

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 Response to Defendants'
Statement of Undisputed Material Facts**

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

1. Defendants submitted their First Set of Interrogatories and Requests for Production of Documents to Plaintiff on December 13, 2024. Exhibit 1.

Response: Undisputed.

2. Defendant provided written responses to Defendants First Set of Interrogatories and Requests for Production of Documents on February 17, 2025. Exhibit 2.

Response: Undisputed, assuming there is a typo, and it should read "Plaintiff provided written responses to Defendants' First Set of Interrogatories and Requests for Production of Documents on February 17, 2025. Exhibit 2."

3. Among Defendants' document requests, Defendants sought all text messages relating to ¶ 20 of Plaintiff's Amended Complaint, all mailers relating to ¶ 21 of Plaintiff's Amended Complaint, all mail solicitations used for fund raising, all internet and email solicitations used for fund raising, and all scripts used for telephone solicitations. Exhibit 1, ¶ 6, 7, 17, 18, 19.

Response: Undisputed.

4. Plaintiffs provided approximately three thousand pages of documents in response to Defendants' requests for production of documents.

Response: Undisputed.

5. Many of these documents represent similar communications sent to various individual voters in different geographic areas.

Response: Undisputed.

6. Plaintiffs provided text message and phone call scripts providing information to voters regarding a ballot measure as well as the pro-life voting history of individual South Dakota legislators. Exhibit 3.

Response: Undisputed.

7. These scripts do not "expressly advocate" for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

8. Plaintiffs also provided the verbiage of text messages sent to voters to inform them of the responsive of individual South Dakota legislators response to a pro-life pledge as well as their voting history on pro-life issues. Exhibit 4.

Response: Undisputed.

9. These messages do not “expressly advocate” for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

10. Plaintiffs disclosed examples of mailers sent to South Dakota voters informing them of the pro-life voting records of individual South Dakota legislators. Exhibit 5.

Response: Undisputed.

11. These mailers do not “expressly advocate” for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

12. Plaintiffs disclosed several communications soliciting donations as well as petition signatures. An example of one such communication is attached as Exhibit 6.

Response: Undisputed.

13. These solicitation messages do not “expressly advocate” for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

14. Plaintiffs shared newsletters they distributed. An example of one such newsletter is attached as Exhibit 7.

Response: Undisputed.

15. These newsletters do not “expressly advocate” for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

16. Plaintiffs disclosed emails they sent to inform voters. An example of one such email is attached as Exhibit 8.

Response: Undisputed.

17. These emails do not “expressly advocate” for a particular candidate or ballot measure as defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

18. Plaintiffs disclosed one pamphlet that appears to “expressly advocate” for the defeat of South Dakota’s “Amendment G” in the 2024 election through the use of the phrase “Vote ‘No.’” Exhibit 9.

Response: Plaintiff does not dispute that the pamphlet uses the phrase “Vote ‘No,’” but objects to remainder of the statement as a legal conclusion, not a statement of fact.

19. The pamphlet also provides additional information regarding the scope of the law and its potential effect on reproductive healthcare in South Dakota. *Id.*

Response: Undisputed.

20. This pamphlet could be considered “express advocacy” as that term is defined in SDCL 12-27-1(9).

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

21. This is the only such communication disclosed by Plaintiffs that appears to expressly advocate for the support or defeat of a particular candidate or ballot question.

Response: Plaintiff objects to this statement as a legal conclusion, not a statement of fact.

22. Plaintiffs disavow any intent to engage in similar express advocacy in the future. Doc. 24, 59-63.

Response: Disputed. Plaintiff intends to make similar pamphlets in the future.

Decl. Whittington, ¶¶ 4, 5, 9; Ex. A to Pl.’s Mot. Summ. J. The purpose of these pamphlets and other communications by Plaintiff is to advocate for issues related to abortion and encourage activism for pro-life policies, not the support or opposition of candidates for election. Decl. Whittington, ¶¶ 4, 5, 7, 9; Ex. A to Pl.’s Mot. Summ. J.

Dated: October 17, 2025.

Respectfully Submitted,

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Certificate Service

I hereby certify that on this 17th day of October 2025 a true and correct copy of the foregoing document was served upon the following person, by placing the same in the service indicated, addressed as follows:

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/s/ Aaron P. Pilcher
Attorney for Plaintiff