UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ASSOCIATION OF CONNECTICUT LOBBYISTS LLC and BARRY WILLIAMS	)	CIVIL ACTION NO: 3:06-CV-01360 (SRU
Plaintiffs,	)	
v.	)	
JEFFREY GARFIELD, in his official capacity as Executive Director and General Counsel of the State Elections Enforcement Commission, RICHARD BLUMENTHAL, in his Official capacity as Attorney General Of the State of Connecticut, PATRICIA HENDEL, ROBERT N. WORGAFTIK, JACLYN BERNSTEI, REBECCA M. DOTY, ENID JOHNS ORESMAN, DENNIS RILEY, MICHAEL RION, SCOTT A. STORMS AND SISTER SALLY J. TOLLES, in their official capacity as Officials And Members of the Office of State Ethics, BENJAMIN BYCEL, in his official capacity as Executive Director of the Office of State Ethics,	)	AUGUST 24, 2007
Defendants.	)	

PLAINTIFFS ASSOCIATION OF CONNECTICUT LOBBYISTS, LLC AND BARRY WILLIAMS OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY DEFENDANTS AND INTERVENOR DEFENDANTS

I. Introduction

The defendants argue that the "reforms" implemented in the Campaign Finance Act are necessary limitations on individual rights using junk science, unsupported personal opinions, and obviously flawed anecdotal analogies. The proponents of the limitations, fabricate a historical factual basis for these draconian measures. Realizing the weakness of their 'evidence', the advocates of limitations claim justification based on public perception.

The limitations of the act attack the most fundamental American rights, the right to free speech, and the right to participate in the political process. The essence of democracy, the right to petition our government, and then seek to change an unresponsive government, is diminished by this misguided law. Not only are a class of citizens, registered communicator lobbyists, their spouses and families affected, but also those groups that they would seek to counsel and advise. This law both limits the ability of Connecticut citizens to protest decisions made by their government and their ability to support candidates who favor the changes they wish to enact.

Similar restrictions on groups have, sadly, been passed by misguided legislatures bowing to the tyranny of public perception in our past. Laws restricting the ability of women, African Americans, Chinese, Japanese, Mexicans, and Philippinos have been enacted by State and

national legislative bodies. Sadly, some misguided courts, to their historical shame, have upheld some of these restrictions based upon the prevailing prejudice of the day, only to be ultimately reversed when reason and fairness prevailed.

All of these misguided restrictions have the same basic ingredients, a perceived crisis, political leaders who seek to gain office by reacting to the crisis, advocacy groups which benefit from the passage of the legislation, hysterical and inaccurate media coverage of the crisis, and a minority which can be scapegoated to solve the crisis.

The advocates of limitations on lobbyists repeatedly cite the alleged crisis in government in Connecticut caused by corruption. The conviction of the former Governor John Rowland and his chief of Staff Peter Ellef, the 1998 conviction of former treasurer Paul Silvester, the conviction of former Bridgeport Mayor Josesph Ganim and the recent conviction of former State Senator Ernest Newton are the oft repeated examples which form the basis for the conclusion that the role of lobbyists in campaigns must be limited. The advocates simply ignore the inconvenient fact that none of these convictions involved campaign contributions, and that no lobbyist was involved in any of the scandals.

The advocates then, illogically, mix the illegal activities conducted in Washington by a corrupt lobbyist with these wholly unrelated Connecticut crimes to suggest that the imposition of restrictions on Connecticut State lobbyists are justified. When challenged, they simply repeat the

mantra that public perception connects the two and that therefore change is justified. The public perception, if it does in fact exist, that lobbyists should be restricted, has been fueled by the overtly political actions of a lieutenant governor/governor seeking election in her own right. Governor Jodi Rell, was an integral part of the 'corrupt" Rowland administration, serving as second in command for ten years. Rather than discuss her own culpability in the scandal, Governor Rell demanded that as part of campaign reform the rights of lobbyists be limited, limiting the power of "special interests". To show her commitment to this "reform" Governor Rell publicly announced that she would accept no donations from lobbyists.

As will be demonstrated from a simple analysis of publicly reported campaign reports, this "reform" is a fraud on the voters. Governor Rell did not technically accept contributions from registered communicator lobbyists. She did, however, raise millions of dollars from client lobbyists, partners, associates and employees of registered communicator lobbyists, and members of associations advised by registered communicator lobbyists. While allegedly eliminating the influence of special interest on her campaign, the "reform" governor raised the same money secretly, avoiding disclosure of the relationship of the special interest to a lobbyist, making the system more, not less subject to abuse.

Ironically the only true campaign finance violations in the 2006 gubernatorial elections were committed not by lobbyists, but by the chief of staff of the "reform" governor and her

appointed commissioners. None of these violators are restricted in any way by the "campaign reform" law. In fact, none of the felons convicted in the scandals cited as a basis for the law are in any way affected by the campaign finance "reform." Former Governor Rowland, former Treasurer Paul Silvester, former Mayor Joseph Ganim, and former State Senator Ernest Newton can all give contributions, act as officers of campaigns, provide unrestricted advice to political action committees and solicit on behalf of any candidates, despite their felony convictions for public corruption. Not one lobbyist has been convicted of a crime, a violation of a campaign law or regulation, or an ethical law relating to campaign finance, yet both they and their spouses and children are limited by the law.

II. No Registered Communicator Lobbyist was involved in any of the scandals cited by the intervenors.

The defendants and intervenors constantly repeat as a justification for the limitations of the rights of lobbyists and their families the claim that Connecticut suffers from corruption. While it is true that the governor, one of his aides, a former treasurer, a senator, and two mayors were convicted or pled guilty to crimes, not one of these scandals involved a registered communicator lobbyist.

The defendants mislead this court by their suggestion that the ban on lobbyists and the scandals are connected. The ban on lobbyists would have had no effect on any of the cited incidents.

A. Governor John Rowland

As can be seen from the declaration of the attorney for the intervening defendants, Governor John Rowland was charged with and pled guilty to specific crimes. These crimes involved the taking of improper gifts, and thereby depriving the Citizens of the State of Connecticut of the honest services of their governor. Despite the claims of the intervenors to the contrary, the government never established a quid quo pro. Governor Rowland was not convicted of bribery. None of the limitations proposed would have any effect on the crime committed. The crime did not involve campaign contributions. No registered communicator lobbyist was involved, in any way, in provision of the improper gifts. The Rowland crime is simply not related to the proposed law.

B. Peter Ellef

The Ellef scandal grew out of the Rowland Scandal. Peter Ellef was one of the two chiefs of staff appointed by Governor John Rowland during his second term. Mr. Ellef pled guilty to crimes which involved his relationship with the Tomasso construction company. Not one registered communicator lobbyist was involved in any way in the crimes of Mr. Ellef. Mr.

Ellef was not an elected official, and thus did not receive any campaign contributions. The respondents have no proof that Governor Rowland was in any way involved in any illegal act committed by Mr. Ellef. There is no connection between these crimes and the enacted legislation.

C. Mayor Joseph Ganim

The Ganim scandal involved bribery and conspiracy to deprive the citizens of honest services. Not one registered communicator lobbyist was involved in any way in the Ganim crimes. The bill limiting lobbyists rights does not affect municipal elections. There is simply no connection between this municipal scandal, the law and registered communicator lobbyists

D. Mayor Philip Giordano

Mayor Philip Giordano pled guilty to unspeakable crimes involving sex with minors. Obviously these crimes have nothing to do with lobbyists or the campaign finance law.

E. Treasurer Paul Silvester

Paul Silvester was the appointed treasurer in the first term of the gubernatorial reign of John Rowland. His crimes did not involve registered communicator lobbyists, or campaign contributions. The legislature reacted to the Silvester scandal by passing a law banning the payment of "finders fees" concerning investments made by the treasurer, Public Act 00-43.

F. Senator Ernest Newton

Senator Ernest Newton took a bribe. No registered communicator lobbyist was involved in the crime. The crime did not involve campaign contributions.

The defendants try to justify the limitations of the plaintiffs constitutional rights by constantly raising the specter of these scandals. They have yet to explain how the limitations would have allegedly affected these scandals. These crimes no more support the lobbyist ban law than any of the thousands of other unrelated crimes committed in Connecticut in the past decade. There is no actual connection of any lobbyist to any of the crimes.

III. The Effect of a Ban on Lobbyist Contributions, The Jodi Rell Campaign

The ban on Lobbyists was adopted at the insistence of Governor Jodi Rell. Governor Rell had been the lieutenant Governor under John Rowland for 10 years. She sought Re-election in her own right in 2006. Governor Rell allegedly limited the influence of special interest money by refusing contributions by registered communicator lobbyist.

1. The campaign pledge.

On October 18, 2005 the Rell campaign issued a press release declaring that it would not accept contributions from lobbyists, contractors, PACs, or persons who controlled state contracts. Exhibit A].

2. The reality.

The Rell campaign did not accept contributions directly from lobbyists. However, the Rell campaign did accept contributions from business associates of lobbyists, client lobbyists, members of organizations represented by lobbyists, officers of corporations that employed lobbyists, officers and partners of law firms that had a lobbying division, and every known special interest. The Rell campaigns special interest funding is summarized on the Money in Politics website Exhibit B].

Governor Rell raised $4,052,687 dollars. She raised at least $1,835,116 dollars from the following special interests.

Finance Insurance and Real Estate	$698,186
Lawyers and Lobbyists	$293,106
General Business	$258,619
Health	$194,088
Transportation	$ 88,200
Construction	$ 63,262
Communication and electronics	$ 53,635
Energy and Natural Resources	$ 48,750
Agriculture	$ 23,910
Defense	$ 9,100

Single Issue $ 5,000

Despite the ban on lobbyists, more than 45% of the money raised by the Rell campaign came from special interests.

The ban on communicator lobbyist contributions by Rell did not eliminate contributions form the business associates of those lobbyists. Governor Rell accepted tens of thousands of dollars from employers, business associates and employees of registered communicator lobbyists. Her self appointed ban, now enacted into law, apparently did not preclude these contributions.

3. Examples:

a. St. Paul/Travellers a registered client lobbyist employed 4 registered Communicator Lobbyists. Between 12/19 and 12/23/05, 24 employees of Travelers contributed more than $12,000 dollars to the Rell campaign. [Exhibit C]

b. Aetna, a registered client lobbyist employed a registered communicator lobbyist. Between 12/19 and 12/23/05, employees of Aetna contributed $18,800 dollars to the Rell Campaign. [Exhibit D].

c. The Connecticut Trial Lawyers Association is a registered client lobbyist which employs two registered communicator lobbyists. Between 5/11 and 5/26/06, 19 members and officers of the organization contributed $10,600 dollars to the Rell Campaign. [Exhibit E]

d. Halloran and Sage, Murtha Cullina, Shipman and Goodwin and Robinson and Cole and Brown Rudnick are all law firms which employ registered communicator lobbyists. The Rell campaign accepted contributions from partners of all of the firms, with the donations coming within days of each other. [Exhibit F1-F8].

The systematic acceptance of donations from the clients, partners, employees, and business associates of registered communicator lobbyists by the Rell campaign, despite its claim of avoiding "special interest" monies shows the hypocrisy of the "reform". Lobbyists, an easy scapegoat, are blamed for corrupting the system while the same money is solicited from the special interests they represent.

This hypocrisy places the registered communicator lobbyist in a truly untenable position. The State Election Enforcement Commission has claimed that a lobbyist will be found to have violated the campaign laws if there exists objective evidence of solicitation. What person looking at the contributions by the business partners of registered communicator lobbyist is going to believe that the lobbyist had nothing to do with the donations, given in large amounts on the same day?

The Rell campaign provides a real life example of what will happen when this law is in effect. Special interest money will be donated, and lobbyists will be prosecuted.

IV. The Defendants have no credible evidence that campaign contributions by lobbyists have corrupted the legislative process.

The real reasons for the defeat of the bottle bill.

The defendants can not show that lobbyist contributions have corrupted the system. Failing to show any crime, violation of campaign law, or breach of ethics by any registered communicator lobbyist, they try to make an attenuated argument that a piece of legislation, the bottle bill was defeated only because of the corrupt influence of money.

The intervening defendants, their declarants and their experts repeatedly suggest to this court that the bill to expand the mandate to return sodas and cans to food stores was defeated only because of the corrupt power and influence of lobbyists and special interests. In their frustrated advocacy for their position on recycling, these advocates, notably CCAG and Common Cause, simply ignore basic facts and reasoned opposition to the plan.

The original bottle bill required the payment of a five cent deposit on various types of soft drinks, beer cans and plastic containers. The bill was passed before recycling of garbage was possible. The cans are returned to the point of purchase, requiring food stores to become garbage collectors. The advocates of recycling have tried to expand the bill to include plastic containers such as water bottles, while simultaneously changing the provisions of the law to

restructure the recipient of moneys from unclaimed deposits. The bill has been defeated each year for at least the last five years.

The intervenors submitted an "expert" report which claims that the reason for the defeat of the bill was the power of special interests using campaign contributions to bribe legislators. This "study" is a principal pillar for their justification of limiting lobbyists rights. The bottle bill was again defeated in 2006. The plaintiff attaches the actual legislative history of the 2006 act so that the court can decide for itself whether or not the intervenors are accurately portraying the issues concerning the bottle bill. [Exhibit G1-G2].

In fact, questions were raised about the bill by:

a. The Commissioner of the Department of Environmental Protection;

b. the owners of several small, local food markets who compete against the massive chain food markets;

c. the manufacturer of a company distributing bottled water;

d. several state representatives;

e. the Connecticut Food Association;

The intervenors see this evidence as special interest interference with "good government. In fact, the testimony and evidence of the food store owners and the association is nothing more

than democracy at work. The plaintiffs CLA and Williams would ask the court to consider the following points made by the opponents of the bottle bill.

A. Summary of the testimony of the opponents of the bottle bill.

1. Kevin Dietly – Principal at Northbridge Environmental Consultants Represents the CT Food Association

Expanding the scope of the deposit program will only add to the cost and aggravation associated with the current system. The deposit system is already costly -- $26 million is spent each year to operate the system of container redemption, collection, processing, and transportation. Most of the cost and activity associated with the program happens "behind the scenes," so the costs are largely buried in the overall cost of living in the state. Consumers know, however, that returning containers to stores and waiting in line at reverse vending machines is less convenient than recycling those same containers along with their other recyclables at the curb or at drop-off centers.

We do not believe that the trivial environmental improvements offered by this bill justify adding $55 million to the expense of the deposit program. If Connecticut lawmakers wish to take meaningful steps to improve the state's litter and recycling programs, this bill represents a step in the wrong direction.

Mr. Dietly was asked about the bar codes which would be needed to accomplish recycling of water bottles. "You don't need to handle the bottle and cans one at a time, read their bar codes and count them and sort them by company in order to recycle the container. The same thing can be accomplished by dumping a whole armful of them into recycling cart at your curb." When asked about the cost of the proposed system Mr. Diely estimated that the average non-carbonated container in CT would cost about 8 cents more plus the nickel deposit.

With the expanded bottle bill there will be an abundance and multiplication of players that are involved in the system

2. Tim Devaney, Owner of Highland Park Market

Besides the obvious costs that come along with an expanded bottle bill – his biggest problem was the increased difficulty to provide customers with a safe food supply. Mr. Devaney identified three issues with the bill:

Trash Collection - "To ask supermarkets to be trash collectors seems like a giant step backwards."

Space - The law requires small markets to have reverse vending machines to recycle in the back room. Space is a huge problem.

Transportation and Storage - Two of his five stores do not have vending machines so they have to transport the bottles. Mr. Devaney has to store the crushed up bottles until one of the three companies comes to pick up the shreddings.

3. Warren Boyle, Fitzgerald's Foods in Simsbury

Mr. Boyle testified that he recycled 174,030 tons of cardboard as reported to the CT DEP for 2006. This number does not include cardboard sent outside of CT and not reported to CT DEP. "This number would be substantial. With the out of state chains doing business in CT and America's largest wholesaler located in VT I own a small independent store and even I purchased a cardboard baler in 1989 and have been recycling all of my cardboard ever since. For as long as I can remember, we have taken all the fat, scraps, and trimmings in our meat departments and turned them over to a rendering company where they get processed into other usable products. At one time, we received income from this transaction. For years now we must pay the rendering company to come and pick up our material. It would probably be cheaper to just add the meat material into our main waste stream. I do not know of any supermarket company not recycling the meat products because it is the right thing to do. "

Mr. Boyle testified about the space problem. "Many of us have separate waste barrels in our office areas to collect recyclable papers, and most of our break rooms have a place for beverage containers to be recycled. I am proud of the roll our industry has taken in reducing

waste by recycling. Mr. Boyle raised the health and safety concern. "Now, I'd like to walk you through the life cycle of a soda can. What happens from start to finish of the returnable beverage can? This Coke can will get delivered to my store. The Coke Co. has to detail the deposit amount of each product on the bill which we verify, and they must also keep track of the deposit on every one of his brothers, sisters, nephews, etc. Not an easy task. Now, I have to except this product and once it is checked in, I have to record the product and the deposit separately, and track the deposits paid. My Coke can goes on the shelf and someone purchases it. At the register, I must record the sale of the can and the deposit paid, and keep track of it. Now my Coke can goes home into the fridge. Hopefully it is consumed at home, for our sake let's say it does. Someone drinks the Coke and we hope that someone rinses the can out. (From experience we are pretty sure this is not going to happen.) And the can is then put in the garage, porch, basement or some other out of the way place. Now, when my Coke can has enough friends hanging around with him someone in the family brings he and all his friends to our store to pop into the reverse vending machine. These cans will have soda syrup running out of them, quite possibly insects or once in a great while, rodents. This is all pushed through the trap door on the machine and a slip is produced to show the customer the total we owe him or her for the bottles. He goes to the registers and we give her the amount of bottle deposits we owe her and we must keep track of it.

"Let me leave my Coke can in the machine for a minute and talk about the machine. All that syrup has to be cleaned, most times twice a day, and on Saturday the machine is cleaned completely inside and out. Cleaning costs are around $75.00 a month. The machine has to be emptied and the contents, in it's leaky smelly mess, stored somewhere in our store. This is probably about $35 to $40 a month. Every night we have to inventory the bottles processed in the machine and count the icky sticky bottles the machine would not accept, to balance the bottles received against the money paid out that tracking thing. Bottle returns are a favorite way for employees to get a little extra cash for an evening out, so, it must be balanced every night. This costs about $120.00 a month. This is about $230.00 in salaries, add taxes and benefits your close to $300.00. Now the machine rental is $250.00, supplies for the machine run about $15.00 and sales tax on the machine rental and supplies is $15.90. Now we do pay a property tax on the machine probably about $10.00 a month. Last is the monthly pest control to keep the critters that invariably get into the machine under control. The part for the bottle area is around $5 or $6. This brings the cost for the temporary home of my little Coke can to $595.90 per month or $7,150.80 a year."

"Let's pick up our little Coke can sitting in the machine. He is transported to our basement where he awaits a pickup by Tomra. A large 18 wheel truck is on the road everyday

stopping at grocery stores, convenience stores, pizza parlors etc. The product is then brought to a central location for separation and processing."

Mr. Boyle suggested that a practical alternative to this system already exists. "Now how about if that little Coke can was purchased in my store, brought home, consumed, rinsed, put in the weekly recycle bin, and put at the curb on trash day. What a concept. I know curb side recycling is not in every town. The towns it is in it has been a huge success. Perhaps the Bottle deposit doesn't go away, but becomes a bottle recycle fee, to fund recycling programs in towns that do not presently have them, funding for the parks department for the amount of trash and recycle receptacles and maintenance, and possibly to finance and encourage businesses to process and find manufacturing uses in CT for this material."

Some would suggest that the small markets can avoid the entire process by simply letting their customers return the bottles to the major chain stores. Mr. Boyle, a businessman pointed out the flaw in this suggestion. – if the customer is sent to Stop & Shop to recycle – customer is not coming back to Fitzgerald's food store.

4. Erin Sloat, Owner of Crown Supermarket in West Hartford

Ms. Sloat, a small businessperson made the following points:

Space - The bottle redemption center is pressed for space now – and an expansion of the bottle bill would require some serious consideration for how to accommodate increased volume – don't have a bottle machine since they don't have space

Currently we have bins to sort – with an expansion of the bill – they will be required to sort by vendor size – currently we have 15 vendors, which would require 60 bins.

Training - Then she would need to educate her staff on how to recycle as well – very expensive

5. Christine Stetson – owner of Village Springs Corporation.

Ms. Stetson made the following points: Her bottled water company in Willington, CT sells millions of bottles of water a year throughout the northeast region from Maine to Pennsylvania. She sells to numerous wholesalers who then deliver the product to independent or chain retail stores along with selling private labeled bottled water in half-liter bottles for our home and office delivery trucks. She also provides bottled water for special events, such as charities, hospitals and Red Cross blood drives.

For Maine's expanded bottle bill we had to hire an expensive third party to pick up empties at numerous redemption centers . We lose a total of 12.5 cents per bottle in Maine.

We can't segregate shipping. CT bar codes won't work and we can't protect against fraudulent returns.

6. Timothy Flynn of Mt Claire Water in Torrington

Mr. Flynn made the following points: His company is the oldest bottled water company in Connecticut. His primary market is home or office delivery. He sells no more than 120,000 bottles a year. The Proposed Bill would require a UPC bar code, and that he deposits money in a special interest-bearing account no more than 3 days after bottle is sold. He would have to make several unnecessary trips to the bank.

6. Carrie Rand testified on behalf of the CT Food Association.

Mrs. Rand outlined the following reasons to Oppose SB 1289: Expanding the Bottle Bill, SB 1289, would expand Connecticut's Bottle Bill to include noncarbonated, nonalcoholic beverage containers. Of the 11 deposit laws in the US, only three impose deposits on these products. The nearest such state is Maine. This bill would add significantly to consumer prices for beverages and other groceries, yet would yield disappointing environmental results.

Expanding the Scope of the Law - Estimated Cost: $45 million per year. Expansion would bring fundamental changes to the operation of the deposit law raising costs for food stores, beverage distributors, and, ultimately, consumers. Food retailers must spend more on space, equipment, and staff for handling bottles. The greatest burden from containers that reverse vending machines (RVMs) can't handle. Sorting containers by hand means long lines for consumers and expense for retailers. Noncarbonated beverages sold in CT represent 265

different brands and materials. Water and juice companies must hire someone to handle their bottles and cans at a cost that is several times higher than for beer and soft drink containers. Expansion would add $45 million in operating costs annually or a cost of more than $5,000 per ton of material recycled. That compares to $500 per ton for the current bottle bill and $150 per ton for curbside recycling.

Raising the Handling Fee - Estimated Cost: $10 million/year. Beverage distributors are required by law to pay retailers and redemption centers a 2¢ handling fee for each soft drink container redeemed today and 1.5¢ for beer containers. The bill would increase that fee to 3¢, causing many more redemption centers to open (Maine's centers tripled when it increased its handling fee from 2¢ to 3¢). More centers means higher costs as volume per center drops, distributors must pick up at more locations, and fraud grows.

State Control of Unclaimed Deposits - The state would take unclaimed deposits from distributors of noncarbonated beverages. These funds are typically left with the distributor to offset the mandated expenses of handling fees and pickup from retailers. With high fraud levels (well in excess of 100% for many companies in Maine), few if any unclaimed deposits will be available for the state.

Minimal Benefit - Noncarbonated beverage containers account for an average of 1.3% of litter. This bill ignores the rest. The additional recycling resulting from expansion would be about 1/3 of 1%.

"We would rather see that go into curbside recycling and therefore CRRA would get the money and hopefully then offset the costs of the garbage pickup or recycling that would occur in the town."

8. Brian Flaherty, Director of Public Affairs at Nestle' Waters North America.

Expanding Connecticut's bottle bill as proposed in the legislation poses significant problems for my company, all of which stem from applying a collection scheme designed 27 years ago for beverages distributed within exclusive regions to a product that follows an entirely open path to market (unlike beer and soda). My product is sold in a one-way system. Also, over redemption due to Connecticut's bordering states that do not have a deposit on bottled water. We do not have bottling operations in Connecticut, and while we continue to explore efforts to combat fraud, we do not have the manufacturing capacity to accommodate a labeling infrastructure solely for one state.

Connecticut is wedged between two huge cities Boston and NYC. It will be very difficult to keep their bottles out of Connecticut.

V. The expansion of the ban on contributions to PACs "controlled" by lobbyists by the SEEC is illegal.

The SEEC has issued two opinions to clarify the act, both cited by the interveners. The first ruling sets forth the commission's flawed "objective analysis" approach to solicitation violations. The Second opinion expands the restrictions on lobbyists by banning PACs from contributing which take advice from lobbyists. This expansion further limits the rights of lobbyists. They are prohibited not only from soliciting, which includes the allegedly objective act of solicitation, but also from providing advice to client PACs. This directly limits their rights to free speech, and their right to petition their government.

A. The rule before the adoption of the reform

Before the adoption of the campaign reform, both client and communicator PACs were prohibited from giving contributions during the session. The ban of campaign finance reform was limited by the legislature to communicator lobbyist PACs.

B. The ruling

The commission had the power to limit contributions made by communicator lobbyist PACs. The commission did not have the power to limit client PACs. The commission, in its ruling, overcame this limitation by declaring that client communicator PACs which receive

advice from registered communicator lobbyists are "controlled" by these lobbyists, and therefore banned from making contributions.

This ruling obviously limits the ability of registered communicator lobbyists to provide advice to client PACs. The ruling illogically relates the provision of advice to final decision making.

C. The restrictions of the law must be narrowly interpreted. The Declaratory Rulings violate the plaintiffs rights by expanding the reach of the prohibitions.

The citizens of this country have a common law right to seek to petition their government by lobbying. Article I, Section Fourteen of the Constitution of the State of Connecticut provides "The citizens have a right, in a peaceable manner to assemble for the common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance." In addition, the right to contract has long been embraced in the concept of liberty under the due process clause. *Brazo v. Real Estate Commission*, 177 Conn. 515, 525, 418 A.2d 883 (1979). Restrictions on a common law right are viewed as penal in nature, and must be strictly construed. *Dental Commission v. Tru-Fit Plastics, Inc.*, 159 Conn. 362, 365, 269 A.2d 265 (1970).

The Connecticut Supreme Court has repeatedly stated that these penal Statutes must be strictly construed. *Dental Commission v. Tru-Fit Plastics, Inc.,* op. cit (exercise of police power

designed to serve public health penal in nature, conduct or acts proscribed must be sufficiently explicit to meet constitutional requirements); *Bailey v. Kozlowski*, 167 Conn. 493, 356 A.2d 114 (1975) (Motor vehicle dealers license restrictions penal in nature); *Fitzpatrick v. Commissioner of Motor Vehicles*, 165 Conn. 416, 334 A.2d 476 (1973); *Altholtz v. Connecticut Dental Commission*, 4 Conn. App. 307, 493 A.2d 917 (1985); *Brazo v. Real Estate Commission*, 177 Conn. 515, 418 A.2d 883 (1979) (broker's license); *Cantor v. State Board of Electrical Examiners*, 3 Conn. App. 707, 492 A.2d 194 (1985) (by defining the situations in which a contractor's license might be revoked, and by providing for a CT Page 16390 fine for violations, statutes are penal in nature, and must be strictly construed); *Alvarez v. New Haven Register Inc.*, 249 Conn. 709, 735 A.2d 306 (1999).

A penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Brazo v. Real Estate Commission*, 177 Conn. 515, 526, 418 A.2d 883 (1979); *Altholtz v. Connecticut Dental Commission*, 4 Conn. App. 307, 313, 493 A.2d 917 (1985); *Amsel v. Brooks*, 141 Conn. 288, 297, 106 A.2d 152 (1954).

By torturing the interpretation of "control" the commission illegally expands the restrictions on the free speech rights of the plaintiffs.

D. The Commission can not limit the rights of the plaintiffs through the declaratory ruling process. Any such interpretation must be done by adoption of regulations.

The commission is not allowed to adopt restrictions enforcing the law by adoption of a declaratory ruling. The legislative process in Connecticut clearly requires public hearings, and all of the procedural safeguards involved in the adoption of regulations by an agency before such a limitation can be imposed.

Section 4-168 of the Connecticut General Statutes sets forth in substantial detail the procedure which an agency must follow if it wishes to adopt a regulation. A "regulation" is defined, in Conn. Gen. Stat. Section 4-166 (13), as each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy. . . . The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency not affecting private rights or procedures available to the public, (B) declaratory rulings issued pursuant to Section 4-176, or (C) intra-agency or interagency memoranda.

Both declarations are clearly regulations. The SEEC can not adopt these restrictions by declaratory ruling. *Salmon Brook Convalescent Home v. Commission on Hospitals and Health Care*, 177 Conn. 356, 363, 417 A.2d 858 (1979).

VI. The act bans only lobbyists.

A. The absence of restrictions on grass roots lobbyists.

The declarant Jonathan Pelto makes a living by providing advice to persons and organizations who wish to influence legislation. He does not register as a communicator lobbyist because he does not "directly" seek to influence legislation. Mr. Pelto is not subject to the myriad of laws regulating lobbyists, and now is not banned from campaign activity, solicitation, or providing advice to PACs. Mr. Pelto's family is also able to conduct any of the regulated activities. The drawing of a distinction between the activities of Mr. Pelto, and those of the plaintiffs has not, and can not be justified by any state interest, let alone a compelling state interest. Not surprisingly Mr. Pelto is in favor of the restrictions on his competition.

B. The absence of restrictions on persons convicted of election related crimes.

The intervenors repeatedly cite the scandals to justify the restrictions on lobbyists. Failing to find an objective justification, the defendants claim the limitations are justified by the public perception that the government is corrupt. If indeed this is the public perception in Connecticut, (the defendants have never produced such proof) the solution is illogical. As stated above, there is no evidence that registered communicator lobbyists had anything to do with the corruption. The corrupt officials, Rowland, Ganim, Silvester, Ellef and Newton, are not restricted from participation in the campaign finance system, solicitation, advice to PACs, or campaign roles.

VII. The interveners reliance on public perception is misplaced.

Reliance on public prejudice and opinion of the majority is dangerous. In the area of participation in the political process, the history of this country is marred by restrictions adopted by the majority to limit the rights of minorities, based on racism, sexism or other popular prejudices. Some examples of this shameful history are;

1. 1776-1787: Declaration of Independence ("All men are created equal"), Articles of Confederation, U.S. Constitution leave voting rights to state jurisdiction. Suffrage is limited to white male property owners.

2. 1776-1807: New Jersey women, age 21 and over, can vote if they fulfill residency and property requirements. In 1807 the New Jersey legislature rescinds women's suffrage.

3. 1776: Free blacks can vote in New Jersey, Pennsylvania and Connecticut.

4. 1792-1838: The constitutions of Connecticut, Delaware, Kentucky, Maryland, New Jersey, North Carolina, Tennessee, and Virginia, exclude blacks from voting but expand white male suffrage.

5. 1870: Passage of the 15th Amendment prohibits states from denying citizens the vote based on "race, color, or previous condition of servitude," but many blacks remain disfranchised in the South by poll taxes and literacy tests.

6. 1882: The Chinese Exclusion Act bars people of Chinese ancestry from becoming American citizens.

7. 1884: The U.S. Supreme Court rules, in *Elk v. Wilkins* , that Native Americans are not citizens as defined by the 14th Amendment.

8. 1887: Passage of the Dawes Act grants citizenship to Native Americans who give up their tribal affiliations. U.S. Congress rescinds women's suffrage in Utah. The Territorial Supreme Court rescinds women's suffrage in Washington Territory

9. 1888: Act of 1888 grants citizenship to Indian women who marry white men. Washington Territorial legislature grants women the right to vote but the Territory's Supreme Court quickly rescinds that right, for the second time.

10. 1889: Washington state referendum defeats women's suffrage.

11. 1919: American Indians who served in the military during World War I are granted U.S. citizenship.

12. 1922: Supreme Court rules that people of Japanese heritage are not eligible to become naturalized citizens. *Takao Ozawa v. United States*, t.260 U.S. 178; 43 S. Ct. 65; 67 L. Ed. 199; 1922 U.S. LEXIS 2357:

13. 1924: The Indian Citizenship Act grants citizenship to American Indians, but many western states prohibit their voting.

14. 1925: Philippinos barred from citizenship unless they have served three years in the U.S. Navy.

At the time of their passage, all of these acts reflected public perception.

Conclusion

The respondents argue that the best way to protect the democratic system is to exclude the plaintiffs from participation in the system. This argument did not make sense when it was employed to women, African Americans, Chinese, Philipinos, Native Americans, and the Japanese. It makes no more sense now.

PLAINTIFF,
ASSOCIATION OF CONNECTICUT LOBBYISTS, LLC

/s/

By: R. Bartley Halloran (Juris No. 418009)
Law Offices of R. Bartley Halloran
P.O. Box 887
74 Batterson Park Road
Farmington, CT 06034-0887
Tel: (860) 676-3222
Fax: (860) 676-3200
Rhalloran@ldlaw.com

CERTIFICATION OF SERVICE

I hereby certify that on August 24, 2007, a copy of the foregoing Opposition to Motion for Summary Judgment was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

R. Bartley Halloran, Esq.
Law Offices of R. Bartley Halloran
74 Batterson Park Road
Post Office Box 887
Farmington, CT 06032-0887
(860) 676-3222
(860) 676-3200 fax
Rhalloran@ldlaw.com

/s/
R. Bartley Halloran