

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**Democrats for an Informed  
Approach to Gender (DIAG),**

*Plaintiff,*

v.

**Alexi Giannoulis,**  
in his official capacity as  
Illinois Secretary of State,

*Defendant.*

Civil Action No. 1:26-cv-00894

Hon. Steven C. Seeger

Oral argument requested

REPLY MEMORANDUM SUPPORTING  
DIAG'S PRELIMINARY INJUNCTION MOTION

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## INTRODUCTION

The state's response does not contest that Democrats for an Informed Approach to Gender (DIAG) is a factually accurate name, describing current and former Democrats urging a different approach to gender than the national Democratic Party. Instead, it insists the state can forbid all nonprofits from using the terms "democrat" or "republican" without the relevant political party's prior approval because "mere use" of the term "democrats" by nonprofits unaffiliated with the Democratic Party is "wrong, confusing, and misleading." Resp. in Opp'n to DIAG's Mot. for Prelim. Inj. (Resp.) 9, Dkt. No. 20. The state gives its citizens so little credit that, in its view, the existence of groups like "Democrats for Trump" and "Republicans for Harris" in Illinois would have misled 2024 voters into believing the two respective political parties had backed each other. The state's justification flunks the commonsense test, and its content-based restriction is unconstitutional.

The First Amendment "reflect[s] a greater faith" in Americans' ability to "inform themselves about" political issues. *Anderson v. Celebrezze*, 460 U.S. 780, 797 (1983). So it prevents a state from restricting speech just because the state deems speech wrong, confusing, or misleading. *See United States v. Alvarez*, 567 U.S. 709, 719 (2012) (plurality opinion) (emphasizing that "falsity alone may not suffice to bring the speech outside the First Amendment"). The state's response fails to justify its content-based speech restriction, which cannot satisfy the rigors of strict scrutiny, or even the state's asserted exacting scrutiny substitute. This Court should enter a preliminary injunction to require Secretary Giannoulas to allow DIAG to conduct affairs in Illinois and to restrain him from enforcing 805 ILCS 105/104.05(a)(6).

## ARGUMENT

The Party Name Provision likely violates the First Amendment because it addresses no compelling or sufficiently substantial government interest or actual problem, is not narrowly tailored, and operates as an unconstitutional prior restraint. *See* Mem. Supp. DIAG’s Prelim. Inj. Mot. (Mem.) 6–12, Dkt. No. 6. Because the provision likely violates the First Amendment, DIAG is suffering irreparable harm, as the state concedes, and the balance of interests accordingly favors DIAG. This Court should therefore grant DIAG preliminary relief.

### **I. The Party Name Provision likely violates the First Amendment.**

The state spends considerable space discussing whether DIAG’s challenge is facial or as applied. Resp. 4–6. But the preliminary injunction memorandum was clear: The provision is “invalid on its face *and* as applied.” Mem. 10.

For both DIAG’s facial and as-applied challenges, the state must prove the Party Name Provision complies with the First Amendment, and the analysis is the same for both. The state must show the provision is narrowly tailored towards a sufficient government interest that addresses an actual problem. The state’s insistence on “separate arguments for each type of challenge,” Resp. 4, is unnecessary because the relevant facts are identical, whether the provision is applied to DIAG or any other nonprofit, *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618 (2021) (rejecting limiting holding to as-applied relief when “the pertinent facts ... are the same”). The state’s lack of a sufficient interest and failure to employ alternatives “is true in every case.” *Id.* And the provision’s “lack of tailoring to the State’s [interest] is categorical—present in every case—as is the weakness of the State’s interest.” *Id.* at 615.

Thus, because there is no daylight between a facial and an as-applied challenge here, this Court need not conduct separate analyses. The Party Name Provision is unconstitutional no matter its application, so the Court should grant DIAG's request to "enjoin[] [the Secretary] from enforcing the Party Name Provision" going forward, whether against DIAG or other nonprofits, and the Court should enter a preliminary injunction "ordering the Secretary to allow DIAG to conduct affairs in Illinois" to provide complete relief to DIAG given its already rejected applications. Mem. 13.

**A. The Party Name Provision is subject to strict scrutiny.**

The state also spends time urging that exacting scrutiny under *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 792, 798 (1988), applies in this case rather than strict scrutiny. Resp. 4. In *Riley*, the Supreme Court applied "exacting First Amendment scrutiny" to a statutory provision compelling disclosures before professional fundraisers could solicit charitable contributions. *Id.* at 798. In doing so, the Court required the provision be "narrowly tailored" to serve "a sufficiently substantial interest." *Id.* at 792.

The distinction, however, between *Riley's* exacting scrutiny and traditional strict scrutiny is immaterial here, for two reasons. First, *Riley's* exacting scrutiny is strict scrutiny. The Supreme Court said as much, discussing how the "Court has applied strict scrutiny to content-based laws that regulate ... professional fundraisers." *Nat'l Inst. of Fam. & Life Advoc. v. Becerra (NIFLA)*, 585 U.S. 755, 771 (2018) (citing *Riley*, 487 U.S. at 798). So have multiple circuit courts. *See, e.g., Planet Aid v. City of St. Johns*, 782 F.3d 318, 330 (6th Cir. 2015) (noting *Riley* and similar cases "plainly

applied strict scrutiny”); *Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, 153 F.4th 795, 814 (9th Cir. 2025) (noting Supreme Court “applied strict scrutiny” in *Riley*).

Second, to the extent the two forms of scrutiny differ, the difference does not alter the outcome. Any difference between the two is limited to the strength of the required governmental interest. Strict scrutiny requires a compelling governmental interest, *NIFLA*, 585 U.S. at 766, while exacting scrutiny requires a “sufficiently substantial” one, Resp. 4 (quoting *Riley*, 487 U.S. at 792). Critically, both require the restriction to be narrowly tailored and the least restrictive means. *NIFLA*, 585 U.S. at 766; *Riley*, 487 U.S. at 798; *see also Wis. Action Coal. v. City of Kenosha*, 767 F.2d 1248, 1255 (7th Cir. 1985) (explaining Supreme Court considers less restrictive means when scrutinizing solicitation regulations). And as discussed below, the state’s interest here is neither compelling nor substantial, and the provision fails narrow tailoring, including its least-restrictive-means requirement. This Court can thus avoid the scrutiny issue and take the “well trod” path of “declining to decide the appropriate level of scrutiny when a statute would fail even under a lower level of scrutiny.” *Richwine v. Matuszak*, 148 F.4th 942, 954 (7th Cir. 2025).

If the Court must choose between strict and exacting scrutiny, strict scrutiny is required. The state argues for exacting scrutiny because the Party Name Provision, in its view, is limited to the “charitable solicitation context,” restricting only “speech related to charitable solicitations.” Resp. 4. But the provision goes well beyond the charitable-solicitation context, restricting DIAG from conducting any affairs, which means it cannot “carry[] on activities that further the charitable, educational, or other

purposes for which [DIAG] was created.” *Young Am.’s Found. v. Doris A. Pistole Revocable Living Tr.*, 998 N.E.2d 94, 103 (Ill. App. Ct. 2013).

The provision thus prevents DIAG from engaging in core First Amendment activities, such as working with students, holding conferences, meeting with donors, and sponsoring lectures. *See id.* at 105. Because First Amendment scrutiny depends on what the provision regulates, *see, e.g., Richwine*, 148 F.4th at 952–54, and the Party Name Provision broadly imposes what is not only a content-based restriction on speech, as the state concedes, Resp. 4, but one that extends beyond charitable solicitation, strict scrutiny is appropriate.

**B. The state’s interest is neither compelling, substantial, nor an actual problem.**

The state supplies neither authority nor factual grounding to support a compelling or substantial interest in “avoid[ing] source confusion,” which it says is the Party Name Provision’s “apparent purpose.” Resp. 8. It cites cases concluding that “voter confusion” might be a compelling interest near a polling place, on a ballot, or in connection with a specific election. Resp. 8 (collecting cases). But those cases are inapposite because the Party Name Provision is not limited to that specific context in which confusion might prevent voters from effectively voting. Nothing about DIAG’s name relates to an election or a ballot, and DIAG is a 501(c)(3) organization that does not—and cannot—participate in any campaign or voting activity. Compl. ¶ 12, Dkt. No. 1; *Who Is DIAG?*, DIAG, <https://perma.cc/KLV9-64RH> (last visited Jan. 23, 2026).

Outside that narrow context, the Supreme Court has rejected “voter confusion” as a valid interest. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 220–21

(1986). In *Tashjian*, the Court rejected Connecticut’s claim that closed primaries were necessary to avoid “voter confusion.” *Id.* Connecticut believed, like Illinois here, that “voters can be ‘misled’ by party labels.” *Id.* at 220. But as the Court explained, the First Amendment “reflect[s] a greater faith in the ability of individual voters to inform themselves about campaign issues.” *Id.* (quoting *Anderson*, 460 U.S. at 797). After all, “there is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs,” as it “reflects our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 755 (2011) (cleaned up).

Nor does it follow that a state’s interest in regulating elections grants it a generalized and freewheeling interest in preventing confusion. In *Alvarez*, the Supreme Court rejected the proposition “that the interest in truthful discourse alone is sufficient to sustain a ban on speech.” 567 U.S. at 723. As such, the state fails to carry its burden here to prove its interest is compelling or substantial.

It also fails to prove the Party Name Provision targets “an actual problem.” *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 822 (2000). No problem exists: The state has not shown Illinoisans confuse or are likely to confuse DIAG with the Democratic Party, any more than “Democrats for Trump” or “Republicans for Harris” would make voters believe America’s parties had endorsed the opposing party’s candidate for president. *See also Alvarez*, 567 U.S. at 726 (“The Government points to no evidence to support its claim that the public’s general perception of military awards

is diluted by false claims ....”). Tellingly, the state supplies zero examples of DIAG’s name confusing anyone in the 37 other states in which it solicits contributions.

The state invokes trademark law, but that is likewise inapplicable, as the Party Name Provision has nothing to do with trademarks. Critically, a trademark “confers private rights” enforced by “[t]he private party, not the Government.” *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 185 (1988); *see also Democratic Party of NJ, Inc. v. Devine*, No. 22-01268, 2022 WL 4976616, at \*3 (D.N.J. Oct. 4, 2022) (considering private party’s suit to prevent unauthorized use of registered marks, “NJDEMS.com” and “New Jersey Democratic Party”). And no one has trademarked “democrats.” <https://tmsearch.uspto.gov/search/search-results> (search “democrats” in the search bar; then deselect “dead” in status filter sidebar) [<https://perma.cc/VV4G-XDG3>]. Nor is it likely someone could in this context. *See, e.g., OCCUPY DEMOCRATS*, Registration No. 6,939,605 (disclaiming mark holder’s exclusive right to use “democrats”).

Because the state has failed to prove the Party Name Provision furthers a compelling or sufficiently substantial interest that addresses an actual problem, the provision violates the First Amendment and the Court should preliminarily enjoin it.

**C. The Party Name Provision fails narrow tailoring.**

The Party Name Provision violates the First Amendment even if preventing confusion were a sufficient governmental interest because it fails narrow tailoring thrice over: It is overinclusive, underinclusive, and not the least restrictive means of achieving whatever interest the state asserts.

The Party Name Provision is overinclusive because it restricts all names that include specific terms, regardless of whether the name causes confusion. The

provision's plain text ensnares all 608 IRS-registered nonprofits with "democrat" or "democratic" in their names and the 479 with "republican" in their names.<sup>1</sup> Despite the existence of over 1,000 nonprofits that would be subject to the provision were they to attempt to register in Illinois, the state supplies no evidence that any of them cause confusion in any other state.

Nor could it. Many of those groups, for example, focus on a specific political issue, such as "Independent Media for Democratic Ethiopia" and "Institute for China's Democratic Transition Inc." Others are well understood to be distinct political parties, such as "Democratic Socialists of America," a nearly half-century old political party, or "Democratic Republicans," a nonprofit harkening back to the party of Thomas Jefferson and James Madison.

Yet the Party Name Provision applies to all those groups, extending to any number of organizations where risk of confusion is absent. It would have prohibited nonprofits called "Reagan Republicans Against Trump" and "Wallace Democrats Against Johnson" from soliciting contributions under the paternalistic supposition that Illinoisans will assume the official party sanctioned the nonprofits. Other examples abound, including a historical one: "Chicago Council for a Democratic Cuba," a nonprofit that promoted a democratic government in Cuba, sued over the Party Name

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<sup>1</sup> The number of nonprofits and nonprofit names mentioned in the next paragraph are listed on the IRS's website. <https://apps.irs.gov/app/eos/> (search by "Organization Name," and include either "democrat" or "republican" as the search term). Illinois has only three registered nonprofits with "democrat" in its name and zero with "republican," demonstrating the Party Name Provision's unique and unnecessary burden. <https://charitable.illinoisattorneygeneral.gov/search> (search "democrat" or "republican" as the organization name).

Provision in 1988. Compl. at 7–8, *United Republican Fund of Ill., Inc. v. Ill. Sec’y of State James Edgar*, No. 88-MR-290 (Ill. Cir. Ct. Dec. 21, 1988).<sup>2</sup>

Rather than refuting the provision’s overinclusive nature, the state argues against a single example, asserting it is “unclear whether the ‘Federation for a Democratic China’ is a not-for-profit entity that even solicits charitable donations.” Resp. 9–10. Even setting aside that the Party Name Provision broadly restricts who can conduct affairs—not just who can solicit charitable contributions—arguing against just *one* of hundreds of covered organizations fails to demonstrate the Party Name Provision is appropriately tailored.

The Party Name Provision is also unconstitutional for the separate reason that it is underinclusive in excluding for-profit corporations even though they, too, engage in charitable solicitations. *See Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 605 (2003) (“This case concerns the amenability of *for-profit fundraising corporations* to suit ... for fraudulent charitable solicitations.” (emphasis added)). True, “for-profit corporations are subject to other laws over their names,” Resp. 11 (citing 805 ILCS 5/4.05), but the state does not argue those laws incorporate the Party Name Provision or otherwise prohibit for-profit corporations from using words associated with political parties, as does the Party Name Provision for nonprofits. *Compare* 805 ILCS 105/104.05(a), *with id.* 5/4.05(a). And the state fails to explain

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<sup>2</sup> A scanned version of the complaint is available at <https://perma.cc/R3GH-H4UC>. The state court dismissed the case on procedural grounds without reaching the merits. There is no evidence the group reinitiated its legal challenge or was ever permitted to register as “Chicago Council for a Democratic Cuba.”

why its confusion concerns do not apply equally to for-profit corporations that could use terms associated with political parties in their names. After all, a for-profit group could register as “Democrats for an Informed Approach to Gender Co.”

The Party Name Provision is underinclusive for the additional reason that it forbids nonprofits from using terms associated with political *parties* but does not impose similar restrictions on terms associated with other organizations, political or otherwise. This means a nonprofit can use terms associated with another entity even if the nonprofit represents a dissenting political viewpoint within that broader entity. For instance, without permission from the Roman Catholic Church, which has categorically opposed the death penalty since 2018, a nonprofit could use the name “Roman Catholics for an Effective Death Penalty.” And without permission from Scouting America, which opened its Boy Scouts program to girls in 2019, a nonprofit could use the name “Boy Scouts Against Gender Integration.” Likewise, without permission from Yale University, which has operated as a private institution since its 1701 founding, a nonprofit can use the name “Yalies Against Private Educational Institutions.” By leaving these names untouched but restricting those like DIAG’s, the provision is underinclusive.

The Party Name Provision is unconstitutional for the additional, separate reason that it is not the least restrictive means of advancing whatever interest the state proffers. Illinois’s General Not for Profit Corporation Act already combats potential confusion in a less restrictive way by requiring nonprofit names to be distinguishable from other names. *See* 805 ILCS 105/104.05(a)(3). And although the state does not

assert an interest is preventing fraud through the Party Name Provision, *see* Resp. 2, 6–9, it would not be the least restrictive means of advancing that interest in any event. Fraud is a narrowly defined category of unprotected speech, which requires the speaker make “intentionally misleading statements” meant to deceive the listener “for the purpose of material gain.” *Madigan*, 538 U.S. at 606; *Alvarez*, 567 U.S. at 723. No such concern animates the Party Name Provision.

The state never asserts, for example, that DIAG’s name is “fraudulent,” and rightfully so. *See* Resp. 9 (describing DIAG’s name as “not a degree of fraud” but a “misrepresentation”). The “government cannot label certain speech as fraudulent so as to deprive it of First Amendment protection.” *Commodity Trend Serv., Inc. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000). Nor can the state show DIAG is falsely claiming to be a part of the Democratic Party just by using “democrats.” DIAG’s website clarifies that it is a California-incorporated nonprofit comprising “Democrats, or now politically homeless former Democrats,” who believe “gender ideology” has led the Democratic Party “wildly astray.” Compl. ¶ 12. There is no suggestion, anywhere, of affiliation with the official party.

The state also has a less speech-restrictive way of punishing actual fraud via its criminal law prohibiting charitable fraud. 720 ILCS 5/17-2 (prohibiting “knowingly and falsely” representing oneself as a “representative of any charitable organization”). Any “legitimate interest” the state has in “preventing fraud can be better served by” enforcing such criminal laws, which are “less intrusive than a direct prohibition on solicitation.” *Village of Schaumburg v. Citizens for a Better Env’t*,

444 U.S. 620, 637 (1980) (noting state’s ability to use “penal laws” to punish charitable fraud “directly”). After all, “charitable solicitation is not so inherently conducive to fraud and overreaching as to justify its prohibition.” *Id.* at 637 n.11. Thus, “[l]aws that primarily prohibit fully protected speech along with potentially fraudulent speech,” as does operation of the Party Name Provision to bar solicitation and other First Amendment activity in Illinois by nonprofits like DIAG, “often violate the First Amendment, even if the law’s stated purpose is to prevent fraud; instead, more precise measures must be used.” *Commodity Trend Serv.*, 233 F.3d at 993.

That is the clear message of the Supreme Court’s four leading cases on fraud and charitable solicitations. As the state concedes, the Supreme Court has thrice considered, and thrice held unconstitutional, prophylactic regulations of charitable solicitation enacted to combat fraud. Resp. 6. The state admits the Party Name Provision is yet another such law but tries to analogize it to the law in *Madigan*. Resp. 7. *Madigan*, however, involved “the First Amendment’s application to individual fraud actions,” stressing the critical First Amendment differences “between fraud actions trained on representations made in individual cases and statutes that categorically ban solicitations” in specific contexts. 538 U.S. at 612, 617.

The Party Name Provision falls into the latter category because it prophylactically imposes a prior restraint on solicitations for entire categories of nonprofits rather than targeting instances of fraud when they occur. By broadly prohibiting nonprofits from using the two main descriptors in American politics without permission, the provision resembles past statutes that broadly “impos[ed] prior restraints on

solicitation when fundraising fees exceeded a specified reasonable level.” *Id.* at 612. The state must employ more precise measures, like bringing fraud actions after “fundraisers make false or misleading representations designed to deceive donors.” *Id.* at 624. Because the state has instead enforced the imprecise and prophylactic Party Name Provision, this Court should preliminarily enjoin it from doing so.

**D. The Party Name Provision is an unconstitutional prior restraint.**

The Party Name Provision violates the First Amendment not just because it fails strict or exacting scrutiny but also because it is an unconstitutional prior restraint. As DIAG’s opening memorandum explained in detail, the provision ticks all four prior-restraint elements: (1) DIAG must apply to the Secretary before soliciting; (2) the Secretary must determine whether it will allow DIAG to conduct affairs based on review of its name; (3) the Secretary must affirmatively approve DIAG’s application; and (4) approval requires determining what constitutes an established political party based on fact appraisal, judgment, and opinion formation. *See* Mem. 11 (applying *Samuelson v. LaPorte Cmty. Sch. Corp.*, 526 F.3d 1046, 1051 (7th Cir. 2008)).

The First Amendment generally forbids prior restraints, like the Party Name Provision, that require speakers to seek governmental approval before speaking. In *Cantwell v. Connecticut*, for example, the Supreme Court enforced the bar against prior restraints to invalidate a statute requiring nonprofits to seek permission before soliciting contributions. 310 U.S. 296 (1940). Though the bar on prior restraints has three “narrow exceptions,” *Green Valley Invs. v. Winnebago County*, 794 F.3d 864, 868 (7th Cir. 2015), the state makes no effort to establish any of them apply here, and

none do, *see* Mem. 11–12. The Party Name Provision thus “creates an unconstitutional prior restraint and cannot be enforced.” *Green Valley Invs.*, 794 F.3d at 869.

The state’s attempts to avoid the proscription of prior restraints fail. As examined above, it asserts that all solicitation restrictions, including those operating as prior restraints, are subject to exacting scrutiny. Resp. 4. But it cites no cases in which the Supreme Court has applied exacting scrutiny to prior restraints that create permitting schemes, like the one here or in *Cantwell*. And in *Riley*, when addressing the law’s provision that did create a permitting scheme by requiring professional fundraisers to obtain a license, the Court stressed its general bar on speakers needing “to obtain a license to speak” and held the provision unconstitutional because it fell outside the bar’s narrow exceptions. 487 U.S. at 802.

Rather than drawing on those analogous cases, the state relies on cases involving statutes imposing prior restraints on “solicitation when fundraising fees exceeded a specified reasonable level.” *Madigan*, 538 U.S. at 612. Precedent involving those types of restrictions, however, does not apply here because those restrictions do not turn on content and thus lack “the danger of censorship” inherent in statutes “where officials have unbridled discretion,” *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975), such as with the Party Name Provision, *see* Mem. 11–12.

\* \* \*

DIAG is thus likely to succeed on the merits of its claim that the Party Name Provision violates the First Amendment for three independent reasons. First, the state’s purported interest is neither compelling, substantial, nor an actual problem.

Second, the provision is not narrowly tailored to address the state's interest and not the least restrictive means of doing so. And third, the provision operates as an unconstitutional prior restraint on DIAG's speech.

**II. DIAG is suffering irreparable harm, and the balance of interests favors granting DIAG preliminary relief.**

A preliminary injunction should enter because the state does not contest that DIAG is suffering irreparable harm and concedes the "public interest can follow the merits" in First Amendment cases. Resp. 12. It urges "a closer look" because, it says, "confusion over affiliation harms the public" and the state "has a strong interest in enforcing its own democratically enacted laws," Resp. 12, but as explained, the Party Name Provision is not narrowly tailored to prevent confusion over affiliation. And the state offers nothing but empty suppositions and speculation that anyone has been or would be confused by DIAG's name, despite its operating in 37 other states. The state has violated nonprofits' First Amendment rights "for almost 40 years," Resp. 12, and DIAG's for almost three months, and it is well settled that a state's urged interest in enforcing its laws must yield to the First Amendment. *See Joelner v. Village of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004) (noting "there can be no irreparable harm" to a government entity "prevented from enforcing an unconstitutional statute"). This Court should bar the state from continuing to refuse to yield for even one day longer.

**CONCLUSION**

DIAG respectfully requests that this Court grant its motion for a preliminary injunction, order the Secretary to allow DIAG to conduct affairs in Illinois, and enjoin him from enforcing the Party Name Provision.

Dated: March 10, 2026

Respectfully submitted,

/s/ Daniel A. Zahn

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