

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

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**ILLINOIS OPPORTUNITY
PROJECT,**

Plaintiff,

v.

**STEPHEN M. HOLDEN, ERIC H.
JASO, and MARGUERITE T.
SIMON,** in their official capacities as
commissioners of the New Jersey
Election Law Enforcement
Commission,

Defendants.

Case No. _____

COMPLAINT

Plaintiff Illinois Opportunity Project, 208 S. La Salle St. Suite 167, Chicago, IL 60604, complains herein against Defendants Stephen M. Holden, 25 S. Stockton St., Trenton, NJ 08608; Eric H. Jaso, 25 S. Stockton St., Trenton, NJ 08608; and Maguerite T. Simon, 25 S. Stockton St., Trenton, NJ 08608, in their official capacities as commissioners of the New Jersey Election Law Enforcement Commission as follows:

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. *Talley v. California*, 362 U.S. 60 (1960); *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995). See *The Federalist Papers* (Charles R. Kesler and Clinton Rossiter, eds., 2003).

2. Similarly, the freedom of association includes the right of private individuals to band together for common purposes without government prying into those associations' membership or donor lists. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963).

3. The New Jersey Legislature recently enacted, and Governor signed, Chapter 124 of the Public Laws of 2019 ("P.L. 2019, c. 124", or the "Law"), requiring disclosure of members and supporters of organizations classified under

Internal Revenue Code sections 501(c)(4) and 527 engaged in issue advocacy to the Defendant Commissioners of the New Jersey Election Law Enforcement Commission.

4. The new statute also requires that 501(c)(4) and 527 organizations engaged in issue advocacy register with the Commissioners and disclose their sponsorship of messages on the face of an issue ad upon pain of civil penalty.

5. The new statute only applies to certain categories of organizations, while exempting other categories of speakers with different viewpoints.

6. Plaintiff, Illinois Opportunity Project (“IOP”), intends to engage in issue advocacy in New Jersey. Thus, if IOP were to engage in its planned issue advocacy, it would be required to register and disclose its donors to the Commissioners and its sponsorship of certain messages.

7. In order to protect the privacy of and on behalf of itself and its donors, IOP brings 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

8. 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 its activities are primarily focused on Illinois, it occasionally engages in issue advocacy in other states when the policies adopted there might have ripple effects on the policies it cares about in Illinois. Member and supporter disclosure laws are one such policy of great concern to IOP.

9. Defendants are the commissioners of the New Jersey Election Law Enforcement Commission. Mr. Holden is from Merchantville, Camden County, New Jersey. Mr. Jaso is from Morristown, Morris County, New Jersey. Ms. Simon lives in Edgewater, Bergen County, New Jersey and Cape May, Cape May County, New Jersey. They are all sued in their official capacities.

JURISDICTION AND VENUE

10. This case raises claims under the First and Fourteenth Amendments of the United States 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.

11. Venue is appropriate under 28 U.S.C. § 1391(b) because the Defendants reside in the District of New Jersey. A majority of the Defendants maintain residences in the Camden Division of the District.

FACTUAL ALLEGATIONS

12. In June 2019, New Jersey enacted P.L. 2019, c. 124, previously known as Senate No. 150. The bill was entitled, “An Act concerning campaign finance disclosures and limits and amending various parts of the statutory law.” Governor Murphy conditionally vetoed a previous iteration of the bill, but after a veto override threat from the Legislature, the governor signed this iteration into law.

13. Under the Law, an organization categorized under either Internal Revenue Code section 501(c)(4), as IOP is, or section 527 must comply with various disclaimer and disclosure requirements if it engages in certain issue advocacy. Under the new C.19:44A-3(t), such an organization is categorized as an “independent expenditure committee” if it “engages in influencing or attempting to influence the outcome of any election or the nomination, election, or defeat of any person to any State or local elective public office, or the passage or defeat of any public question, legislation, or regulation, or in providing political information on any candidate or public question, legislation, or regulation, and raises or expends \$3,000 or more in the aggregate for any such purpose annually.”

14. By including only 501(c)(4) and 527 organizations in the Law’s scope, the Legislature exempted 501(c)(5) union organizations and 501(c)(6) business groups from the same mandates, even though these groups also engage in issue advocacy.

15. The Law requires independent expenditure committees to register with the Commissioners, providing their complete name, the mailing address of the committee, and the name and address of a resident of this State who shall have been designated by the committee as its agent to accept service of process. The registration shall also include the name and home addresses of persons having control of the committee, persons making decisions as to its expenditures, and persons who participated in founding the committee. Moreover, the Commissioners may require by rule “any other information” which they believe is “material to the fullest possible disclosure of the economic, political and other particular interests and objectives which the committee has been organized to or does advance.” C.19:44A-8.1(21)(a)(1-3). The Commissioners post PDF copies of recent registration forms on their website for public viewing (<https://www.elec.nj.gov/ELECRreport/>).

16. The Law requires independent expenditure committees to provide to the Commissioners “a cumulative quarterly report, upon a form prescribed by the Election Law Enforcement Commission, of all contributions received in excess of \$10,000 in the form of moneys, loans, paid personal services, or other things of value made to it.” C.19:44A-8(d)(1). When an individual contributes over \$10,000 to the independent expenditure committee, that committee’s report shall include the mailing address and occupation of the individual and the name and mailing

address of the individual's employer. *Id.* The report shall also include the individual's home address if different from his mailing address. C.19:44A-8.1(21)(c). When an organization contributes over \$10,000 to the independent expenditure committee, the committee's report shall include the name and mailing address of the organization. C.19:44A-8(d)(1). The Commissioners may further require by rule "any information" which they believe to be "material to the fullest possible disclosure of the economic, political and other particular interests and objectives which the contributing organization has been organized to or does advance." C.19:44A-8.1(21)(c). The Commissioners post PDF copies of recent quarterly reports on their website for public viewing (<https://www.elec.nj.gov/ELECRreport/>).

17. The Law also requires independent expenditure committees to place a disclaimer on all its materials, announcing its sponsorship of its issue advocacy: "the [independent expenditure] committee shall use the complete name or identifying title on . . . any decision to expend funds for the purpose of . . . providing political information on any candidate or public question, legislation, or regulation." C.19:44A-8.1(21)(b). The disclaimer must include the committee's name and business address and a statement that it was not undertaken in coordination with a candidate or committee. C.19:44A-22.3(2)(b) & (c). If the

committee fails to include the disclaimer, it is subject to civil penalties from the Commissioners. C.19:44A-22.3(2)(g)(1), citing C.19:44A-22(a)(1).

18. The Illinois Opportunity Project engages in issue advocacy in Illinois and other states on issues that relate to its mission. Illinois Opportunity Project opposes P.L. 2019, c. 124, as it supports the right of individuals to advocate on issues without being subject to disclosure to the government.

19. Illinois Opportunity Project wishes to communicate its views on P.L. 2019, c.124 to New Jersey voters. In particular, it plans to expend over \$3,000 on paid issue-advocacy communications by mail to thousands of New Jersey voters after October 15, 2019. These mailings will include names and pictures of the governor and state legislators and information about P.L. 2019, c.124. The mailings will inform voters of IOP's respect for privacy, free speech, and the First Amendment, and the Law's deleterious effects on these principles, and identify which elected officials supported or opposed the Law. The communications will not include any express campaign advocacy as to these officials.

20. IOP intends to engage in substantially similar speech in New Jersey in the future.

21. If IOP engages in its planned issue advocacy in New Jersey, then any individual or organization that supports IOP with \$10,000 or more in donations will have to be disclosed to the Commissioners.

22. If IOP engages in its planned issue advocacy, it will be required to register and to include an identifying disclaimer on all of its materials.

23. IOP is concerned that compelled disclosure of its members, supporters, and leaders could lead to substantial personal and economic repercussions. Across the country, individual and corporate donors to and staff for political candidates and issue causes are being subject to harassment, career damage, and even death threats for publicly engaging in the public square. IOP fears that its members, supporters, staff, and volunteer leaders may also encounter similar reprisals from certain activists if their donations are made public.

24. 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 were to move forward with its course of conduct, its sponsorship of issue advocacy and its members' and supporters' contributions to its work would be subject to registration and disclosure.

25. Because of these potential harms, IOP will chill its own speech and not engage in its desired communications, so long as these sections of the statute remain the law.

26. IOP has no remedy at law.

COUNT I

By requiring Plaintiff to disclose its members and supporters, the Commissioners violate the First and Fourteenth Amendments.

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

28. IOP and its donors enjoy a right to privacy in their association for free speech about issues. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963). This right to privacy in association for free speech is protected by the First Amendment as incorporated against the states. *Id.* The Law violates that right by requiring disclosure of donations, ending the privacy of the speech-oriented association.

29. The Law cannot meet the required level of scrutiny. The U.S. Supreme Court has only found a compelling interest in membership-disclosure regulations when the association was engaged in or advocating for illegal activity. *Familias Unidas v. Briscoe*, 619 F.2d 391, 401 (5th Cir. 1980) (“The disclosure requirements in [*Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961)] and [*New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928)] attached only to organizations either having a demonstrated track record of illicit conduct or explicitly embracing, as doctrine, plainly unlawful means and ends.”).

IOP has no track record of illicit conduct nor has it embraced plainly unlawful means and ends; it is a legitimate social-welfare organization engaged in issue advocacy. The government lacks a compelling interest in forcing it to disclose its members and supporters.

30. IOP and its members and supporters are entitled to an injunction under 42 U.S.C. § 1983 enjoining the continued enforcement of C.19:44A-8(d)(1) as applied to IOP and other organizations engaged in issue advocacy.

COUNT II

By requiring Plaintiff to register and disclose its sponsorship of issue advocacy, the Commissioners violate the First and Fourteenth Amendments.

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

32. IOP enjoys a right to anonymity in its free speech about issues, a right protected by the First Amendment as incorporated against the states. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960). The Law violates that right by requiring IOP to first register with the Commissioners before engaging in issue speech (*see Watchtower*) and to put a disclaimer announcing its sponsorship on all of its issue-advocacy materials (*see McIntyre and Talley*).

33. As applied to IOP, this statute affects direct issue speech, not express advocacy concerning candidates or ballot measures. Not only does this Law apply at all times, rather than only at times proximate to an election, but it applies to all issue advocacy that provides even simple factual information about legislation. This contravenes the First Amendment. *See Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 836-37 (7th Cir. 2014) (government does not have “a green light to impose political-committee status on every person or group that makes a communication about a political issue that also refers to a candidate.”).

34. IOP is entitled to an injunction under 42 U.S.C. § 1983 enjoining the continued enforcement of C.19:44A-8.1(21)(a)(1-3) as applied to IOP and other persons or organizations engaged solely in issue advocacy.

35. IOP is entitled to an injunction under 42 U.S.C. 1983 enjoining the continued enforcement of C.19:44A-8.1(21)(a) as applied to IOP and other persons or organizations engaged solely in issue advocacy.

COUNT III

By targeting the Plaintiff and other social-welfare organizations, the Commissioners violate the First and Fourteenth Amendments.

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

37. Regulations are impermissible when they treat separate categories of speech differently when the distinctions “bear[] no relationship whatsoever to the particular interests that the [government] has asserted.” *Cincinnati v. Discovery Network*, 507 U.S. 410, 424 (1993).

38. This regulation categorizes certain speech, namely issue advocacy from social-welfare and political viewpoints, and subjects that speech to burdensome requirements, while it exempts issue advocacy from union and business viewpoints. Covering some categories while creating exemptions for others, picking winners and losers among organizations that all engage in similar issue speech, is fatal under the First Amendment. *See Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1669 (2015).

39. The government can offer no justification for its categorization. Union organizations and business groups both engage in vigorous issue advocacy on matters affecting public policy in New Jersey. Yet they were both exempted from the Law. This underinclusivity results in privileging certain viewpoints and punishing others. *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 802 (2011); *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994).

40. IOP is entitled to an injunction under 42 U.S.C. § 1983 enjoining the continued selective categorization by C.19:44A-3(t) of IOP and other 501(c)(4)

and 527 organizations engaged in issue advocacy as “independent expenditure committees.”

PRAYER FOR RELIEF

Plaintiff, Illinois Opportunity Project, respectfully requests that this Court:

- a. Declare that C.19:44A-8(d)(1) compels member and supporter disclosure for organizations engaged in issue advocacy in violation of the right to freedom of speech and association under the First and Fourteenth Amendments;
- b. Declare that C.19:44A-8.1(21)(a)(1-3) compels sponsor registration for issue advocacy in violation of the right to anonymous speech under the First and Fourteenth Amendments;
- c. Declare that C.19:44A-8.1(21)(a) compels sponsor disclosure for issue advocacy in violation of the right to anonymous speech under the First and Fourteenth Amendments;
- d. Declare that C.19:44A-3(t) discriminates between categories of speakers based on viewpoint in violation of the First and Fourteenth Amendments;
- e. Enjoin the Commissioners from enforcing C.19:44A-8(d)(1) against IOP and other organizations that engage solely in issue advocacy;

- f. Enjoin the Commissioners from enforcing C.19:44A-8.1(21)(a)(1-3) against IOP and other organizations that engage solely in issue advocacy;
- g. Enjoin the Commissioners from enforcing C.19:44A-8.1(21)(a) against IOP and other organizations when they sponsor issue advocacy;
- h. Enjoin the Commissioners from categorizing IOP and other organizations that engage solely in issue advocacy as “independent expenditure committees” under C. 19:44A-3(t).
- i. Award Plaintiff its costs and attorneys’ fees under 42 U.S.C. § 1988; and
- j. Award any further relief to which Plaintiff may be entitled.

Dated: September 11, 2019

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Respectfully Submitted,

/s/ Mark R. Scirocco

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