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

BALL, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No.: 15-cv-10441
vs.	)	
	)	Hon. John Z. Lee
	)	
MADIGAN, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION

INTRODUCTION

Plaintiffs Claire Ball and Scott Schulter are Libertarian Party candidates who challenge the constitutionality of Section 9-45 of the Illinois Election Code, 10 ILCS 5/9-45, which bans campaign contributions by medical marijuana cultivators and dispensaries participating in the State's medical cannabis pilot program. This Court should reject plaintiffs' arguments and uphold the statute, which easily satisfies the "relatively complaisant" standard of review applicable to restrictions on campaign contributions.

Plaintiffs do not, and cannot, dispute that Illinois has an important—indeed, compelling—interest in preventing quid pro corruption, or even the *appearance* of such corruption, in its new and untested medical marijuana pilot program, especially because medical marijuana remains illegal under federal law and in many states. And the contribution ban is closely drawn to protecting this interest, as it targets only the entities which pose the greatest risk of corruption—the cultivators and dispensaries competing for a limited number of licenses in this highly regulated and potentially lucrative industry.

BACKGROUND
The Compassionate Use of Medical Cannabis Pilot Program Act

Medical cannabis remains controversial. Under federal law, cannabis is illegal even for medical use, and is designated a Schedule I controlled substance with a "high potential for abuse." 21 U.S.C. § 812. In contrast, a minority of states, including Illinois, have legalized medical cannabis. In 2014, Illinois joined eighteen other states and the District of Columbia in removing state-level criminal penalties from the medical use and cultivation of cannabis. 410 ILCS 130/5(e). The Compassionate Use of Medical Cannabis Pilot Program Act ("Act"), effective January 1, 2014, protects patients in Illinois with "debilitating medical conditions," and their physicians and providers, from arrest, prosecution, and criminal penalties for the medical use of cannabis. 410 ILCS 130/5(g).

Illinois' medical cannabis pilot program, which is set to repeal on July 1, 2020, see 410 ILCS 130/220[1], contains a number of safeguards. To qualify for medical cannabis, a patient must be diagnosed by a licensed physician as having a "debilitating medical condition," 410 ILCS 130/10(t), and physicians are barred from profiting either directly or indirectly from the medical cannabis industry. 410 ILCS 130/35(b). Cultivation centers and dispensing organizations must apply for registration, and their numbers are limited by statute. The Department of Agriculture may register up to 22 cultivation centers, no more than one per each Illinois State Police District boundary. 410 ILCS 130/85. Similarly, the Department of Financial and Professional Regulation may register up to 60 dispensaries, which "shall be geographically dispersed throughout the State." 410 ILCS 130/115.

[1] The sunset date for the medical cannabis pilot program was initially four years after the effective date of the Act. Public Act 99-0519 (SB0010), enacted on June 30, 2016, extended the sunset date to July 1, 2020, among other amendments to the Act.

Pursuant to the Act, prospective cultivators and dispensaries must provide detailed information to the regulating agencies and submit to background checks by the agencies and the Illinois State Police. *Id.*; *see also* 410 ILCS 130/95. The Department of Agriculture evaluates cultivators under a points system which considers a number of selection criteria, including, for example, the suitability of their facilities, their knowledge of Illinois law, and their plans for staffing, security, product safety, research, and substance abuse prevention. 8 Ill. Admin. Code 1000.100. The Department of Financial and Professional Regulation evaluates dispensaries under a similar system. 68 Ill. Admin. Code 1290.70. Registrations for cultivators and dispensaries expire annually, and registrants must apply for renewal. 410 ILCS 130/85(b) (cultivators); 8 Ill. Admin. Code 1000.130 (same); 410 ILCS 130/125 (dispensaries); 68 Ill. Admin. Code 1290.150 (same). These procedures are intended to help ensure that the State licenses "honest businesses" that will not circumvent the Act's limitation to medical purposes. Ill. Gen. Assem., Senate Proceedings, May 17, 2013, at 64 (statements of Sen. Haine) (excerpt attached as Exhibit D).

The Election Code's Concomitant Ban on Campaign Contributions By Medical Cannabis Cultivation Centers and Dispensary Organizations

In addition to the safeguards in the Act, the Illinois General Assembly added a provision to the Election Code, 10 ILCS 5/9-45, which serves to prevent quid pro quo corruption or its appearance in the medical cannabis pilot program. Section 9-45, effective January 1, 2014, prohibits campaign contributions by medical cannabis cultivators and dispensaries. 10 ILCS 5/9-45. Under this provision, it is "unlawful for any medical cannabis cultivation center or medical cannabis dispensary organization or any political action committee created by any medical cannabis cultivation center or dispensary organization to make a campaign contribution to any political committee established to promote the candidacy of a candidate or public official." *Id.*

It is also unlawful for candidates, political committees, or other persons to knowingly accept or receive such contributions. *Id.*

The Risk of Quid Pro Quo Corruption and its Appearance in Illinois' Nascent Medical Marijuana Industry

Section 9-45's ban on campaign contributions reflects reasonable, common sense concerns about the potential for quid pro quo corruption, or at least its appearance, in Illinois' new and untested medical marijuana industry. The news media has reported on concerns from applicants, academics, the public, and even the governor, about the potential for corruption in the medical cannabis pilot program:

- On WTTW's Chicago Tonight, a segment aired on concerns about corruption in the medical marijuana program. *See* http://chicagotonight.wttw.com/2014/11/17/smoke-and-mirrors. ("As the medical marijuana pilot program gets underway in Illinois, some fear the corruption and cronyism the state is known for will dominate who will be granted the first licenses.").

- On NBC Channel 5, another segment on the pilot program aired. The clip includes statements made by the governor about the potential for corruption and a response from Rep. Lou Lang, one of the bill's sponsors, stating that the legislation is intended to prevent corruption. *See* http://www.nbcchicago.com/blogs/ward-room/Rauner-Objects-to-Illinois-Medical-Marijuana-Bill-275386251.html

- The Chicago Tribune reported that the governor expressed concerns during his campaign that the medical marijuana licensing process in Illinois could be "rigged." The Tribune's Editorial Board stated that "[t]his is a new industry in Illinois, one that is supposed to benefit people's health" and that "the best way to serve patients is to award licenses to growers and operators proven to be above reproach." (Editorial Board, *Lift the Smoke Screen on Medical Marijuana Licenses in Illinois*, January 15, 2015 Chicago Tribune) (*available at* http://www.chicagotribune.com/news/opinion/editorials/ct-illinois-pot-rauner-edit-20150114-story.html) (Copy attached as Exhibit A).

- The Illinois Times/BGA reported that "getting in on the ground floor of Illinois' medical marijuana business isn't cheap or easy" and the "rush of big money and power, along with Illinois' sorry track record of tricky deals, has some applicants questioning whether selections will be influenced by cronyism, politicking, and mystery." The article quotes University of Illinois at Chicago professor Dick Simpson as stating that corruption is "a valid concern in the medical marijuana process." (K. Lydersen, *Pot Biz Lights Up: Medical Marijuana Investors Count on Secrecy, Profits, and Expansion*, November 20, 2014 Illinois Times) (*available at* http://illinoistimes.com/article-14717-pot-biz-lights-

up.html) (copy attached as Exhibit B). The Illinois Times and the Better Government Association also reported that "State lawmakers recognized that influence peddling would be a concern so dispensaries and cultivation centers or political action committees formed by them are prohibited from making political donations." *Id.*

- The Huffington Post reported that "[p]olitical favoritism may already by cropping up in Illinois' newly established medical marijuana industry." The article states that "[c]ompetition to become established in Illinois' newly established medical marijuana business is stiff" and "[t]hose wanting a shot at one of the precious few dispensary and growing center slots are already jockeying for position." The author concludes that "it's not hard to imagine opportunities for corruption." (H. Gowins, *State, Insiders Stand to Benefit from Illinois' Medical Marijuana Law*, Huffington Post Blog, June 20, 2014) (*available at* http://www.huffingtonpost.com/hilary-gowins/state-insiders-stand-to-b_b_5515604.html) (copy attached as Exhibit C).

Such concerns should be understood in the context of Illinois' history of corruption. Plaintiffs acknowledge that Illinois has had problems with corruption, noting that "[t]he State has witnessed officeholders embezzling money, judges fixing the outcome of trials, and governors attempting to sell vacated U.S. Senate seats." (Dkt. No. 29-1 at 2). The State passed pay-to-play legislation in 2008, after former Governor Ryan was convicted of racketeering charges "based on his efforts, as Secretary of State, to steer state contracts to friendly firms in exchange for financial support for his gubernatorial campaign." *Wagner v. Fed. Elec. Comm'n*, 793 F.3d 1, 16-17 (D.D.C. 2015). Former Governor Blagojevich was subsequently prosecuted and convicted for "various forms of pay-to-play corruption." *Id.* The Illinois General Assembly has acknowledged that public corruption is a "far reaching, continuing, and extremely profitable criminal enterprise" and that "[p]ublic-corruption related schemes persist" despite the threat of imprisonment. 5 ILCS 283/5.

ARGUMENT

This Court should deny plaintiffs' motion for summary judgement and grant defendants' cross motion for summary judgment. *See* Fed. R. Civ. P. 56(a); *Boss v. Castro*, 816 F.3d 910, 916 (7th Cir. 2016) (summary judgment is appropriate "where there are no genuine issues of

material fact and the moving party is entitled to judgment as a matter of law"). Based on the undisputed facts, the Election Code's ban on campaign contributions by medical marijuana cultivators and dispensaries, 10 ILCS 5/9-45 ("Section 9-45"), satisfies the applicable standard of review, as it is "closely drawn" to promote the State's "sufficiently important" interest in preventing quid pro quo corruption, or the appearance of such corruption, in the medical marijuana pilot program. Section 9-45 should be upheld.

I. SECTION 9-45 IS SUBJECT TO "RELATIVELY COMPLAISANT" REVIEW BECAUSE IT REGULATES CAMPAIGN CONTRIBUTIONS RATHER THAN INDEPENDENT EXPENDITURES.

Section 9-45 is not subject to strict scrutiny; a more deferential standard applies here. Unlike restrictions on independent expenditures, which *are* subject to strict scrutiny, restrictions on campaign contributions are subject to a "more lenient," "less-demanding" standard of review. *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 152 (7th Cir. 2011). Restrictions on contributions are subject to "relatively complaisant review," as the Supreme Court put it, because "contributions lie closer to the edges than to the core of political expression." *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 161 (2003). In contrast to limitations on independent expenditures, limitations on contributions entail "only a marginal restriction upon the contributor's ability to engage in free communication." *Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976). Limitations on contributions involve "little direct restraint" on political speech because they permit the "symbolic expression of support evidenced by a contribution" without "in any way infring[ing] the contributor's freedom to discuss candidates and issues." *Id.* at 21.

Thus, the Supreme Court has held that a contribution limitation (such as Section 9-45) need not be narrowly tailored to serve a compelling governmental interest, but instead should be

upheld if it satisfies the "lesser demand" of being "closely drawn to match a sufficiently important interest." *Beaumont*, 539 U.S. at 162. The principle that contribution limitations are subject to the more deferential "closely drawn" standard of review is well-settled. *See, e.g.*, *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1445 (2014) (finding "no need" to revisit the "distinction between contributions and expenditures and the corollary distinction in the applicable standards of review"). "[D]eference to legislative choice is warranted particularly when Congress regulates campaign contributions, carrying as they do a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption and the misuse of corporate advantages." *Beaumont*, 539 U.S. at 155.

Despite this controlling authority, plaintiffs invite this Court to apply strict scrutiny to Section 9-45, claiming that it creates a "content-based restriction on speech" and "acts as a prior restraint against free speech." (Dkt. No. 29-1 at 5-6) Plaintiffs are wrong on both counts. "A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Buckley*, 424 U.S. at 14. As a contribution ban, Section 9-45 is "content neutral," because it reflects concern "not with the message content, but rather with the corrupting effect that communicating through contributions may have on the recipients of those contributions" *Iowa Right to Life Comm. v. Tooker*, 717 F.3d 576, 602-03 (8th Cir. 2013). Moreover, Section 9-45 does not act as a "prior restraint;" that term refers to a process for prior approval of speech that amounts to content-based censorship, which is not the case here. *See, e.g.*, *Blue Canary Corp. v. City of Milwaukee*, 251 F.3d 1121, 1123 (7th Cir. 2001) ("The prior-restraint issue that the plaintiff attempts to raise is thus a red-herring.").

Plaintiffs are also wrong in claiming that Section 9-45 is suspect and subject to exacting scrutiny because it targets a specific industry, medical marijuana. (Dkt. No. 29-1 at 5-6). For years, courts have upheld limitations or bans on campaign contributions in other highly-regulated industries, such as gambling and liquor. *See Casino Ass'n of La. v. Foster*, 820 So. 2d 494, 509 (La. 2002) (upholding ban on contributions from casinos under the "closely drawn" standard); *Soto v. State of New Jersey*, 565 A.2d 1088, 1098 (N.J. Super. Ct. 1989) (same); *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61, 67 (Ill. 1976) (upholding ban on contributions from liquor licensees). Similarly, courts have upheld restrictions on campaign contributions by specific classes of persons or entities. *See, e.g.*, *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210-211 (corporations and unions); *Wagner v. Fed. Election Comm'n*, 793 F.3d 1, 23 (D. D.C. 2015) (government contractors); *Preston v. Leake*, 660 F.3d 726, 737-38 (4th Cir. 2011) (lobbyists); *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 715-717 (4th Cir. 1999) (same). It is well-established that the legislature need not "strike at all evils at the same time," and "a statute is not invalid under the Constitution because it might have gone farther than it did." *Buckley*, 424 U.S. at 105.

II. SECTION 9-45 EASILY SATISFIES THE APPLICABLE STANDARD OF REVIEW AND SHOULD BE UPHELD.

Section 9-45 easily satisfies the "relatively complaisant" standard of review that applies here. *Beaumont*, 539 U.S. at 162 (restrictions on campaign contributions are subject to "relatively complaisant review" should be upheld if they are "closely drawn" to promoting a "sufficiently important" state interest). First, the State has an interest in preventing quid pro quo corruption—or even the *appearance* of such corruption—in the nascent medical marijuana industry, and this interest qualifies as a both "sufficiently important" *and* "compelling." *Buckley*, 424 U.S. at 26-28 (stating that quid pro quo corruption undermines "the integrity of our system

of democracy"); *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1445 (2014) (stating that the prevention of quid pro quo corruption or its appearance is a "compelling" interest).[2] (Part II-A) Second, Section 9-45, which bans campaign contributions by medial cannabis cultivators and dispensaries, but does not regulate their independent expenditures or otherwise restrict them from supporting or opposing political candidates, is "closely drawn" to promoting this interest. (Part II-B)

A. Illinois has a "sufficiently important" interest in preventing quid pro quo corruption or its appearance in the medical cannabis pilot program.

Plaintiffs do not and cannot dispute that the State's interest in preventing quid pro corruption or its appearance is a "sufficiently important" (indeed, "compelling") one under the Supreme Court's first amendment jurisprudence. They freely admit that it is "proper for Illinois to be concerned about corruption," that the State is "constitutionally empowered to take measures to prevent quid pro corruption," and that "[f]or years, the use of medical marijuana has been criminalized and most sales or transactions have occurred on the black market." (Dkt. No. 29-1 at 3-4). Nevertheless, they argue that the ban on campaign contributions by marijuana cultivators and dispensaries must be struck down on evidentiary grounds. They assert that the State's concerns are merely "theoretical and speculative," since the State did not "assemble a legislative record of serious wrongdoing" and there have been "no known attempts by underground marijuana entities to unduly influence politicians in Illinois." (*Id.* at 4, 9). "There has been no ReeferGate," plaintiffs say. (*Id.* at 4).

Plaintiffs misunderstand—and far overstate—the applicable burden. Although evidence of actual corruption has been presented in some cases, it is wrong to infer that such evidence is

[2] The term quid pro quo corruption "captures the notion of a direct exchange of an official act for money." *McCutcheon*, 134 S. Ct. at 1141. "The hallmark of corruption is the financial quid pro quo: dollars for political favors." *Id.*

required. *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 391-92 (2000) ("While *Buckley's* evidentiary showing exemplifies a sufficient justification for contribution limits, it does not speak to what may be necessary as a minimum."). In *Nixon*, the plaintiffs challenged a Missouri statute imposing limits on campaign contributions. *Id.* at 382. Missouri did not preserve legislative history, and presented no legislative record in support of the ban. *Id.* at 393. As its "only evidence," Missouri offered an affidavit making the (obvious) point that large contributions have "the real potential to buy votes." *Id.* at 384-85, 393. The Eight Circuit struck down the law, "tak[ing] the State to task" for failing to justify its interest in preventing corruption with "empirical evidence of actually corrupt practices or of a perception among Missouri voters that unrestricted contributions must have been exerting a covertly corrosive influence." *Id.* at 390-91. But the Supreme Court reversed, holding that the evidentiary issue did not even "present a close call." *Id.* at 392.

The Court explained that "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgements will vary up or down with the novelty and plausibility of the justification raised." *Id.* at 391 (emphasis added). "Mere conjecture" may be inadequate, in the sense that "the threat of corruption cannot be illusory," *id.* at 392; *Ognibene v. Parkes*, 671 F.3d 174, 188 (2d Cir. 2011), citing *Buckley*, 424 U.S. at 27, but the courts will not second-guess reasonable concerns about corruption. Thus, the plaintiffs in *Nixon* invoked "academic studies said to indicate that large contributions to public officials or candidates do not actually result in changes in candidates' positions," but it made no difference, because the Court, relying on common sense, found "little reason to doubt that sometimes large contributions will work actual corruption of our political system" and "no reason to question the existence of a corresponding suspicion among voters." 528 U.S. at 394-95.

In this case, the State's concerns about the potential for quid pro quo corruption in the medical cannabis pilot program are neither novel nor implausible, nor are they "illusory." To the contrary, the risks are manifest, and not only because Illinois has a long history of corruption scandals and "pay to play" politics. Medical marijuana is still illegal under federal law, and until recently, medical marijuana was an "underground market" in Illinois, with most transactions occurring "on the black market." (Dkt. No. 29-1 at 4, 14). The industry is new, untested, and closely-regulated. The legislation is an experimental[3] foray into the effectiveness and propriety of such a program. This is reflected in the legislative history of the pilot program, as well as inherently within its automatic sunset provision. *See, e.g.*, 98th Ill. Gen. Assem., House Proceedings, Apr. 17, 2013, at 113 (statements of Rep. Lang) ("And this will give us time to make sure if there are changes we can make those changes, if there's something we left out or something we need to adjust, and we can do it along the way as well.") (excerpt attached as Exhibit E); *see also* 98th Ill. Gen. Assem., Senate Proceedings, May 17, 2013, at 71 (statements of Sen. Haine) ("That's why it's a pilot program. We're going to see how this thing works.") (excerpt attached as Exhibit D); *see also* 410 ILCS 130/220 (sunset provision). The limitation on campaign contributions acts as a significantly important and appropriate "control" on that experiment by prophylactically limiting the influence that campaign contributions may have, or appear to have, upon the pilot program. In other words, the provision helps to ensure that the pilot program, or the question of its renewal, is and is seen to be fairly assessed on the merits.

Furthermore, the numbers of cultivation centers and dispensing organizations are limited by statute (again, no more than 22 cultivators and 60 dispensaries may be registered), effectively

[3] In line with the constitutional theory that our states act as "laboratories" when fashioning policy. *E.g.*, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S. Ct. 371, 386, 76 L. Ed. 747 (1932) (Brandeis, J., dissenting) ("There must be power in the states and the nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs.").

granting geographic monopolies to licensees in the developing and potentially lucrative medical cannabis market. *See* 410 ILCS 130/85; 410 ILCS 130/115. The applicants for registration are awarded pursuant to a comprehensive but inherently discretionary points system. The potential for corruption is obvious—and the State's interest in preventing it is especially strong, because corruption in the medical marijuana industry could impact the public's health and safety.[4]

But there is more. On top of preventing actual corruption, the State also has a separate "sufficiently important" interest in preventing the *appearance* of corruption in the medical cannabis pilot program. *See Ognibene*, 671 F. 3d at 186 ("This interest [in eliminating the appearance of corruption] exists even where there is no actual corruption, because the perception of corruption, or of opportunities for corruption, threatens the public's faith in democracy."). The appearance of corruption is "[o]f almost equal concern as the danger of actual quid pro quo arrangements," *Buckley*, 427 U.S. at 27, and presents a separate ground, which plaintiffs all but ignore, for upholding Section 9-45's campaign contribution ban.

Indeed, news and media outlets have reported widely on concerns about the potential for corruption in the State's new and potentially lucrative medical cannabis industry. Newspaper articles, including from the Chicago Tribune, and links to video clips of segments on WTTW's Chicago Tonight and NBC Channel 5 are provided in the background section above. The existence of these articles and news reports confirms that concerns about the appearance of corruption in the medical cannabis pilot program are legitimate. *See Nixon*, 528 U.S. at 393-394 (pointing to the existence of "newspaper accounts of large contributions supporting inferences of impropriety" in upholding limitations on campaign contributions).

[4] Contrary to plaintiffs' suggestion (Dkt. No. 29-1 at 9), defendants do not argue that protecting health and safety, by itself, has been recognized by the courts as an interest sufficiently important to uphold a ban on campaign contributions. However, the State's interest in preventing quid pro quo corruption—which indisputably *has* been recognized as such an interest—is bolstered where, as here, corruption could impact the public's health and safety.

In sum, Section 9-45 is a valid prophylactic measure for preventing corruption or its appearance in the new medical marijuana industry. The State need not wait until a problem arises. *See Ognibene*, 671 F.3d at 188 ("Appellants essentially propose giving every corruptor at least one chance to corrupt before anything can be done, but this dog is not entitled to a bite."). "[R]estrictions on direct contributions are preventative, because few if any contributions to candidates will involve quid pro quo arrangements." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 357 (2010). Courts should not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210 (1982); *see also Ognibene*, 671 F.3d at 188 (2d Cir. 2011) ("There is no reason to require the legislature to experience the very problem it fears before taking appropriate prophylactic measures.").

B. Section 9-45's ban on campaign contributions by medical cannabis cultivators and dispensaries has only a marginal impact on speech and is "closely drawn" to promoting the State's interest in preventing quid pro quo corruption or its appearance.

The campaign contribution ban in Section 9-45 is "closely drawn" to promoting the State's strong interest in preventing quid pro quo corruption or its appearance in the medical cannabis pilot program. In this context, the law requires "a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served…that employs not necessarily the least restrictive means but…a means narrowly tailored to achieve the desired objective." *McCutcheon*, 134 S. Ct. at 1456-57. Section 9-45 fits the bill. It applies only to marijuana cultivators and dispensaries, which are limited in number and which pose the greatest risk of corruption, because they reap profits from the industry and require State licensure to operate. Further, it only bans contributions, and does

not infringe on the "freedom to discuss candidates and issues." *Id.* at 1444, quoting *Buckley*, 424 U.S. at 21.

Similarly focused limitations or bans on contributions, targeting licensees in controversial and highly-regulated industries, have repeatedly been upheld. In *Schiller Park Colonial Inn, Inc. v. Berz*, the Illinois Supreme Court upheld the State's limitation on campaign contributions from liquor licensees. 349 N.E. 2d 61, 67 (Ill. 1976). Likewise, in *Casino Association of Louisiana v. Foster*, the Louisiana Supreme Court upheld an outright ban on campaign contributions from riverboat and land-based casino interests.[5] 820 So. 2d 494, 509 (La. 2002); *see also Soto v. State of New Jersey*, 565 A.2d 1088, 1098-1099 (N.J. Super. Ct. 1989) (upholding blanket prohibition on political contributions by casino employees).

The Louisiana Supreme Court's reasoning in *Casino Association* applies here too. In *Casino Association*, the Court noted that "[h]istorically, gambling has been recognized as a vice activity which poses a threat to public health and public morals," *id.* at 504. Similar concerns arise here—medical cannabis has only recently been legalized in Illinois, and only as part of a stringent regulatory scheme. The *Casino Association* court also found it "significant" that Louisiana limited the number of casinos and riverboats, *id.* at 509. This again mirrors the case at bar; as noted above, Illinois' pilot program limits the numbers of medical cannabis cultivators and dispensaries. Louisiana also did not restrict independent expenditures or otherwise restrict casinos' ability to "engage in free independent expression," *id.*—again, the same is true in this case. As *Casino Association* accordingly found, Louisiana's contribution ban was "closely drawn" to the State's interest in preventing corruption and its appearance. *Id.* at 509. Illinois' contribution ban is closely drawn for the same reasons.

[5] The ban applied not only to licensees, but also those with a greater than 10% ownership interest in a licensee; officers, directors, trustees, partners, senior management and key employees of licensees; and the spouses of such persons. *Id.* at 496-97.

The D.C. Circuit's recent decision in *Wagner v. Federal Election Commission* also confirms that Section 9-45 is "closely drawn." *See* 793 F.3d 1 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 895 (2016). In *Wagner*, the Court upheld a flat prohibition on contributions to candidates and political parties by government contractors. *Id.* at 22-24. The Court made three key observations, all of which apply equally to this case. First, "[u]nlike the corruption risk when a contribution is made by a member of the general public, in the case of contracting there is a very specific quo for which the contribution may serve as the quid: the grant or retention of the contract." *Id.* at 22. Second, "because of that sharped focus, the appearance problem is also greater: a contribution made while negotiating or performing a contract looks like a quid pro quo, whether or not it truly is." *Id.* Third, "the contracting context also sharpens the risk of interference with merit-based public administration." *Id.*

This reasoning applies not only to government contracts, but also to licenses that are granted by the State pursuant to a merit-based system and subject to renewal, further confirming that Section 9-45 is "closely drawn" to promoting Illinois' interest in preventing quid pro quo corruption or its appearance in the medical cannabis program. *See also Yamada v. Snipes*, 786 F.3d 1182, 1205-1206 (9th Cir. 2015) (finding Hawaii's government contractor contribution ban "closely drawn because it targets direct contributions from contractors to officeholders and candidates, the contributions most closely linked to actual and perceived quid pro quo corruption"); *Preston*, 660 F.3d at 737 ("We also conclude that in aiming the [contribution] ban at only lobbyists, who, experience has taught, are especially susceptible to political corruption, North Carolina closely drew its enactment to serve the state interests it identified.").

In arguing that Section 9-45 is not "closely drawn," plaintiffs rely entirely on *Randall v. Sorrell*, but that case is inapposite because it addressed contribution limits applying to all

citizens. (Dkt. No. 29-1 at 10-14). In *Randall*, the Supreme Court struck down a Vermont campaign finance statute that applied broadly to individuals, organizations, and political parties, and established contribution limits that were "the lowest in the Nation." 548 U.S. 230, 250 (2006). The concern was that the limits could "harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Id.* at 248-249.

Needless to say, Section 9-45's narrow contribution ban, limited to medical marijuana cultivators and dispensaries, is nothing like Vermont's failed campaign finance law. Plaintiffs' reliance on *Randall* is improper, and *Green Party of Connecticut v. Garfield*, 616 F.3d 189, 201 (2d Cir. 2010), confirms as much. There, the Second Circuit faulted the district court for relying on *Randall*'s multifactor test in a case challenging a ban on campaign contributions by state contractors, lobbyists, and their families:

> On only one occasion has the Supreme Court held that a contribution limit was not closely drawn to the government's interests. In *Randall v. Sorrell*, the Supreme Court applied a multifactor test and struck down a Vermont law that limited the amount of money that any single individual could contribute to a campaign for state office. . . . The District Court relied extensively on *Randall*'s multifactor test in determining whether the CFRA's contribution bans were "closely drawn" to the asserted government interests. **We disagree with that approach.** *Randall* addressed *general* contribution limits that applied to *all* citizens. Thus *Randall*'s multifactor test was concerned primarily with the effect the contribution limits would have on the electoral system as a whole.

Id. at 201 (boldfaced underlining added). The Court added that contributions by contractors and lobbyists typically amounted to only a "small fraction of the total amount of money given as campaign contributions in Connecticut." *Id.*

Though *Randall* is inapposite and plaintiffs' reliance on it is misplaced, two of their points merit comment. First, plaintiffs' suggestion that Section 9-45 compromises their ability to "amass[] the resources necessary for effective advocacy" (Dkt. No. 29-1 at 10-11) is unsupported

speculation. The total amount of contributions that plaintiffs have received for their campaigns may be small (at least as of the time they filed their complaint—plaintiffs do not disclose the amount of contributions received since then), but plaintiffs can only speculate that their situation would be any different absent Section 9-45. Indeed, in their interrogatory responses, plaintiffs admit that not a *single* medical marijuana cultivator or dispensary has expressed an interest in contributing to their campaigns. (Ex. F at ¶¶ 9-10).[6] In any event, plaintiffs cannot plausibly claim that the focused contribution ban in Section 9-45 has a significant effect "on the electoral system as a whole." *Garfield*, 616 F.3d at 201.

Second, plaintiffs are incorrect in arguing that Section 9-45 bans medical marijuana groups from contributing to political parties. (Dkt. No. 29-1 at 11). The Election Code does define "political committee" to include both a "candidate political committee" and a "political party committee." 10 ILCS 5/9-1.8(a). However, Section 9-45 does not ban contributions to political committees generally, but instead prohibits contributions to "any political committee *established to promote the candidacy of a candidate or public official*." 10 ILCS 5/9-45 (emphasis added).

In conclusion, Section 9-45 easily passes the "closely drawn" test. Section 9-45 is a focused and narrow ban on campaign contributions from a limited number of licensees in a controversial, highly-regulated, and newly legalized industry in Illinois. Section 9-45 does not limit independent expenditures, and medical marijuana cultivators and dispensaries remain free to advocate in support of or opposition to candidates for office. The State's interest in

[6] Plaintiff Scott Schulter, who had received just $172.22 in campaign contributions by the time he filed his complaint, speculates that if he received "just one contribution of $10,800 from a medical cannabis organization, he would enjoy 62 times his ability to engage in political advocacy." (Dkt. No. 29-1 at 11); *see also* Dkt. 29-2, p. 3, ¶ 12. Wishful thinking aside, his hypothetical only bolsters the State's concerns about the appearance of corruption in the medical cannabis pilot program. If Mr. Schulter received such a contribution, then more than 98% of his contributions would come from the medical marijuana industry.

preventing quid pro quo corruption or its appearance in the nascent medical marijuana industry is strong, especially in light of health and safety concerns, and Section 9-45 is closely drawn to promoting that interest.

III. THE CLAIMS AGAINST THE ILLINOIS ATTORNEY GENERAL FAIL AND SHOULD BE DISMISED.

Finally, it is axiomatic that, in order to present a cognizable claim against a purported Defendant, Plaintiffs must demonstrate an actual case or controversy between the plaintiff and the defendant. *G & S Holdings LLC v. Cont'l Cas. Co.*, 697 F.3d 534, 540 (7th Cir. 2012). In order to do so, the plaintiff must demonstrate that there is a "'fairly traceable'" injury to "'the defendants' allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Id.* However, with respect to the Illinois Attorney General, Plaintiffs have not established a traceable injury or that the relief sought would provide them with any redress.

Plaintiffs claim that the Attorney General has "authority to prosecute violations of 10 ILCS 5/9-45 [the statute in question] pursuant to 10 ILCS 5/9-25.2." Dkt. 29-2, p. 2, ¶ 2 (56.2 Statement of Undisputed Facts); *see also* Dkt. 24, p. 4, ¶ 12 (Amended Complaint). However, by its very terms, 10 ILCS 5/9–25.2 provides an enforcement mechanism for a candidate's receipt of contributions that would violate two specific statutes, specifically: 720 ILCS 5/33-3.1 and 720 ILCS 5/33-3.2. *Id.* These two statues generally prohibit certain governmental employees receiving or soliciting contributions from those individuals or entities over which they have regulatory authority. *See* 720 ILCS 5/33-3.1(a) (applying to "employee(s) of an executive branch constitutional officer" of the State); 720 ILCS 5/33-3.2(a) (applying to "employee(s) of a chief executive officer of a local government").

Plaintiffs do not claim any injury under 720 ILCS 5/33-3.1(a) or 5/33-3.2(a), which form the basis of the Attorney General's prosecutorial authority under 10 ILCS 5/9-25.2. Nor do

Plaintiffs seek to invalidate 720 ILCS 5/33-3.1(a), 5/33-3.2(a), or 10 ILCS 5/9-25.2. Indeed, even if Plaintiffs were to succeed on the merits with respect to 10 ILCS 5/9-45, no change would come to the Attorney General's prosecutorial authority under 10 ILCS 5/9-25.2. In short, Plaintiffs have not demonstrated a "fairly traceable" injury with respect to the Attorney General, nor have they demonstrated the ability to obtain redress. Plaintiffs accordingly fail to establish cognizable standing to pursue their cause of action against the Attorney General.

CONCLUSION

"[N]o one knows whether medical marijuana will be a lasing success or failure for Illinois." (Dkt. No. 29-1 at 14). To ensure that Illinois' program succeeds, Section 9-45 should be upheld. Illinois' ban on campaign contributions by medical marijuana cultivators and dispensaries has little impact on their speech, while at the same time advancing the State's "sufficiently important," and even "compelling," interest in preventing quid pro quo corruption and its appearance in the new, untested, closely-regulated, and potentially lucrative medical cannabis industry. This Court should deny plaintiffs' motion for summary judgment and grant defendants' cross-motion for summary judgment.

Respectfully submitted,

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