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Against Backdrop of National Scandals,
Federal Court Upholds Connecticut's Landmark Pay-To-Play Law

Headlines across the nation have dwelled on the erupting scandals in Illinois and New Mexico, and described the widespread fraud in the mortgage bond marketplace. In Connecticut, earlier experiences with corruption at the state level led to the enactment of the strongest "pay-to-play" prevention rules in the country. "Pay-to-play" rules are enacted to prevent those with a direct interest in the outcome of governmental decision-making from using campaign donations to effectively purchase a favorable result.

Lobbyists and other affected interests immediately challenged the law in court. With assistance from pro bono counsel Ira M. Feinberg of Hogan & Hartson, LLP, the Brennan Center for Justice at New York University School of Law and the State of Connecticut's Office of the Attorney General successfully defended the pay-to-play provisions against constitutional challenge.

In an important victory in the state's efforts to curb corruption in politics, on December 19, 2008, a Federal judge held that the contribution and solicitation bans of Connecticut's Campaign Finance Reform Act (CFRA) did not violate the First Amendment and were justified by the important interest of reducing corruption and the appearance of corruption.

A Clear Victory for Good Government

The CFRA was enacted in 2005 against the backdrop of several high profile government corruption scandals, culminating in the 2004 conviction of former Governor Rowland and several contractors for exchanging campaign contributions for state contracts. To prevent further corruption and stem the growing public perception that special favors were routinely exchanged for contributions, the Connecticut legislature took strong measures and passed a series of campaign finance reform laws.

As part of these reforms, Connecticut enacted a ban on contributions and solicitation of contributions from those the law defined as "communicator lobbyists," as well as state contractors and their immediate family members. In response, the trade association for lobbyists, a group of state contractors, their immediate family members and candidates challenged the ban, claiming that the bans violated the First

Amendment rights of candidates to receive contributions and the associational rights of lobbyists, state contractors and their family members to make or solicit contributions.

Federal District Judge Stefan Underhill upheld the bans in their entirety, stating that:

> "In light of Connecticut's recent history of corruption scandals involving high-ranking state politicians, I conclude that the legislature had a constitutional, sufficiently important interest in combating actual and perceived corruption by eliminating contributions from individuals with the means and motive to exercise undue influence over elected officials."

The Court explained that contribution and solicitation limits are constitutional unless they: 1) "prevent candidates from amassing the necessary resources for effective campaign advocacy;" 2) "magnify the advantages of incumbency;" or 3)"infringe on the contributor's freedom to discuss candidates and issues" without achieving a sufficiently important government interest. Connecticut's law did not trespass on any of these concerns.

The Court made several factual determinations that undermined candidate's claims that the bans violated their right to collect contributions. First, the Court found that contributions from lobbyists and state contractors have historically never been substantial. Therefore, the absence of such funds would do little to impede a candidate from running effective campaigns. Secondly, the Court found that in Connecticut, lobbyist contributions tended to support incumbents and thus, the bans did nothing to magnify the advantage of incumbency.

The Court also held that, although the bans do marginally infringe on Plaintiffs' First Amendment rights by preventing them from engaging in the symbolic expression of making a nominal contribution in support of a candidate, the bans were justified by an anti-corruption interest.

The Court emphasized that the bans posed only a minimal threat to the right to associate because Plaintiffs could always directly associate with candidates in other ways. For example, Plaintiffs could associate with candidates through volunteering, posting a campaign sign in their yard, making get-out-the-vote calls, writing letters to the editor, and serving as an advisor to a candidate.

The Court then took into consideration evidence of both actual corruption and of the appearance of corruption in the form of polling data and concluded that the state's anti-corruption interest in enacting the bans greatly outweighed any impact the bans would have on the First Amendment rights of contributors.

In reaffirming that a state may reduce the appearance of corruption by employing anti-circumvention measures, the Court upheld the broad span of the ban, including its ban on contributions by immediate family members, the ban on contributions to legislative and party committees and the ban on solicitation of contributions calling these measures "common sense anti-circumvention measures." The Court rejected Plaintiffs' argument that the State must wait until attempts to circumvent the ban occur before enacting anti-circumvention measures, stating that "the General Assembly need not wait to see whether such efforts at circumventing the direct ban on lobbyist contributions in fact materialize before enacting common sense anti-circumvention measures."

As a Hartford Courant editorial noted on December 23, 2008: "The federal court ruling last week upholding Connecticut's law banning campaign contributions by lobbyists and state contractors is a welcome development in the fight against government corruption." Laura MacCleery, of the Brennan Center for Justice at New York University School of Law, called it a "clear victory for good government."