

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

STUDENTS FOR LIFE ACTION,
Plaintiff,

v.

MARTY JACKLEY, *in his official capacity
as Attorney General of the State of
South Dakota*, and MONAE JOHNSON, *in
her official capacity as South Dakota
Secretary of State*,
Defendants.

No. 3:23-CV-3010-RAL

**Plaintiff's Statement of Undisputed Facts in
Support of its Motion for Summary Judgment**

Plaintiff, Students for Life Action, submits the following Statement of Undisputed Facts in support of its Motion for Summary Judgment pursuant to D.S.D. CIV LR 56.1.

South Dakota's Law Regulating Communications Concerning a Candidate or Ballot Question

1. South Dakota law defines an "independent communication expenditure" as "an expenditure, including the payment of money or exchange of other valuable consideration or promise, made by a person, entity, or political committee for a communication concerning a candidate or a ballot question which is not made to, controlled by, coordinated with, requested by, or made upon consultation with that candidate, political committee, or agent of a candidate or political committee." S.D. Codified Laws § 12-27-1(11).

2. South Dakota law imposes rules on persons and entities that make “independent communication expenditures . . . related to communications concerning candidates, public office holders, ballot questions, or political parties who are not controlled by, coordinated with, requested by, or made upon consultation with that candidate, political committee, or agent of a candidate or political committee.” S.D. Codified Laws § 12-27-16.

3. Persons and entities that pay, or promise to pay, more than \$100 for such a communication must “append to or include in each communication a disclaimer that clearly and forthrightly” states “‘Top Five Contributors,’ including a listing of the names of the five persons making the largest contributions in aggregate to the entity during the twelve months preceding that communication.” S.D. Codified Laws § 12-27-16(1)(c).

4. A person or entity who pays, or promises to pay, more than \$100 for such a communication must file an “independent communication expenditure statement” within 48 hours after the communication is disseminated or published. S.D. Codified Laws § 12-27-16(2).

5. The statute contains no time limitations; it is not limited to communications within a pre-election window. S.D. Codified Laws § 12-27-16.

6. A first violation of this section is a Class 2 misdemeanor; a subsequent violation within one calendar year is a Class 1 misdemeanor—both punishable by imprisonment, a fine, or both. S.D. Codified Laws § 12-27-16(1), § 22-6-2.

7. The law charges the Defendant Attorney General with enforcement by either bringing a criminal action or by filing a civil action seeking a civil penalty of up to \$10,000 per violation. S.D. Codified Laws § 12-27-35. And the law separately authorizes the Attorney General to bring actions for civil penalties of up to \$2,000 per violation for violations of Section 12-27-16. S.D. Codified Laws § 12-27-43.

Plaintiff Students for Life Action's Speech in South Dakota

8. Plaintiff SFLA is a 501(c)(4) social-welfare organization based in Fredericksburg, Virginia. It engages in issue advocacy nationwide to train and mobilize leaders to impact public policy and achieve issue-specific results in key elections. Exhibit 1, Declaration of Tina Whittington, ¶ 3.

9. SFLA limits its voter communications to candidates' positions on abortion-related issues and to encourage activism for pro-life policies; it does not tell voters which candidate to vote for or against. Decl. Whittington, ¶ 4.

10. SFLA has engaged in communications concerning candidates and office holders in South Dakota that cost more than \$100 on abortion-related issues and will continue to make similar communications costing more than \$100 in South Dakota in the future. Decl. Whittington, ¶ 5.

11. Those communications included text messages sent the day before the June 2022 primary election informing voters about roughly 12 incumbent legislators' voting records on banning chemical abortions and their responses to candidate surveys. Decl. Whittington, ¶ 6, Exh. A. Each of these communications cost SFLA \$116.62. Decl. Whittington, ¶ 6.

12. Some of those text messages urged recipients to encourage a candidate who had taken a pro-life pledge to keep that pledge if elected; others urged recipients to encourage candidates who had not taken a pro-life pledge to nonetheless vote for pro-life legislation if elected. Decl. Whittington, ¶ 7, Exh. A. None of them told the recipients who they should or should not vote for. Decl. Whittington, ¶ 7.

13. Also in 2022, SFLA sent mailers to South Dakotans, urging them to contact their state legislators to encourage them to support pro-life legislation. Decl. Whittington, ¶ 8, Exh. B.

14. SFLA's future expenditures, like its past expenditures, will fall within the definition of "independent communication expenditure" under S.D. Codified Laws § 12-27-1(11) because they will mention candidates and elected officials. They will, therefore, trigger Section § 12-27-16 requirements, including listing SFLA's largest donors on the communications. Decl. Whittington, ¶ 9.

15. SFLA accepts donations that are earmarked by donors for certain uses. Decl. Whittington, ¶ 10.

16. As a rule, SFLA does not disclose the names of its donors unless required to by law, because many of SFLA's donors find this anonymity important, or even vital, to their giving. Decl. Whittington, ¶ 11.

17. If SFLA were required to disclose its top five donors in a given year, even if those donors have made donations earmarked so those funds will not be used for communications concerning a candidate or ballot question in South Dakota, donors

may reduce the amount of their donations or stop donating entirely. Decl.

Whittington, ¶ 12.

Dated: September 3, 2025

Respectfully Submitted,

By: 

Jeffrey M. Schwab
(Pro Hac Vice)
Noelle Daniel
(Pro Hac Vice)
Liberty Justice Center
7500 Rialto Blvd.
Suite 1-250
Austin, Texas 78735
Telephone: 512-481-4400
jschwab@ljc.org
ndaniel@libertyjusticecenter.org

/s/ Aaron P. Pilcher

Aaron Pilcher, Attorney at Law
79 3rd St. SE
Huron, South Dakota 57350
Telephone: (605) 554-1661
Fax: (605) 554-1662
aaronpilcherlaw@gmail.com

Attorneys for Plaintiff Students for Life Action