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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

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**ILLINOIS OPPORTUNITY  
PROJECT,**

Plaintiff,

v.

**STEVE BULLOCK**, in his official  
capacity as governor of Montana, and  
**MEGHAN HOLMLUND**, in her  
official capacity as chief of the State  
Procurement Bureau

Defendant.

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Case No. 6:19-cv-00056-CCL

FIRST AMENDED COMPLAINT

## INTRODUCTION

1. Stretching back to the founding era and *The Federalist Papers*, the freedom of speech has included the right to engage in anonymous issue advocacy concerning important public issues. *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995).

2. Similarly, the freedom of association includes the right of private individuals to band together for common purposes without government prying in to those associations' membership or donor lists. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). *See Rumsfeld v. FAIR*, 547 U.S. 47 (2006).

3. These First Amendment freedoms also protect the right of nonprofit organizations to solicit, retain, and recruit members and donors who support their mission. *See Riley v. National Federation of the Blind*, 487 U.S. 781 (1988).

4. Defendant Steve Bullock, governor of Montana, has issued Executive Order 15-2018 (Ex. 1), which mandates state agencies under his control require bidders on any non-incident state contract to disclose their contributions to organizations that engage in issue advocacy within a certain proximity of an election. Defendant Meghan Holmlund is responsible for implementing this policy as chief of the State Procurement Bureau.

5. Plaintiff Illinois Opportunity Project (IOP) intends to engage in issue advocacy in Montana. This issue advocacy would circulate within the window of

time covered by the executive order. Thus, if IOP engaged in its planned issue advocacy, any of its donors who bid on state contracts in Montana would be required to disclose their IOP donations.

6. In order to protect the privacy of and on behalf of itself and its donors, IOP bring this suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief to protect the core First Amendment rights to free speech and association.

### **PARTIES**

7. Plaintiff Illinois Opportunity Project is a 501(c)(4) social-welfare organization based in Chicago, Cook County, Illinois. It seeks to promote the social good and common welfare by educating the public about policy that is driven by the principles of liberty and free enterprise. Though Illinois is its home state, IOP engages in issue advocacy in different states across the country on issues of concern to its mission. Donor disclosure laws are one such policy of great concern to IOP.

8. Defendant Steve Bullock is governor of the State of Montana and the issuing authority behind Executive Order 15-2018. He works in Helena, Lewis and Clark County, Montana. He is sued in his official capacity. Defendant Meghan Holmlund is Chief of the State Procurement Bureau. Ms. Holmlund is the Montana Department of Administration official charged with overseeing the state's

procurement laws and policies, including Executive Order 15-2018. *See* 18-4-221, MCA. Ms. Holmlund works in Helena, Lewis and Clark County, Montana. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

9. This case raises claims under the First and Fourteenth Amendments of the United State Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(1) and (2) because Defendants are located in and a substantial portion of the events giving rise to the claims occurred in the District of Montana, Helena Division.

### **FACTUAL ALLEGATIONS**

11. In June 2018, Governor Steve Bullock issued Executive Order 15-2018 (Ex. 1) (“Governor Bullock’s Executive Order”), which applies to “every contracting department and agency” within the authority of an executive order in Montana state government. Governor Bullock’s Executive Order mandates that these agencies require certain disclosures from entities that wish to bid on contracts for business from Montana state government. (Ex. 1.) Specifically, entities that are bidding on non-incidentals state contracts (worth more than \$25,000 for services or

\$50,000 for goods) must disclose “covered expenditures” they made within the last two years. (Ex. 1 at 4.)

12. “Covered expenditures” include any contribution by the bidder to “another entity, regardless of the entity’s tax status, that pays for an electioneering communication,” (Ex. 1 at 3), regardless of whether the contribution paid for the electioneering communication. “Electioneering communication” is defined as:

a paid communication that is public distributed by radio, television, cable, satellite, internet website, mobile device, newspaper, periodical, billboard, mail, or any other distribution of printed or electronic materials, that is made within 60 days of the initiation of voting in an election in Montana, that can be received by more than 100 recipients in the district in Montana voting on the candidate or ballot issue, and that:

- a. refers to one or more clearly identified candidates in that election in Montana;
- b. depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election in Montana; or
- c. refers to a political party, ballot issue, or other question submitted to the voters in that election in Montana.

(Ex. 1 at 3.)

13. Governor Bullock’s Executive Order 15-2018 was a mainstay of his presidential campaign. The *New York Times* described his crusade for campaign finance reform as his “one big idea.” Maggie Astor, *It’s Steve Bullock’s First Time on the Democratic Debate Stage. Here’s His Big Idea*, N.Y. Times (July 30, 2019), available at <https://www.nytimes.com/2019/07/30/us/politics/steve-bullock-debate.html>. According to another news report, “Bullock centered his 2020

announcement on his fight against unrestrained corporate spending on elections,” specifically mentioning this order as evidence. *Steve Bullock announces presidential run*, Roll Call (May 14, 2019), <https://www.rollcall.com/news/campaigns/steve-bullock-announces-presidential-run>. As a TIME.com headline pithily puts it, “Steve Bullock hates dark money.” Laura Zornosa, *Steve Bullock hates dark money. But a Dark Money Lobbyist Is Helping His Presidential Campaign*, Time (July 8, 2019), available at <https://time.com/5621952/steve-bullock-dark-money-lobbyist/>.

14. Meghan Holmlund is the chief of the State Procurement Bureau. According to the Bureau’s website, the bureau “ensures compliance with all state statutes and procurement requirements.” The Bureau also serves as “a central location for vendors interested in bidding on state projects.” (<http://sfsd.mt.gov/Home/Division/AboutUs/aboutSPB>). Specific to the Executive Order, the bureau maintains a website with guidance for contractors, an operations manual for state employees, and a webinar on “Dark Money Disclosure Reporting and Requirements.” (<http://sfsd.mt.gov/SPB/Dark-Money>). The declaration form and disclosure template maintained by the bureau on its website both ominously refer to the requirements as applying to “dark money spending” or “dark money contributions.”

15. The State of Montana maintains a website, [transparency.mt.gov](https://transparency.mt.gov), which posts a variety of data sets for public viewing. One of those data sets is entitled, “Dark Money Spending for Entities Doing Business with the State of Montana.”

(<https://dataportal.mt.gov/t/DOASITSDDataPortalPub/views/DarkMoney/DarkMoneyDashboard?isGuestRedirectFromVizportal=y&:embed=y>). This website displays for the public the information submitted by all bidders on state contracts pursuant to the executive order, such as the bidders’ name, contribution amount, and candidate or referendum supported. *Id.*

16. Montana is holding a general election on November 3, 2020. The ballot will include the governor’s office and races for the State Senate and State House.

17. The Illinois Opportunity Project engages in issue advocacy in Illinois and other states on issues that relate to its mission. It feels strongly that issue advocacy is a protected right under the First Amendment.

18. Illinois Opportunity Project wishes to communicate its views on the First Amendment to at least 100 Montanans in advance of the November 2020 general election. In particular, it plans to make paid communications by mail to thousands of Montana voters within 90 days of the 2020 general election. These mailings will include names and pictures of candidates for governor. The mailings

will urge these candidates not to continue Governor Bullock's Executive Order out of respect for privacy, free speech, and the First Amendment. The mailings will not engage in express advocacy or suggest specific candidate preferences to voters but will instead increase voter awareness on the issue of nonprofit organizations' privacy. IOP intends to comply with Montana's campaign finance laws in relation to these mailings.

19. IOP intends to engage in substantially similar speech in future Montana elections.

20. As a nonprofit, IOP exists, advances its mission, and undertakes its advocacy through the generosity of its members and supporters who donate to support its work.

21. IOP promises all of its donors privacy for their support of its mission. Privacy is an important part of a donor's decision to give to IOP because of the potential for harassment or retaliation against the donor for supporting IOP due to IOP's stances on controversial issues.

22. Among IOP's donors is a large multistate company that has significant contracts with several agencies of the State of Montana. IOP intends to solicit this donor for support in the future, but will be unable to promise privacy again because of the Governor's Executive Order, thus exposing the donor to harassment and retaliation. IOP knows this company is sensitive to its public image



and will be disinclined to renew its support for IOP if it will open the company to potential public blowback. IOP also knows this company has sensitive business and regulatory concerns before Montana policymakers that could be negatively impacted by unwanted exposure and attention to its support for IOP.

23. IOP's other current corporate donors includes multistate companies who may now or in the future wish to bid on business from Montana state government.

24. IOP has also identified another large, household-name multistate company as a promising new donor prospect based on the company's support for similar organizations and issues. This company has a contract with an agency of the State of Montana. IOP intends to solicit this donor for support, but will be unable to promise privacy because of this order. IOP knows that this company is also sensitive to its public image and will be disinclined to support IOP if it will open the company to potential public blowback. IOP also knows this company has sensitive regulatory issues before Montana policymakers and believes it would not want to undermine its lobbying efforts by unwanted exposure and attention if it chose to support IOP.

25. IOP intends to solicit other multistate companies who either now or in the future intend to bid on business from Montana state government.

26. IOP also desires to solicit financial support from corporate donors within Montana, and these potential donors who would be solicited would include corporations that may now or in the future bid on business with Montana state government. However, IOP will be unable to promise these donors privacy because of the order.

27. IOP is concerned that compelled disclosure of its donors could lead to substantial personal and economic repercussions for its supporters. Across the country, individual and corporate donors to political candidates and issue causes are being subject to boycotts, harassment, protests, career damage, and even death threats for publicly engaging in the public square. IOP fears that its corporate donors may also encounter similar reprisals from certain activists if their donations are made public. Montana's posting of all donor information on the Internet makes this fear of harassment and retaliation all the more real, as it exposes national or multinational companies to harassment from anywhere in the world.

28. IOP also knows that Governor Bullock's Executive Order will make it substantially harder for it to renew current members' support and to recruit new members and supporters. If companies are forced to choose between exposure or supporting IOP, many companies will choose to continue making money from state contracts over supporting IOP. This will decrease IOP's fundraising and membership, impacting its bottom line and its ability to carry out its mission. If

IOP cannot guarantee its donors privacy because of its work in Montana, it fears it will lose donors to other organizations in non-disclosure states.

29. IOP will experience increased difficulty in retaining and recruiting corporate members because of the disclosure requirements imposed by Defendants. The order constitutes a hinderance and impediment to IOP's ability to successfully raise money to advance its mission from Montana-based and multistate corporate donors in a variety of industries that are regular government contractors.

30. IOP therefore brings this pre-enforcement challenge on behalf of itself and its donors to vindicate its First Amendment rights. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014) (setting the standard for pre-enforcement challenges). IOP intends to engage in a course of conduct affected with constitutional interest (namely its issue advocacy). If it moved forward with its course of conduct, its corporate donors would be subject to disclosure when they bid on state contracts. If the bidders refuse to provide the protected information, they will lose the ability to bid under the terms of the order.

31. Because of these potential harms, IOP will chill its own speech and not engage in its desired communications so long as Governor Bullock's Executive Order is law.

32. IOP has no remedy at law.

## COUNT I

### **By requiring Plaintiff's current and potential donors to disclose their donations in order to bid on state contracts, Governor Bullock's Executive Order violates the First Amendment.**

33. The allegations contained in all preceding paragraphs are incorporated herein by reference.

34. IOP and its donors enjoy a right to engage in anonymous issue advocacy protected by the First Amendment as incorporated against the states. *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995). The Governor's Executive Order violates that right by requiring disclosure of donations, removing the anonymity of their issue advocacy.

35. Similarly, IOP and its donors enjoy a right to privacy in their association for free speech about issues, a right protected by the First Amendment as incorporated against the states. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). *See Rumsfeld v. FAIR*, 547 U.S. 47 (2006). The Governor's Executive Order violates that right by requiring disclosure of donations, ending the privacy of the speech-oriented association.

36. IOP enjoys a right to charitable solicitation to advance its mission. *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988). Governor Bullock's Executive Order hinders the fruitful exercise of that right by requiring disclosure of

donations, making it less likely that potential donors will contribute at the cost of unwanted exposure and potential harassment and retaliation.

37. “[E]ven though this provision applies evenhandedly to advocates of differing viewpoints, it [a disclosure requirement] is a direct regulation of the content of speech.” *McIntyre*, 514 U.S. at 345. *Accord ACLU v. Heller*, 378 F.3d 979, 987 (9th Cir. 2004).

38. This court should apply “the most exacting scrutiny” to the order because it is a content-based disclosure regulation. *Doe v. Harris*, 772 F.3d 563, 574 (9th Cir. 2014). *Accord McIntyre*, 514 U.S. at 346 (sponsor disclosure law subject to exacting scrutiny); *Nat’l Assn. for Gun Rights (NAGR) v. Mangan*, 933 F.3d 1102, 1114 (9th Cir. 2019) (same).

39. Governor Bullock’s Executive Order does not meet the standards of exacting scrutiny and is overbroad. Though the government may have a legitimate interest in knowing the organizations sponsoring issue advocacy proximate in time to an election, *see NAGR* at 1117-18, it does not have an interest in knowing the names and addresses of donors who have simply donated to entities that engage in issue advocacy. When government forces the disclosure of donors, it crosses into the realm of anonymous speech and private association protected by *McIntyre* and *NAACP*, where its interests are secondary and citizens interests are stronger.

40. IOP and its donors are entitled to an injunction under 42 U.S.C. § 1983 enjoining Governor Bullock from continuing his unconstitutional policy of requiring disclosure of issue-advocacy donors and enjoining Defendant Holmlund from advising executive agencies they must comply with that unconstitutional policy.

### **PRAYER FOR RELIEF**

Plaintiff Illinois Opportunity Project respectfully requests that this Court:

- a. Declare that Governor Bullock's Executive Order 15-2018 compels donor disclosure in violation of the right to freedom of speech under the First and Fourteenth Amendments;
- b. Declare that Governor Bullock's Executive Order 15-2018 compels donor disclosure in violation the right to freedom of private association under the First and Fourteenth Amendments;
- c. Enjoin Governor Bullock from continuing his policy of requiring disclosure of donations by entities that bid on Montana state contracts;
- d. Enjoin Meghan Holmlund from advising executive agencies to comply with Governor Bullock's Executive Order 15-2018;

- e. Award Plaintiff its costs and attorneys' fees under 42 U.S.C. § 1988; and
- f. Award any further relief to which Plaintiff may be entitled.

Dated: January 21, 2020

Respectfully Submitted,

/s/ Anita Y. Milanovich

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### **Certificate of Service**

I hereby certify that a true and correct copy of the foregoing document was served on Defendants via CM/ECF electronic notice.

/s/ Anita Y. Milanovich  
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