

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

THE HABITAT COMPANY LLC, and)
DANIEL E. LEVIN)

Plaintiffs,)

v.)

No. _____

ILLINOIS HOUSING DEVELOPMENT)
AUTHORITY, and ELLEN H. DALEY,)
Chief Procurement Officer for)
General Services, in her official capacity)

Judge _____

Defendants.)

VERIFIED COMPLAINT

Plaintiffs, The Habitat Company LLC (“Habitat”) and Daniel E. Levin (“Levin”), by their undersigned counsel, state as follows for their Verified Complaint against defendants Illinois Housing Development Authority (“IHDA”) and Ellen H. Daley (“Daley”), Chief Procurement Officer for General Services, in her official capacity (collectively, “Defendants”):

INTRODUCTION

1. This is a civil rights action challenging, on its face, and as applied to Habitat and Levin, Sections 50-37 and 50-60 of the Illinois Procurement Code (the “Act”), 30 ILCS 500/1-1 *et seq.*, because they violate the First and Fourteenth Amendments to the U.S. Constitution.

2. Plaintiffs seek declaratory and injunctive relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201 *et seq.*, including a temporary restraining order and a preliminary injunction to bar (i) Daley from voiding Habitat’s contract with IHDA to continue to perform property management services at a multi-use Chicago high-rise called Lake Shore Plaza, and (ii) IHDA from entering into a property management contract with any third party.

3. The First Amendment rights of free speech and association include the right to engage in the political process through campaign contributions to political candidates. The Act substantially burdens these rights.

4. Since 2010, Habitat has had three consecutive three-year contracts with IHDA to manage Lake Shore Plaza, each one awarded pursuant to an open and competitive RFP process. In the fall of 2018, following another open and competitive RFP process, as to which Habitat was the sole respondent, IHDA awarded Habitat a new one-year management contract for Lake Shore Plaza, to commence January 1, 2019 (“2019 Contract”). Habitat’s rates have not increased since its first contract in 2010, and the 2019 Contract, like its predecessors, is below market, providing a substantial benefit to IHDA and the residents of Lake Shore Plaza. The contract to manage Lake Shore Plaza is Habitat’s only State contract.

5. On December 28, 2018, Daley notified Habitat that certain financial contributions that Levin and his wife, Fay Hartog-Levin (“Hartog-Levin”) made to Democratic candidates in the 2018 gubernatorial campaign (and that Hartog-Levin allegedly made to gubernatorial candidates in 2014) purportedly violate the Act and warrant voiding the 2019 Contract. Daley has subsequently instructed IHDA to enter into a replacement contract immediately with a third party management company.

6. IHDA has informed Habitat that it would prefer to continue its long-standing relationship with Habitat by executing the 2019 Contract it had awarded Habitat and to which it had agreed. However, IHDA has stated that it believes that Daley’s finding and direction prevent it from doing so. Accordingly, it has issued an emergency RFP on an expedited basis for a substitute management company. IHDA’s board is expected to authorize IHDA to enter into a management agreement with a third-party company at its board meeting on January 18, 2019, as Daley has directed.

7. Daley's decision to void the 2019 Contract is arbitrary, capricious and, if allowed, would violate Plaintiffs' First and Fourteenth Amendment rights.

8. The Act goes far beyond controlling U.S. Supreme Court case law by barring Habitat from making *any* contribution in any amount to any political committee of the officeholder responsible for awarding the contracts to Habitat, as well as any candidate for that office ("Prohibited Contributions"). Cases such as *Buckley vs. Valeo*, 424 U.S. 1 (1975), hold that political contributions are a form of speech and association and that restrictions on such contributions violate the First Amendment unless they are closely drawn to an important state interest. Under *Buckley* and its progeny, statutes that ban individuals from making any contribution, like the Act, are facially unconstitutional. Under the Act, a single such Prohibited Contribution would render Habitat's contract with IHDA voidable; three such Prohibited Contributions by Habitat within a 36-month period would both "void" Habitat's contract with IHDA and would bar Habitat from all State contracts for a period of three years. Habitat has made no Prohibited Contribution.

9. The Act also bars any person "affiliated" with Habitat from making a Prohibited Contribution in any amount. As defined by the Act, Levin is an affiliated person under the Act because he holds an ownership interest in Habitat that exceeds 7.5%. Hartog-Levin is an "affiliated person" under the Act because she is married to Levin. 30 ILCS 500/50-37(a).

10. Sections 50-37(b) and 50-60 of the Act state that if an affiliated person, such as Levin, has made any Prohibited Contribution, Daley, as the chief procurement officer, has unfettered discretion to void Habitat's contract with IHDA, regardless of the size of the contribution or whether it bears any relationship to the award of the contract. 30 ILCS 500/50-37(b), 50-60.

11. In connection with the 2018 gubernatorial campaign primary election, Levin made five contributions to the political committee for Chris Kennedy, who was then a candidate for the Democratic Party nomination for Governor, and Hartog-Levin made one contribution to him. Kennedy lost the primary. Levin later made a one-time contribution to the political committee for the Democratic gubernatorial nominee, JB Pritzker.

12. At the time of these contributions to Kennedy and Pritzker, the governor was a Republican, Bruce Rauner. Governor Rauner was also running for re-election.

13. Neither Kennedy nor Pritzker had any authority or role in IHDA's decision to award Habitat the 2019 Contract. Rather, IHDA awarded the 2019 Contract to Habitat in November 2018, during the Rauner administration, and the Levins' campaign contributions had no actual or apparent influence on the decision. Indeed, the contributions were made to individuals who sought to run for governor in opposition to Rauner.

14. Despite the fact that the Levins' contributions made to Democratic candidates had no actual influence over the award of the 2019 Contract by an agency under a Republican administration, nor even the appearance of impropriety or a conflict, Daley notified Habitat on December 28, 2018, that an "improper political contribution, associated with [Habitat], may have been made," and subsequently directed IHDA not to enter into the 2019 Contract that IHDA had awarded to Habitat in November 2018.

15. Habitat is not aware of any other instance in which a state chief procurement officer has ever chosen to void a contract based on campaign contributions by an affiliated person.

16. Defendants' decision to void the 2019 Contract infringes on Levin's First Amendment rights of speech and association, and chills him and other Illinoisans from exercising their right to contributing to candidates of their choosing. Additionally, the decision

deprives Habitat of property without due process of law in that, *inter alia*, it vests unfettered discretion in a chief procurement officer to void contracts without any rational relationship to a legitimate state interest. Finally, the decision deprives Habitat and Levin of equal protection of the laws because they have been treated arbitrarily as compared to other similarly situated individuals and companies. Injunctive relief is needed to preserve the status quo and, ultimately, to require IHDA to proceed with the 2019 Contract.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

18. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b).

THE PARTIES

19. Plaintiff Habitat is an Illinois limited liability company with its principal place of business in Chicago, Illinois.

20. Habitat has engaged in the business of property management and development for 47 years. It manages approximately 22,000 units consisting of market rate, affordable, public housing, and condominium units. It employs nearly 800 individuals.

21. Habitat has extensive experience developing and managing properties that include affordable and public housing, more than any other company in Chicago. From 1987 to 2013, Habitat and Levin served as the Court-appointed receiver for the Chicago Housing Authority (“CHA”) in the landmark lawsuit, *Gautreaux v. Chicago Housing Authority*, No. 66 C 1459. As receiver, Habitat and Levin exercised all powers of CHA regarding the development of thousands of new scattered-site public housing units and the redevelopment of mixed-income housing on and near the sites of demolished public housing high-rises. Habitat currently manages over 5,000 public housing units through contracts with the Chicago Housing Authority. Habitat also manages several other properties with a mix of market and affordable residences.

22. Plaintiff Levin is an individual residing in Winnetka, Illinois. Levin is the founder, Chairman and the majority owner of Habitat.

23. Defendant IHDA was created by the Illinois state legislature in 1967 as a self-supporting agency to finance affordable housing across Illinois. IHDA owns Lake Shore Plaza, located at 445 East Ohio Street in Chicago, Illinois. Lake Shore Plaza has 567 residential units plus commercial property. Of the residential property, 80% are leased at private market rates and 20% are reserved for low-income residents who qualify under the federal “Section 8” program.

24. IHDA’s statutory powers include the power to enter into real estate management contracts. In so doing, and in all relevant respects regarding this Complaint, IHDA acts under color of state law.

25. Defendant Daley is the Chief Procurement Officer, General Services, for the State of Illinois. As a Chief Procurement Officer, Daley has the statutory responsibility for reviewing and approving contracts between IHDA and third-party contractors, like Habitat. In so doing, and in all relevant respects regarding this Complaint, Daley acts under color of state law. She is sued solely in her official capacity for purposes of declaratory and injunctive relief.

FACTS

Illinois Procurement Code

26. Pursuant to Section 50-37(b) of the Act, any business entity whose contracts with State agencies annually total more than \$50,000 in the aggregate and any “affiliated person” of such business entity are prohibited from making contributions in any amount to the political committee of the officeholder responsible for awarding the contracts or of any candidate for that office. 30 ILCS 500/50-37(b).

27. Section 50-37(c) of the Act extends that same prohibition to business entities whose pending bids or offers for State contracts exceed \$50,000, and to the affiliated persons of such business entities. 30 ILCS 500/50-37(c).

28. The prohibitions in Sections 50-37(b) and 50-37(c) of the Act also extend to political contributions of affiliated entities of the business entity seeking or holding the contract. Affiliated entities' contributions are not at issue in this matter.

29. "Affiliated person" is defined under the Act as "(i) any person with any ownership interest or distributive share of the bidding or contracting business entity in excess of 7.5%, (ii) executive employees of the bidding or contracting business entity, and (iii) the spouse of any such persons." 30 ILCS 500/50-37(a). Levin is an "affiliated person" under the Act because he owns in excess of 7.5% of Habitat. Hartog-Levin is an "affiliated person" of Habitat under the Act because she is married to Levin.

30. Section 50-37(d) of the Act provides that "All contracts between state agencies and a business entity that violate Subsection (b) or (c) shall be voidable under Section 50-60." 30 ILCS 500/50-37(d). Thus, any political contribution in violation of Subsection 50-37(b) or 50-37(c) makes the relevant business entity's State contracts voidable under Section 50-60 of the Act, regardless of whether the political contribution at issue was made by the business entity, an affiliated person or an affiliated entity, and regardless of whether the recipient of the contribution had any actual or apparent role or influence in the decision to award the contract at issue.

31. Under Section 50-60(a) of the Act, the Chief Procurement Officer ("CPO") has discretion either to void the business entity's State contracts, or to ratify and affirm them if the CPO finds ratification and affirmance is in the "best interests of the State." The Act does not define this phrase or otherwise delineate any standards or guidelines for the exercise of the

CPO's discretion. 30 ILCS 500/50-60. Daley is currently the CPO overseeing the IHDA contract with Habitat.

32. Section 50-37(d) further provides as follows: "If a business entity violates subsection (b) 3 or more times within a 36-month period, then all contracts between State agencies and that business entity shall be void, and that business entity shall not bid or respond to any invitation to bid or request for proposals from any State agency or otherwise enter into any contract with any State agency for 3 years from the date of the last violation." 30 ILCS 500/50-37(d).

33. On information and belief, Daley and other CPOs have ratified contracts that were voidable under the Act even though an affiliated person had made a Prohibited Contribution. A copy of an example of one such Notice of Campaign Contribution Violation of Procurement Code is attached hereto as Exhibit 1.

34. On information and belief, neither Daley nor any other CPO previously has exercised discretion to void a contract because an affiliated person had made a Prohibited Contribution.

35. On information and belief, neither Daley nor any other CPO has ever exercised discretion to void a contract where an affiliated person made a Prohibited Contribution (i) to a candidate who was not an officeholder at the time of the contribution and who did not win the election or (ii) to a candidate who was running against the current officeholder who approved the contract at issue.

Habitat and Lake Shore Plaza

36. Habitat has provided management services for Lake Shore Plaza pursuant to multi-year contracts with IHDA since 2010. IHDA awarded contracts to Habitat in 2009, 2012, 2015, and 2018. Each of the contracts was awarded pursuant to a competitive bidding process in

which Habitat submitted the winning bid to IHDA in response to IHDA's requests for proposals. The contract that IHDA awarded to Habitat in 2015 expired by its terms on December 31, 2018.

37. In or about September 2018, IHDA issued a Request for Proposal ("2018 RFP"), seeking proposals from qualified vendors to provide residential property management, commercial property management, and construction management services for Lake Shore Plaza, for a three-year term beginning on January 1, 2019.

38. In response to the 2018 RFP, Habitat submitted a bid to IHDA, seeking to continue to provide property and construction management services for Lake Shore Plaza. No other vendor submitted a bid in response to the 2018 RFP.

39. On or about November 13, 2018, IHDA awarded the 2019 Contract to Habitat for Lake Shore Plaza, effective January 1, 2019 for a period of one year at the same rate as the prior years' contracts. A copy of the Notice of Award Form, dated November 13, 2018, is attached as Exhibit 2. The 2019 Contract was evaluated and awarded to Habitat under the Rauner administration.

40. After IHDA's award, IHDA and Habitat negotiated and reached agreement to the terms of the 2019 Contract.

41. Under the terms of the 2019 Contract, IHDA agreed to pay Habitat an amount in excess of \$50,000. *See* Notice of Award Form at 1, Ex. 2. Habitat's rates have not increased since its first contract with IHDA in 2010, and the 2019 Contract, like its predecessors, is below market.

42. On or about December 7, 2018, Habitat timely signed and returned to IHDA the 2019 Contract that IHDA had agreed to. A true and correct copy of the 2019 Contract is attached as Exhibit 3. IHDA did not return a countersigned 2019 Contract to Habitat due to the actions of Daley, as described below.

The Campaign Contributions

43. In 2017 and 2018, Levin made five contributions to Chris Kennedy in support of his Illinois campaign for the Democratic nomination for governor. In 2017, Hartog-Levin also contributed to Kennedy's campaign.

44. Levin and Hartog-Levin contributed to Kennedy's campaign because he was long-time personal friend, they supported his policies, and believed he would be a good governor. Kennedy did not win the nomination.

45. In or about August 2018, Levin made a \$5,000 contribution to JB Pritzker, who had won the Democratic nomination for governor. Levin contributed to Pritzker's campaign because Pritzker was a long-time personal friend, he supported Pritzker's policies, and believed he would be a good governor.

46. According to Daley, in 2014, Hartog-Levin allegedly also made a single contribution to the Sheila Simon for Illinois campaign committee (in the amount of \$500) and a single contribution to the Taxpayers for Quinn campaign committee (in the amount of \$5,000). Hartog-Levin does not recall making either of these contributions but believes it is possible that she did because she supported their policies and their re-election at the time.

47. Setting aside issues related to the Act, the Levins' campaign contributions otherwise complied with State contribution limits. Levin and Hartog-Levin did not make any contributions in order to gain any advantage for Habitat, and were unaware of the prohibitions in the Act.

48. Neither Kennedy nor Pritzker (or Simon or Quinn) had any authority or role in IHDA's evaluation of the 2018 RFP or its decision to award Habitat the 2019 Contract.

The CPO Threatens To Void the 2019 Contract

49. By letter dated December 28, 2018 (“12/28/18 CPO Letter”), Daley notified Habitat, for the first time, that her review of the IHDA procurement for the 2019 Contract “disclosed that an improper political contribution, associated with [Habitat], may have been made.” Citing the campaign contributions that Levin and Hartog-Levin made to the Democratic candidates in connection with the 2018 gubernatorial campaign and that Hartog-Levin made in the 2014 campaign, as well as a contribution made by a Habitat employee (discussed in ¶¶50-51 below), Daley stated that prohibited contributions may result in the Habitat’s contract being voided by her and that three or more violations in a 36-month period “will result in all contracts being voided as well as debarment from all State procurement for three years.” A copy of the 12/28/18 CPO Letter is attached as Exhibit 4.

50. In addition, in her 12/28/18 CPO Letter, Daley claimed that Sheila Byrne is another “affiliated person” of Habitat, that Ms. Byrne made a \$250 contribution in January 2018 to Kennedy’s campaign committee, and that her contribution was also a Prohibited Contribution under the Act that could justify voiding the 2019 Contract between IHDA and Habitat.

51. Contrary to Daley’s assertions, Byrne is not an “affiliated person” under the Act. *See* 30 ILCS 500/50-37(a). Byrne owned (and continues to own) less than 7.5% interest in Habitat, is not an executive employee of Habitat as defined in the Act, and is not a spouse of an affiliated person.

52. Prior to receiving the 12/28/18 CPO Letter, neither Habitat, Levin nor Hartog-Levin was aware that Levin and Hartog-Levin were barred from contributing any amounts to any gubernatorial candidates, let alone candidates who were not officeholders and were opposing then-Governor Rauner, and who had no role in or influence over the decision of IHDA regarding the 2018 RFP for Lake Shore Plaza.

53. By letter dated January 11, 2019 to Daley, with copies to IHDA and the State Attorney General, Habitat, through its counsel, responded to the 12/28/18 CPO Letter. A copy of the January 11, 2019 letter (with exhibits that include affidavits that are incorporated herein) is attached as Exhibit 5. (Although Daley had requested a response to her letter by January 4, she subsequently agreed to allow Habitat additional time, to February 4, to respond, *see* Exhibit 6, and Habitat had informed Daley it would continue to provide property management services during the interim. Habitat nevertheless submitted the response by January 11 because it had received information that Daley was taking steps to oust Habitat despite not having received as response, as described more fully below.) Among other things, Habitat's response letter demonstrated the following:

- a. The Act did not require that Daley void the 2019 Contract because, under the express terms of the Act, only contributions made by the entity (Habitat) could trigger an obligation to void the 2019 Contract and Habitat did not make any contributions;
- b. Byrne was not an affiliated person under the Act because her ownership interest in Habitat was less than 7.5% and she was not an executive employee of Habitat;
- c. Hartog-Levin's 2014 contributions, even if made, were not Prohibited Contributions with respect to the 2019 Contract;
- d. The Act violates the First Amendment on its face and as applied to Levin, Hartog-Levin, and Byrne; and
- e. The 2019 Contract benefits the public interest, warranting ratification, because (i) IHDA has consistently selected Habitat to manage Lake Shore Plaza since 2010 and believes that Habitat is the best candidate to do so; (ii) no other vendor even responded to the 2018 RFP; (iii) the 2019 Contract is below market rate and is financially beneficial to

the State; and (iv) emergency transition to a new property manager would likely increase costs to the State and would be disruptive to the commercial occupants and residents.

54. Although Habitat's 2016 Contract expired on December 31, 2018 and IHDA has not yet signed the 2019 Contract, Habitat has continued to provide management services for Lake Shore Plaza, without any interruption of service and with agreement to defer payment for a reasonable period in order to resolve the allegations made by Daley.

55. On or about January 16, 2019, Daley informed Habitat's counsel that she anticipated to inform Habitat by the following week of her final decision concerning the 2019 Contract.

56. However, Habitat learned from IHDA that, over IHDA's objection, Daley had instructed IHDA to issue an "emergency" RFP. IHDA did so on January 14, 2019, with responses due on January 16, 2019. On information and belief, the emergency RFP seeks a vendor to provide the same services that Habitat agreed to provide under the 2019 Contract that IHDA awarded to Habitat.

57. IHDA also informed Habitat that Daley had, without notice to Habitat, directed IHDA to execute a contract with an interim property manager by no later than the close of business on January 18, 2019, even though Daley was aware that Habitat objected to her 12/28/18 CPO Letter and even though Daley had informed Habitat that her decision concerning the 2019 Contract would be rendered the following week. In the January 16 communication in which Daley promised her response within a week, she did not tell Habitat that an emergency services RFP had been issued with responses due that date, nor did she advise Habitat of her intent to issue an edict that an emergency services contract be in place by January 18, presumably in advance of or contemporaneous with, release of her decision concerning Habitat.

58. On information and belief, IHDA intends to procure authorization from its Board to execute a contract with a third party management company pursuant to the emergency RFP at a meeting of its Board, scheduled for Friday, January 18, 2019.

59. On information and belief, any contract issued by IDHA pursuant to its emergency RFP would be exempt from review by the CPO under the Act. Accordingly, any such emergency replacement contractor would not be subject to the same campaign contribution prohibitions under the Act that Daley contends both apply to Habitat and Levin and justify her voiding the 2019 Contract.

60. By letter dated January 17, 2019, Plaintiffs renewed requests previously made orally that IHDA and Daley agree to maintain the status quo and not enter into an agreement with any replacement contractor in order to allow the parties time to attempt to resolve their differences. A copy of the January 17, 2019 letter is attached as Exhibit 7. The January 17, 2019 letter followed Habitat's verbal requests that Daley and IHDA agree to a standstill. Daley has refused to agree and IHDA informed Habitat that it cannot agree to do so in light of the directive from Daley.

Necessity of and Entitlement to Injunctive Relief

61. Unless enjoined by this Court, IHDA will engage a third-party management firm at the arbitrary and unconstitutional direction of Daley. Lake Shore Plaza is currently being managed by Habitat, and Habitat is prepared to continue to manage the property if Plaintiffs' request for injunctive relief is granted.

62. Plaintiffs will suffer irreparable harm as a result of the political contribution prohibition in the Act and the voiding of the 2019 Contract, as to which there is no adequate remedy at law. Levin and other individuals affiliated with businesses contracting with the State are and will be chilled in the exercise of their First Amendment rights to speech and association.

Additionally, Habitat will incur injury to its reputation by having a contract voided due to a purported breach of state ethics restrictions.

63. Neither IHDA nor Daley will be harmed by the entry of injunctive relief. Indeed, IHDA has informed Habitat that IHDA wants to enter into the 2019 Contract because it has had a good professional relationship with Habitat and that IHDA is only preparing to contract with a third-party because Daley has directed it to do so. In addition, Habitat's management services have been excellent and provided at below-market rates.

64. Third parties will be harmed if injunctive relief is not entered. The residents of the 567 units at Lake Shore Plaza would lose a highly-qualified, experienced management company and capable staff who are familiar with the building and many of its residents. Habitat's six administrative and nine maintenance employees would have their professional lives disrupted, as they may have to be relocated to other properties or seek alternative employment.

65. The public interest favors the vindication of constitutional rights through injunctive relief.

CLAIMS FOR RELIEF

First Claim for Relief – Facial Violation of First Amendment

66. Plaintiffs incorporate and reallege paragraphs 1-65 above.

67. The Act violates on its face the First Amendment rights of Levin and Habitat to free speech and association in several respects, including the following.

68. The Act prohibits any contribution, even of a penny, by any "business entity" or any "affiliated person" of a "business entity" to the election campaign of any of the State's constitutional officers, including governor.

69. Levin's contributions to the Kennedy and Pritzker campaigns constituted an exercise of his First Amendment rights to speech and association.

70. The First Amendment permits a limit on an individual's contributions to a political candidate only if the limit is closely drawn to achieve a substantial and important state interest.

71. An absolute prohibition on a business entity or an individual's right to contribute to a political candidate burdens the entity or individual's rights to speech and association and is not closely drawn to achieve a substantial and important state interest.

72. A prohibition on a business entity's or an "affiliated person's" right to contribute to a political candidate, without any requirement of an actual connection between the candidate and any contract between the state and the business entity with which the person is "affiliated" is not closely drawn to achieve a substantial and important state interest.

73. Accordingly, the contribution prohibition is facially overbroad and invalid.

74. The breadth of the contribution prohibition has a chilling effect on protected speech and association. For example, it chills owners and officers of business entities from supporting candidates whose policies they prefer; it chills spouses of such persons, such as Hartog-Levin, from exercising their rights of free speech and association.

75. The Act violates First Amendment rights of speech and association in an additional respect: Section 50-60(a) grants a Chief Procurement Officer unfettered and standardless discretion to void any state contract of a business entity based on any prohibited contribution regardless of the amount or relationship between the contribution and the policies underlying the Act. The statutory standard for ratifying the relevant contract – "best interests of the State" – is so sweeping and vague that it is meaningless and subject to the whims of such an Officer. A statute that vests unfettered and standardless discretion in a state actor to grant or deny a license, permit or contract based on an exercise of protected First Amendment rights is unconstitutional.

76. Levin has been injured in that his First Amendment rights have been chilled and he is being punished for the exercise of his rights.

77. Habitat has been injured in that its First Amendment rights have been chilled and it is being punished for the exercise of the First Amendment rights of Levin, Hartog-Levin and Byrne. Defendants will, unless enjoined, deprive Habitat of a contract that it had been awarded, based on its association with its “affiliated persons” and their exercise of their First Amendment rights.

Second Claim for Relief – As-Applied Violation of First Amendment

78. Plaintiffs incorporate and reallege paragraphs 1-77 above.

79. The Act violates Habitat and Levin’s First Amendment rights as-applied.

80. The purpose of Sections 50-37 and 50-60 is to prevent improper influence or the appearance of such influence in awards of government contracts. There is no relationship between that governmental purpose and the prohibitions applied to Levin and Habitat in this matter.

81. The political contributions of Levin, Hartog-Levin and Byrne did not influence and could not have influenced IHDA’s decision to award Habitat the 2019 Contract; and no reasonable person could find even an appearance of such improper influence.

a. Levin’s contributions to the failed Kennedy campaign clearly bore no actual or apparent relationship to whether or not the *Rauner* administration would award Habitat the 2019 Contract under any circumstances, let alone where Habitat had been awarded three prior, consecutive contracts to manage the property, was the only respondent to the 2018 RFP, and had agreed to continue to manage at a below-market rate. The same is true for Hartog-Levin’s and Byrne’s contributions to the Kennedy campaign.

b. Levin's \$5,000 contribution to the Pritzker campaign likewise bore no actual or apparent relationship to the contract decision by the administration whose Governor was opposing the Pritzker campaign.

c. Hartog-Levin's 2014 contributions, if they were made, are even more remote to any rational connection to the purposes of the Act. They occurred in 2014 during the administration of Governor Rauner's predecessor and were made to his opponent. The notion that a 2014 contribution to the failed Quinn-Simon campaigns could have any actual or apparent influence to the Rauner administration's decision to award a contract to Habitat in 2018 is fanciful.

82. Defendants' violations of the First Amendment have injured Levin and Habitat, as previously alleged.

Third Claim for Relief – Due Process Violation

83. Plaintiffs incorporate and reallege paragraphs 1-82 above.

84. Habitat has a property interest in the 2019 Contract that IHDA awarded to Habitat pursuant to an RFP process, and whose terms IHDA had agreed to and intended to sign until Daley directed IHDA not to do so based on her unlawful application of the Act to purport to void the Contract award.

85. Defendants' decision to void the 2019 Contract, if not enjoined, would deprive Habitat of property without due process of law in at least the following respects:

a. The absolute prohibition on campaign contributions by Habitat's "affiliated persons" is not rationally related to any legitimate state interest.

b. Section 50-60 of the Act is unconstitutionally vague on its face in that it vests unfettered discretion in the Chief Procurement Officer based on her wholly subjective

and standardless judgment as to whether the contract at issue is in “the best interests of the State.”

c. Section 50-60 of the Act is unconstitutional as applied to the 2019 Contract because voiding the Contract would be indisputably contrary to the “best interests of the State.” The objective of the Act would not be served by such a result since the political contributions at issue had no actual or apparent impact on IHDA’s decision to award the contract to Habitat. The nullification would also conflict with the “best interests of the State” in that a qualified management company, with eight years of experience managing IHDA’s property, at below-market rates, would be replaced by a company without such experience and who will likely be charging a higher rate. Moreover, upon information and belief, IHDA is being directed to replace Habitat with a company that would not be subject to the same procurement review as Habitat.

d. The Act does not allow for any hearing before the Chief Procurement Officer exercises his or her unfettered discretion. Rather, as here, the CPO simply sent a letter and purported to consider a letter in response, after which, as Daley wrote in her December 28 letter, she may “deem your response unsatisfactory” and thereafter “take an action consistent with the Code as noted above.”

86. Defendants’ violations of Habitat’s due process rights will injure Habitat because it will lose the 2019 Contract and suffer reputational harm.

Fourth Claim for Relief – Equal Protection Violation

87. Plaintiffs incorporate and reallege paragraphs 1-86 above.

88. Habitat and Mr. Levin have a right under the Equal Protection Clause to be treated by government the same as other persons who are in all relevant respects alike.

89. Defendants have violated Habitat's and Levin's rights to equal protection of the laws in at least the following respects:

a. The Act prohibits "affiliated persons" from making campaign contributions to state officeholders, while other persons have no such restriction. The distinction between such classes of contributors violates equal protection for one or both of the following reasons: (i) because the distinction at issue impairs fundamental First Amendment rights of speech and association of affiliated persons such as Levin, it is subject to strict scrutiny, and fails because it is not substantially related to a compelling state interest; and/or (ii) even if the "rational basis" standard were to apply to the distinction between "affiliated" and other persons, the lack of any actual or apparent nexus between the campaign contributions and the award of the contract at issue renders the statute not rationally related to a legitimate state interest.

b. The vagueness of the "best interests of the State" standard, under which the CPO exercises unfettered discretion to decide whether to ratify or void State contracts under the Act guarantees that irrational and arbitrary distinctions will be made between similarly situated persons. That has occurred here: Daley is purporting to void the 2019 Contract even though, upon information and belief, she and other procurement officers have regularly granted waivers of violations of the prohibited contributions. There is no rational distinction between the voiding of the 2019 Contract and the waivers granted in other matters.

c. Upon information and belief, Daley has directed IHDA to issue an "emergency" RFP on short notice to procure a property manager to enter into a one-year contract in lieu of Habitat's 2019 Contract, and has no intention of subjecting the awardee of such a contract to the procurement process applied to Habitat, including whether or not the

awardee or its “affiliated persons” have violated the Act. Voiding Habitat’s 2019 Contract under the Act, while ignoring the Act with regard to Habitat’s successor (including whether the replacement entity or its affiliated persons had made prohibited contributions to the current governor under whose administration the replacement contract would be awarded), would violate Habitat and Levin’s rights to equal protection of the laws.

90. The violations of Habitat and Levin’s equal protection rights will injure each of them, as previously alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Enter a declaratory judgment holding that on its face, and as applied to Plaintiffs, the Act:
- (1) violates their First Amendment rights to speech and association;
 - (2) violates their Fourteenth Amendment rights to due process of law; and
 - (3) violates their Fourteenth Amendment rights to equal protection of the laws.
- B. Enter a temporary restraining order, and/or a preliminary injunction, and a permanent injunction that (i) enjoins Daley from voiding the 2019 Contract Award, barring IHDA from executing the 2019 Contract, or ordering IHDA to contract with a third party; and (ii) enjoins IHDA from entering into a contract with a third party to manage Lake Shore Plaza.
- C. Award plaintiffs their reasonable attorneys’ fees, costs, and expenses pursuant to 42 U.S.C. § 1988.
- D. Award such other and further relief as this Court may deem just and proper.

Dated: January 18, 2019

Respectfully submitted,

THE HABITAT COMPANY LLC, and
DANIEL E. LEVIN

By: /s/ Edward W. Feldman
One of their lawyers

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VERIFICATION

I declare under penalty of perjury pursuant to 28 U.S.C. Section 1746 that the factual information included in the foregoing VERIFIED COMPLAINT is true to the best of my knowledge, information, and belief.

Dated: January 18, 2019

/s/Matthew Fiascone

Matthew Fiascone