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

ILLINOIS LIBERTY PAC, *et al.*,	
Plaintiffs,	Judge Gary Feinerman
v.	Magistrate Judge Susan E. Cox
LISA M. MADIGAN, *et al.*,	Case: 1:12-cv-05811
Defendants.	

MEMORANDUM OF CAMPAIGN LEGAL CENTER, CHICAGO APPLESEED AND ILLINOIS CAMPAIGN FOR POLITICAL REFORM AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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NOTIFICATION OF AFFILIATES—DISCLOSURE STATEMENT

Pursuant to LCvR 3.2, *amicus* Campaign Legal Center (CLC) states that it has no publicly held affiliates to report.

Pursuant to LCvR 3.2, *amicus* Chicago Appleseed states that it has no publicly held affiliates to report.

Pursuant to LCvR 3.2, *amicus* Illinois Campaign for Political Reform (ICPR) states that it has no publicly held affiliates to report.

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INTRODUCTION AND SUMMARY OF ARGUMENT

This remains a simple case, unnecessarily complicated by plaintiffs' avoidance of the decades-old, well-established legal framework for determining the constitutionality of contribution limits. The only cognizable burden on plaintiffs' free speech and associational rights is that which stems from the contribution limits directly applicable to plaintiffs themselves. Illinois law imposes a $50,000 per election cycle limit on contributions from plaintiff Illinois Liberty PAC (ILP) to a candidate for state office, a $5,000 per election cycle limit on contributions from plaintiff Bachrach to a candidate for state office, a $10,000 per election cycle limit on contributions from plaintiff Bachrach to plaintiff ILP and a $10,000 limit on contributions from corporations, labor unions and other associations to a candidate for state office. *See* 10 ILCS 5/9-8.5(b) and (d). Time and again the Supreme Court has held that such contribution limits are a constitutionally permissible means of advancing the government's vital interests in preventing corruption, the appearance of corruption and circumvention of candidate contribution limits—so long as the limits are not so low as to prevent candidates and PACs from amassing the resources necessary for effective advocacy. *See*, *e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 20-29 (1976); *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 194-199 (1981) ("*CalMed*"); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 381-398 (2000); and *Randall v. Sorrell*, 548 U.S. 230, 238-269 (2006).

This Court need only decide whether the challenged $50,000, $10,000 and $5,000 contribution limits prevent candidates and PACs from amassing the resources necessary for effective advocacy. Plaintiffs cannot credibly allege that these limits prevent effective advocacy (though the plaintiffs have now purported to add such a contention to the Second Amended Complaint in paragraph 45 with respect to new plaintiff, State Senator Kyle McCarter), which is no surprise considering that the Supreme Court has upheld much lower limits against

constitutional challenge. Plaintiffs are free under the challenged Illinois contribution limits to associate with the candidates and PACs of their choice and to effectively advocate for the election or defeat of the candidates of their choice. Illinois' contribution limits are clearly constitutional.

This Court has already recognized, in its opinion denying plaintiffs' request for a preliminary injunction, that plaintiffs' arguments are unlikely to succeed. *See ILP v. Madigan*, 902 F. Supp. 2d 1113, 1126-27 (N.D. Ill. 2012) ("Plaintiffs' negligible likelihood of success is reason enough to deny their preliminary injunction motion."). Although plaintiffs have amended their complaint since that decision, those amendments did not significantly alter the plaintiffs' legal theories or address the previously noted deficiency in those theories. In essence, plaintiffs' arguments remain that the Illinois legislature could have enacted a better system of campaign finance limits by imposing additional limits on contributions from political parties and their legislative leaders. However, whether Illinois adopted the best possible set of campaign finance limits is not the issue in this case. Rather, as this Court made clear in its preliminary injunction decision, the issue is whether the Illinois limits actually adopted satisfy the Supreme Court's requirement that contribution limits not be so low as to prevent candidates and PACs from amassing the resources necessary for effective advocacy, not impermissibly disfavor certain content, viewpoints, or speakers, and not be rendered fatally underinclusive by exemptions. 902 F. Supp. 2d at 1120-21.

As this Court has previously noted, the contribution limits at issue in this case (1) most certainly do no prevent candidates from amassing the resources necessary for effective advocacy; (2) do not impermissibly disfavor certain content, viewpoints, or speakers; and (3) are not rendered fatally underinclusive by the contribution limit scheme's treatment of parties, races

with self-funded candidates and/or independent spending, and corporations, labor unions and other organizations. The state's contribution limits scheme is well within the discretion afforded to legislatures by the Supreme Court. Thus, for essentially the reasons set forth in the Court's prior opinion denying plaintiffs' preliminary injunction motion, the defendants' motion to dismiss should be granted.

ARGUMENT

I. Contribution Limits Are Subject to "Less Rigorous" "Closely Drawn" Review, Not Strict Scrutiny

As this Court recognized in its opinion denying plaintiffs' preliminary injunction motion, in assessing the constitutionality of campaign finance limits on contributions, the proper standard of scrutiny to apply is a "less rigorous" "closely drawn" standard, rather than a "strict scrutiny" standard. 902 F. Supp. 2d at 1119. Beginning with *Buckley*, the Supreme Court has held that expenditure limits represent "substantial . . . restraints on the quantity and diversity of political speech," *Buckley*, 424 U.S. at 19, and consequently, must satisfy strict scrutiny review. *Id*. at 44-45. By contrast, a contribution limit "entails only a marginal restriction upon [one's] ability to engage in free communication," *id*. at 20, and thus is constitutionally "valid" if it "satisfies the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 136 (internal quotation marks omitted) (quoting *FEC v. Beaumont*, 539 U.S. 146, 162 (2003)).

This "less rigorous" standard reflects that a contribution is merely a "symbolic expression of support" because it "serves as a general expression of support . . . but does not communicate the underlying basis for the support." *Buckley*, 424 U.S. at 21. Further, a contribution represents only indirect speech, or "speech by proxy," *CalMed*, 453 U.S. at 196, because "the transformation of contributions into political debate involves speech by someone other than the

contributor." *Beaumont*, 539 U.S. at 161-162 (quoting *Buckley*, 424 U.S. at 20-21).

This case concerns limits on contributions—i.e., contributions made by plaintiffs to candidates, contributions made by plaintiffs Bachrach and plaintiff ILP, and contributions accepted by plaintiff McCarter—not limits on expenditures by plaintiffs. Thus less rigorous "closely drawn" scrutiny, not strict scrutiny, is appropriate.

Unlike plaintiffs' original complaint, the second amended complaint begins by taking an ambiguous position on what the applicable standard of review should be, stating that "[t]he Act's scheme cannot withstand strict, exacting or intermediate scrutiny . . . ." Second Amended Complaint, ¶ 50. However, later in the complaint, plaintiffs once again urge that the applicable standard should be "strict scrutiny" because certain provisions of the law—i.e., the law'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"—"impose a significant burden on the exercise of core free speech rights." Second Amended Complaint, ¶ 51. This is simply wrong, as a matter of law.

As this Court appropriately recognized in its prior decision, for more than 35 years, the Supreme Court has repeatedly made clear that contribution limits are not subject to strict scrutiny. "In *Buckley* and subsequent cases," the Court has "recognized that contribution limits, unlike limits on expenditures, entai[l] only a marginal restriction upon the contributor's ability to engage in free communication" and are therefore constitutional so long as they "satisf[y] the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 134-36 (internal quotation marks omitted) (quoting *Buckley*, 424 U.S. at 20 and *Beaumont*, 539 U.S. at 162). *Amici* respectfully urge this Court to continue to reject plaintiffs'

invitation to apply strict scrutiny to Illinois' contribution limits and, instead, to apply the less rigorous "closely drawn" scrutiny appropriate for contribution limits.

II. Illinois' Contribution Limits Are Clearly Constitutional

Plaintiffs challenge the constitutionality of Illinois' contribution limit "scheme" established by 10 ILCS 5/9-8.5(b)-(d). *See*, *e.g.*, Second Amended Complaint at paragraphs 48-71. However, plaintiffs' constitutionally-protected right to free speech is impacted only by four discrete contribution limits found within Sections 5/9-8.5(b) and 5/9-8.5(d)—and all four contribution limits are clearly constitutional under Supreme Court precedent.

Section 5/9-8.5(b) imposes a $50,000 per election cycle limit on contributions from a PAC such as plaintiff ILP to a candidate for state office. Section 5/9-8.5(b) imposes a $5,000 per election cycle limit on contributions from an individual such as plaintiff Bachrach to a candidate for state office. Section 5/9-8.5(b) also imposes a $10,000 limit on contributions from corporations, labor unions and other associations to candidates such as plaintiff McCarter. Finally, Section 5/9-8.5(d) imposes a $10,000 per election cycle limit on contributions from an individual such as plaintiff Bachrach to a PAC such as plaintiff ILP.

Constitutional analysis of these four contribution limits is simple and straightforward. These limits are closely drawn to match the state's compelling interests in preventing corruption and the circumvention of candidate contribution limits and are thus constitutional. Indeed, these Illinois limits are far more accommodating of plaintiffs' constitutional rights than the federal law $1,000 contribution limit upheld in *Buckley*, the federal law $5,000 limit upheld in *CalMed*, and the state law contribution limits ranging from $275 to $1,075 upheld in *Nixon*.

A. Nothing in the Illinois Campaign Finance Limits Act Violates the Constitution's First Amendment

1. The Constitutionality of the Separate Limits

As this Court has previously recognized, the different contribution limits imposed under the Act upon individuals, corporations and PACs are well within the range of limits that the Supreme Court has previously upheld. This Court explained:

> 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.

902 F. Supp. 2d at 1120; *see also Beaumont*, 539 U.S. at 163 (upholding complete ban on contributions to federal candidates from non-profit corporations); *Nixon*, 528 U.S. at 395-397 (upholding $1,075 limit on individual and PAC contributions to statewide candidates in Missouri); *Buckley*, 424 U.S. at 23-29 (upholding $1,000 limit on individual and PAC contributions to candidates for federal office); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1125 (9th Cir. 2011) (noting that *Citizens United* did not overrule *Beaumont*).

The only significant change made in plaintiffs' Second Amended Complaint is that they have added a candidate for office, Kyle McCarter, who is a sitting State Senator, but who contends the limits will prevent him from amassing "resources necessary to mount a competitive race without party or legislative caucus money" unless he is permitted to raise unlimited sums from donors. Second Amended Complaint, ¶¶ 8, 45. At least plaintiffs have now apparently recognized the appropriate legal standard in their latest amended complaint.

As the *amici* pointed out in their prior brief, contribution limits are constitutional so long as they do not prevent candidates from amassing the resources necessary for effective advocacy. Dkt. No. 37, Attachment 1, pp. 8-12; *Buckley*, at 20-29; *CalMed.*, 453 U.S. at 194-98; *Nixon*, 528

U.S. at 395-396; *Randall*, 548 U.S. at 248-61 (striking down Vermont's $400 limit on contributions to gubernatorial candidates because it "prevented challengers from mounting effective campaigns" and impermissibly muted "the voice of political parties".)

Illinois contribution limit amounts are well in excess of limitations that have previously been held by the courts, including the Supreme Court, not to unconstitutionally interfere with a candidate's ability to mount an effective campaign, as noted above. Indeed, perhaps the best evidence that Illinois' limits are so low as to prevent candidates from amassing the resources necessary for effective advocacy is that Senator McCarter was easily re-elected in his district since the imposition of the limits in the current Act. Senator McCarter was re-elected in 2012 with *80%* of the votes in the primary and 62% of the votes in the general election, all of which he succeeded in obtaining without any reported contributions for legislative caucus or political party committees. *See* Ill. State Bd. Of Elections, Ballots Cast, General Primary—3/20/2012, 54th Senate;[1] Ill. State Bd. Of Elections, Ballots Cast, General Election—11/6/2012, 54th Senate;[2] Ill. State Bd. Of Elections, McCarter 2011-12 Contributions List.[3]

Section 5/9-8.5(b) of the Illinois Act imposes a $50,000 per election cycle limit on

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[1] *Available at* http://www.elections.il.gov/electioninformation/VoteTotalsList.aspx?ElectionType=GP&ElectionID=32&SearchType=OfficeSearch&OfficeID=5777&QueryType=Office& (last visited Aug. 30, 2013).

[2] *Available at* http://www.elections.il.gov/electioninformation/VoteTotalsList.aspx?ElectionType=GE&ElectionID=33&SearchType=OfficeSearch&OfficeID=6164&QueryType=Office& (last visited Aug. 30, 2013).

[3] *Available at* http://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByCommittees.aspx?ddlCmteContributionType=All+Types&ddlCmteLastOnlyNameSearchType=Starts+with&txtCmteLastOnlyName=&ddlCmteFirstNameSearchType=Starts+with&txtCmteFirstName=&ddlCmteAddressSearchType=Starts+with&txtCmteAddress=&ddlCmteCitySearchType=Starts+with&txtCmteCity=&ddlState=&txtCmteZip=&txtCmteZipThru=&ddlCmteOccupationSearchType=Starts+with&txtCmteOccupation=&ddlCmteEmployerSearchType=Starts+with&txtCmteEmployer=&txtCmteAmount=&txtCmteAmountThru=&txtCmteRcvDate=1%2f1%2f2011&txtCmteRcvDateThru=12%2f31%2f2013&ddlCmteOrderBy=Last+or+Only+Name+-+A+to+Z&ddlCmteNameSearchType=Contains&txtCmteName=&txtCmteID=17137&txtCmteLocalID=&txtCmteStateID=&ddlVendorLastOnlyName=Starts+with&txtVendorLastOnlyName=&ddlVendorFirstName=Starts+with&txtVendorFirstName=&ddlVendorAddress=Starts+with&txtVendorAddress=&ddlVendorCity=Starts+with&txtVendorCity=&ddlVendorState=&txtVendorZip=&txtVendorZipThru=&ddlPurpose=Starts+with&txtPurpose=&ddlOtherReceipts=Starts+with&txtOtherReceipts= (last visited Aug. 30, 2013).

contributions from plaintiff ILP to a candidate for state office, a $10,000 limit on contributions from corporations and unions, and a $5,000 limit on contributions from individuals to a candidate for state office. The Supreme Court in *Buckley* upheld a $1,000 limit on contributions to candidates, part of a statutory regime that limits PAC contributions to candidates to $5,000[4] and, though acknowledging that contribution limits could be unconstitutional if they "prevented candidates and political committees from amassing the resources necessary for effective advocacy," 424 U.S. at 21, the Court explicitly rejected the argument that the challenged federal law $1,000 limit on contributions to candidates would not have "any dramatic adverse effect on the funding of campaigns and political associations." *Id.*

Similarly, the *Nixon* Court upheld state law limits on contributions to candidates ranging from $275 to $1,075 and found "'no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political associations,' and thus no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy.'" 528 U.S. at 395-396 (quoting *Buckley*, 424 U.S. at 21). Consequently, the *Nixon* Court concluded: "There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the Missouri statute." *Id*. at 397-98.

If the $1,000 contribution limit upheld in *Buckley*, or the $1,075 limit upheld in *Nixon*, do not prevent candidates from amassing the resources necessary for effective advocacy, it is unfathomable that Illinois' $50,000 limit on plaintiff ILP's contributions to candidates, the $10,000 corporate limit, or Illinois' $5,000 limit on individual contributions could have such an effect. The contribution limits established by 10 ILCS 5/9-8.5(b) are closely drawn to the state's

[4] *See Buckley*, 424 U.S. at 13 n.12 ("An organization registered as a political committee for not less than six months which has received contributions from at least 50 persons and made contributions to at least five candidates may give up to $5,000 to any candidate for any election.").

vital interest in preventing corruption and the appearance of corruption and thus are constitutional.

Section 5/9-8.5(d) imposes a $10,000 per election cycle limit on contributions from plaintiff Bachrach to plaintiff ILP. The Supreme Court in *CalMed* upheld a $5,000 limit on contributions by an individual to a PAC as closely drawn to the governmental interests of preventing corruption and the appearance of corruption, and preventing circumvention of the candidate contribution limits. 453 U.S. at 194-99. Illinois' more generous $10,000 limit on contributions from individuals to PACs such as plaintiff ILP is likewise closely drawn to the same governmental interests and is constitutional.

Thus, as this Court concluded in denying a preliminary injunction, there is nothing to suggest that there is anything unconstitutional about Illinois campaign finance limits when those limits are viewed in isolation.

2. Treating Political Parties More Favorably By Exempting Them From Contribution Limits Does Not Make the Act Unconstitutional

Plaintiffs' primary contention appears to be that the Act violates the First Amendment by exempting political parties from the limits on contributions to candidates. Second Amended Complaint, ¶¶ 51-53. As this Court noted in its decision denying preliminary injunction, it is true that otherwise permissible limits can be rendered unconstitutional if they impermissibly disfavor certain content, viewpoints, or speakers, or if exemptions from a speech restriction render it fatally underinclusive and thereby cast doubt on the government's justification therefore. 902 F. Supp. 2d at 1120-21; *see also Citizens United*, 558 U.S. 310, 339-40 (2010); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383-386 (1992); *Brown v. Entmt 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).

However, as this Court appropriately recognized in its prior opinion, it does not logically follow from these cases or from any of the cases cited by plaintiffs that the First Amendment *requires* that parties be subject to the same limits as individuals, corporations or PACs. 902 F. Supp. 2d at 1121. Indeed, the Supreme Court has repeatedly upheld the constitutionality of campaign finance limits that enable political parties to contribute far more generously to their own candidates. That was the case in the *Colorado II* decision cited by plaintiffs, as well as in the *McConnell* case. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 439 n.2 and 442 n.7 (2001); *McConnell*, 540 U.S. at 188. As this Court previously noted, the Supreme Court has repeatedly recognized that political parties may be treated more generously in a system limiting campaign contributions because of the special position such parties occupy in our political system. 902 F. Supp. 2d at 1121-22. And none of the Justices have espoused the view that the First Amendment prohibits jurisdictions with contribution limits from treating parties more favorably than non-parties. There is simply nothing to support plaintiffs' contention that a set of campaign finance limits is unconstitutional if it does not also impose limits on such political parties or their legislative leaders.

3. The Waiver Provision Does Not Render the Act Unconstitutional

Plaintiffs also contend that the Illinois Act is rendered invalid 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) and (h-5). Plaintiffs argue that this renders the Act fatally under inclusive and unconstitutionally favors some speakers over others. Second Amended Complaint, ¶¶54-59, 66-71.

However, as this Court correctly observed in its prior opinion, these contentions are "foreclosed by *Davis v. FEC*." 902 F. Supp. 2d at 1124 (citing *Davis v. FEC*, 554 U.S. 724

(2008)). The Supreme Court in *Davis* considered the constitutionality of the McCain-Feingold law's so-called "millionaire's amendment," which tripled the contribution limit for a federal candidate and lifted the coordinated party expenditure limit if the opponent's self-funded expenditures plus certain contributions exceeded a specified threshold. In the course of its opinion in *Davis*, the Supreme Court made clear that such a "millionaire's amendment" would be permissible so long as it lifted the contribution limits for *all* candidates. 554 U.S. at 737. This is precisely what the Illinois Act does. Thus, *Davis* forecloses plaintiffs' argument here—the waiver provision is constitutional.

4. The Different Treatment of Individuals, Corporations and PACs Does Not Render the Illinois Act Unconstitutional

Plaintiffs' final contention is that the Illinois Act impermissibly treats individuals differently from similarly situated corporations, labor organizations and associations by imposing more stringent limits on individual contributions. 10 ILCS 5/9-8.5(b)-(d); Second Amended Complaint, ¶¶ 60-65, 66-71. However, as this Court has previously properly concluded, there is no basis for this contention. 902 F. Supp. 2d at 1125. Similar differential limits were upheld by the Supreme Court in *Buckley*, and have been upheld in many other cases since that decision. There is no basis for doubting the continued validity of that holding. *See Green Party of Conn. v. Garfield*, 616 F.3d 189, 199 (2d Cir. 2010) (rejecting an argument that *Citizens United* undermined the Supreme Court precedents regarding the validity of contribution limits under the First Amendment).

B. Nothing in the Illinois Campaign Finance Limits Act Violates the Equal Protection Clause of the Fourteenth Amendment

Plaintiffs also allege that the Illinois contribution limits "violate the Equal Protection Clause of the Fourteenth Amendment." Second Amended Complaint, ¶¶ 48, 63. Plaintiffs' argue that their Equal Protection claim warrants "strict scrutiny" of the challenged contribution

limits, but cite no authority for the application of strict scrutiny in the context of Equal Protection challenges to contribution limits. *Id.* at 18. As the U.S. District Court for the District of Columbia noted recently in *Wagner v. FEC*, 854 F. Supp. 2d 83, 95 (D.D.C. 2012), *vacated* 717 F.3d 1007 (D.C. Cir. May 31, 2013),[5] "[t]he Supreme Court has yet to decide what level of scrutiny applies to equal-protection challenges to laws restricting political contributions." The district court in *Wagner* gave thoughtful consideration to the issue and made the following poignant observation:

> If strict scrutiny were to apply to equal-protection claims in the area of campaign contributions, it would lead to 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. Any First Amendment claim that could be reframed as an equal-protection challenge would thus be entitled to strict scrutiny and would consequently stand a much greater chance of prevailing. This is particularly concerning given that the Supreme Court has explicitly rejected strict scrutiny for contribution limits (and bans) being challenged in the First Amendment context.

Id.

After considering and rejecting the defendant's argument that "rational basis" review was appropriate in an Equal Protection challenge to contribution limits, *id.* at 95-96, the court determined that "it makes more sense to apply closely drawn scrutiny . . . [that] the Supreme Court has specifically designated for restrictions on financial contributions to campaigns and political organizations." *Id.* (citing *Beaumont,* 539 U.S. at 161). "Such a form of review also cures the problem of permitting plaintiffs to obtain a different level of scrutiny from their First Amendment challenge merely by labeling their claim one of equal protection." *Id*. at 96. The

[5] Earlier this year, the D.C. Circuit Court vacated the district court's decision on jurisdictional grounds, holding that the Federal Election Campaign Act (FECA) grants exclusive merits jurisdiction regarding the challenged statute to the *en banc* D.C. Circuit Court. The court remanded the case to the district court to "make appropriate findings of fact, as necessary, and to certify those facts and the constitutional questions to the *en banc* court of appeals . . . ." 717 F.3d at 1017. Nevertheless, the reasoning of the district court regarding the appropriate level of scrutiny applicable to Equal Protection challenges, which this Court found persuasive and cited in its earlier decision, 902 F. Supp. 2d at 1126, remains sound.

court cited much "precedent for importing scrutiny levels from First Amendment cases when an equal-protection challenge implicates First Amendment rights," *id.*, and "conclude[d], therefore, that to survive an equal-protection challenge, [a contribution restriction] must be 'closely drawn to match a sufficiently important interest.'" *Id*. at 97 (citing *Beaumont*, 539 U.S. at 161).

The *Wagner* court's approach, cited approvingly by this court, *see* 902 F. Supp. 2d at 1126, makes good sense and is wholly consistent with the Supreme Court's position that "respondents can fare no better under the Equal Protection Clause than under the First Amendment itself." *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 55 n.4 (1986). As the U.S. District Court for the District of Columbia explained in *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003):

> It is generally unnecessary to analyze laws which burden the exercise of First Amendment rights by a class of persons under the equal protection guarantee, because the substantive guarantees of the Amendment serve as the strongest protection against the limitation of these rights. . . . If the Court . . . finds that the classification does not violate any First Amendment right, the Court is unlikely to invalidate that classification under equal protection principles.

251 F. Supp. 2d at 709 n.180 (citing Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law—Substance & Procedure* § 18.40 (3d ed. 1999)).

As this Court accordingly recognized in its prior opinion, there is simply no basis or support for plaintiffs' argument under the Fourteenth Amendment. 902 F. Supp. 2d at 1125-26

For these reasons, *amici* respectfully urge this Court to reject plaintiffs' argument that an Equal Protection challenge to Illinois' contribution limits warrants strict scrutiny and, instead, to apply the less rigorous "closely drawn" scrutiny appropriate for contribution limits upholding the constitutionality of the Act under the Fourteenth Amendment, for the same reasons that it withstands scrutiny under the First Amendment.

C. Whether the Illinois Legislature Could Have Adopted a Better System of Campaign Finance Limits is Not Relevant to Whether the System Actually Adopted is Constitutional

Plaintiffs contend in their Second Amended Complaint that any legitimate anti-corruption interest in Illinois would be better served by a system that imposed some limits on political parties and their legislative leaders and that adopted some alternative form of a "millionaires waiver amendment." Whether or not an ideal system regulating campaign finances would include such provisions is a subject on which reasonable minds can differ. Indeed, some of these *amici* have urged Illinois legislators to adopt such provisions. However, the *amici* and the plaintiffs fundamentally differ and part company on at least two very basic points.

First, the *amici* believe that Illinois' adoption of a rudimentary system regulating campaign contributions is an important step forward in limiting the potentially corrupting effect of money in politics. It is doubtful that plaintiffs share that belief; from their varied arguments, it appears that what plaintiffs actually favor is a system in which there are no limits on political contributions and their potentially corrupting influence.

Second, the *amici* believe that the precise structure of a system imposing limits on political contributions is largely within the discretion of the democratically elected representatives of the people, subject to compliance with minimal constitutional requirements. The Supreme Court has repeatedly upheld the constitutionality of contribution limits of varying amounts, with respect to different contributors and recipients, noting that "a court has no scalpel to probe" whether a particular type of limit or scheme of limits works best. *See*, *e.g.*, *Buckley*, 424 U.S. at 30 ("While the contribution limitation provisions might well have been structured to take account of [various factors], Congress' failure to engage in such fine tuning does not invalidate the legislation. . . . [A] court has no scalpel to probe, whether, say, a $2,000 ceiling

might not serve as well as $1,000."); *see also Randall*, 548 U.S. at 248. Instead, it is the role of the legislature to determine which precise amount limits work best. Campaign finance limitations need not be perfect or ideal to remain constitutional.

At its heart, plaintiffs' arguments boil down to a contention that the Illinois legislature could have adopted a better or ideal system of limits—a determination well within the prerogatives of Illinois' elected representatives. Plaintiffs remain free to lobby the Illinois legislators to improve the current systems. Seeking abrogation of the duly adopted and clearly constitutional campaign finance limits on the basis of specious arguments, however, is something they cannot do.

CONCLUSION

For the reasons set forth above, plaintiffs' Second Amended Complaint should be dismissed with prejudice.

Respectfully submitted,

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