

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION NO.

<hr/>	
1A AUTO, INC., and)
126 SELF STORAGE, INC.,)
)
Plaintiffs,)
)
v.)
)
MICHAEL SULLIVAN, Director,)
Office of Campaign and Political Finance,)
)
Defendant.)
<hr/>	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their undersigned counsel, hereby file this Complaint against Defendant and allege as follows:

INTRODUCTION

1. This civil rights action seeks to vindicate the constitutional rights of businesses to participate on equal footing with unions and other groups in the political process.

2. On its face and as enforced by Defendant, G.L. c. 55, §8 imposes an outright ban on political contributions by business corporations to candidates, parties, and political committees, both directly from their general corporate treasuries and indirectly from business-controlled political action committees (“PACs”).

3. Unincorporated groups, including labor unions, are allowed to contribute thousands of dollars to candidates, parties, and political committees, both directly from their general treasuries and indirectly from union-controlled PACs.

4. There is no legitimate justification for allowing unions to contribute thousands of dollars to candidates, parties, and political committees, while completely banning any contributions from businesses.

5. This lopsided ban on political contributions violates Plaintiffs' rights of equal protection, free speech, and free association protected by the Massachusetts and United States constitutions.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiffs' claims for relief pursuant to G.L. c. 12, §11I, G.L. c. 231A, §1 *et seq.*, G.L. c. 212, §3, G.L. c. 214, §1, G.L. c. 214, §5, and 42 U.S.C. §1983.

7. Venue is appropriate pursuant to G.L. c. 223, §1.

PARTIES

8. Plaintiff 1A Auto, Inc., is a family-owned Massachusetts business corporation. It sells auto parts in Pepperell, Massachusetts. It does not solicit or receive funds for any political purpose. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would directly and indirectly contribute money or other valuable things for the purpose of aiding the nomination and election of numerous persons to public office, and aiding the interests of political parties. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would make such contributions to candidates, PACs other than independent expenditure PACs, and party committees. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would establish, finance, maintain, and control a PAC to make such contributions.

9. Plaintiff 126 Self Storage, Inc., is a family-owned Massachusetts business corporation. It rents self-storage units in Ashland, Massachusetts. It does not solicit or receive funds for any political purpose. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self

Storage, Inc., would directly and indirectly contribute money or other valuable things for the purpose of aiding the nomination and election of numerous persons to public office, and aiding the interests of political parties. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self Storage, Inc., would make such contributions to candidates, PACs other than independent expenditure PACs, and party committees. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self Storage, Inc., would establish, finance, maintain, and control a PAC to make such contributions.

10. Defendant Michael Sullivan is the Director of the Office of Campaign and Political Finance. Defendant Sullivan is responsible for enforcement of Massachusetts statutes and regulations regarding disclosure and regulation of campaign expenditures and contributions, including G.L. c. 55, §8. Defendant Sullivan is empowered to enforce these laws through, *inter alia*, issuance of rules, regulations, interpretative bulletins, and advisory opinions. Defendant Sullivan is currently enforcing the laws, practices, policies, and procedures complained of in this action. Defendant Sullivan is sued in his official capacity.

FACTS

11. In pertinent part, G.L. c. 55, §8 provides:

[N]o business or professional corporation, partnership, limited liability company partnership under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

12. The statute imposes an outright ban on political contributions by business corporations to candidates, parties, and political committees, both directly from a business's general corporate treasury and indirectly through a PAC.

13. Due to Defendant's enforcement of G.L. c. 55, §8, business corporations "may not contribute to candidates, PACs (other than independent expenditure PACs), or party committees." See IB-88-01.

14. Exhibit 1 accurately reflects IB-88-01 and Defendant's current enforcement practices, policies, and procedures.

15. Due to Defendant's enforcement of G.L. c. 55, §8, businesses may not establish, finance, maintain, or control a PAC that supports candidates, other PACs (other than independent expenditure PACs), or party committees. See AO-90-30.

16. Exhibit 2 accurately reflects AO-90-30 and Defendant's current enforcement practices, policies, and procedures.

17. Due to Defendant's enforcement of G.L. c. 55, §8, non-profit organizations, PACs, and unincorporated organizations with business members are likewise barred from contributing to candidates, PACs (other than independent expenditure PACs), or party committees. See AO-98-01.

18. Exhibit 3 accurately reflects AO-98-01 and Defendant's current enforcement practices, policies, and procedures.

19. A corporation that violates G.L. c. 55, §8 can be fined up to \$50,000; any officer, director, or agent of the corporation can be fined up to \$10,000 and/or imprisoned for one year.

20. As enforced by Defendant, G.L. c. 55, §8 allows labor unions and other unincorporated associations to make political contributions to candidates, PACs, or party committees, both directly and through union-controlled PACs. See AO-97-21.

21. Exhibit 4 accurately reflects AO-97-21 and Defendant's current enforcement practices, policies, and procedures.

22. As enforced by Defendant, G.L. c. 55, §8 allows any union to directly contribute the lesser of 10 percent of its revenue or \$15,000 per year from funds not solicited for a political purpose to candidates, PACs, or party committees. See IB-88-01.

23. Direct contributions from unions to candidates, PACs, or party committees in the aggregate amount of \$15,000 per year or less do not create a cognizable risk of corruption.

24. If a union exceeds the 10-percent/\$15,000 limit on direct contributions, its subsequent contributions are subject to ordinary contribution limits and all of its spending becomes subject to disclosure requirements. See IB-88-01.

25. Annual political contribution limits for individuals are: \$1,000 per candidate, \$5,000 per party, and \$500 per PAC. See G.L. c. 55, §7A(a)(1)–(3); 970 Mass. Code Regs. 1.04.

26. Spending by a union-controlled PAC is separate from and in addition to the 10-percent/\$15,000 limit set out in IB-88-01. See AO-97-21.

27. Annual political contribution limits for PACs are: \$500 per candidate, \$5,000 per party, and \$500 per PAC. See G.L. c. 55, §7A(a)(1)–(3); 970 Mass. Code Regs. 1.04.

FIRST CLAIM FOR RELIEF
(Equal Protection)
(Massachusetts Declaration of Rights, Art. 1)

28. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

29. Plaintiffs are entitled to the equal protection of law guaranteed by Article 1 of the Massachusetts Declaration of Rights.

30. Article 1 of the Massachusetts Declaration of Rights requires that the same political contribution limits apply to unions and businesses.

31. On its face and as enforced by Defendant, G.L. c. 55, §8 prohibits Plaintiffs from making political contributions to candidates, parties, or committees while allowing unions to make such contributions in excess of ordinary limits.

32. For purposes of regulating political contributions, businesses and unions are functionally equivalent organizations.

33. The statutory classifications imposed by G.L. c. 55, §8 and enforced by Defendant impinge upon Plaintiffs' political speech.

34. The statutory classifications imposed by G.L. c. 55, §8 and enforced by Defendant are not narrowly tailored to prevent corruption or the appearance thereof.

35. By applying different contribution limits to unions and businesses, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of equal protection of the law, in violation of Article 1 of the Massachusetts Declaration of Rights.

36. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

SECOND CLAIM FOR RELIEF

(Equal Protection)

(Fourteenth Amendment)

37. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

38. Plaintiffs are entitled to the equal protection of law guaranteed by the Fourteenth Amendment to the United States Constitution.

39. The Fourteenth Amendment requires that the same contribution limits apply to unions and businesses.

40. By applying different contribution limits to unions and businesses, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures that deprive Plaintiffs of equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

41. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

THIRD CLAIM FOR RELIEF
(Freedom of Speech and Association)
(Massachusetts Declaration of Rights, Art. 16 and 19)

42. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

43. Plaintiffs' political speech is protected by Articles 16 and 19 of the Massachusetts Declaration of Rights.

44. On its face and as enforced by Defendant, G.L. c. 55, §8 prohibits Plaintiffs from making political contributions to candidates, parties, or committees.

45. The contribution ban imposed by G.L. c. 55, §8 and enforced by Defendant impinges upon Plaintiffs' political speech.

46. The contribution ban imposed by G.L. c. 55, §8 and enforced by Defendant is not narrowly tailored to prevent corruption or the appearance thereof.

47. By prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of the rights of free speech and association, in violation of Articles 16 and 19 of the Massachusetts Declaration of Rights.

48. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

FOURTH CLAIM FOR RELIEF
(Freedom of Speech and Association)
(First and Fourteenth Amendments)

49. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

50. Plaintiffs' political speech is protected by the First and Fourteenth Amendments to the United States Constitution.

51. By prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of the rights of free speech and association, in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

52. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor as follows:

A. Declare that Defendant's application of different political contribution limits to unions and businesses deprives Plaintiffs of equal protection of the law, in violation of Article 1 of the Massachusetts Declaration of Rights;

B. Declare that Defendant's application of different political contribution limits to unions and businesses deprives Plaintiffs of equal protection of the law, in violation of the Fourteenth Amendment;

C. Declare that by prohibiting Plaintiffs from making political contributions to candidates, parties, or committees G.L. c. 55, §8 deprives Plaintiffs of the rights of free speech and association, in violation of Articles 16 and 19 of the Massachusetts Declaration of Rights;

D. Declare that by prohibiting Plaintiffs from making political contributions to candidates, parties, or committees Mass. G.L. c. 55, §8 deprives Plaintiffs of the rights of free speech and association, in violation of the First and Fourteenth Amendments to the United States Constitution;

E. Preliminarily and permanently enjoin Defendant, his officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing different political contribution limits for unions and businesses;

F. Preliminarily and permanently enjoin Defendant, his officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing G.L. c. 55, §8 against Plaintiffs;

G. Award Plaintiffs their costs, attorneys' fees, and other expenses in accordance with law, including 42 U.S.C. §1988 and G.L. c. 12, §11I; and

H. Order such additional relief as may be just and proper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

1A AUTO, INC. and 126 SELF STORAGE, INC.,

By their attorneys,

Gregory D. Cote, BBO # 645943
McCarter & English, LLP
265 Franklin Street
Boston, MA 02110
(617) 449-6500
GCote@McCarter.com

Of Counsel:

James Manley
Aditya Dynar
**Scharf-Norton Center for Constitutional
Litigation at the
GOLDWATER INSTITUTE**
500 E. Coronado Road
Phoenix, AZ 85004
(602) 462-5000
Litigation@GoldwaterInstitute.org

February ___, 2015