UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREEN PARTY OF CONNECTICUT, *et al.*	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
JEFFREY GARFIELD, *et al.*,	:	CASE NO. 3:06-cv-1030 (SRU)
	:	(Consolidated with 06-cv-1360)
Defendants,	:	
	:	
AUDREY BLONDIN, *et al.*,	:	
	:	
Intervenor-Defendants.	:	

PLAINTIFFS' REPLY TO DEFENDANTS AND INTERVENOR-DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

Defendants and intervenor-defendants (collectively, the "defendants") have raised a number of arguments in opposition to plaintiffs' motion for summary judgment. They have also leveled a broadside attack on what they perceive as plaintiffs' failure to understand the seriousness of the scandal involving Governor Rowland and the corresponding need to take what they acknowledge are unprecedented measures in order to restore the public's confidence in Connecticut's democratic institutions. No one disputes the need to address the integrity of state government following the Rowland scandal or the legitimacy of *reasonable* restrictions on the activities on lobbyists and state contractors, which is why their campaign finance activities have been subject to more extensive regulation and heightened disclosure requirements. The arguments raised by defendants, however, do not support the sweeping restrictions on First Amendment activities that have been imposed here.

The charge that plaintiffs have an unrealistic picture of how the political process works in Connecticut is contradicted by the facts. Indeed, it is defendant's cynical description of that process that is suspect. There is nothing in the record that convincingly establishes that Connecticut's more than 200 elected representatives are for sale. The voluminous record compiled by defendants consists of biased testimony from representatives of the intervening parties and anecdotal testimony from three or four legislators who were the main proponents of the CFRA. Defendants attempt to tar the entire political process because of the unfortunate events that led to Governor Rowland's resignation. However, his resignation had no connection to the activities of the hundreds of lobbyists who have been arbitrarily barred from engaging in certain First Amendment activities. The most that can be said about Governor Rowland is that certain contractors made illegal gifts to the Governor. That evidence is insufficient to justify restriction the rights of thousands of contracting principals covered by the statute.

What this case boils down to is a question of perception. From defendants' perspective, any contribution made by an individual doing business with the state or lobbying on behalf of any business or group creates the appearance of undue influence, without regard to the amount of the contribution, the reason it was made, or the ability of the contribution to impact governmental action. The First Amendment prohibits the government from relying on these types of misguided generalizations to restrict the political activities of entire classes of individuals. As a result, plaintiffs are entitled to summary judgment as to Count IV of the Amended Complaint.

ARGUMENT

I. THE CONTRIBUTION BANS

A. Standard of Review

Defendants contend that plaintiffs have intentionally obfuscated the applicable standard for evaluating restrictions on contributions and are *sub silentio* urging a heightened standard. Def. Opp. at 19. Defendants are mistaken. Plaintiffs readily acknowledge that a contribution limit "passes muster" if it is "closely drawn" to match a "sufficiently important interest." *Randall v. Sorrell*, 126 S. Ct. 2479, 2491(2006) (citing *Buckley* v. *Valeo*, 424 U.S. 1, 25 (1976)). It is defendants who fail to acknowledge the constitutional significant difference between limiting and prohibiting contributions. Defendants have framed their argument in a way that requires this court to defer absolutely to legislative judgments. That has not been the approach adopted by the Supreme Court in its most recent contribution cases. *See*, *e.g.*, *Randall*, 126 S. Ct. at 2495-2499 (striking down contribution limits as too low); *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 232 (2003) (striking down ban on contributions by minor children).

There is clearly a constitutionally significant difference between no speech and some level of speech. The Supreme Court explicitly recognized this fact in *Beaumont* and stated that the distinction between a ban and a limit is an important consideration in the "tailoring" analysis. *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 162-163 (2003) (PAC option allows corporate political participation); *Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 259 n.12 (1986) (same). It was also a consideration in *Randall* with respect to the unreasonably low limits imposed on political parties. The Court found that they effectively silenced parties. 126 S. Ct. at 2492-2493. The General Assembly also recognized this fact when it proposed lower contributions limits (rather than bans) for lobbyists and contractors initially.

See Garfield Decl. Ex. 4, 5. A prominent state senator also recognized this fact on the floor of the Senate when debating the CFRA. Garfield Decl. Ex. 28 at 158 (statement of Senator Andrew McDonald) ("[W]e can have contribution limits. . . . What you cannot do is ban free speech . . . . And yet, we've done that in this legislation."). Moreover, small contributions allow for symbolic expressions of support and the Supreme Court has already held that the government has no interest in suppressing such speech where there is no possible threat of real or perceived corruption. *See Randall*, 126 S. Ct. at 2499.

B. Sufficiency of the Governmental Interest

Defendants' main justification for the CFRA is that the system needs radical reform because lobbyists and state contractors are corrupting and/or unduly influencing the political process through a pattern of campaign giving. Def. Opp. at 8-9. Campaign finance data from the state's own records belies this assertion, as both lobbyists and contractors contribute exceedingly modest amounts of money. Defendants have failed to identify a single lobbyist or lobbyist-controlled PAC that has funneled significant amount of money into the political process. Nor have they established a pattern of large contributions being driven into the system by lobbyists. There is some testimony in the record that legislative leadership committees raise most of their money from special interests groups represented by lobbyists, but this law does not affect the ability of those groups to contribute. In fact, the overwhelming majority of lobbyists do not even file disclosure reports because they do not meet the reporting threshold.

On the contractor side, defendants have identified a single major contributor, the Tomasso family. Based on this example, defendants contend that the all contractors should be prohibited from contributing to the elected officials. Even defendants' own witness, Senator Andrew Roraback, testified that such a prophylaxis was unnecessary since most contracts are

awarded competitively. The record also establishes clearly that contractors do not contribute significant amounts of money to political campaigns. Except for the exaggerated fears of defendants, there is no basis to conclude that contracts are awarded based on contribution patterns. The money supposedly contributed by individuals associated with the Tomasso family is an isolated example of a major contractor contributing to political campaigns. It is not representative of the contribution patterns of any other state contractors. If the Tomasso family gained a competitive advantage as a result of its contributions, the record does not support the broader contention that this practice is the norm.

Because the state's campaign finance reports do not support the claim that lobbyists and contractors are driving large amounts of money into the political process, it is not surprising that defendants' justification for the CFRA hinges on the much weaker argument that any contribution by an interested party is suspect. That view is not supported by the facts. Plaintiffs have clearly established that many lobbyists and contractors make contributions to support candidates who share their opinions. Moreover, it is exactly this type of generalization about contributions and politicians that was rejected in *Randall*. 126 S. Ct. at 2495-2499. Contrary to the defendant's assertion, it is not "self-evident" that campaign contributions buy access or influence. Lobbyists, for example, have access not because they contribute or raise large amounts of money, but because of the influential industry, labor, and advocacy groups that they represent. Defendants do not seriously dispute that influence of those powerful special interests will be diminished as a result of these new restrictions. There is also no merit to their contention that contributions lead to legislative outcomes that are somehow tainted or not in the public interest. Like it or not, politicians are required to raise and spend money in order to be elected,

and no law can (or should) prevent legislators from voting in a way that is consistent with the interests of their supporters.

C. Appropriateness of the Tailoring

Defendant's failure to substantiate the need for such sweeping restrictions on entire classes of contributors demonstrates the poor tailoring of the law, generally. They have failed to identify a single lobbyist or lobbying firm that is a major contributor or otherwise suspect. Yet, this law targets more than 600 registered lobbyists and their families. The term lobbyist is unnecessarily broadly defined to encompass hundreds of individuals who do not appear regularly before the legislature and do not wield the type of influence that defendants ascribe to what is at most a handful of "influential" lobbyists. Defendants do not even argue that lobbyists have any influence on the executive branch and have not presented any evidence to that effect. In fact, the only case cited by the defendants that supposedly involved a comparable ban on contributions by lobbyists targeted fewer people and was significantly less restrictive than the Connecticut statute. *See Institute of Gov't al Advocates v. Fair Practices Political Comm'n*, 164 F. Supp. 2d 1183 (E.D. Cal. 2001). The California statute only covered the most influential lobbyists in the state as measured by amount of time spent lobbying (55 hours a month.). *Id*. at 1187-1188. Defendants may not think that is a significant factor, but it substantially limits the reach of the statute in a way that focuses on the class of lobbyists that present the greatest risk of undue influence. Moreover, the statute under consideration in *Governmental Advocates* did not restrict contributions to political parties and did not prohibit solicitation of contributions. *Id*. The Connecticut restrictions on contributions to all candidates and political parties, and the restrictions on their PAC involvement, when combined with the restrictions on solicitation, prevent lobbyists from supporting candidates and parties in an unprecedented way.

The net is cast even wider on the contractor side. Thousands of principals and their families are covered by this law based primarily on the criminal conduct of one or two large construction contractors doing business with the state. There is no allegation that business was steered their way based on any pattern of campaign giving, despite the efforts of defendants to suggest otherwise. The cases cited by the defendants involving the gaming and liquor industries were shown to have documented history of corruption linked to organized crime. The restrictions upheld in those cases focused on the particular industries that presented the greatest danger of corruption. Similarly, the *Blount* case involves the highly regulated securities industry that is historically subject to restrictions on their financial dealings. *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995). The Connecticut statute by contrast, covers every contractor doing business with the state above a relatively minimum dollar threshold. Unlike the *Blount* case, moreover, the Connecticut statute targets contracts awarded on a competitive basis. To the extent that defendants have offered evidence of "rigged" bids, that is a separate criminal offense that this statute does not address. And in those circumstances, the connection to political contributions is tenuous as rank-and-file employees are not elected to their positions.

Under the defendants' conception of the First Amendment, the regulation of contributions is justified no matter how broadly it defines targeted class and no matter how completely it restricts their rights. The Supreme Court's most recent campaign finance cases flat out reject that approach. *Randall* rejected the argument that all contributions over a certain minimal amount are suspect. 126 S. Ct. at 2499. It also rejected the argument that political parties should be subject to the same contributions limits as individuals to avoid circumvention of the individual limits. *Id*. In *McConnell*, the court rejected the argument that it was necessary to prohibit contributions by minors to prevent circumvention of the general statutory scheme. 540

U.S. at 232. In *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604 (1996), the Court also rejected the argument that party expenditures should be presumptively treated as contributions as an anti circumvention measure. Finally, in *Federal Eleiction Comm'n v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL*"), the Court could not have been more emphatic that there is a limit to the argument the government can suppress lawful speech to maximize the effectiveness of lees intrusive restrictions on speech. Defendants are wrong that this limiting principle has no application in the contribution context. The First Amendment forbids the government from treating all contributions and all contributors as suspect as a prophylaxis against corruption. There is no merit to defendants' contention that all contributions may be prohibited because some contributions may be lawfully limited. The lesser restriction on speech in no way justifies the greater restriction.

II. THE SOLICITATION BANS

A. Standard of Review

As the previous briefing making clear, the parties adamantly dispute the standard of review applicable to the CFRA's solicitation bans. Defendants contend that the solicitation bans are minimal restraints on speech and that they should be reviewed under the deferential "closely drawn" analysis. Def. Opp. at 44. Defendants are mistaken – strict scrutiny applies. Defendants arrive at their conclusion based on a tortured argument that fails to follow rudimentary First Amendment principles.

Defendants' first argument is that the Supreme Court's analysis in *McConnell* dictates the application of a less rigid standard. As plaintiffs have repeatedly articulated throughout the briefing, the solicitation provisions at issue in *McConnell* were drastically different. They did

not actually preclude candidate or party officials from soliciting contributions from any source. Thus, the restrictions acted solely as contribution limits, in much the way that other laws prohibit the solicitation of otherwise unlawful contributions. *See, e.g.*, 2 V.S.A. § 266 (Vermont law prohibiting solicitation of contributions from lobbyists during legislative session).

Hedging their bets, defendants also contend that the *McConnell* Court "merely held that if the solicitation prohibition operates in the same way as a contribution limit, then the less rigorous closely drawn standard necessarily applies. But the Court had no occasion to consider, and did not decide, what the correct standard of review would be for a solicitation restriction that might operate somewhat differently from a contribution limit." Def. Opp. at 46. The *McConnell* Court did not need to articulate the standard, because – as other courts have concluded – it is very clearly strict scrutiny. Moreover, the analysis in *McConnell* explained why strict scrutiny was not applicable. Thus, it is presumed that if the conditions met in *McConnell* were not present, the Supreme Court would have applied strict scrutiny.

Other courts that have considered similarly broad solicitation prohibitions have applied strict scrutiny. *See, e.g.*, Blount, 61 F.3d at 943; *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005). In *White*, the Eighth Circuit concluded that a prohibition on judicial candidates soliciting contributions for their campaigns was a content-based restriction and triggered strict scrutiny. *Id*. at 763-764. As the Court of Appeals explained, "the very nature of the speech that the solicitation clause affects invokes strict scrutiny. This is because the clause applies to requests for funds to be used in promoting a political message." *Id*. at 764. *White* was decided after *McConnell* and did not acknowledge *McConnell* as relevant to determining the standard of review because it was lawful to make contributions to the candidate-judges. *Id*. at 763-764.

Defendants also argue that it is logical and "makes perfect sense" to apply the same level of scrutiny to solicitation restrictions that are "related to contribution limits." Def. Opp. at 47. Their argument is based on the false premise that any campaign finance restrictions must be reviewed as contribution or expenditure limits. Defendants, however, have created a false dichotomy and nowhere in the Supreme Court's analysis in either *WRTL* or *McConnell* is there mention of such a choice. As plaintiffs have repeatedly elaborated, it does not make sense to apply the deferential level of review given to across-the-board contribution limits in this case. Moreover, the solicitation bans impose a direct restraint on speech that is distinct from a limit on contributions, which constitute symbolic expression.

Defendants also try to analogize the solicitation bans to city ordinances that restrict door-to-door fundraising. Def. Opp. at 49. But the Supreme Court has rejected review of campaign finance regulations as time, place, manner restrictions. Moreover, the analogy fails because the solicitation ban is not limited to mere requests for contributions. The definition of solicit includes serving as certain positions on a campaign and attending fundraisers, even if no tickets are purchased. None of the solicitation restrictions at issue in the cases cited by defendants are nearly as broad. Additionally, even under the "due regard" standard applicable in the cases cited by defendants, the solicitation bans fail because they prohibit express requests for contributions by lobbyists and contractors at any time, at any place, and in any manner.

Defendants also assert that plaintiffs have improperly conflated the solicitation bans with restrictions on express advocacy. Def. Opp. at 49 n.24. They argue that the Supreme Court decision in *WRTL* is inapposite because it "did not involve any issue relating to a ban on contributions or the solicitation of contributions." *Id.* Defendants' criticism is unfounded. *WRTL* analyzes the constitutionality of an anti-circumvention provision that relates to the ban on

direct contributions by corporations. In an as-applied challenge – Count IV is both a facial and an as applied challenge to the CFRA's contribution and solicitation bans – the Supreme Court concluded that direct restraints on corporate speech, even those related to contribution bans, were subject to strict scrutiny. Thus, despite the myriad efforts made by defendants to avoid the imposition of strict scrutiny, it is clear that the solicitation bans are subject to such an exacting standard of review.

B. Application of Strict Scrutiny

Defendants also argue that the solicitation bans, even if they are subject to strict scrutiny review, should be upheld. Def. Opp. at 50. Defendants assert that the solicitation restrictions advance the "compelling" interests of precluding circumvention of the contribution bans and preventing the "bundling" of contributions by lobbyists and contractors. Plaintiffs have already established that these purported interests are insufficient. But, even assuming *arguendo* that the interests set forth by defendants are adequate, these restrictions are not narrowly tailored to further those interests. Essentially, the solicitation bans (like the contribution bans) fail to "draw[ ] a logical compromise between lobbyists' [and contractors] private rights and their professional obligations." *See State v. Alaska Civil Liberties Union*, 978 P.2d 597, 619 (Alaska 1999).

Defendants attempt to paint a distorted picture of the General Assembly in which all legislators know the roster of clients for every lobbyists, that all lobbyists direct their clients to make contributions at the behest of legislators, and that legislators presume that all contributions come from lobbyists. (Defendant equally distort the facts with respect to contractors and assert that a contribution to any elected official can affect the award of any contract.) These assumptions are contrary to the record in this case. Moreover, this picture, at best, portrays a

need to preclude lobbyists and contractors from soliciting and collecting contributions from clients or business associates. Defendants, however, have failed to demonstrate how any contribution solicited by a lobbyist or contractor creates an impression of undue influence. For example, even presuming that all legislators know the clients of each lobbyist, the government has no interest in preventing the neighbor of a lobbyist from acting on the advice of a lobbyist and giving a contribution to his local representative. The representative does not know, even according to defendants' set of facts, that the lobbyist advised the neighbor to make the contribution. Moreover, the definition of solicit is so broad that it precludes participation in many political activities, such as attending fundraising events (even if a contribution is not made) or serving in certain roles on campaigns.

In *White*, for example, the Eighth Circuit struck down the solicitation provision, in part, because other laws prevented judges from learning the identity of the donors to their campaigns. 416 F.3d at 763-764. Defendants presume that any contribution solicited by a lobbyists or contractor will be understood by the candidate to be connected to that lobbyist or contractor. But that is the case (assuming defendants' factual premise) only if clients, business associates, or family members are making contributions. Given the fact that the solicitation provisions extend far beyond this narrow group and that they include actions other than direct requests for money, they are clearly not narrowly tailored.

CONCLUSION

For all of the foregoing reasons and for all of the reasons set forth in both the memorandum of law in support of plaintiffs' motion for summary judgment and the

memorandum of law in opposition to defendants' motion for summary judgment, plaintiffs are entitled to summary judgment on Count IV of the Amended Complaint.

Dated: September 26, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2007, a copy of the foregoing *Plaintiffs' Reply to Defendants and Intervenor-Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment* was filed electronically. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mark J. Lopez
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