

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

DAN PROFT and)	
LIBERTY PRINCIPLES PAC,)	
)	
)	Plaintiffs,) Case No.
)	
v.)	
)	
LISA MADIGAN,)	
Attorney General of Illinois;)	
WILLIAM J. CADIGAN, Chairman,)	
Illinois State Board of Elections;)	
JOHN R. KEITH, Vice Chairman,)	
Illinois State Board of Elections;)	
ANDREW K. CARRUTHERS, Member,)	
Illinois State Board of Elections;)	
IAN K. LINNABARY, Member,)	
Illinois State Board of Elections;)	
WILLIAM M. MCGUFFAGE, Member,)	
Illinois State Board of Elections;)	
KATHERINE S. O'BRIEN, Member,)	
Illinois State Board of Elections;)	
CHARLES W. SCHOLZ, Member,)	
Illinois State Board of Elections)	
CASANDRA B. WATSON, Member,)	
Illinois State Board of Elections,)	
all in their official capacities.,)	
)	
)	Defendants.)
)	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Illinois Election Code limits the contributions that individuals and organizations may make to candidates for state elective offices.
2. The Code eliminates all such limits, however, in any race in which a candidate's self-funding, or independent expenditures supporting or opposing a candidate, exceed a threshold amount: \$250,000 in a race for statewide office, or \$100,000 in any other race.

3. There is, however, one exception to that rule: the Code *never* allows groups registered as “independent expenditure committees” to contribute to, or even coordinate with, a candidate, even in a race in which the limits have been eliminated for everyone else.

4. This exception is not justified. Groups registered as independent expenditure committees do not pose a unique threat of corruption that could justify banning them from contributing to candidates at times when all others, including ordinary political action committees, may do so without limitation.

5. The Code therefore unfairly, unreasonably restricts the free-speech and free-association rights of independent expenditure committees and the citizens who form those committees to engage in political speech. This lawsuit therefore seeks an injunction that would allow Plaintiffs and other independent expenditure committees to participate in races in which the limits that apply to others have been eliminated to the same extent as individuals and other organizations.

JURISDICTION AND VENUE

6. Plaintiffs bring this suit under 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.

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

PARTIES

8. Plaintiff Dan Proft is a radio host, political consultant, and political activist who associates with others to engage in speech to promote free-market principles, support candidates for state elective offices in Illinois who share those principles, and oppose candidates for state elective offices in Illinois who do not share those principles.

9. Plaintiff Liberty Principles PAC is an entity Mr. Proft founded for the purpose of associating with others to make communications supporting or opposing candidates based on whether they support free-market principles. Mr. Proft is the entity's chairman and treasurer, and he has registered the entity with the Illinois State Board of Elections as an "independent expenditure committee."

10. Defendant Lisa Madigan is the Attorney General of the State of Illinois and maintains an office in Cook County, Illinois. She has the power to prosecute violations of the Illinois Election Code's provisions restricting campaign contributions under 10 ILCS 5/9-25.2.

11. Defendant William J. Cadigan is the Chairman and a member of the Illinois State Board of Elections (the "Board"), which maintains an office in Cook County. The Illinois Election Code authorizes the Board to assess a fine against any independent expenditure committee that makes an unauthorized contribution to another political committee. 10 ILCS 5/9-8.6(d).

12. Defendant John R. Keith is Vice Chairman and member of the Board.

13. Defendant Andrew K. Carruthers is a member of the Board.

14. Defendant Ian K. Linnabary is a member of the Board.

15. Defendant William M. McGuffage is a member of the Board.

16. Defendant Katherine S. O'Brien is a member of the Board.

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

18. Defendant Casandra B. Watson is a member of the Board.

19. All Defendants are sued in their official capacities.

FACTS

Illinois' Campaign Contribution Limits

20. In 2009, Illinois amended its Election Code to limit the contributions that individuals and organizations may make to candidates for state elective offices, limit the contributions that various types of political committees may receive, and require political committees of all kinds to disclose the contributions they receive and the expenditures they make. *See Ill. Public Act 96-832.*

21. The contribution limits enacted in 2009 restrict the amounts that individuals and organizations may contribute to a candidate's political committee in an election cycle: individuals may give no more than \$5,000; political action committees ("PACs") may give \$50,000; and corporations, unions, and other associations may give \$10,000. 10 ILCS 5/9-8.5(b). (These limits, and all monetary amounts from the Illinois Election Code referenced below, are subject to adjustment for inflation at the beginning of every election cycle. 10 ILCS 5/9-8.5(g).)

22. The General Assembly did not limit the amount that a political party committee may contribute to a candidate in a general election, but it did limit the amounts a party could give in a primary election: \$200,000 to a candidate for statewide office; \$125,000 to a candidate for the Illinois Senate; and \$75,000 to a candidate for the Illinois House of Representatives. 10 ILCS 5/9-8.5(b).

23. When the Illinois General Assembly enacted the above contribution limits, it also made an exception: if, in a particular race, a candidate contributes more than a certain amount to his or her own campaign – \$250,000 in a race for statewide office, or \$100,000 in any other race – then all candidates in that race may accept unlimited contributions from any donor – *i.e.*, from

any individual, PAC, political party committee, candidate committee, corporation, union, or other association. 10 ILCS 5/9-8.5(h).

24. In addition to limiting the contributions that candidates can receive from individuals and organizations, the 2009 Code amendments also limited the contributions that other types of political committees may receive.

25. In a given election cycle, an individual may contribute no more than \$10,000 to a PAC; a corporation, union, political party, or other association may give no more than \$20,000; and another PAC may give no more than \$50,000 to another PAC. 10 ILCS 5/9-8.5(d).

26. Similarly, in a given election cycle, an individual may contribute no more than \$10,000 to a party committee; a corporation, union, or other association may give no more than \$20,000; and a PAC may contribute no more than \$50,000. 10 ILCS 5/9-8.5(c).

27. The “contributions” the Code restricts include not only cash payments to a political committee but also, among other things, expenditures that a political committee makes “in cooperation, consultation, or concert with another political committee,” 10 ILCS 5/9-1.4(A)(5), which are commonly referred to as “coordinated expenditures.”

28. The Code prohibits any individual or organization from forming more than one PAC. 10 ILCS 5/9-2(d).

29. The Code defines a PAC to include any person or organization (other than a candidate, a political party, or a candidate or party’s 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” or “makes electioneering communications during any 12-month period in an aggregate amount exceeding \$5,000 related to any candidate or candidates for public office.” 10 ILCS 5/9-1.8(d).

Illinois' Regulation of Independent Expenditures

30. The Code's restrictions on PACs originally applied to both PACs that make contributions to candidates and PACs that only make independent expenditures – *i.e.*, PACs that only make expenditures “to advocate for or against a specific candidate without coordination with any public official, candidate, or political party.” *Personal PAC v. McGuffage*, 858 F. Supp. 2d 963 (N.D. Ill. 2012).

31. In 2012, however, this Court held that the Code's limits on contributions to PACs, and its rule prohibiting anyone from forming more than one PAC, were unconstitutional as applied to PACs that only make independent expenditures. *Id.* at 967-69.

32. The Court based that decision on Supreme Court precedent establishing that the First Amendment prohibits restrictions on independent expenditures because such expenditures do not create a risk of *quid pro quo* corruption. *Personal PAC*, 858 F. Supp. 2d at 967-69 (citing *Citizens United v. FEC*, 558 U.S. 310, 340 (2010); *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011)).

33. After the *Personal PAC* decision, the Illinois General Assembly amended the Illinois Election Code to address independent expenditures specifically.

34. Under that amendment, individuals who make independent expenditures of \$3,000 or more in a 12-month period must file written disclosures of their expenditures with the Board. 10 ILCS 5/9-8.6(a).

35. Any entity (other than a natural person) that makes independent expenditures must register with the Board as a political committee. 10 ILCS 5/9-8.6(b).

36. If an entity wishes to receive unlimited contributions to support its independent-expenditure advocacy, it must register with the Board as an “independent expenditure committee,”

and its chairperson must sign a statement verifying that the committee is “for the exclusive purpose of making independent expenditures” and that “the committee may accept unlimited contributions from any source” only if it does not make contributions to any candidate, party committee, or PAC. 10 ILCS 5/9-3(d-5), 9-8.5(e-5).

37. If an independent expenditure committee makes a contribution to a candidate committee, political party, or PAC, the Board may impose a fine on the committee “equal to the amount of any contribution received in the preceding 2 years by the committee that exceeded the limits” that would have applied to the committee if it had registered as an ordinary PAC. 10 ILCS 5/9-8.6(d).

38. The Code requires an independent expenditure committee to follow the same rules for disclosure of contributions and expenditures that PACs and other political committees must follow. 10 ILCS 9-8.5(e-5), 9-10, 9-11.

39. When the General Assembly amended the Code to address independent expenditures, it added a new exception to the Code’s limits on contribution to candidates: Now, the limits in a race are eliminated when either a candidate’s self-funding *or* independent expenditures supporting or opposing a candidate (in the aggregate) exceed \$250,000 in a race for statewide office or \$100,000 in any other race. 10 ILCS 5/9-8.5(h), (h-5).

40. The Code’s limit-lifting provisions can give rise to an anomalous situation: In a race where all limits on contributions to candidates have been eliminated, every person and organization may give a candidate unlimited amounts and may coordinate with a candidate when making expenditures without limitation – except independent expenditure committees, which remain prohibited from coordinating with candidates or otherwise contributing to them.

Injury to Plaintiffs

41. Plaintiff Dan Proft is a political activist who associates with others for the purpose of communicating with the public about political ideas and candidates for state elective office in Illinois.

42. Mr. Proft would like to raise unlimited funds from like-minded individuals and organizations and, in turn, spend unlimited amounts on communications (such as television and radio advertisements and literature) supporting and opposing candidates for state elective offices.

43. Mr. Proft also would like to be able to communicate and coordinate freely with the candidates he supports because he believes that doing so would make his communications (and the candidates' communications) to the public more effective.

44. The Code, however, does not allow Mr. Proft to do all these things he wishes to do.

45. To associate with others to speak about candidates for office, Mr. Proft must choose between two imperfect alternatives. Under Illinois law, he may either: (1) form a PAC and be subject to limits on the funds he can raise and, except in races where the limits have been lifted, on the contributions and coordinated expenditures he can make; or (2) form an independent expenditure committee and be totally, permanently prohibited from making contributions and coordinated expenditures.

46. Faced with this choice, Mr. Proft elected in 2012 to form Liberty Principles PAC as an independent expenditure committee.

47. Since then, Liberty Principles PAC has raised funds from donors and made independent expenditures in many Illinois legislative races while complying with all of the

Code's restrictions, disclosure requirements, and other rules for independent expenditure committees.

48. In races in which the limits on contributions to candidates have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5), Mr. Proft would like to contribute to, and communicate and coordinate with, the candidates he supports through Liberty Principles PAC.

49. He cannot do so, however, because the Code prohibits independent expenditure committees from making contributions to candidates even when the contribution limits have been eliminated for individuals and every other type of entity.

50. For example, in the 2018 primary election, Liberty Principles PAC made independent expenditures in numerous races in which the limits on contributions to candidates were eliminated under 10 ILCS 5/9-8.5(h-5), including the races for State Representative for the 46th, 49th, 53rd, 56th, 62nd, 82nd, 93rd, 101st, 108th, 109th, 110th, and 115th Districts.

51. In each of those races, after the contribution limits were eliminated for others, Liberty Principles PAC could have and would have coordinated with, or otherwise made contributions to, a candidate in the race if the Illinois Election Code had not forbidden it.

52. Currently, Liberty Principles PAC is planning to make independent expenditures supporting and opposing candidates in numerous state legislative races in the 2018 general election, including the races for State Representative for the 19th, 46th, 55th, 56th, 62nd, 111th, and 112th Districts.

53. Mr. Proft anticipates that, in some or all of those races, the limits on contributions to candidates will be eliminated under 10 ILCS 5/9-8.5(h-5) due to independent expenditures exceeding the (inflation-adjusted) \$100,000 threshold.

54. Mr. Proft is certain that the limits on contributions to candidates will be eliminated under 10 ILCS 5/9-8.5(h-5) in at least one of those races due to Liberty Principles PAC's own independent expenditures exceeding the threshold.

55. When the limits on contributions to candidates are inevitably eliminated in some or all of the 2018 general election races in which Liberty Principles PAC participates, Mr. Proft and Liberty Principles PAC would like to begin coordinating with or otherwise contributing to candidates, just as individuals and other types of organizations will be allowed to do.

56. The Election Code will not allow them to do so, however, and they will not do so unless this Court grants them injunctive relief.

57. Mr. Proft has not made coordinated contributions in that race or any race where contribution limits have been lifted, but he would do so if the Code did not prohibit it.

COUNT I

FIRST AMENDMENT

The Illinois Election Code's ban on contributions to candidates by independent expenditure committees in races in which all other limits on contributions to candidates have been eliminated violates Plaintiffs' First Amendment rights to freedom of speech and freedom of association.

58. Plaintiffs incorporate the allegations of all of the above paragraphs in this Count by reference.

59. The United States Supreme Court has recognized only one government interest that can justify campaign-finance restrictions: the prevention of actual or apparent *quid pro quo* corruption. *See Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 155 (7th Cir. 2011).

60. Therefore, in any challenge to campaign-finance restrictions, the government must show, at a minimum, that its restrictions are narrowly tailored to prevent actual or apparent *quid pro quo* corruption. *See McCutcheon v. FEC*, 134 S.Ct. 1434, 1441, 1456-57 (2014).

61. By prohibiting Plaintiffs from contributing to candidates in races in which limits on contributions to candidates have otherwise been eliminated, the Code infringes Plaintiffs' First Amendment rights to free speech and freedom of association because it prohibits them from contributing money to candidates they wish to support, prohibits them from speaking to candidates for public office (and their respective committees) about political issues, and prohibits them from communicating with the public about political issues in the manner they consider to be most effective.

62. No anti-corruption rationale justifies prohibiting Liberty Principles PAC and other independent expenditure committees from making contributions in races in which all other individuals and organizations are allowed to give candidates unlimited contributions under 10 ILCS 5/9-8.5(h) or (h-5).

63. The state cannot show that, in races in which contribution limits have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5), contributions by independent expenditure committees (which the Code prohibits) would pose a greater threat of corruption than the threat posed by contributions by individuals, PACs, parties, corporations, unions, and other associations (which the Code allows in unlimited amounts).

64. Therefore, the state cannot meet its burden to show that the Code's prohibition on contributions by independent expenditure committees in races in which all other limits on contributions to candidates have been eliminated is narrowly tailored to prevent corruption.

65. Therefore, the Code's prohibition on coordinated expenditures by independent expenditure committees in races where the Code's limits on contributions to candidates have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5) violates the First Amendment.

COUNT II
EQUAL PROTECTION

The Illinois Election Code's ban on contributions to candidates by independent expenditure committees in races where all other limits on contributions to candidates have been eliminated violates the Equal Protection Clause of the Fourteenth Amendment.

66. Plaintiffs incorporate the allegations of all of the above paragraphs in this Count by reference.

67. In a race in which contribution limits to candidates have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5), independent expenditure committees and the political donors who are allowed to give candidates unlimited amounts are similarly situated with respect to their contributions' potential to corrupt: Coordinated expenditures or other contributions by an independent expenditure committee would not pose a greater threat of corruption than the unlimited coordinated expenditures and contributions that individuals, ordinary PACs, and other donors may make.

68. No corruption-related difference between independent expenditure committees and other donors justifies banning coordinated expenditures by independent expenditure committees while allowing unlimited coordinated expenditures (and contributions) by the others.

69. Therefore, the Code's prohibition on coordinated expenditures by independent expenditure committees in races where the Code's limits on contributions to candidates have been eliminated violates the Equal Protection Clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

Plaintiffs request that this Court enter judgment in their favor and against Defendants and:

A. Declare that the Illinois Election Code's prohibition against contributions by independent expenditure committees in races in which the Code's other limits on contributions to candidates have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5) violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment on its face and as applied to Plaintiffs;

B. Enter a preliminary injunction and a permanent injunction preventing Defendants from enforcing the Illinois Election Code's prohibition on contributions by independent expenditure committees against Plaintiffs and any other independent expenditure committee with respect to any contributions they make in any race in which limits on contributions to candidates have been eliminated under 10 ILCS 5/9-8.5(h) or (h-5);

C. Award Plaintiffs their reasonable attorneys' fees and costs under 42 U.S.C. § 1988(b); and

D. Award Plaintiffs any other relief the Court deems just and proper.

Dated: July 18, 2018

Respectfully Submitted,

**DAN PROFT and
LIBERTY PRINCIPLES PAC**

By: /s/ Patrick Hughes

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Attorneys for Plaintiffs

VERIFICATION

I, Dan Proft, declare under penalty of perjury, on behalf of myself and Liberty Principles PAC, that the allegations in this Complaint are true and correct to the best of my knowledge, except as to matters stated to be on information and belief, and as to such matters I certify that I verily believe the same to be true.

/s/ 
Dan Proft

Dated: 7/12/2018