

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ASSOCIATION OF CONNECTICUT)
LOBBYISTS LLC, BARRY WILLIAMS,)
AND PAUL LEVINE)

CIVIL ACTION NO:
3:06-CV-1030 (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.)
WORGAFNIK, JACLYN BERNSTEI,)
REBECCA M. DOTY, ENID JOHNS)
ORESMA, 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,)

Defendants.)

NOVEMBER 6, 2006

AMENDED COMPLAINT

JURISDICTION AND VENUE

FIRST This action arises under the Amendments to the Constitution of the United States Section I and Section XIV; and under the laws of the United States, Title 42 Section 1983. This Court also has jurisdiction of this matter under 28 U.S.C. Section 1331 and 1343(a)(3) ,1343(a)(4), 2201 and 2202, and 42 U. S. C. 1988. This court has supplemental jurisdiction over State Constitutional Law Claims pursuant to 28 U.S.C. 1367(a)

SECOND Venue is proper in the United States District Court for the District of Connecticut pursuant to 28 U.S.C. 1391(a) because the events and transactions giving rise to this action occurred in this district and 1391(b) because the defendants reside in this district.

THIRD Personal jurisdiction is proper in the United States District Court for the District of Connecticut in this action in that the defendants are the State of Connecticut, citizens of the State of Connecticut, constitutional officers of the state of Connecticut, or appointed officials of the State of Connecticut, all of whom reside in the State of Connecticut.

THE PARTIES

PLAINTIFFS

FOURTH The Plaintiff Association of Connecticut Lobbyists LLC hereinafter ("the Association") is a limited liability corporation duly organized and existing under the laws of the State of Connecticut, with a principal place of business at 4 Oakwood Lane, Clinton Connecticut

FIFTH Barry Williams is a resident of the State of Connecticut who is a communicator lobbyist, with a residence at 194 Woodland street, Glastonbury, CT.

SIXTH Paul Levine is a Connecticut Citizen, residing in West Hartford Connecticut. Mr. Levine is the spouse of a registered communicator lobbyist, and as such is prohibited from making campaign contributions, serving in various roles in campaigns, subject to an invasion of his privacy by listing on the website of the Elections Enforcement Commission, and limited in his free speech activities by the prohibitions on solicitation.

DEFENDANTS

SEVENTH The Defendant Richard Blumenthal is the Attorney General of the State of Connecticut, invested with the powers of the office as set forth by the laws and constitution of the State of Connecticut. Amongst those powers and duties is the duty to enforce orders and rulings of the State Elections Enforcement Commission, in accordance with Connecticut General Statutes §9-7b(2006) This action is brought against the Defendant in his official capacity only.

EIGHTH Patricia Hendel is the Chairman of the Office of State Ethics. Robert N. Worgaftik, Vice-Chairperson, Jaclyn Bernstein, Rebecca M. Doty, Enid Johns Oresman, Dennis Riley, Michael Rion, Scott A. Storms and Sister Sally J. Tolles are members of said Commission charged with judging the culpability of lobbyists accused of violating the ethical laws of the State of Connecticut, and assessing penalties against lobbyists for violations of those laws, in accordance with Connecticut General Statutes §§1-82 and 1-88, including but not limited to the assessments of fines up to \$10,000 (ten thousand dollars) per violation, and referral to the Office of the Chief States Attorney for Criminal prosecution. In accordance with Connecticut General Statutes §1-81(8)(b) the board is required to employ an executive director ethics enforcement officer. The board has appointed Defendant Benjamin Bycel as Executive Director. Although Defendant Bycel is required to appoint an Ethics Enforcement Officer to supervise the enforcement division of said office, as of August 22, 2006 he has not made such an appointment. This action is brought against the members of the Commission and Benjamin Bycel in their official capacities only.

NINTH Defendant Jeffery B. Garfield is a resident of Connecticut and is the Executive Director and General Counsel of the State Elections Enforcement Commission. This action is brought against the Defendant solely in his official capacity as Executive Director and General Counsel. Among the Commissions duties are the duty to administer and ensure implementation of the Citizens' Election Program and the duty to impose civil penalties upon violations of certain provisions of the act (Connecticut General Statutes §§9-7b, 333l, 701, 713 and 714 (2006))

AS AND FOR A CAUSE OF ACTION

TENTH This is an action for a declaratory ruling under 28 U.S.C. Section 2201 seeking a declaratory judgment that certain limitations imposed on the Plaintiffs in accordance with Connecticut General Statute §9-333 et seq. violate the constitutional rights of the plaintiffs.

ELEVENTH In addition the Plaintiffs seek a temporary and permanent injunction in accordance with 42 USC 1983 prohibiting the duly appointed commissions and boards and the State officials who are entrusted with the imposition and enforcement of sanctions for violation of Connecticut General Statute §9-333 et. seq. and Connecticut General Statute §1-97 from imposing any such unconstitutional sanctions against the Plaintiffs, and for relief in accordance with 42 USC 1988 including the imposition of the costs of this action.

FACTUAL ALLEGATIONS

TWELFTH The Plaintiff Association of Connecticut Lobbyists LLC is an incorporated entity which consists of elected officers and members who are registered lobbyists in the State of Connecticut. The Association was created and exists for the purpose of protecting the rights of its members, including their rights to engage in activities such as petitioning the governmental authorities on behalf of themselves and their clients, participating in the open and free exchange of ideas, and participating in the electoral process.

THIRTEENTH The Plaintiff Barry Williams is and has been a communicator lobbyist, registered in accordance with the laws of the State of Connecticut.

FOURTEENTH In December 2005 the Connecticut Legislature, pursuant to the authority granted to it by the Constitution of the State of Connecticut, passed Public Act 2005-05 in special session. Pursuant to her authority und the Constitution of the State of Connecticut Governor Jodi Rell signed said legislation, making the provisions of the Act the law of the State of Connecticut

FIFTEENTH Public Act 2005-05 changed the provisions of several statutes governing campaign financing in the State of Connecticut. In particular the Act made the following changes which limit the plaintiffs' rights:

- a) C.G.S. 9-333(l)(h) "No communicator lobbyist, member of the immediate family of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or a member of the immediate family of a communicator lobbyist shall make a contribution or contributions to, or for the benefit of (1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative,(2) a political committee established or controlled by any such candidate, (3) a legislative caucus committee or a legislative leadership committee, or (4) a party committee."
- b) C.G.S. 9-333(i)(1) "No communication lobbyist, immediate family member of a communication lobbyist, agent of a communication lobbyist, or political committee established or controlled by a communication lobbyist, or any such immediate family member or agent shall solicit (A) a contribution on behalf of a candidate

committee or an exploratory committee established by a candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, a political committee established or controlled by any such candidate, a legislative caucus committee, a legislative leadership committee or a party committee, or (B) the purchase of advertising space in a program for a fund-raising affair sponsored by a town committee pursuant to subparagraph (B) of subdivision (10) of §9-333b."

- c) C.G.S. 9-704(c) "The following shall not be deemed to be qualifying contributions under subsection (a) of this section and shall be returned by the campaign treasurer of the candidate committee to the contributor: (1) A contribution from a communicator lobbyist or a member of the immediate family of a communicator lobbyist;"

SIXTEENTH The Act defined the terms "communicator lobbyist" "family member" and "solicit" as follows:

- a) C.G.S. 9-333a Definitions: (26) "solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, campaign treasurer, deputy campaign treasurer or any other officer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, or (iii) notifying the person of any activities of or contact information for any candidate for public office.

- b) C.G.S. 9-333a(16) "Lobbyist" means a lobbyist , as defined in §1-91 and "communicator lobbyist" means a communicator lobbyist, as defined in §1-91.

- c) Connecticut General Statute §1-91 defines lobbyist as:
 - (1) "Lobbyist means a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures, or receives or agrees to receive compensation, reimbursement, or both, and such compensation, reimbursement or expenditures are two thousand dollars or more in any calendar year or the combined amount thereof is two thousand dollars or more in any such calendar year. Lobbyist shall not include:

 - (2) A public official, employee of a branch of state government or a subdivision thereof, or elected or appointed official of a municipality or his designee other than an independent contractor, who is acting within the scope of his authority or employment;

 - (3) A publisher, owner or an employee of the press, radio or television while disseminating news or editorial comment to the general public in the ordinary course of business;

 - (4) An individual representing himself or another person before the legislature or a state agency other than for the purpose of influencing legislative or administrative action;

 - (5) Any individual or employee who receives no compensation or reimbursement specifically for lobbying and who limits his activities solely to formal appearances to give testimony

before public sessions of committees of the General Assembly or public hearings of state agencies and who, if he testifies, registers his appearance in the records of such committees or agencies;

- (6) A member of an advisory board acting within the scope of his appointment;
- (7) A senator or representative in Congress acting within the scope of his office;
- (8) person who receives no compensation or reimbursement specifically for lobbying and who spends no more than five hours in furtherance of lobbying

- d) C.G.S. 9-333A(24) defines "Immediate family" "Immediate family means the spouse or a dependent child of an individual."

SEVENTEENTH The Association of Connecticut Lobbyists LLC on behalf of its members has sought through its unpaid elected leadership, to persuade the General Assembly of the State of Connecticut, and the Office of the Governor, to limit or change certain provisions of the 2005 Campaign Finance Reform Legislation, Public Act 2005-05, including but not limited to the provision contained in Connecticut General Statutes §§9-333a,b, and 9-333l.

EIGHTEENTH The Association of Connecticut Lobbyists LLC failed to persuade the state government to limit or change the restrictive provisions contained in said acts. Upon a vote of its membership the Association was authorized to pursue, on behalf of all of the registered lobbyists who are members of the Association whatever legal remedies were available to vindicate the constitutional rights of the member registered lobbyists. This suit, by the Association of Connecticut Lobbyists LLC is filed in conformance with the mandate of its members to challenge the constitutionality of the provisions which prevent

the members and their family members from engaging in the political process, and limiting their rights of free speech.

NINETEENTH Said prohibitions on solicitation are not limited in time, so that a statement made now by a lobbyist or a family member to either a client or a third person could give rise to an accusation of a violation if that client or third person makes a campaign contribution after January 1, 2007.

Said prohibitions and bans constitute an invidious discrimination against the Plaintiffs as a class. Said provisions ban rather than limit contributions by members of the Association of Connecticut Lobbyists LLC and members of their families. Said provisions are direct restraints on the ability of the individual Plaintiff and the members of the Association and the members of their families' participation in the political process. Said limitations are limitations on political communication and freedom to discuss the candidates and issues. Said provisions are not narrowly drawn, they constitute a total ban on participation in the political system of the State of Connecticut by the Plaintiffs and the members of their families. Said provisions are arbitrary and capricious, in that the definition of communicator lobbyist is based upon a standard which is both arbitrary and capricious.

TWENTIETH Under the provisions of the law any person who violates any provision of the subsection shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than five thousand dollars or twice the amount any contribution solicited in violation of this subsection, whichever is greater.(C.G.S 9-333b(3))

TWENTY FIRST In addition to the penalties set forth under Connecticut General Statutes §9-333b, the Plaintiff Barry Williams and the members of the Association of Connecticut Lobbyists LLC, as registered lobbyists are subject to the jurisdiction of the Office of State Ethics, pursuant to Connecticut General Statutes §1-90 et seq. Communicator lobbyists have been prohibited from giving gifts to elected officials under the laws of the State of Connecticut. In the past,

campaign contributions were exempted from the definition of banned gifts, under Connecticut General Statutes §1-97. The new Campaign Finance Reform Act excludes any contribution by a communicator lobbyist or a family member from the definition of campaign contribution. (C.G.S. 9-704) Any campaign contribution given by a communicator lobbyist, or a member of his immediate family would subject the communicator lobbyist to the penalties for violation of the restrictions placed on the giving of gifts by lobbyists, in accordance with Connecticut General Statutes §1-97.

TWENTY SECOND The Office of State Ethics, through an enforcement division, is empowered to investigate alleged violations. The Defendants who are members of the Office of State Ethics are empowered to decide whether or not a violation of the gift law has occurred, and assess a penalty against a communicator lobbyist for the violation of the gift laws of the State of Connecticut.

TWENTY THIRD In accordance with Connecticut General Statutes §§1-99 and 1-100, a communicator lobbyist who provides a banned gift to an elected official or a person campaigning for office, is subject to penalties including a fine of \$10,000 dollars per violation, prosecution for a criminal violation as either a Class D felony or a Class A misdemeanor, imprisonment and additional fines.

TWENTY FOURTH The members of the Association of Connecticut Lobbyists LLC, and the Plaintiff Barry Williams, as a matter of routine have provided their clients with assessments of a legislative performance, advice on making contributions to those most favorable to their respective positions, analysis of the effectiveness of legislators, insights and advice concerning the likelihood of a specific elected official winning a primary or general election contest, and innumerable other factual and qualitative assessments which have affected the campaign contributions made by their clients.

TWENTY FIFTH The members of the Association of Connecticut Lobbyists LLC and the Plaintiff Barry Williams, have acted and participated in the campaigns for elective office of state officials, as have the members of their immediate family.

The Plaintiffs have solicited contributions, purchased ads, made contributions, and participated in the electoral process, in a reputable and legal manner.

TWENTY SIXTH As a result of the threat of the imposition of fines, penalties, prosecutions and possible criminal charges for the exercise of their rights of free speech and advice, the Plaintiffs will not be able in the future, to engage in any of the following activities:

- a) make a political contribution;
- b) serve in an unpaid volunteer position for an campaign for elective office;
- c) advise their clients to whom they should contribute;
- d) advise their clients whether a candidate for office is likely to win;
- e) advise their clients whether a candidate for office is an effective legislator;
- f) make any statement to any person which could conceivably lead that person to conclude that they should consider making a political contribution;
- g) communicate their evaluations or ratings of the effectiveness, leadership potential, or power of a given legislator or statewide office holder or candidate, or indicate their assessment of a likely leaning on a new issue by a legislator, statewide office holder, or candidate for public office;
- h) express their political support or beliefs in any newspaper, on any television show, or any radio program;

- i) provide advice to any candidate for political office;
- j) appear at any fundraiser for any candidate for political office;
- k) serve in any official capacity in any campaign for state office.

Despite these severe and unconstitutional restrictions on their own activity, the Plaintiffs, and the members of the Association of Connecticut Lobbyists LLC remain exposed to fines, costs, and potential criminal penalties if their spouses or children engage in their constitutional right to participate in the election of state officials.

TWENTY SEVENTH The campaign finance law, in main part becomes effective January 1, 2007. The effect of the law on the Plaintiffs is immediate, in that they are chilled in the provision of the advice and their ability to make free comments immediately.

TWENTY EIGHTH The actions of the state government in imposing the illegal and unconstitutional limitations on the rights of the Plaintiffs violate the plaintiffs rights under the Constitution of the State of Connecticut, The Constitution of the United States, and the laws of the United States, in particular 42 United States Code Section 1983.

TWENTY NINTH The actions of the defendants violate the plaintiffs constitutional right recognized under the Constitution of the State of Connecticut Section 4 in that it imposes a limitation on the ability of the plaintiff citizens to speak feely write and publish their sentiments on all subjects. The actions of the defendants violate the Plaintiffs' rights under Section 5 of the Constitution of the State of Connecticut in that the law passed limits or restrains the liberty of speech, and limits the rights of the Plaintiffs, and those they represent, in a peaceable manner to apply to those invested with the powers of government for redress of their grievances. The actions of the Defendants violate the Plaintiffs rights under the Constitution of the United States, Amendment I, in that they constitute an

improper abridgement of the freedom of speech, and the right to petition the government for redress of grievances. These rights are protected from deprivation by the states in accordance with the Fourteenth Amendment of the Constitution of the United States.

THIRTIETH The actions of the State constitute a denial of the Rights of the Plaintiffs under the Fourteenth Amendment of the Constitution of the United States to Equal Protection and Due Process of Law, in one or more of the following ways:

- a) in that they provide penalties for solicitation and contribution based upon an arbitrary and capricious standard of payment of \$2,000 dollars per year to lobby by a third party;
- b) in that they provide penalties for solicitation and contributions against persons who enter into a marriage or a civil union under the laws of this state, but provide no penalties against persons who live as a family without the benefit of either marriage or civil union;
- c) in that they impose penalties for solicitation and contributions upon a person registered to lobby in the State of Connecticut, including criminal penalties which can require imprisonment and large fines, but do not impose any restrictions or penalties upon persons engaged in lobbying in other states, or lobbying the United States Government, or persons who will register after the election is conducted;
- d) in that they impose penalties upon communicator lobbyists for solicitation and contributions while making no such penalties against other similarly situated advocates whose method of compensation differs from that of the communicator lobbyists;

CLAIMS FOR RELIEF

THIRTY FIRST Each of the foregoing allegations is incorporated by reference into each of the following claims, as if set forth fully therein.

COUNT ONE

THIRTY SECOND The total bans on the contributions, solicitations and participation in the political process by communicator lobbyists and their families contained in the Act, Connecticut General Statutes §9-333l (h) and (i) violate the Constitutional Rights of the Plaintiffs under the First Amendment and Fourteenth Amendment of the Constitution of the United States.

COUNT TWO

THIRTY THIRD The total bans on the contributions solicitations and participation in the political process by communicator lobbyists and their families contained in the Act, as aforesaid, violates the rights under Sections Four and Five of the Connecticut Constitution.

REQUEST FOR RELIEF

Wherefore the Plaintiffs request that this Court:

- a) Declare the challenged sections of the Act unconstitutional;
- b) Issue permanent injunctive relief barring the Defendants from enforcing the challenged statutes in whole or in part;
- c) Award Plaintiffs their reasonable attorneys fees and expenses pursuant to 42 U.S.C. 1988 and
- d) Grant any additional relief to which Plaintiffs are entitled.

Dated this 6th day of November, 2006.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically and served by

United States Mail, first class, postage prepaid this 2nd day of November 2006, to:

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