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' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs' response is replete with rhetoric, hyperbole, and misdirection. Citing inapposite cases involving a ban against teaching evolution, imprisonment for wearing a jacket protesting the Vietnam War and the draft, and a conviction for participating in a meeting of the Communist Party, plaintiffs accuse Illinois of attempting to "stifle new ideas, speakers, and industries." (Dkt. No. 34 at 2-3) They claim that the State's ban on campaign contributions by medical marijuana cultivators and dispensaries, 10 ILCS 5/9-45, is a "speaker-based ban" that derives from purported "[t]repidation over new ideas conjured up by thought-agitators and disruptive social agents," and they call it "another instance of government removing politically unpopular speakers from the marketplace of ideas." (*Id.* at 12-14) In reality, Section 5/9-45 is none of those things. Section 5/9-45 does not preclude anyone from advocating for (or against) medical marijuana, nor does it preclude anyone from expressing support for plaintiffs' campaigns or making independent expenditures.

Although plaintiffs accuse Illinois of having "anxiety over medical marijuana" (*id.* at 14), the State has *legalized* medical marijuana, at least for the duration of the pilot program—something that at least 25 other states have not yet done. Section 5/9-45's concomitant restriction on campaign contributions, one component of a comprehensive regulatory framework, does not suppress speech, but instead promotes the State's "sufficiently important"—indeed, "compelling"—interest in preventing quid pro quo corruption or its appearance in the nascent medical marijuana industry. Consistent with the many cases upholding restrictions on campaign contributions under a "relatively complaisant" standard of review, this Court should uphold Section 5/9-45, grant defendants' motion for summary judgment, and deny plaintiffs' cross motion for summary judgment.

ARGUMENT

I. PLAINTIFFS MISCHARACTERIZE THE IMPACT OF SECTION 9-45 AND MISSTATE THE APPLICABLE STANDARD OF REVIEW.

Plaintiffs' attempt to characterize Section 5/9-45 as a ban on speech intended to prevent "thought-agitators" and "disruptive social agents" from supporting medical marijuana in Illinois falls flat. The Supreme Court has repeatedly upheld restrictions on campaign contributions, noting that they entail "only a marginal restriction upon the contributor's ability to engage in free communication" and do not "in any way infringe the contributor's freedom to discuss candidates and issues." *Buckley v. Valeo*, 424 U.S. 1 at 20-21 (1976). The Supreme Court "said, in effect, that limiting contributions left communication significantly unimpaired." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 387 (2000).

Here, Section 5/9-45's restriction on campaign contributions does not prohibit medical marijuana cultivators or dispensaries, or plaintiffs, from engaging in any type of "pure speech." *Schiller Park Colonial Inn, Inc. v. Bertz*, 349 N.E.2d 61, 66 (Ill. 1976). Nothing in Section 5/9-

45 forecloses plaintiffs from speaking about medical marijuana or any other issue they wish to speak about. And nothing in Section 5/9-45 forecloses cultivators or dispensaries from expressing their support for plaintiffs and their campaigns, or for medical marijuana more generally. Section 5/9-45 does not preclude cultivators and dispensaries from contributing to political parties (Dkt. No. 33-1 at 17), nor does it regulate independent expenditures by cultivators, dispensaries, or anyone else.

As established in defendants' brief, Section 5/9-45 is not subject to strict scrutiny, but rather to "relatively complaisant review." (Dkt. No. 33-1 at 6-7) Campaign contributions do not "communicate the underlying basis for the support." *Buckley*, 424 U.S. at 1. Thus, Section 9-45, as a contribution ban, 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 recipients of those contributions." (*Id.*, citing *Iowa Right to Life Comm. v. Tooker*, 717 F.3d 576, 602-03 (8th Cir. 2013))

Aside from several cases which have nothing to do with campaign finance, plaintiffs cite *Citizens United v. Federal Election Commission* in arguing that strict scrutiny should apply here. (Dkt. No. 34 at 13) But unlike this case, *Citizens United* involved a restriction on independent expenditures, one which made it a felony for corporations to "either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications" prior to elections. 558 U.S. 310, 337-340. *Citizens United*, unlike this case, involved a "ban on speech." *Id.* at 339. It is well-settled that restrictions on independent expenditures are subject to more demanding scrutiny than restrictions on campaign contributions. (Dkt. No. 33-1 at 6-7, citing *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1445 (2014))

At bottom, plaintiffs seem to argue that Section 9-45's restriction on campaign contributions must be subject to strict scrutiny because it focuses on one particular industry, medical marijuana. (Dkt. No. 34 at 13) But again, courts have upheld, under a less demanding standard of review, campaign contribution limitations or bans in other highly-regulated industries, such as gambling and liquor. (Dkt. No. 33-1 at 8) And courts have also upheld, under a less demanding standard of review, contribution limitations or bans focused on specific classes of persons or entities, such as corporations, unions, government contractors, and lobbyists. (*Id.*) Restrictions on campaign contributions need not apply "across-the-board" to every person or corporation to be valid; more targeted restrictions have been repeatedly upheld by the courts and may be perfectly appropriate.

Plaintiffs emphasize that "Uber, the coal industry, and tobacco" are not subject to campaign contribution restrictions in Illinois. (Dkt. No. 34 at 13) But these industries are not comparable (or "similarly situated," as plaintiffs say) to medical marijuana in Illinois. Until just 2.5 years ago, medical marijuana was *criminalized* in Illinois, and it remains illegal in at least twenty-five states. (Dkt. No. 34 at 2) Medical marijuana also remains illegal under federal law, which designates it a Schedule I controlled substance with a "high potential for abuse" (Dkt. No. 33-1 at 2). Not only is there an unusual risk of quid pro quo corruption or its appearance—the medical marijuana industry in Illinois is new, untested, and highly-regulated, and prospective cultivators and dispensaries must compete for a limited number of potentially lucrative licenses awarded by state agencies applying a points system—but the State's interested in preventing such corruption is especially compelling, because corruption in this nascent industry could significantly impact public health and safety. (*Id.* at 12 n.4) Medical marijuana raises unique concerns not present at all—or at least, to the same degree—for "Uber, the coal industry, and

tobacco," and in any event, the legislature need not "strike at all evils at the same time." *Buckley*, 424 U.S. at 105 ("a statute is not invalid under the Constitution because it might have gone farther than it did").

II. PLAINTIFFS INCORRECTLY ACCUSE DEFENDANTS OF RELYING ON INADMISSIBLE HEARSAY WHEN THEY ARE THE ONES THAT HAVE DONE SO.

Plaintiffs do not dispute that the State has a "sufficiently important" interest in preventing even the *appearance* of corruption in the medical cannabis pilot program. (Dkt. No. 33-1 at 12) They argue, however, that the newspaper articles defendants attached to their opening brief, all of which confirm that concerns about the appearance of corruption are legitimate here, are inadmissible hearsay. (Dkt. No. 34 at 3)

Plaintiffs are mistaken. The articles are not hearsay because they are not offered for their truth. *See* Fed. R. Evid. 801. Instead, the existence of the articles shows a public *perception* of corruption. In other cases involving First Amendment challenges to restrictions on campaign contributions or expenditures, courts have held that news articles offered for this non-hearsay purpose are admissible. *See, e.g.*, *Mariani v. United States*, 80 F. Supp. 2d 352, 362 (M.D. Pa. 1999) ("Objections to findings of fact that cite newspaper and magazine articles…have been overruled to the extent that these articles have not been offered for the truth of the matter asserted, but instead to demonstrate the appearance of corruption created by soft money contributions."), citing *Democratic Party v. Nat'l Conservative Political Action Comm.*, 578 F. Supp. 797, 829 (E.D. Pa. 1983), aff'd in part, rev'd in part, 470 U.S. 480 (1985) ("The hearsay evidence rule does not bar, however, the admissibility of these and other authenticated news reports when used to show public perceptions of corruption, rather than corruption in fact."). Indeed, in *Nixon*, the Supreme Court explicitly endorsed the district judge's reliance on

newspaper articles in upholding Missouri's campaign contribution limitations. 528 U.S. 377, 393 ("The District Court cited newspaper accounts of large contributions supporting inferences of impropriety.").

Plaintiffs, not defendants, are the ones who rely on inadmissible hearsay. In fact, plaintiffs' motion for summary judgment and their response brief both reference comments by the medical cannabis bill's lead sponsor, Representative Lou Lang, regarding the purported purpose of the campaign contribution ban. (Dkt. No. 29-1 at 13, Dkt. No. 34 at 4) Plaintiffs offer these comments for their truth; as such, they are rank hearsay. Nor are they subject to any exception. The statements of individual legislators are *not* party admissions by the state. *Bennett v. Yoshina*, 98 F. Supp. 2d 1139, 1154 (D. Haw. 2000) (holding that a magistrate judge abused his discretion in considering hearsay statements by individual legislators). Representative Lang's comments are inadmissible hearsay which should be stricken from plaintiffs' briefs and disregarded.

III. PLAINTIFFS IGNORE THE STATE'S INTEREST IN PREVENTING THE "APPEARANCE" OF CORRUPTION AND OVERSTATE DEFENDANTS' EVIDENTIARY BURDEN.

Apart from their misguided hearsay argument, plaintiffs say little in response to the State's concern, validated by admissible evidence, about the appearance of quid pro quo corruption in the medical marijuana pilot program. Plaintiffs do not dispute that the appearance of corruption is "[o]f almost equal concern" as the danger of corruption itself. *Buckley*, 424 U.S. at 27; *see also Nixon*, 528 U.S. at 390 ("Democracy works 'only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption."). They seem to acknowledge that concerns about corruption exist here, but argue that such concerns are the

State's fault. (Dkt. No. 34 at 4 (claiming that any perception of corruption is "an appearance that the state itself manufactured"), *id.* at 5 (implying that the State created a "regulatory scheme that arouses some public suspicion")) Plaintiffs say that Illinois "set an artificially low number" of cultivation centers and dispensaries and could have awarded licenses "in a less suspect manner, for example, a public lottery—like Arizona did." (*Id.* at 4)[1]

Plaintiffs' attempts to second guess the Illinois legislature's regulatory scheme are improper and unpersuasive. The medical cannabis pilot program limits the numbers of cultivators and dispensaries for a reason: "This provides for 22 growers and the reason we picked 22 is one for each State Police district, so that we don't overburden the State police with inspections. And it provides a maximum of 60 dispensaries to be scattered around the State of Illinois by some rules that the department would put together to make sure that everyone in Illinois who needs this product has access to it." 98th Ill. Gen. Assem., House Proceedings, April 17, 2013 at 46. Likewise, the reasons why the legislature would prefer a merit-based points system for evaluating and awarding licenses to prospective cultivators and dispensaries to Arizona's "lottery" system are obvious—with respect to a controlled substance with a "high potential for abuse," there are good reasons for ensuring that licenses are awarded only to the most qualified applicants. *Id.* ("We took the mistakes that other states made and fixed those mistakes."). That the medical marijuana pilot program is "controlled" and "highly regulated," *id.*, cannot somehow be turned against the State as a basis for invaliding Section 5/9-45's ban on campaign contributions.

[1] Plaintiffs also claim that Illinois "could have made the names of applicants for dispensary or cultivation licenses public." (*Id.* at 4) This argument regarding enhanced disclosures is addressed in Part IV below. In *Buckley*, the Supreme Court rejected an argument that a contribution ban was improper because Congress could have adopted disclosure requirements instead. 424 U.S. at 28.

Plaintiffs' more general argument that the State has not met its evidentiary burden also fails. (Dkt. No. 34 at 3-8) The evidence that defendants presented of an appearance of corruption in the medical marijuana program suffices, by itself, to support the restriction on campaign contributions. (Dkt. No. 33-1 at 12-13) Further, the potential for actual corruption is obvious here. Plaintiffs do not dispute that Illinois has a long history of corruption, including pay-to-play scandals. (Dkt. No. 33-1 at 5) Nor do they dispute that there are risks of corruption in the medical marijuana program, which is new, untested, and highly-regulated, and permits a limited number of licenses (for good reason) to awarded pursuant to a points system administered by state officials (again, for good reason). In their initial brief, plaintiffs noted that there has been no "ReeferGate." Now they say that "[u]nlike the era of alcohol prohibition, there has been no documentation of a Mary Jane Capone operating in Chicago." (Dkt. No. 34 at 8) But as the case law confirms, the State need not wait until a problem arises; Section 5/9-45 is a valid prophylactic measure for preventing corruption or its appearance in the new medical marijuana industry. (Dkt. No. 33-1 at 13)

The Supreme Court's decision in *Nixon*, discussed in detail in defendants' opening brief, confirms that plaintiffs far overstate the applicable evidentiary burden. (Dkt. No. 33-1 at 9-10) Plaintiffs try to distinguish *Nixon* by noting that it involved across-the-board limits on contributions rather than the more targeted type of ban at issue here. (Dkt. No. 34 at 3-4) But this is a distinction without a difference. If anything, the more focused ban at issue here should be subject to an even more lenient standard of review, because there is a lesser chance that it could "have any dramatic adverse effect on the funding of campaigns and political associations." *Buckley*, 424 U.S. at 21-22.

In arguing for stricter scrutiny, plaintiffs quote *Nixon*'s statement that "[t]he quantum of empirical evidence needed to justify heighted judicial scrutiny will vary with the *novelty* and plausibility of the justification raised." (Dkt. No. 34 at 3, citing *Nixon*, 528 U.S. at 391 (emphasis added)) But this principle actually supports defendants' position. The State's justification for Section 5/9-45 is that it combats quid pro quo corruption and its appearance, and there is "no serious question about the legitimacy" of this interest. *Nixon*, 528 U.S. at 390. The issue is not the novelty of the ban, as plaintiffs suggest (Dkt. No. 34 at 3-4), but rather the novelty of the justification. Because the State's justification is *not at all novel*, the evidentiary burden is correspondingly lower.

Even apart from *Nixon*, which is on-point and controlling Supreme Court precedent, plaintiffs are wrong in claiming that "existing case law" does not support the contribution ban at issue here. (Dkt. No. 34 at 6-8) In *Berz*, the Illinois Supreme Court upheld a ban on campaign contributions by liquor licensees without requiring extensive evidence of corruption in the liquor industry; instead, the court noted that "the business of selling intoxicating liquor is attended with danger to the community." 349 N.E.2d at 65. Similar concerns apply here: again, under federal law, medical marijuana is an illegal controlled substance with a "high potential for abuse." (Dkt. No. 33-1 at 2) Likewise, in *Foster*, the Louisiana Supreme Court, in upholding a ban on campaign contributions by casinos, found it important that "gambling has been recognized as a vice activity which poses a threat to public health and morals." 820 So. 2d at 504. Plaintiffs admit that "[f]or years, the use of medical marijuana has been criminalized and most sales have occurred on the black market." (Dkt. No. 29-1 at 3-4) Cases like *Berz* and *Foster* support defendants' position, not plaintiffs'.

IV. PLAINTIFFS REHASH ROTUINE ARGUMENTS ABOUT REGULATORY "ALTERNATIVES" THAT COURTS HAVE REPEATEDTLY REJECTED.

Plaintiffs next argue that Section 9-45 is unconstitutional because the State could have advanced its undisputed interest in preventing corruption or its appearance in other, less restrictive ways. (Dkt. No. 34 at 9-10) But the "closely drawn" test requires only a "reasonable" fit; the State is not required to employ the "least restrictive means" of achieving its objectives. (Dkt. No. 33-1 at 13, citing *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1456-57 (2014)) In cases involving challenges to restrictions on campaign contributions, "deference to legislative choice is warranted," *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 155 (2003), and courts have repeatedly upheld restrictions on campaign contributions notwithstanding "alternatives" of the sort that plaintiffs propose here.

First, plaintiffs argue that a limit on campaign contributions instead of a ban "would be better tailored to any interest in preventing corruption." (Dkt. No. 34 at 9) But plaintiffs ignore the State's interest in preventing the *appearance* of corruption, which is especially strong here, given that Illinois has a long history of corruption, including pay-to-play scandals, and cultivators and dispensaries must compete for a limited number of state-granted licenses in a new, highly-regulated, and potentially lucrative industry.

Where, as here, there are legitimate concerns about the public's perception of corruption, courts have repeatedly upheld complete bans on campaign contributions. *See, e.g.*, *Wagner v. Fed. Election Comm'n*, 793 F.3d 1, 22-23 (D.C. Cir. 2015) (upholding complete ban on contributions by government contractors); *Preston v. Leake*, 660 F.3d 726, 737 (4th Cir. 2011) (upholding complete ban on contributions by lobbyists); *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 716 (4th Cir. 1999) (same); *see also Casino Ass'n of La. v. Foster*, 820 So.2d 494, 503-04 (La. 2002) (upholding complete ban on contributions by casinos and

collecting cases upholding complete bans); *Schiller Park Colonial Inn, Inc. v. Bertz*, 349 N.E.2d 61, 66 (upholding complete ban on contributions by liquor licenses and expressing concerns that a licensee could circumvent a law proscribing only large contributions by aggregating many small contributions).

Bans on campaign contributions are subject to the same "relatively complaisant" standard of review (Dkt. No. 33-1 at 6) that applies to limitations on contributions, *Beaumont*, 539 U.S. at 161, and Section 9-45 easily satisfies this standard. (Dkt. No. 33-1 at 8-17) In arguing otherwise, plaintiffs cite only to *DePaul v. Commonwealth of Pennsylvania*, 969 A.2d 536 (Pa. 2009), but that case is easily distinguishable. In *DePaul*, the court struck down a complete ban on campaign contributions by certain individuals associated with gaming, but only because the state legislature specifically stated that its purpose was "to prevent actual or appearance of corruption that may result from *large campaign contributions*." *Id.* at 598-99 (emphasis added) ("Ultimately, what matters most for purposes of the constitutional challenge forwarded here is the specifics of the Pennsylvania legislation."). Given the contradiction between this clear statement of legislative intent and the actual operation of the statute, the court could not find the statute narrowly tailored. *Id.* at 600 ("Banning all contributions is not a narrowly drawn means of furthering a policy of negating the corrupting effect and appearance of large contributions."). Section 9-45 does not have the same issue; *DePaul* is inapposite.

Second, plaintiffs claim that Section 9-45 is too broad because it restricts contributions to candidates for "*any and all* offices." (Dkt. No. 34 at 9) (emphasis in original) Again, plaintiffs advance an argument that the courts have rejected. In *Berz*, the Illinois Supreme Court upheld a ban on contributions by liquor licensees to all officeholders, rejecting an argument that the ban was overbroad because it was not limited to candidates "whose potential duties have some

relation to the regulation of liquor." 349 N.E.2d at 67. As the court observed, "[t]he nature of our political system and past history suggests that political officials or public officers may wield powers or possess beyond the powers and influence inherent in their official duties." *Id.*; *see also Soto v. State of N.J.*, 565 A.2d 1088, 1100 (N.J. Super. Ct. 1989) ("Nor do we find the statute overbroad because it prohibits contributions to any political candidate or committee within the State regardless of whether the particular office or committee has anything to do with casino regulation.").

Third, plaintiffs claim that Illinois could "impose any variety of screening programs to protect against corruption." (Dkt. No. 34 at 10) But the legislature could have reasonably concluded that the alternatives plaintiffs propose, such as "cross-check[ing] the business interests of licenses for suspicious dealings," "check[ing] for conflicts of interest," or "empoy[ing] a third party accountability audit" are not sufficient to prevent quid pro corruption. Plus, none of these measures would do much for reducing the appearance of corruption caused by campaign contributions by medical marijuana cultivators and dispensaries.

Fourth, plaintiffs assert that Illinois cold "require an enhanced disclosure regime for contributions related to medical marijuana operations." (Dkt. No. 34 at 10) Once again, this argument has been rejected. *See Buckley*, 424 U.S. at 28 ("Congress was surely entitled to conclude that disclosures was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed."); *see also Foster*, 820 So.2d at 508. The legislature could have reasonably concluded that disclosure requirements would not be sufficient to combat corruption or its appearance.

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). This Court should decline plaintiffs' invitation to second guess the regulatory framework established by the Illinois General Assembly for the State's medical marijuana pilot program.

V. PLAINTIFFS RELY IN INAPPOSITE CASE LAW AND UNSUBSTANTIED SPECULATION REGARDING THEIR ABILITIES TO "MOUNT EFFECTIVE CAMAPAIGNS."

Plaintiffs also complain that contributions are a "life line for third party candidates to mount effective campaigns." (Dkt. No. 34 at 10) They continue to rely on *Randall v. Sorrell*, 548 U.S 230 (2006), which 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." *Id.* at 250. This argument merits little comment, and defendants refer the Court to their opening brief, which established that *Randall* is inapposite and does not apply here. (Dkt. No. 33-1 at 16-17) Moreover, as defendants noted, plaintiffs have introduced no evidence whatsoever that Section 9-45 compromises their ability to "amass[] the resources necessary for effective advocacy." (*Id.* at 16-17)

In their response brief, plaintiffs do not seriously contest this point, but instead repeat that they have received minimal campaign contributions from *any* source. (Dkt. No. 34 at 11-12) Of course, this fact hardly shows that plaintiffs' funding problems are caused by Section 5/9-45, especially when they admit that not a single marijuana cultivator or dispensary has expressed any interest in contributing to their campaigns. (Dkt. No. 33-1 at 17) And even if plaintiffs could make such a showing (they cannot), it still would not matter, because *Randall* was concerned with the effect of contribution limits "on the electoral system as a whole." *Green Party of Conn.*

v. Garfield, 616 F.3d 189, 201 (2d Cir. 2010). As the Supreme Court has made clear, even if a particular individual were able to show that a contribution limit affected his or her ability to wage a competitive campaign (which, again, plaintiffs cannot do), "a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley*." *Nixon*, 528 U.S. at 396.

Plaintiffs' inability to garner significant contributions from any source is not a ground for invalidating Section 5/9-45, and as defendants noted before, if plaintiffs' wishful thinking came to fruition, and they received almost all of their funding from the medical marijuana industry, this would only bolster the State's concerns about the appearance of quid pro quo corruption in the pilot program. (Dkt. No. 33-1 at 17)

VI. PLAINTIFFS FAIL TO SUPPORT THEIR CLAIMS AGAINST THE ILLINOIS ATTORNEY GENERAL.

Finally, plaintiffs' claims against the Attorney General should be dismissed because plaintiffs have not established an actual "case or controversy" between themselves and the Attorney General. (Dkt. No. 33-1 at 18-19) Plaintiffs do not dispute that they were mistaken in alleging that Section 5/9-25.2 of the Election Code, 10 ILCS 5/9-25.2, gives the Attorney General authority to prosecute violations of the contribution ban at issue here (Section 5/9-25). (Dkt. No. 33-1 at 18) Now, plaintiffs assert that a *different* provision of the Election Code, 10 ILCS 5/9-26, authorizes the Attorney General to prosecute violations of the contribution ban. Plaintiffs are again mistaken. Section 5/9-26 relates to "[w]illful failure to file or willful filing of false or incomplete information," which it characterizes as a "business offense" subject to a fine of up to $5,000. 10 ILCS 5/9-26. Section 5/9-26 also designates "[w]illful filing of a false complaint under this Article" as a Class B misdemeanor. *Id.* These provisions have nothing to do with the contribution ban at issue here.

Plaintiffs latch on to subsequent language in Section 5/9-26 stating that "[a] prosecution for any offense designated by this Article shall be commenced no later than 18 months after the commission of the offense," and that "[t]he appropriate State's Attorney or the Attorney General shall bring such actions in the name of the people." But they take this language out of context and misinterpret it. In general, the Board of Elections has authority to enforce Article 9 of the Election Code by holding "investigations, inquiries, and hearings." 10 ILCS 5/9-18. The Board may determine whether a person has engaged in a "violation" of "any provision" of Article 9 and take appropriate action. 10 ILCS 5/9-21, 10 ILCS 5/9-23. In contrast, the language in Section 5/9-26 that plaintiffs rely on, relating to action by the State's Attorney or Attorney General, is narrower, as it refers to "prosecution" for "any offense designated by this Article." Not every "violation" amounts to an "offense." When the legislature intended to designate something as an "offense" or subject someone to criminal penalties for a violation, it did so explicitly. *See, e.g.*, 10 ILCS 5/9-25.1, 10 ILCS 5/9-25.2, 10 ILCS 5/9-26.

Thus, plaintiffs' reliance on Section 5/9-26 gets them nowhere, because the Election Code does not designate a violation of the contribution ban (Section 5/9-45) as an "offense" subject to prosecution. Section 5/9-45 does not subject violators to criminal penalties. Plaintiffs try to get around this problem by citing yet another inapplicable provision of the Election Code, Section 5/29-12, which states: "Except with respect to Article 9 of this Code, any person who knowingly (a) does any act prohibited by or declared unlawful by, or (b) fails to do any act required by, this Code, shall, unless a different punishment is prescribed by this Code, be guilty of a Class A misdemeanor." 10 ILCS 5/9-12 (emphasis added). The flaw in plaintiffs' reasoning is obvious: Section 5/29-12 explicitly excludes Article 9, which is where the campaign contribution appears, from its reach.

CONCLUSION

For the foregoing reasons and the reasons in defendants' memorandum in support of their motion for summary judgment and response to plaintiffs' motion (Dkt. No. 33-1), this Court should grant defendants' motion for summary judgment and deny plaintiffs' cross-motion for summary judgment.

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Respectfully submitted,

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