal candidate during an election cycle). The fact that the Court upheld a campaign finance scheme whose contribution limits on parties were orders of magnitude higher than its limits on individuals and PACs undermines Plaintiffs' submission that the First Amendment prohibits such a scheme.

Any doubt would be dispelled by examining the views of the Justices who decided *Colorado II*. The four dissenters were Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas. Adopting the assumption (with which they disagreed) that coordinated expenditures equal direct contributions and that *Buckley*'s "closely drawn" test is the appropriate standard, the dissenters expressed the view that the First Amendment prohibits any coordinated spending limits on political parties. *Id*. at 474-82 (Thomas, J., dissenting). The dissenters justified their view by pointing to "the unique relationship between a political party and its candidates," and by noting that "[t]he very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes." *Id*. at 476 (Thomas, J., dissenting) (internal quotation marks omitted); *see also id*. at 477 (Thomas, J., dissenting) ("[A party's influence with candidates] is simply the essence of our Nation's party system of government. One can speak of an individual citizen or a political action committee corrupting or coercing a candidate, but what could it mean for a party to 'corrupt' its candidate or to exercise 'coercive' influence over him?"). The five Justices in the *Colorado II* majority—Justices Stevens, O'Connor, Souter, Ginsburg and Breyer—did not *expressly* say in their opinion that campaign

finance schemes may treat parties more favorably than individuals and PACs, though the scheme they upheld did exactly that. But two years later, those five Justices did make that allowance in the course of rejecting an argument that a federal statute violated the Constitution by treating political parties more favorably than "special interest groups such as the National Rifle Association, American Civil Liberties Union, and Sierra Club." *McConnell v. FEC*, 540 U.S. 93, 187 (2003), *overruled in part on other grounds*, *Citizens United v. FEC*, *supra*. The Justices explained as follows:

> As an initial matter, we note that BCRA [the Bipartisan Campaign Reform Act of 2002] actually favors political parties in many ways. Most obviously, party committees are entitled to receive individual contributions that substantially exceed FECA's [the Federal Election Campaign Act of 1971] limits on contributions to nonparty political committees; individuals can give $25,000 to political party committees whereas they can give a maximum of $5,000 to nonparty political committees. In addition, party committees are entitled in effect to contribute to candidates by making coordinated expenditures, and those expenditures may greatly exceed the contribution limits that apply to other donors. See 2 U.S.C. § 441a(d) (Supp. II).
>
> More importantly, however, *Congress is fully entitled to consider the real-world differences between political parties and interest groups when crafting a system of campaign finance regulation*. See [*FEC v.*] *National Right to Work*, 459 U.S. [197], 210 [(1982)]. Interest groups do not select slates of candidates for elections. Interest groups do not determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses. Political parties have influence and power in the Legislature that vastly exceeds that of any interest group. As a result, it is hardly surprising that party affiliation is the primary way by which voters identify candidates, or that parties in turn have special access to and relationships with federal officeholders. *Congress' efforts at campaign finance regulation may account for these salient differences*.

Id. at 188 (emphasis added). *McConnell* drew a dissent from the four *Colorado II* dissenters, but the dissenters did not take issue with the *McConnell* majority's recognition of the special place of

political parties in our political system. And given that the *Citizens United* majority includes the three *Colorado II* dissenters who remained on the Court as of 2010, it cannot be doubted that the foregoing passage from *McConnell* remains good law to this day. *See also Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) ("*Colorado I*") (Kennedy, J., concurring in part and dissenting in part) ("We have a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity; we also have a practical identity of interests between the two entities during an election.").

Also instructive is *Randall v. Sorrell*, *supra*, which invalidated the extremely low candidate contribution limits that Vermont imposed on individuals, PACs, and political parties alike. In a plurality opinion joined by Chief Justice Roberts and in relevant part by Justice Alito, Justice Breyer explained that the provisions were invalid under the First Amendment because, among other reasons, they placed "identical limits" on party and individual contributions to candidates. 548 U.S. at 259. This "special party-related harm[]," the plurality reasoned, "would reduce the voice of political parties in Vermont to a whisper." *Ibid*. (internal quotation marks omitted). The plurality contrasted the limits invalidated in *Randall* with the coordinated spending limits on parties upheld in *Colorado II*, which the plurality emphasized were "much higher than the federal limits on contributions from individuals to candidates, thereby reflecting an effort by Congress to balance (1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals." *Id*. at 258 (internal quotation marks omitted).

As far as the decided cases reveal, there are at most two schools of thought on the Supreme Court. The predominant school, reflecting the view of at least six sitting Justices (Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, and Alito), is that in jurisdictions that impose contribution limits, the First Amendment *requires* that political parties be treated more favorably than non-party contributors; and we know from *Colorado II* that Justices Scalia, Kennedy, and Thomas would invalidate any limits on party contributions. The minority view, if in fact any Justice holds the view at all, is that the First Amendment *allows but does not require* jurisdictions with contribution limits to treat parties more favorably than non-party contributors. No Justice has espoused the view pressed here by Plaintiffs, that the First Amendment *prohibits* jurisdictions with contribution limits from treating parties more favorably than not-parties. It therefore is highly unlikely that the Act violates the First Amendment by exempting political parties from the contribution limits imposed on individuals and PACs.

Plaintiffs suggest that the First Amendment analysis should take account of what they believe to be the special dangers of political party corruption in Illinois, as demonstrated by the State's history and its contemporary political culture and practice. But the First Amendment's campaign finance principles are uniform across the Nation. Just over three months ago, in *American Traditional Partnership, Inc. v. Bullock*, 132 S. Ct. 2490 (2012), the Supreme Court summarily rejected an argument that Montana's special history and circumstances warranted an exception from generally applicable First Amendment standards. There is no reason to believe that the Supreme Court would hold that a practice generally required or allowed in jurisdictions with contribution limits (treating parties more favorably than non-parties) is prohibited in Illinois.

Plaintiffs cite passages from the legislative debates to support their view that the Act's contribution limits are unconstitutional. What individual legislators said in those debates are not pertinent to the Act's constitutionality. *See United States v. O'Brien*, 391 U.S. 367, 383 (1968) ("What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Tp.*, 980 F.2d 437, 443 (7th Cir. 1992) (upholding a state Pledge of Allegiance statute against a First Amendment challenge even though a senator opposing passage argued that the bill was invalid under *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), and even though one senator supporting the bill's passage said, "it amazes me that these people get up and read that kind of garbage that Jackson [Justice Robert Jackson, author of the majority opinion in *Barnette*] had there, his advise [sic] from the Supreme Court, I rate just about as highly as I do the advise [sic] from Congress," and another supporter said, "Maybe we ought to abolish the Supreme Court and have a dictatorship like in Russia because in Russia at least they say a pledge of allegiance to their own flag") (internal quotation marks omitted, alterations in original).

3. Whether the Waiver Provision Renders Invalid the Limits on Contributions to Individual Candidates

Plaintiffs next contend that any conceivably legitimate interest that could justify the limits on individual and PAC contributions to candidates is fatally undermined by the Act's underinclusiveness, as evidenced by the waiver provisions that lift contribution limits in races where a self-funding candidate, an individual, or an independent expenditure committee spends over a particular threshold. 10 ILCS 5/9-8.5(h) & (h-5). Relatedly, Plaintiffs contend that it

violates the First Amendment to condition the volume of their speech, as expressed by their contributions to candidates, on the speech activities of others.

Plaintiffs' submissions are foreclosed by *Davis v. FEC*, *supra*. At issue in *Davis* was the so-called "Millionaire's Amendment," which tripled the contribution limit for a federal candidate and lifted the coordinated party expenditure limit if her opponent's self-funded expenditures plus half the contributions received in the year preceding the election exceeded a certain threshold. 554 U.S. at 729 n.5. The Supreme Court held that the statute's *asymmetric* waiver of contribution limits "impose[d] an unprecedented penalty on any candidate who robustly exercises [the] First Amendment right [to spend personal funds on an election]" and thus violated the First Amendment. *Id*. at 738-40. In so holding, however, the Court made clear that the statute would have survived had it raised the contribution limits for *all* candidates when a self-funding candidate exceeded the spending threshold:

> If [the Millionaire's Amendment] simply raised the contribution limits for all candidates, Davis' argument would plainly fail. This Court has previously sustained the facial constitutionality of limits on discrete and aggregate individual contributions and on coordinated party expenditures. At the same time, the Court has recognized that such limits implicate First Amendment interests and that they cannot stand unless they are closely drawn to serve a sufficiently important interest, such as preventing corruption and the appearance of corruption. When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law. But we have held that limits that are too low cannot stand.
>
> There is, however, no constitutional basis for attacking contribution limits on the ground that they are too high. Congress has no constitutional obligation to limit contributions at all; and if Congress concludes that allowing contributions of a certain amount does not create an undue risk of corruption or the appearance of corruption, a candidate who wishes to restrict an opponent's fundraising cannot argue that the Constitution demands that contributions be regulated more strictly. Consequently, if [the

> Millionaire's Amendment's] elevated contribution limits applied across the board, Davis would not have any basis for challenging those limits.

Id. at 737 (internal quotations marks and citations omitted).

The Act's waiver provisions are materially identical to the hypothetical version of the Millionaire's Amendment that the Supreme Court said it would uphold—a version that raises the contribution limits for all candidates when a certain spending threshold is exceeded. If the hypothetical statute rendered the otherwise applicable contribution limits fatally underinclusive or impermissibly conditioned one candidate's speech on the choices made by others, *Davis* would not have approved it. It follows that the Act's waiver provisions do not render constitutionally infirm the limits that the Act imposes on individual and PAC contributions to candidates.

4. Whether the Limits on Individual Contributions to PACs are Rendered Invalid by the Higher Limit Imposed on Corporations, Labor Unions and Other Organizations

Finally, Plaintiffs contend that the Act violates the First Amendment rights of individuals by permitting corporations, labor unions, and other organizations to contribute twice as much as individuals to PACs ($10,000 vs. $5,000). The contention has no merit. In *Buckley*, the Supreme Court approved the imposition of lower contribution limits on individuals than on entities. *See* 424 U.S. at 35-36 (upholding provisions that imposed a $1,000 contribution limit on individuals and a $5,000 limit on PACs). Plaintiffs provide no basis to conclude that this component of *Buckley* is no longer good law. *See Green Party of Conn.*, 616 F.3d at 199 (holding that *Citizens United* did not undermine the Supreme Court's precedents regarding the validity of contribution limits under the First Amendment).

B. Equal Protection Clause

Plaintiffs claim that the challenged provisions violate the Equal Protection Clause because they impermissibly discriminate (1) against individuals and PACs by exempting political parties from the limits on contributions to a candidate and (2) against individuals by allowing corporations, labor unions, and other associations to contribute twice as much to a PAC. Plaintiffs' equal protection challenge rests on the grounds they unsuccessfully advanced under the First Amendment. The question here is whether those grounds fare any better when presented in the guise of an equal protection challenge.

Plaintiffs answer in the affirmative, arguing that equal protection challenges to disparate contribution limits are governed by strict scrutiny, not by the more relaxed "closely drawn" scrutiny applied under the First Amendment. The argument is without merit. The First Amendment encompasses a strong equality principle, one that provides the standard for evaluating the constitutional validity of government action that treats different classes of speakers and speech differently. Some Justices have urged that the "closely drawn" test be jettisoned and that contribution limits instead be subjected to strict scrutiny. *See*, *e.g.*, *Randall*, 548 U.S. at 266-67 (Thomas, J., concurring); *Colorado II*, 533 U.S. at 465-66 (Thomas, J., dissenting); *Shrink*, 528 U.S. at 410 (Thomas, J., dissenting). If that goal could be accomplished simply by switching analysis from the First Amendment to the Equal Protection Clause, surely those Justices would have proposed that course. They do not appear to have done so, and even if they had, the proposal would not be viable in light of the Supreme Court's adherence to the "closely drawn" standard in measuring the validity of contribution limits.

Plaintiffs have not cited any case where a litigant who lost a First Amendment challenge to contribution limits proceeded to prevail by re-framing the challenge under the Equal Protection Clause. This is not surprising in light of precedent holding that it makes no difference whether a challenge to the disparate treatment of speakers or speech is framed under the First Amendment or the Equal Protection Clause. *See Ark. Writers' Project v. Ragland*, 481 U.S. 221, 227 n.3 (1987) ("Appellant's First Amendment claims [challenging a state sales tax that taxed different publications differently] are obviously intertwined with interests arising under the Equal Protection Clause. However, since Arkansas' sales tax system directly implicates freedom of the press, we analyze it primarily in First Amendment terms.") (citations omitted); *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 55 n.4 (1986) ("Respondents argue, as an 'alternative basis' for affirming the decision of the Court of Appeals, that the Renton ordinance violates their rights under the Equal Protection Clause of the Fourteenth Amendment. As should be apparent from our preceding discussion, respondents can fare no better under the Equal Protection Clause than under the First Amendment itself."); *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 n.7 (1983) ("Justice Rehnquist's dissent analyzes this case solely as a problem of equal protection, applying the familiar tiers of scrutiny. We, however, view the problem as one arising directly under the First Amendment, for, as our discussion shows, the Framers perceived singling out the press for taxation as a means of abridging the freedom of the press. The appropriate method of analysis thus is to balance the burden implicit in singling out the press against the interest asserted by the State. Under a long line of precedent, the regulation can survive only if the governmental interest outweighs the burden and cannot be achieved by means that do not infringe First Amendment rights as significantly.") (citations omitted);

Ognibene, 671 F.3d at 193 n.19 (summarily rejecting an equal protection challenge to a contribution limit because the court had already held that the limit did not effect impermissible viewpoint discrimination under the First Amendment); *Kucharek v. Hanaway*, 902 F.2d 513, 517 (7th Cir. 1990) ("The state is permitted to suppress obscenity but it is not permitted to distort the marketplace of erotic discourse by suppressing only that obscenity which conveys a disfavored message. It makes no difference whether this conclusion is premised on the equal protection clause as informed by policies drawn from the free-speech and free-press clauses or on the speech and press clauses themselves.") (internal citations omitted); *see also Wagner v. FEC*, 854 F. Supp. 2d. 83, 95 (D.D.C. 2012) (applying the "closely drawn" standard to resolve an equal protection challenge to disparate contribution limits avoids "the anomalous result that a statutory provision could survive closely drawn scrutiny under the First Amendment, but nevertheless be found to violate equal-protection guarantees because of its impingement upon the very same rights").

Because the applicable standards are the same, Plaintiffs' equal protection challenge to the Act's contribution limits fails for the same reasons as their First Amendment challenge.

II. Other Preliminary Injunction Factors

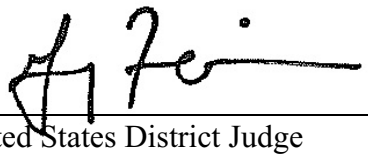
Plaintiffs' negligible likelihood of success is reason enough to deny their preliminary injunction motion. Consideration of the balance of harms and the public interest, which are two other components of the preliminary injunction calculus, confirm that preliminary relief should be denied. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 132 S. Ct. __, 2012 WL 3064878, at *2 (July 30, 2012) (Roberts, C.J., in chambers) (quoting *New*

Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345, 1351 (1977) (Rehnquist, C.J., in chambers)); *see also Aid for Women v. Foulston*, 441 F.3d 1101, 1119 (10th Cir. 2006) (same); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (same). If a preliminary injunction were granted, there would be no contribution limits for individuals and PACs in the weeks leading up to the 2012 Illinois state elections. This would create a manifest possibility of actual or apparent corruption, an irreparable harm to Illinois, its citizens, and the public interest. That harm far outweighs any irreparable harm that the challenged provisions might impose upon individuals and PACs, who may contribute up to $5,000 or $50,000, respectively, to any given candidate, and who may make their voices heard by devoting unlimited sums to their own independent expenditures or by contributing unlimited sums to independent expenditure committees or to PACs that make only independent expenditures. *See WRTL*, 664 F.3d at 153-54; *Personal PAC*, 2012 WL 850744, at *6.

Conclusion

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction is denied.

October 5, 2012



United States District Judge

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

ILLINOIS LIBERTY PAC, EDGAR BACHRACH, and KYLE McCARTER,	)	
	)	12 C 5811
Plaintiffs,	)	
	)	Judge Feinerman
vs.	)	
	)	
LISA MADIGAN, Attorney General 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,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Illinois Liberty PAC, Edgar Bachrach, and Kyle McCarter brought this declaratory judgment action under 42 U.S.C. § 1983 against the Attorney General of Illinois and the Chairman, Vice-Chairman, and other members of the Illinois State Board of Elections, all in their official capacities, alleging that certain contribution limits imposed by the Illinois Disclosure and Regulation of Campaign Contributions and Expenditures Act, 10 ILCS 5/9-1 *et seq.*, violate the First Amendment. Doc. 65. Early in the litigation, Illinois Liberty and Bachrach moved for a preliminary injunction. Doc. 32. The court denied the motion, Docs. 43-44 (reported at 902 F. Supp. 2d 1113 (N.D. Ill. 2012)), and the Seventh Circuit summarily affirmed, 2012 WL 5259036 (7th Cir. Oct. 24, 2012). After Plaintiffs filed a second amended complaint,

Doc. 65, Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), Doc. 77. The court granted in part and denied in part the motion. Docs. 95-96 (reported at 2014 WL 859325 (N.D. Ill. Mar. 3, 2014)).

Plaintiffs' only surviving claim alleges that the Act's treatment of legislative caucus committees violates the First Amendment by imposing the same restrictions on them as on political party committees and less onerous conditions on them as on political action committees ("PACs"), corporations, and individuals. The operative complaint attaches Dr. Marcus Osborn's expert report. Doc. 65-6. Defendants have moved to bar Osborn's testimony, Doc. 116, and the parties have cross-moved for summary judgment, Docs. 122, 126. For the following reasons, all three motions are denied.

Background

When considering Plaintiffs' summary judgment motion, the facts are considered in the light most favorable to Defendants, and when considering Defendants' summary judgment motion, the facts are considered in the light most favorable to Plaintiffs. *See First State Bank of Monticello v. Ohio Cas. Ins. Co.*, 555 F.3d 564, 567 (7th Cir. 2009) ("[B]ecause the district court had cross-motions for summary judgment before it, we construe all facts and inferences therefrom in favor of the party against whom the motion under consideration is made.") (internal quotation marks omitted). On summary judgment, the court must assume the truth of those facts, but does not vouch for them. *See Smith v. Bray*, 681 F.3d 888, 892 (7th Cir. 2012). Much of the factual background is set forth in the court's two previous opinions, familiarity with which is assumed.

Illinois Liberty PAC is a PAC that has made contributions to political candidates and would make larger contributions if permitted by Illinois law. Doc. 133 at ¶ 3. Bachrach is a

private individual who has made contributions to PACs and political candidates; he, too, would like to make contributions larger than those allowed by the Act. *Id*. at ¶ 4. Kyle McCarter is an Illinois State Senator who would like to receive contributions from individuals and groups in amounts larger than those permitted by the Act. *Id*. at ¶ 5. Defendants are Illinois state officials sued in their official capacities. *Id*. at ¶¶ 6-9.

The Act defines a legislative caucus committee as "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 of Representatives, or a committee established by 5 or more members of the same caucus of the Senate or 10 or more members of the same caucus of the House of Representatives." 10 ILCS 5/9-1.8. The Act lists "legislative caucus committee" as a kind of "political party committee," and accordingly subjects both types of committees to the same restrictions. *Id*.; 10 ILCS 5/9-8.5. The General Assembly's four legislative leaders have the power to "establish" legislative caucus committees. Those leaders are chosen by other legislators: the Senate President and House Speaker are elected by the membership of their respective legislative bodies, and the two Minority Leaders are elected by "member[s] of the numerically strongest political party other than the party to which the Speaker or the President belongs." Ill. Const. art. IV, §§ 6(b)-(d).

Plaintiffs' only remaining claim alleges that the Act's favorable treatment of legislative caucus committees as compared to individuals, corporations, and PACs—and the identical treatment of legislative caucus committees and political party committees—violates the First Amendment. Because the First Amendment allows campaign finance laws that give favorable treatment to political party committees, 902 F. Supp. 2d at 1120-24, Plaintiffs' claim turns on

whether legislative caucus committees, as defined in 10 ILCS 5/9-1.8(c), are similar enough to political party committees to justify their identical treatment under the Act. Doc. 133 at ¶ 10; 2014 WL 859325, at *3-4. In answering "no" to that question, Plaintiffs rely primarily on the report and deposition testimony of Dr. Osborn, who opines that legislative caucus committees are unlike political party committees.

Osborn's report, as supplemented, opines that legislative caucus committees have two goals: (1) to promote legislative leaders; and (2) to expand their respective political parties. Doc. 133 at ¶¶ 13, 15-17. Osborn contrasts those goals with simply electing candidates to office, which he says is the primary purpose of political parties, *id*. at ¶ 15, although he acknowledges that political parties, like legislative caucus committees, also seek to shape policy, *id*. at ¶ 18. Based on the structure of the Illinois governmental system and his literature review—which included only articles written prior to the 2010 enactment of the Act, none specific to Illinois—Osborn opines that legislative caucus committees operate like federal Leadership PACs. *Id*. at ¶¶ 26-27, 45-47.

In preparing his report, Osborn did not collect or analyze data comparing the policy goals of any legislative caucus committee with its associated political party, and he did not know how many legislative caucus committees existed in Illinois during the 2012 election cycle. *Id*. at ¶¶ 19, 24. Osborn does not know which other States have legislative caucus committees, and he accordingly did not compare legislative caucus committees in Illinois to committees in other States. *Id*. at ¶¶ 20-21. Osborn did not collect or analyze data on congressional campaign committees, and did not compare legislative caucus committees in Illinois to federal congressional campaign committees. *Id*. at ¶¶ 22-23. Osborn did not conduct any interviews or review the voting records of any Illinois legislator. *Id*. at ¶¶ 42-43.

Osborn focused on spending in the 2012 election cycle. His report includes data from two Democratic legislative caucus committees: the Senate Victory Fund, headed by the President of the Senate, and the Democratic Majority Committee, headed by the Speaker of the House. *Id.* at ¶ 29. Osborn did not examine whether the Democratic Party or Republican Party participated financially in the same elections as the legislative caucus committees, and he did not compare the legislative caucus committees' contributions with those of political parties or political party committees. *Id.* at ¶¶ 31-32, 41. Osborn discounted the importance of data from the Illinois House Republican committee, which was more likely to show a purely expansionist strategy, as opposed to a dual purpose strategy that would also work to advance the Republican legislative leaders' personal power. *Id.* at ¶ 30.

With those parameters, Osborn found that during the 2012 general election, the Democratic Majority Committee and the Senate Victory Fund primarily utilized a caucus expansion strategy. *Id.* at ¶¶ 34, 37. However, Osborn highlighted two contributions that the Democratic Majority Committee made in what he deemed "safe" general election contests, which did not indicate an expansionist strategy. *Id.* at ¶ 36. Osborn viewed the Senate Victory Fund's five largest general election contributions as reflecting a dual strategy of expanding the Democratic caucus and promoting the Senate President's agenda. *Id.* at ¶ 38.

At summary judgment, Plaintiffs submitted a declaration by Osborn explaining many of the choices he made in preparing his report. Doc. 133-1. Osborn opted for a qualitative analysis rather than a quantitative analysis because he was analyzing the structure of the Act just four years after its enactment. Doc. 134 at ¶¶ 34-35. Only two election cycles had occurred by the time Osborn completed his report, and data from three cycles would be more amenable to a quantitative approach because it often takes several years for key players to fully understand and

exploit changes in campaign finance laws. *Id*. at ¶¶ 35-36. Osborn explained that he chose not to review data from Republican-led legislative caucus committees because Republicans are the minority in the Illinois legislature, and a minority party's legislative caucus committee is likely to pursue a caucus expansion strategy. *Id*. at ¶ 37. Osborn highlighted certain elections because they showed that legislative caucus committees may not exclusively pursue a caucus expansion or party maximization strategy. *Id*. at ¶ 38. Osborn meant to provide a qualitative analysis; he was not attempting to predict the frequency or likelihood of future non-expansionist spending by legislative caucus committees. *Ibid*.

Matthew Besler testified as a Rule 30(b)(6) witness for Illinois Liberty. Doc. 133 at ¶ 48. Besler testified to his understanding that a legislative caucus committee's role is to elect candidates to the General Assembly. *Id*. at ¶ 49. Senator McCarter testified during his deposition that he was not familiar with the term "legislative caucus committee." *Id*. at ¶ 51. McCarter could not identify any examples of legislative leaders rewarding or punishing candidates through the granting or withholding of electoral support from their legislative caucus committees. *Id*. at ¶ 52.

Discussion

I. Defendants' Motion to Exclude Dr. Osborn

Defendants move under Federal Rule of Evidence 702 to strike Osborn's report and exclude his testimony. Rule 702 provides that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999); *Happel v. Walmart Stores, Inc.*, 602 F.3d 820, 824 (7th Cir. 2010). The district court serves as the "gate-keeper who determines whether proffered expert testimony is reliable and relevant before accepting a witness as an expert." *Winters v. Fru-Con Inc.*, 498 F.3d 734, 741 (7th Cir. 2007) (internal quotation marks omitted). The expert's proponent bears the burden of proving by a preponderance of the evidence that the expert's testimony satisfies Rule 702. *See Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009).

Osborn has provided a report under Federal Rule of Civil Procedure 26(a)(2), Doc. 116-2, and was deposed, Doc. 116-4. Osborn has approximately two decades' experience with legislative advocacy and campaigns. Doc. 116-2 at 18. He earned a Ph.D. in Public Administration, and undergraduate degrees in Political Science and History. *Ibid.* Osborn has represented and consulted for businesses, trade associations, and government agencies in Arizona over the past two decades. *Ibid.*; Doc. 116-4 at 6 (p. 20:21-23). He has also advised clients on campaign fundraising and studied fundraising strategies and methods for more than ten years. Doc. 116-2 at 18. He represented the Arizona Chamber of Commerce in its efforts to repeal Arizona's "Clean Elections Act" and to restructure the State's campaign finance laws in the wake of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). Doc. 116-4 at 6 (20:24-21:3). Osborn wrote a book chapter and his doctoral dissertation on campaign finance, and has presented his work at academic conferences. Doc. 116-2 at 18.

Osborn's report draws the following conclusions about Illinois's campaign finance law in general and legislative caucus committees in particular:

> A review of elements of the Illinois[] campaign finance system identifies a number of significant issues that impact the integrity of elections and

> legislative process by creating structures that increase the potential for corruption and the appearance of corruption. … The Illinois campaign regulatory system creates mechanisms that enhance the authority of the existing legislative leadership by providing them access to fundraising tools that are unavailable to potentially competing interests. The regulatory system provides contribution advantages to political parties and then extends those advantages to Legislative Caucus Committees. The benefits provided to Legislative Caucus Committees are unwarranted because they operate more like political action committees than party committees.
>
> Caucus Committees dangerously tie the institutional authority of legislators to fundraising. The special regulatory status of the Legislative Caucus Committee provides an ample environment to create overly close fundraising and policymaking relationships. The risk of corruption is amplified because of the lack of general election contribution limits on Legislative Caucus Committees and the contribution restrictions that are placed on potentially countervailing political action committees, corporations and individuals who may be supporting opposing candidates. The deck is unbalanced in terms of regulatory requirements to allow those in the Legislature with the most organizational authority to also have the best campaign tools. This is self-protecting that is likely to result in a consolidation of power, not a robust electoral environment.

Id. at 15-16.

Defendants argue that Osborn's knowledge, skill, experience, training, and education do not qualify him as an expert on Illinois's election system or campaign finance laws. Doc. 116 at 13-14. They further contend that Osborn's methodology was unreliable due to his use of an incomplete data set, noting that he analyzed only some of the spending by only two of the six legislative caucus committees in Illinois during one election cycle. *Id*. at 4-7. Defendants also fault Osborn's methodology for not comparing legislative caucus committees spending to that of political party committees in Illinois or to any federal campaign spending. *Id*. at 8-10. They submit that Osborn's inquiry was incomplete because he did not conduct any interviews or review any deposition transcripts, adding that the literature upon which he relied has limited relevance and undermines his methodology. *Id*. at 10-12. And they assert that Osborn's testimony will not assist the trier of fact. *Id*. at 15.

The Seventh Circuit has cautioned that "the test for reliability for nonscientific experts is flexible." *United States v. Romero*, 189 F.3d 576, 584 (7th Cir. 1999) (internal quotation marks omitted). Unlike scientific or technical experts, whose hypotheses can be tested or subjected to peer review and whose methods can be measured against specific industry standards, a political scientist's testimony (political science is not "science" for Rule 702 purposes) cannot be so mechanically scrutinized. *See Lees v. Carthage Coll.*, 714 F.3d 516, 525 (7th Cir. 2013) (holding that nonscientific expert testimony in the field of premises security did "not easily admit of rigorous testing and replication"). Osborn's report relies on his experience, a literature review, and some spending data from the 2012 election. Doc. 116-2 at 6-11. His report is qualitative; his inclusion of some contributions as examples does not transform the fundamental character of his analysis, and he does not purport to have conducted a comprehensive quantitative or statistical analysis. Doc. 133-1 at ¶ 3. Contrary to Defendants' submission, expert testimony "is not unreliable simply because it is founded on [a witness's] experience rather than on data; indeed, Rule 702 allows a witness to be 'qualified as an expert by knowledge, skill, *experience*, training, or education.'" *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010) (quoting Fed. R. Evid. 702); *see also Kumho*, 526 U.S. at 150 (distinguishing expert testimony based on science and engineering from "other cases," in which "the relevant reliability concerns may focus upon personal knowledge or experience," and reaffirming that the *Daubert* factors "do *not* constitute a 'definitive checklist or test'") (quoting *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593 (1993)).

Osborn's analysis of the possibilities and incentives for corruption in Illinois's campaign finance structure rests primarily on his understanding of the literature and his experience as a consultant and lobbyist. Doc. 116-2 at 6-8. His report uses examples from two legislative

caucus committees' largest expenditures during one election cycle to illustrate how those committees' apparent priorities align with his predictions. *Id*. at 9-11. This analysis is consistent with the qualitative nature of the report. Although Osborn does not purport to make factual conclusions about actual quid pro quo corruption actually occurring in Illinois, his report concludes that there is an amplified "risk of corruption" when legislative caucus committees are treated like political parties and both are treated more favorably than PACs and other political speakers. Doc. 116-2 at 16; Doc. 119 at 14.

The methods Osborn used were appropriate for his qualitative inquiry into (what he, rightly or wrongly, views as) the risks created by the Act. *See United States v. Mikos*, 539 F.3d 706, 711 (7th Cir. 2008) ("Rule 702 does not condition admissibility on the state of the published literature, or a complete and flaw-free set of data …."). Moreover, Osborn's background makes him eminently qualified to undertake that inquiry. "Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, experience, or education with the subject matter of the witness's testimony." *Gayton v. McCoy*, 593 F.3d 610, 616 (7th Cir. 2010) (internal quotation marks omitted). Osborn's twenty years of experience with legislative advocacy, campaigns, ballot measures, campaign fundraising, and studying campaign strategies, methods, and competitiveness easily meet this standard.

Defendants retort that Osborn is unqualified to testify about the Illinois campaign finance system because he lacks Illinois-specific knowledge or experience. Doc. 116 at 13-14; Doc. 129 at 8. True enough, the question the court must ask on a Rule 702 motion "is not whether an expert witness is qualified in general, but whether his qualifications provide a foundation for [him] to answer a specific question." *Gayton*, 593 F.3d at 617 (internal quotation marks omitted,

alteration in original). Yet Osborn's education and experience give him the foundation necessary to opine about the incentives and power structure inherent in any American campaign financing scheme. *See United States v. Parra*, 402 F.3d 752, 758 (7th Cir. 2005) ("[W]hile extensive academic and practical expertise is an area is certainly sufficient to qualify a potential witness as an expert, Rule 702 specifically contemplates the admission of testimony by experts whose knowledge is based on experience.") (internal quotation marks omitted). The ability to identify opportunities and incentives in the structure of a campaign finance law is essential to Osborn's professional activities, and he used that skill to prepare his report. The distinctions (if any) between the campaign finance systems of Illinois and the other States impact the weight, not the admissibility, of Osborn's opinions.

For these reasons, Defendants' motion to exclude is denied, and Osborn's testimony is admitted for its examination of "the structure of Illinois' scheme of campaign contribution limits and the incentives and opportunities for corruption it creates." Doc. 119 at 9-10.

II. Cross-Motions for Summary Judgment

As noted, Plaintiffs' sole remaining claim alleges that legislative caucus committees are insufficiently similar to political party committees to justify their identical treatment under the Act and their more favorable treatment as compared to individuals, corporations, and PACs. 2014 WL 859325 at *4; *see Citizens United*, 558 U.S. at 340 ("[T]he Government may commit a constitutional wrong when by law it identifies certain preferred speakers."). Plaintiffs allege that the Act's disparate contribution limits are not closely drawn to serve a sufficiently important interest, as required by *Buckley v. Valeo*, 424 U.S. 1 (1976). Specifically, they maintain that the limits are underinclusive because legislative caucus committees have the same potential to corrupt as PACs, so the justification for limiting PAC contributions should extend to legislative

caucus committees. Doc. 128 at 11-14; *see Buckley*, 424 U.S. at 20-25. The inquiry is appropriately focused on corruption, as "the only public interest strong enough to justify restricting election-related speech is the interest in preventing quid pro quo corruption or the appearance of corruption." *Wis. Right-to-Life, Inc. v. Barland*, 751 F.3d 804, 823 (7th Cir. 2014).

The "basic object" of a political party is "to help elect whichever candidates the party believes would best advance its ideals and interests." *Randall v. Sorrell*, 548 U.S. 230, 257-58 (2006) (plurality opinion). Political parties do not blindly pursue at any cost to maximize their representation in a legislative body; rather, they seek and promote candidates who, as a general matter, will advance their goals and be loyal team players. *See FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 476 (2001) ("*Colorado II*") (Thomas, J., dissenting) ("The very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes.") (internal quotation marks omitted). Plaintiffs assert that the "basic object" of legislative caucus committees is not just to elect like-minded candidates, but also to advance the legislative leaders' personal interests by doling out campaign contributions from their committees in exchange for quid pro quo commitments from the recipients of those contributions. Doc. 128 at 13-14; Doc. 132 at 8-9.

The court cannot conclude that this indisputably is true or not true on the summary judgment record. Viewed in the light most favorable to Defendants, the record would allow the conclusion that because the House Speaker, the Senate President, and the two Minority Leaders must maintain the broad-based support of their respective caucuses to hold their leadership posts, they could not hijack legislative caucus committees to primarily serve their personal goals at the expense of their respective parties' causes as a whole. Moreover, "[c]orruption is a subversion

of the political process. … The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 497 (1985). It is difficult to imagine political parties using campaign contributions to "corrupt" recipients in the way that individual contributors or PACs can. *See Randall*, 548 U.S. at 256-259 (emphasizing "a particularly important political right, the right to associate in a political party," and striking down contribution limits that subjected political parties to the same restrictions as other contributors); *Colorado II*, 533 U.S. at 453 (recognizing that parties' "strong working relationship with candidates and [their] unique ability to speak in coordination with them should be taken into account in the First Amendment analysis"); *id*. at 477 (Thomas, J., dissenting) ("One can speak of an individual citizen or a political action committee corrupting or coercing a candidate, but what could it mean for a party to corrupt its candidate or to exercise coercive influence over him?") (internal quotation marks omitted). Viewing the record in the light most favorable to Defendants, it is similarly difficult to imagine that a legislative caucus committee, created by a legislator whose leadership role depends upon an election by other legislators in the same party, could corrupt a candidate or incumbent from that political party.

At the same time, viewing the record (particularly Osborn's opinions) in the light most favorable to Plaintiffs, the court cannot conclude as a matter of law that Plaintiffs are wrong to claim that legislative caucus committees serve their leaders' personal interests at the expense of their associated parties' interests, and therefore that legislative caucus committees are more similar to PACs and corporations than to political party committees. *See Costello v. Grundon*, 651 F.3d 614, 636 (7th Cir. 2011) ("On summary judgment, a court may not weigh the evidence or decide which inferences should be drawn from the facts."); *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 799 (7th Cir. 2011) ("[O]f course, a district court may not weigh the evidence

at the summary judgment stage; it must view the evidence in the light most favorable to the non-movant."). It follows that Defendants' summary judgment motion must be denied as well.

Conclusion

For the foregoing reasons, Defendants' motion to strike Osborn's testimony and the parties' cross-motions for summary judgment are denied. The case will proceed to trial on Plaintiffs' First Amendment challenge to the Act's treatment of legislative caucus committees as compared to political party committees, on the one hand, and to PACs, corporations, and individuals, on the other.

September 21, 2015

United States District Judge

10 ILCS 5/9-1.8

Sec. 9-1.8. Political committees.

(a) "Political committee" includes a candidate political committee, a political party committee, a political action committee, a ballot initiative committee, and an independent expenditure committee.

(b) "Candidate political committee" means the candidate himself or herself or any natural person, trust, partnership, corporation, or other organization or group of persons designated by the candidate that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $5,000 on behalf of the candidate.

(c) "Political party committee" means the State central committee of a political party, a county central committee of a political party, a legislative caucus committee, or a committee formed by a ward or township committeeman of a political party. For purposes of this Article, a "legislative caucus committee" means 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 of Representatives, or a committee established by 5 or more members of the same caucus of the Senate or 10 or more members of the same caucus of the House of Representatives.

(d) "Political action committee" means any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons, other than a candidate, political party, candidate political committee, or political party committee, that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $5,000 on behalf of or in opposition to a candidate or candidates for public office. "Political action committee" includes any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons, other than a candidate, political party, candidate political committee, or political party committee, that makes electioneering communications during any 12-month period in an aggregate amount exceeding $5,000 related to any candidate or candidates for public office.

(e) "Ballot initiative committee" means any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons that

accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $5,000 in support of or in opposition to any question of public policy to be submitted to the electors. "Ballot initiative committee" includes any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons that makes electioneering communications during any 12-month period in an aggregate amount exceeding $5,000 related to any question of public policy to be submitted to the voters. The $5,000 threshold applies to any contributions or expenditures received or made with the purpose of securing a place on the ballot for, advocating the defeat or passage of, or engaging in electioneering communication regarding the question of public policy, regardless of the method of initiation of the question of public policy and regardless of whether petitions have been circulated or filed with the appropriate office or whether the question has been adopted and certified by the governing body.

(f) "Independent expenditure committee" means any trust, partnership, committee, association, corporation, or other organization or group of persons formed for the exclusive purpose of making independent expenditures during any 12-month period in an aggregate amount exceeding $5,000 in support of or in opposition to (i) the nomination for election, election, retention, or defeat of any public official or candidate or (ii) any question of public policy to be submitted to the electors. "Independent expenditure committee" also includes any trust, partnership, committee, association, corporation, or other organization or group of persons that makes electioneering communications that are not made in connection, consultation, or concert with or at the request or suggestion of a public official or candidate, a public official's or candidate's designated political committee or campaign, or an agent or agents of the public official, candidate, or political committee or campaign during any 12-month period in an aggregate amount exceeding $5,000 related to (i) the nomination for election, election, retention, or defeat of any public official or candidate or (ii) any question of public policy to be submitted to the voters.

(Source: P.A. 97-766, eff. 7-6-12; 98-115, eff. 7-29-13.)

10 ILCS 5/9-8.5

Sec. 9-8.5. Limitations on campaign contributions.

(a) It is unlawful for a political committee to accept contributions except as provided in this Section.

(b) During an election cycle, a candidate political committee may not accept contributions with an aggregate value over the following: (i) $5,000 from any individual, (ii) $10,000 from any corporation, labor organization, or association, or (iii) $50,000 from a candidate political committee or political action committee. A candidate political committee may accept contributions in any amount from a political party committee except during an election cycle in which the candidate seeks nomination at a primary election. During an election cycle in which the candidate seeks nomination at a primary election, a candidate political committee may not accept contributions from political party committees with an aggregate value over the following: (i) $200,000 for a candidate political committee established to support a candidate seeking nomination to statewide office, (ii) $125,000 for a candidate political committee established to support a candidate seeking nomination to the Senate, the Supreme Court or Appellate Court in the First Judicial District, or an office elected by all voters in a county with 1,000,000 or more residents, (iii) $75,000 for a candidate political committee established to support a candidate seeking nomination to the House of Representatives, the Supreme Court or Appellate Court for a Judicial District other than the First Judicial District, an office elected by all voters of a county of fewer than 1,000,000 residents, and municipal and county offices in Cook County other than those elected by all voters of Cook County, and (iv) $50,000 for a candidate political committee established to support the nomination of a candidate to any other office. A candidate political committee established to elect a candidate to the General Assembly may accept contributions from only one legislative caucus committee. A candidate political committee may not accept contributions from a ballot initiative committee or from an independent expenditure committee.

(c) During an election cycle, a political party committee may not accept contributions with an aggregate value over the following: (i) $10,000 from any individual, (ii) $20,000 from any corporation, labor organization, or association, or (iii) $50,000 from a political action committee. A political party committee may accept contributions in any amount from another political party committee or a candidate political committee, except as provided in subsection (c-5). Nothing in this

Section shall limit the amounts that may be transferred between a political party committee established under subsection (a) of Section 7-8 of this Code and an affiliated federal political committee established under the Federal Election Code by the same political party. A political party committee may not accept contributions from a ballot initiative committee or from an independent expenditure committee. A political party committee established by a legislative caucus may not accept contributions from another political party committee established by a legislative caucus.

(c-5) During the period beginning on the date candidates may begin circulating petitions for a primary election and ending on the day of the primary election, a political party committee may not accept contributions with an aggregate value over $50,000 from a candidate political committee or political party committee. A political party committee may accept contributions in any amount from a candidate political committee or political party committee if the political party committee receiving the contribution filed a statement of nonparticipation in the primary as provided in subsection (c-10). The Task Force on Campaign Finance Reform shall study and make recommendations on the provisions of this subsection to the Governor and General Assembly by September 30, 2012. This subsection becomes inoperative on July 1, 2013 and thereafter no longer applies.

(c-10) A political party committee that does not intend to make contributions to candidates to be nominated at a general primary election or consolidated primary election may file a Statement of Nonparticipation in a Primary Election with the Board. The Statement of Nonparticipation shall include a verification signed by the chairperson and treasurer of the committee that (i) the committee will not make contributions or coordinated expenditures in support of or opposition to a candidate or candidates to be nominated at the general primary election or consolidated primary election (select one) to be held on (insert date), (ii) the political party committee may accept unlimited contributions from candidate political committees and political party committees, provided that the political party committee does not make contributions to a candidate or candidates to be nominated at the primary election, and (iii) failure to abide by these requirements shall deem the political party committee in violation of this Article and subject the committee to a fine of no more than 150% of the total contributions or coordinated expenditures made by the committee in violation of this Article. This subsection becomes inoperative on July 1, 2013 and thereafter no longer applies.

(d) During an election cycle, a political action committee may not accept contributions with an aggregate value over the following: (i) $10,000 from any individual, (ii) $20,000 from any corporation, labor organization, political party committee, or association, or (iii) $50,000 from a political action committee or candidate political committee. A political action committee may not accept contributions from a ballot initiative committee or from an independent expenditure committee.

(e) A ballot initiative committee may accept contributions in any amount from any source, provided that the committee files the document required by Section 9-3 of this Article and files the disclosure reports required by the provisions of this Article.

(e-5) An independent expenditure committee may accept contributions in any amount from any source, provided that the committee files the document required by Section 9-3 of this Article and files the disclosure reports required by the provisions of this Article.

(f) Nothing in this Section shall prohibit a political committee from dividing the proceeds of joint fundraising efforts; provided that no political committee may receive more than the limit from any one contributor, and provided that an independent expenditure committee may not conduct joint fundraising efforts with a candidate political committee or a political party committee.

(g) On January 1 of each odd-numbered year, the State Board of Elections shall adjust the amounts of the contribution limitations established in this Section for inflation as determined by the Consumer Price Index for All Urban Consumers as issued by the United States Department of Labor and rounded to the nearest $100. The State Board shall publish this information on its official website.

(h) Self-funding candidates. If a public official, a candidate, or the public official's or candidate's immediate family contributes or loans to the public official's or candidate's political committee or to other political committees that transfer funds to the public official's or candidate's political committee or makes independent expenditures for the benefit of the public official's or candidate's campaign during the 12 months prior to an election in an aggregate amount of more than (i) $250,000 for statewide office or (ii) $100,000 for all other elective offices, then the public official or candidate shall file with the State Board of Elections, within one day, a Notification of Self-funding that shall detail each contribution or loan made by the

public official, the candidate, or the public official's or candidate's immediate family. Within 2 business days after the filing of a Notification of Self-funding, the notification shall be posted on the Board's website and the Board shall give official notice of the filing to each candidate for the same office as the public official or candidate making the filing, including the public official or candidate filing the Notification of Self-funding. Notice shall be sent via first class mail to the candidate and the treasurer of the candidate's committee. Notice shall also be sent by e-mail to the candidate and the treasurer of the candidate's committee if the candidate and the treasurer, as applicable, have provided the Board with an e-mail address. Upon posting of the notice on the Board's website, all candidates for that office, including the public official or candidate who filed a Notification of Self-funding, shall be permitted to accept contributions in excess of any contribution limits imposed by subsection (b). If a public official or candidate filed a Notification of Self-funding during an election cycle that includes a general primary election or consolidated primary election and that public official or candidate is nominated, all candidates for that office, including the nominee who filed the notification of self-funding, shall be permitted to accept contributions in excess of any contribution limit imposed by subsection (b) for the subsequent election cycle. For the purposes of this subsection, "immediate family" means the spouse, parent, or child of a public official or candidate.

(h-5) If a natural person or independent expenditure committee makes independent expenditures in support of or in opposition to the campaign of a particular public official or candidate in an aggregate amount of more than (i) $250,000 for statewide office or (ii) $100,000 for all other elective offices in an election cycle, as reported in a written disclosure filed under subsection (a) of Section 9-8.6 or subsection (e-5) of Section 9-10, then the State Board of Elections shall, within 2 business days after the filing of the disclosure, post the disclosure on the Board's website and give official notice of the disclosure to each candidate for the same office as the public official or candidate for whose benefit or detriment the natural person or independent expenditure committee made independent expenditures. Upon posting of the notice on the Board's website, all candidates for that office in that election, including the public official or candidate for whose benefit or detriment the natural person or independent expenditure committee made independent expenditures, shall be permitted to accept contributions in excess of any contribution limits imposed by subsection (b).

(h-10) If the State Board of Elections receives notification or determines that a natural person or persons, an independent expenditure committee or committees, or

combination thereof has made independent expenditures in support of or in opposition to the campaign of a particular public official or candidate in an aggregate amount of more than (i) $250,000 for statewide office or (ii) $100,000 for all other elective offices in an election cycle, then the Board shall, within 2 business days after discovering the independent expenditures that, in the aggregate, exceed the threshold set forth in (i) and (ii) of this subsection, post notice of this fact on the Board's website and give official notice to each candidate for the same office as the public official or candidate for whose benefit or detriment the independent expenditures were made. Notice shall be sent via first class mail to the candidate and the treasurer of the candidate's committee. Notice shall also be sent by e-mail to the candidate and the treasurer of the candidate's committee if the candidate and the treasurer, as applicable, have provided the Board with an e-mail address. Upon posting of the notice on the Board's website, all candidates of that office in that election, including the public official or candidate for whose benefit or detriment the independent expenditures were made, may accept contributions in excess of any contribution limits imposed by subsection (b).

(i) For the purposes of this Section, a corporation, labor organization, association, or a political action committee established by a corporation, labor organization, or association may act as a conduit in facilitating the delivery to a political action committee of contributions made through dues, levies, or similar assessments and the political action committee may report the contributions in the aggregate, provided that: (i) contributions made through dues, levies, or similar assessments paid by any natural person, corporation, labor organization, or association in a calendar year may not exceed the limits set forth in this Section; (ii) the corporation, labor organization, association, or a political action committee established by a corporation, labor organization, or association facilitating the delivery of contributions maintains a list of natural persons, corporations, labor organizations, and associations that paid the dues, levies, or similar assessments from which the contributions comprising the aggregate amount derive; and (iii) contributions made through dues, levies, or similar assessments paid by any natural person, corporation, labor organization, or association that exceed $500 in a quarterly reporting period shall be itemized on the committee's quarterly report and may not be reported in the aggregate. A political action committee facilitating the delivery of contributions or receiving contributions shall disclose the amount of contributions made through dues delivered or received and the name of the corporation, labor organization, association, or political action committee delivering the contributions, if applicable. On January 1 of each odd-numbered year, the State Board of Elections shall adjust the amounts of the contribution limitations established in this

subsection for inflation as determined by the Consumer Price Index for All Urban Consumers as issued by the United States Department of Labor and rounded to the nearest $100. The State Board shall publish this information on its official website.

(j) A political committee that receives a contribution or transfer in violation of this Section shall dispose of the contribution or transfer by returning the contribution or transfer, or an amount equal to the contribution or transfer, to the contributor or transferor or donating the contribution or transfer, or an amount equal to the contribution or transfer, to a charity. A contribution or transfer received in violation of this Section that is not disposed of as provided in this subsection within 30 days after the Board sends notification to the political committee of the excess contribution by certified mail shall escheat to the General Revenue Fund and the political committee shall be deemed in violation of this Section and subject to a civil penalty not to exceed 150% of the total amount of the contribution.

(k) For the purposes of this Section, "statewide office" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, and Treasurer.

(l) This Section is repealed if and when the United States Supreme Court invalidates contribution limits on committees formed to assist candidates, political parties, corporations, associations, or labor organizations established by or pursuant to federal law.

(Source: P.A. 97-766, eff. 7-6-12; 98-115, eff. 7-29-13.)