United States District Court
Southern District of Indiana

Indiana Right to Life Victory Fund, **Sarkes Tarzian, Inc.,** *Plaintiffs*, *v.* **Holli Sullivan,** in her official capacity as Secretary of State, **Indiana Election Commission, Paul Okeson**, in his official capacity as Chair and member of the Indiana Election Commission**, Suzannah Wilson Overholt**, in her official capacity as Vice-chair and member of the Indiana Election Commission**, Karen Celestino-Horseman**, in her official capacity as member of the Indiana Election Commission**, J. Bradley King**, in his official capacity as co-director of the Indiana Election Division**, Angela M. Nussmeyer**, in her official capacity as co-director of the Indiana Election Division**, Theodore E. Rokita**, in his official capacity as Indiana Attorney General**, Ryan Mears** and **Erika Oliphant**, in their official capacities as prosecuting attorneys**,** *Defendants*.	**Civ. No.** 1:21-cv-2796-SEB-TAB **Brief in Support of Plaintiffs' Motion for Preliminary Injunction**

Brief in Support of Plaintiffs' Motion for Preliminary Injunction

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Introduction

Plaintiffs Indiana Right to Life Victory Fund ("**IRTL Victory Fund**") and Sarkes Tarzian, Inc. have moved for a preliminary injunction against Indiana's unconstitutional prohibition on corporate contributions to political action committees ("**PACs**") for purposes of independent expenditures.

Plaintiffs meet the requirements for a preliminary injunction: they are likely to succeed on the merits of their claims, they have irreparable harm if the injunction is not granted and no adequate remedy at law, the public interest favors the Plaintiffs, and the balance of equities favors the Plaintiffs.

I. Facts

As set forth more fully in the *Verified Complaint for Declaratory and Injunctive Relief* ("**Compl.**") (ECF 1), the facts of this case are as follows:

A. Parties

Plaintiff IRTL Victory Fund is an Indiana independent-expenditure-only PAC whose only purpose is to receive, administer, and expend funds in connection with independent expenditures regarding candidates for Indiana offices. *Compl.*, ECF No. 1, at ¶¶ 41-42. IRTL Victory Fund is prohibited from making contributions to any candidate or any political party. *Id.* ¶ 43; *Amended Resolution for the Board of Directors of Indiana Right to Life Incorporated Establishing an Independent-Expenditure- Only Political Action Committee*, Ex. 1 (ECF 1-1).

IRTL Victory Fund wants to solicit and accept unlimited contributions for the purpose of making independent expenditures, but is prohibited from doing so under the Indiana Election

Code.[1] *See infra* Part I.B; *Compl.* ¶ 44. IRTL Victory Fund has established a bank account into which contributions for the designated purpose of making independent expenditures will be deposited. *Id.* ¶ 45. This account is maintained solely for the purpose of making independent expenditures. *Id*. No monies will be accepted for making contributions to any candidate or political party. *Id*.

IRTL Victory Fund wants to make independent expenditures in the upcoming 2022 primary and general elections. *Id.* ¶ 46. In order to fund these independent expenditures, IRTL Victory Fund wants to solicit and accept unlimited contributions for the designated purpose of making independent expenditures. *Id*. It would do so, but for the Election Code's prohibitions and the penalties it imposes. *Id*.; *see also id*. ¶¶ 36–39 for penalties.

Plaintiff Sarkes Tarzian, Inc. is an Indiana corporation. *Id.* ¶ 47. It wants to make a $10,000 contribution to IRTL Victory Fund, earmarked for the purpose of making independent expenditures—and is ready, willing, and able to do so. *Id.* ¶¶ 47-48. However, Sarkes Tarzian, Inc. will only make such contribution and IRTL Victory Fund will only accept it so long as neither are subject to the Election Code's prohibitions on corporations contributing to PACs for purposes of independent expenditures and associated penalties. *Id*. ¶ 48.

Defendants, Holli Sullivan, in her official capacity as Secretary of State; Indiana Election Commission; Paul Okeson, in his official capacity as Chair and member of the Indiana Election Commission; Suzannah Wilson Overholt, in her official capacity as Vice-chair and member of

[1]"Anyone who contributes to the Right to Life PAC is bound by this limitation, so [IC §§ 3-9-2-4, 3-9-2-5] operates to limit the contributions the committee may lawfully receive. To the extent that a contributor wants to donate . . . but refrains from doing so in order to avoid violating the statute, the committee itself is injured." *Wisconsin Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 147 (7th Cir. 2011).

the Indiana Election Commission; Karen Celestino- Horseman, in her official capacity as member of the Indiana Election Commission; J. Bradley King, in his official capacity as co-director of the Indiana Election Division; Angela M. Nussmeyer, in her official capacity as co-director of the Indiana Election Division; Theodore E. Rokita, in his official capacity as Indiana Attorney General; and Ryan Mears and Erika Oliphant, in their official capacities as prosecuting attorneys, are responsible for instituting investigations and seeking/enforcing the penalties imposed for violation of the prohibitions described above. *Id*. at ¶¶ 7–14 (detailing the roles, responsibilities, and requirements for the foregoing Defendants).

B. Legal Landscape

Indiana's Election Code prohibits corporations from making contributions to PACs for independent expenditures. Instead, corporations are only permitted to make a contribution which (**1**) does not exceed contribution limits established in IC § 3-9-2-4 of Indiana's Election Code, IC § 3, et seq. ("**Election Code**") and (**2**) "is designated for disbursement to a specific candidate or committee[.]" IC § 3-9-2-5(c); *see Compl.* ¶¶ 19–22. As discussed next, these two code sections, IC §§ 3-9-2-4 and 3-9-2-5, prohibit corporate contributions for independent expenditures in multiple ways.

First, the Election Code provides that corporations and labor organizations "may not," during a year, "make total contributions in excess of" listed amounts for the various categories of contributions that it permits. IC § 3-9-2-4 (or "**Article 9, Chapter 2, Section 4**") (listing four categories of candidates to whom contributions may be made and four categories of committees

to which contributions may be made[2]); *see Compl.* ¶ 19 (providing statute section in full). These amounts total $22,000. *See* IC § 3-9-2-4. Therefore, a corporation "may contribute a total of $22,000 per calendar year." *Compl.* ¶ 56 (quoting *2022 Indiana Campaign Finance Manual*, Indiana Election Division, p. 61, available at https://www.in.gov/sos/elections/files/2022-Campaign-Finance-Manual.FINAL.v1.pdf.

By listing these permitted categories of contributions, IC § 3-9-2-4 prohibits, with very limited exceptions, other types of contribution. *Compl.* ¶¶ 19–22, 32–33. The limited exceptions, found in IC § 3-9-2-6, are as follows:

> (1) Nonpartisan registration and get-out-the-vote campaigns: (A) by a corporation aimed at its stockholders and employees; or (B) by a trade association or labor organization aimed at its members. (2) A contribution or transfer by an incorporated nonpartisan political action committee to any other committee. (3) A contribution supporting or opposing the approval of a public question submitted to the electorate of the entire state or a local public question.

By detailing these limited exceptions, the legislature made it clear that they are the *only* types of contributions that may be made other than those permitted by IC § 3-9-2-4. No similar exceptions apply to contributions for independent expenditures, meaning that corporations are prohibited from making contributions to PACs for independent expenditures. *Compl.* ¶¶ 32-33; *see generally* IC § 3-9-2, et seq.

Second, the very next section in the same chapter, IC § 3-9-2-5 (or "**Article 9, Chapter 2, Section 5**") dictates how a "corporation or labor organization may make a contribution to a

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[2]Specifically, the committees listed are "state committees of political parties" (IC § 3-9-2-4(2)); "regular party committees organized by a legislative caucus of the senate of the general assembly" (IC § 3-9-2-4(5)); "regular party committees organized by a legislative caucus of the house of representatives of the general assembly" (IC § 3-9-2-4(6)); and "central committees other than state committees" (IC § 3-9-2-4(8)). *Compl.* ¶ 19 n.2.

political action committee." Such entities may do so only "if the contribution: (1) does not exceed any of the limits prescribed under section 4 of this chapter; and (2) is designated for disbursement to a specific candidate or committee listed under section 4 of this chapter." IC § 3-9-2-5. This is the only means provided by which a "corporation or labor organization may make a contribution to a political action committee," IC § 3-9-2-5.[3]

Thus, Article 9, Chapter 2, Section 5 prohibits corporations from making contributions for purposes that are not "listed under section 4 of th[e] chapter," that is, Article 9, Chapter 2, Section 4, or in the limited exceptions of IC §§ 3-9-2-6. In turn, then, IC §§ 3-9-2-4, 3-9-2-5 prohibit corporations from making contributions to PACs for the purpose of independent expenditures, which are not listed in IC § 3-9-2-4 (and therefore may not be listed as a "designat[ion] for disbursement" per IC § 3-9-2-5's requirement) or in the limited exceptions of IC §§ 3-9-2-6.

Third, as a matter of law, independent expenditures cannot be designated for disbursement to a specific candidate or committee. Indiana does not define independent expenditures, so federal law is instructive here. Under 11 CFR § 100.16, independent

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[3]The fact that IC § 3-9-2-6 creates limited exceptions to IC §§ 3-9-2-4, 3-9-2-5 further goes to show the necessity of this conclusion. Per IC § 3-9-2-6, The contribution limits do not apply to:

> (1) Nonpartisan registration and get-out-the-vote campaigns: (A) by a corporation aimed at its stockholders and employees; or (B) by a trade association or labor organization aimed at its members. (2) A contribution or transfer by an incorporated nonpartisan political action committee to any other committee. (3) A contribution supporting or opposing the approval of a public question submitted to the electorate of the entire state or a local public question.

By listing these limited exceptions, the legislature made it clear that they are the *only* types of contributions that may be made other than those permitted by IC § 3-9-2-4. For example, no similar exceptions apply for contributions for independent expenditures. *See generally* IC § 3-9-2, et seq.

expenditure is defined as

> an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

Compl. ¶¶ 34-35. By definition, an independent expenditure cannot be "designated for disbursement to a specific candidate or committee[.]" Instead, such expenditures (and contributions for such expenditures) must remain completely independent from the candidate, and may not be disbursed *to* the candidate. Accordingly, Article 9, Chapter 2, Section 5 acts as a complete prohibition on contributions to PACs for independent expenditures.

A violation of the Election Code results in civil penalties, IC § 3-9-4-16, and potential criminal penalties, IC § 3-14-1-10. *Compl.* ¶¶ 36–39.

II. Argument

Indiana's prohibition on corporate contributions to PACs for independent expenditures is unconstitutional. As shown below, Plaintiffs meet the requirements for a preliminary injunction: they are likely to succeed on the merits of their case, they have irreparable harm and no adequate remedy at law if the injunction is not granted, the public interest favors the Plaintiffs, and the balance of equities favors the Plaintiffs.

A. Standards for a Preliminary Injunction

The Seventh Circuit applies a two-phase approach to analyzing the need for a preliminary injunction. First, "a party seeking a preliminary injunction must demonstrate (1) some likelihood of succeeding on the merits, and (2) that it has no adequate remedy at law and will suffer irreparable harm if preliminary relief is denied." *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d

6, 11 (7th Cir. 1992) (internal citations omitted). Then, if these "threshold" factors are met, the court proceeds to "a balancing phase." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008). In the balancing phase, the court must consider "(3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Abbott Labs.*, 971 F.2d at 11–12.

In the final analysis, the district court equitably weighs these factors together on a "sliding scale," by "seeking at all times to 'minimize the costs of being mistaken.'" *Id.* at 12 (quoting *American Hosp. Supply Corp. v. Hosp. Prods. Ltd.*, 780 F.2d 589, 593 (7th Cir. 1986)). The more likely the plaintiff is to win, the less heavily the balance of harms to the other parties and the public policy arguments for non-parties need to weigh in the plaintiff's favor; the less likely a plaintiff is to win, the more those factors must weigh in the plaintiff's favor. *See Valencia v. City of Springfield*, 883 F.3d 959, 966 (7th Cir. 2018).

While this is true in all cases, it is particularly important in the First Amendment context. The other factors are categorically met when the moving party succeeds in showing that First Amendment freedoms are at stake: (1) "'the loss of First Amendment freedoms . . . unquestionably constitutes *irreparable injury*,'" (2) "'injunctions protecting First Amendment freedoms are *always in the public interest*,'" *Wisconsin Right To Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir. 2014) (emphases added) (quoting *ACLU v. Alvarez*, 679 F.3d 583, 589–590 (7th Cir. 2012)); and (3) "[t]he loss of First Amendment freedoms is presumed to constitute an irreparable injury for which *money damages are not adequate*," *Christian Legal Soc'y v. Walker*, 453 F.3d 853,

859 (7th Cir. 2006) (emphasis added); *see also Ind. Civ. Liberties Union Found., Inc. v. Superint., Ind. State Police*, 470 F. Supp. 3d 888, 905–06 (S.D. Ind. 2020) ("The deprivation of First Amendment rights is one for which *no adequate remedy at law exists*" (emphasis added)). Therefore, "In First Amendment cases . . . the likelihood of success on the merits is usually the decisive factor," *Wisconsin Right To Life, Inc.*, 751 F.3d at 830, for if that factor is satisfied, the others follow.

B. Application to This Case

Indiana's prohibition on corporate contributions to PACs for purposes of independent expenditures, a prohibition for which there is no recognized justification, is unconstitutional. Accordingly, Plaintiffs are likely to succeed on the merits of this case. *See* Part II.B.1. Given this violation of Plaintiffs' fundamental constitutional rights, the other factors—irreparable injury if a preliminary injunction is not granted, lack of an adequate remedy at law, and the public interest—follow suit. *See* Part II.B.2–4. Likewise, the balance of equities favors the Plaintiffs. *See* Part II.B.5. Accordingly, a preliminary injunction should be granted.

1. Plaintiffs Will Likely Succeed on the Merits of their Claims

"When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *McCutcheon v. FEC*, 572 U.S. 185, 210 (2014) (citation omitted). Under well-established case law on campaign finance restrictions, courts have made clear that "preventing actual or apparent quid pro quo corruption is the *only* interest the Supreme Court has recognized as sufficient to justify campaign-finance restrictions." *Barland*, 664 F.3d at 151–52; *see also Citizens United v. FEC*, 558 U.S. 310, 359 (2010) ("When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of

corruption, that interest was limited to quid pro quo corruption.") and *McCutcheon*, 572 U.S. at 192 (2014) ("Any regulation must instead target what we have called 'quid pro quo' corruption or its appearance. That Latin phrase captures the notion of a direct exchange of an official act for money.") (internal citations omitted).

Accordingly, here, it is Indiana's burden to prove that the Election Code's prohibition on corporate contributions to PACs for independent expenditures prevents actual or apparent quid pro quo corruption. However, because "the government's interest in preventing actual or apparent [quid pro quo] corruption—an interest generally strong enough to justify *some* limits on contributions *to candidates*—cannot be used to justify restrictions on independent expenditures," *Barland*, 664 F.3d at 153 (citing *Citizens United*, 558 U.S. at 357) (second emphasis added), Indiana cannot satisfy its burden. Plaintiffs here are extremely likely to succeed on the merits of their claims.

"'There is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs, includ[ing] discussion[] of candidates.'" *Id.* at 151–52 (quoting *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 755 (2011)).

> The free flow of political speech "is central to the meaning and purpose of the First Amendment." *Citizens United*, 130 S.Ct. at 892. . . . [U]nencumbered discussion about political candidates and issues is "integral to the operation of the system of government established by our Constitution." *Buckley v. Valeo*, 424 U.S. 1, 14, 96 S.Ct. 612 (1976). "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United*, 130 S.Ct. at 898.

Id.

And political "[s]pending . . . and contributing . . . both fall within the First Amendment's

protection of speech and political association." *Id.* at 152 (quoting *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 440 (2001)). Therefore, "preventing actual or apparent quid pro quo corruption is the *only* interest the Supreme Court has recognized as sufficient to justify campaign-finance restrictions." *Id.* at 153; *see also Citizens United*, 358 U.S. at 359 and *McCutcheon*, 572 U.S. at 172. However, "[t]he threat of quid pro quo corruption does not arise when independent groups spend money on political speech. . . . 'The separation between candidates and independent expenditure groups negates the possibility that independent expenditures will result in the sort of quid pro quo corruption with which [the Court's] case law is concerned.'" *Barland*, 664 F.3d at 153 (quoting *Ariz. Free Enter.*, 564 U.S. at 751). Therefore, "the government's interest in preventing actual or apparent [quid pro quo] corruption—an interest generally strong enough to justify *some* limits on contributions *to candidates*—cannot be used to justify restrictions on independent expenditures." *Id.* (citing *Citizens United*, 558 U.S. at 357) (second emphasis added). As noted, this remains "true even though the statute limits *contributions*, not *expenditures*," for "after *Citizens United* there is *no* valid governmental interest sufficient to justify imposing limits on fundraising by independent-expenditure organizations."[4] *Id.* at 154; *see also Citizens United*, 558 U.S. at 360 ("independent expenditures do not lead to, or create the appearance of, quid pro quo corruption.").

Notably, "[o]ver time, various other justifications for restricting political speech have

[4]This furthermore remains true *even if* the statute in question does not explicitly prohibit the *receipt* of contributions, but only making contributions. When a statute limits the amount that may be "contribute[d] to . . . political committees," it "operates to limit the contributions the committee may lawfully receive. To the extent that a contributor wants to donate more than the statute allows but refrains from doing so in order to avoid violating the statute, the committee itself is injured." *Id.* at 147.

been offered—equalization of viewpoints, combating distortion, leveling electoral opportunity, encouraging the use of public financing, and reducing the appearance of favoritism and undue political access or influence—but the Court has repudiated them all." *Id.* at 153–54. This leaving no recognized justification for the sort of campaign-finance restrictions at issue here, Plaintiffs are likely to succeed on the merits of this case. Indeed, such was the case in *Barland*, in which "Wisconsin's $10,000 aggregate annual contribution limit" was held, "as a matter of law and logic . . . unconstitutional as applied to organizations, like the Right to Life PAC, that engage only in independent expenditures for political speech." *Id.* at 154.

Barland's decision is consistent with the Supreme Court. *See McCutcheon v. FEC*, 572 U.S. 185 (2014) (the only legal justification for contribution limits is to combat quid pro quo corruption or its appearance; contribution limits serving any other purpose are unconstitutional); *Citizens United*, 558 U.S. at 360 (holding that "independent expenditures do not lead to, or create the appearance of, quid pro quo corruption"). Furthermore, other circuits have agreed that independent expenditures present no danger of quid pro quo corruption or its appearance, finding laws that burden independent expenditures unconstitutional. *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 n.1, 487–488 (2d Cir. 2013) (ordering district court to enjoin enforcement of law limiting, *inter alia*, contributions to independent-expenditure-only PACs: "[A] donor to an independent expenditure committee . . . may not be limited in his ability to contribute to such committees. All federal circuit courts that have addressed this issue have so held," and, "[R]egardless of the standard of review, . . . the threat of quid pro quo corruption does not arise when individuals make contributions to groups that engage in independent spending on political speech"); *N. Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 308 (4th Cir. 2008)

(finding application of "$4,000 contribution limit to independent expenditure political committees" unconstitutional); *Cath. Leadership Coal. of Texas v. Reisman*, 764 F.3d 409, 428, 445 (5th Cir. 2014) (finding unconstitutional statute that limited independent expenditures because "as a matter of law, independent expenditures do not give rise to corruption or the appearance of corruption"); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1118 (9th Cir. 2011) (upholding injunction of statute limiting "the spending and fundraising of independent committees," because defendant city's "anti-corruption" justification for it was unavailing "in the context of restrictions on independent expenditures, . . . [per] *Citizens United*"); *Republican Party of New Mexico v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013) (affirming district court's preliminary injunction enjoining enforcement of law prohibiting contributions of any kind, thus including those for independent expenditures, greater than $5,000, from individuals to political committees); *Emily's List v. FEC*, 581 F.3d 1, 9 (D.C. Cir. 2009) (because "contributions to a committee that makes only independent expenditures pose no . . . threat of actual or potential corruption," law that effectively capped independent expenditures by certain political committees at $5,000 was unconstitutional); *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (vacating order denying injunctive relief against statute "limiting contributions to an independent expenditure group," because "the government has no anti-corruption interest" in such limitation).

Here, Indiana prohibits corporate contributions to PACs for independent expenditures. *See supra* Part I.B. Under relevant precedent, such prohibition cannot, as a matter of law, target quid pro quo corruption or its appearance. It is therefore unconstitutional. Plaintiffs are extremely likely to succeed on the merits in this case.

2. Plaintiffs Have No Adequate Remedy at Law

To show that there is no adequate remedy at law, a plaintiff need not demonstrate that a potential remedy would be "wholly ineffectual; rather, the remedy must be seriously deficient as compared to the harm suffered." *Foodcomm Int'l v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003) (citing *Roland Machinery Co. v. Dresser Industries*, 749 F.2d 380, 386 (7th Cir.1984)).

In cases challenging laws that hinder First Amendment freedoms, this analytical factor presents an easy test, as remedies at law are presumed to be deficient: "The loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate." *Christian Legal Soc'y*, 453 F.3d at 859. *See also Ind. Civ. Liberties Union Found.*, 470 F. Supp. 3d 888, 905–06 (S.D. Ind. 2020) ("The deprivation of First Amendment rights is one for which no adequate remedy at law exists.") (citing *Alvarez*, 679 F.3d at 589; *Christian Legal Soc'y*, 453 F.3d at 859); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (holding that there was no adequate remedy at law to statute violating Second Amendment, which protects "intangible and unquantifiable interests" similar to First Amendment).

The Election Code prohibits corporations from contributing to PACs for purposes of independent expenditures, a speech act protected by the First Amendment. Plaintiffs are likely to succeed on the merits in this case, *supra* Part II(B)(1). Therefore, absent a preliminary injunction, Plaintiffs have no adequate remedy at law.

3. Plaintiffs Have Irreparable Harm

"'[T]he loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury.'" *Wisconsin Right To Life, Inc.*, 751 F.3d at 830 (quoting *Alvarez*, 679 F.3d at 589); *see also Christian Legal Soc'y*, 453 F.3d at 859 ("The loss of First Amendment freedoms is

presumed to constitute an irreparable injury"); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020); *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

The Election Code prohibits corporations from contributing to PACs for purposes of independent expenditures, a speech act protected by the First Amendment. Plaintiffs are likely to succeed on the merits in this case, *supra* Part II(B)(1). Therefore, absent a preliminary injunction, Plaintiffs will suffer irreparable harm.

4. The Public Interest Favors a Preliminary Injunction

As with the "no adequate remedy" and "irreparable harm" factors, the "public interest" factor is also categorically met if First Amendment freedoms are at stake. "'[I]njunctions protecting First Amendment freedoms are *always* in the public interest.'" *Wisconsin Right To Life, Inc.*, 751 F.3d at 830 (emphasis added) (quoting *Alvarez*, 679 F.3d at 590); *see also Christian Legal Soc'y*, 453 F.3d at 859 (same) (citing *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir.2004)); *Elrod*, 427 U.S. at 373; *Ind. Civ. Liberties Union Found.*, 470 F. Supp. 3d at 908 ("'protecting First Amendment freedoms always serves the public interest'") (quoting *Swart v. City of Chicago*, 440 F. Supp.3d 926, 945 (N.D. Ill. 2020)); and *cf. Higher Soc'y of Ind. v. Tippecanoe Cnty., Ind.*, 858 F.3d 1113, 1116 (7th Cir. 2017) ("[T]he public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional") (quoting *Alvarez*, 679 F.3d at 590).

The Election Code prohibits corporations from contributing to PACs for purposes of independent expenditures, a speech act protected by the First Amendment. Plaintiffs are likely to succeed on the merits in this case, *supra* Part II(B)(1). Therefore, the public interest favors granting a preliminary injunction.

5. The Balance of Equities Favors a Preliminary Injunction

Just as "the public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional," *Higher Soc'y*, 858 F.3d at 1116 (quoting *Alvarez*, 679 F.3d at 590), one can imagine little harm, much less irreparable harm, to a nonmoving governmental party who is enjoined from enforcing a statute that is probably unconstitutional. *See id.* (finding that the balance of harms, including harm to the nonmoving party by the granting of an injunction, typically favors granting a preliminary injunction in First Amendment cases); *Alvarez*, 679 F.3d at 589 (same); *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013) (same).

Therefore, in First Amendment cases, "the balance of harms normally favors granting preliminary injunctive relief." *Higher Soc'y*, 858 F.3d at 1116; *see also Alvarez*, 679 F.3d at 589; *Korte*, 735 F.3d at 666. Thus, in such cases, "the likelihood of success on the merits is usually the decisive factor." *Wisconsin Right To Life, Inc.*, 751 F.3d at 830.

These truths apply no less in this case. As explained *supra* Part II(B)(1), Plaintiffs are likely to succeed on the merits in this case. Moreover, the additional factors weigh in favor of Plaintiffs. Accordingly, in this case "the balance of harms . . . favors granting preliminary injunctive relief." *Higher Soc'y*, 858 F.3d at 1116.

Conclusion

Because Indiana prohibits corporations from contributing to PACs for purposes of independent expenditures, a speech act protected by the First Amendment, and because there is no recognized justification for such a prohibition, Plaintiffs are likely to succeed on the merits in this case. Likewise, because the loss of First Amendment freedoms is at stake in this case, Plaintiffs have irreparable harm if the injunction is not granted and no adequate remedy at law;

the public interest favors the Plaintiffs; and the balance of equities favors the Plaintiffs. As such, Plaintiffs meet the requirements for a preliminary injunction. For these reasons, and all others stated above, Plaintiffs respectfully request this Court grant the preliminary injunction and enjoin enforcement of IC §§ 3-9-2-4, 3-9-2-5.

Dated: November 4, 2021

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Certificate of Service

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