UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREEN PARTY OF CONNECTICUT, ET AL.,	:	CASE NO. 3:06-CV-1030 (SRU)
Plaintiffs,	:	
v.	:	
JEFFREY GARFIELD, ET AL.,	:	
Defendants.	:	
AUDREY BLONDIN, ET AL.,	:	
Intervenor-Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' AND INTERVENOR-DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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Defendants Jeffrey Garfield, Executive Director of the Connecticut State Elections Enforcement Commission ("SEEC"); Richard Blumenthal, Attorney General of the State of Connecticut; Benjamin Bycel, Executive Director of the Office of State Ethics; Patricia Hendel, Robert N. Worgaftik, Jaclyn Bernstein, Rebecca M. Doty, Enid Johns Oresman, Dennis Riley, Michael Rion, Scott A. Storms, and Sister Sally J. Tolles, Members of the Office of State Ethics; and Intervenor-Defendants Audrey Blondin; Kim Hynes; Tom Sevigny; Connecticut Common Cause ("CCC"); and Connecticut Citizen Action Group ("CCAG") (hereinafter collectively, "Defendants"), respectfully submit this Memorandum of Law in support of their motion for partial summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, seeking dismissal of Plaintiffs' challenges to the constitutionality of the provisions of Connecticut's Campaign Finance Reform Act prohibiting certain campaign contributions, and solicitation of certain campaign contributions, by lobbyists, state contractors, and members of their families.

PRELIMINARY STATEMENT

In December 2005, in the wake of the scandals leading to the resignation and conviction of Governor John Rowland and the prosecution of other top state officials, the Connecticut General Assembly enacted Public Act 05-5 of the October 25, 2005 Special Session, "An Act Concerning Comprehensive Campaign Finance Reform For State-Wide Constitutional and General Assembly Offices," now codified in Chapters 155-157 of the Connecticut General Statutes (the "Campaign Finance Reform Act," or simply, "the Act"). As its official title suggests, the Act adopted a broad range of campaign finance reforms in an urgent effort to restore the confidence of Connecticut citizens that their state government was serving their interests, rather than serving special interests that had purchased influence through political

contributions. One set of provisions created the Citizens' Election Program, providing for a system of public financing of election campaigns for state legislative and executive offices. Plaintiffs in the *Green Party* case have challenged the constitutionality of those provisions, *see* Amended Complaint, *Green Party of Connecticut et al. v. Garfield et al.*, No. 3:06-CV-0130 (SRU), filed September 26, 2006 ("*Green Party* Complaint"), Counts One, Two and Three; Defendants' motion to dismiss those Counts of the *Green Party* Complaint was argued on June 6, 2007, and remains pending before the Court.

The instant motion involves the provisions of the Act that prohibit lobbyists and their immediate families from making campaign contributions to, or soliciting campaign contributions for, certain candidates for statewide executive office or candidates for the state legislature, *see* Conn. Gen. Stats. §§ 9-610 (h), (i), and the provisions prohibiting state contractors and their families from making contributions to or soliciting contributions for statewide executive offices or legislative positions, depending upon the branch of government with which they are doing business, *see* Conn. Gen. Stats. §§ 9-612 (g)(2)(A), (B). The complaints in these consolidated cases challenge these provisions principally on the ground that they deprive lobbyists, contractors and their families of their rights of speech and association under the First Amendment of the United States Constitution. *See Green Party* Complaint, Count Four; Second Amended Complaint, *Association of Connecticut Lobbyists LLC et al. v. Garfield et al.*, No. 3:06-CV-1360 (SRU), filed January 17, 2007 ("*ACL* Complaint"), Count One. In addition, Count Two of the *ACL* Complaint claims that these provisions of the Act are a violation of the Connecticut Constitution.

Defendants move herein for summary judgment on the claims in Count Four of the *Green Party* Complaint, and in the *ACL* Complaint in its entirety. As discussed in detail

below, the Act's prohibitions on campaign contributions and solicitation by state contractors, lobbyists, and their immediate family members fit comfortably within the governing principles established by the Supreme Court, and are constitutional. The Supreme Court has repeatedly emphasized – from its seminal decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), to its most recent pronouncement in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, Nos. 06-969, 06-970, 2007 WL 1804336 (U.S. June 25, 2007) – that limits on campaign contributions are generally valid. The Court has made clear that contribution limits are justified by the strong governmental interest in "preventing corruption and the appearance of corruption," *Buckley*, 424 U.S. at 45; *accord Wisconsin Right to Life*, 2007 WL 1804336, at p. 19 (Opinion of Roberts, C.J.); *McConnell v. Federal Election Commission*, 540 U.S. 93, 136 (2003); *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 388 (2000), and that "contribution limits, unlike limits on expenditures, 'entail only a marginal restriction upon the contributor's ability to engage in free communication.'" *McConnell*, 540 U.S. at 134-35 (quoting *Buckley*, 424 U.S. at 20). Accordingly, the Court has explicitly held that strict scrutiny does not apply to contribution limits. *See McConnell*, 540 U.S. at 136-38; *Shrink Missouri Government*, 528 U.S. at 386-88.

Equally important, the Court has held that the public interest in avoiding corruption or the appearance of corruption should be broadly construed. "Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.' Many of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley* . . . were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials." *McConnell*, 540 U.S. at 150 (internal citations omitted).

In light of these well-established principles, the Act's restrictions on campaign contributions should be sustained. The Governor and General Assembly reasonably concluded, in light of the corruption scandals that have rocked the state government in recent years, that it was important to ban campaign contributions and solicitations by lobbyists and state contractors, to send a strong message to voters that their state government was not for sale and that campaign contributions would no longer be permitted to unduly influence elected officials' decisions. State contractors were at the heart of the recent money-for-favors scandals in Connecticut, and the legislature had overwhelming evidence that the amount of the bribes offered by contractors paled in comparison with the lawful campaign contributions that contractors had used to gain undue influence in the state contracting process. The Act's prohibition of campaign contributions by contractors to the very state officials with whom they are contracting is plainly a reasonable, narrow and common-sense measure to both eliminate any improper influence that contractors may thereby gain over state officials and to avoid the obvious conflict of interest and appearance of improper influence that such contributions created. Similarly, the General Assembly – which of course is uniquely positioned to know and understand how lobbyists in Hartford operate – could reasonably conclude that the campaign contributions made by lobbyists and solicited from their clients gave lobbyists undue access to legislators dependent on those contributions to fund their campaigns, and gave lobbyists undue influence, or at least the appearance of undue influence, on legislative decision-making. Taking the modest step of prohibiting political contributions and solicitation by lobbyists was a critically important measure to reassure the public that decisions in Hartford would be made on the merits, not because of the amount of contributions a lobbyist could bankroll, and thus to restore the trust of voters in state government.

Moreover, the Act's prohibitions on campaign contributions and solicitations by lobbyists and state contractors do not violate their rights to free speech or to associate with the candidate of their choice. The Supreme Court has made clear that contribution restrictions impose only a minimal burden on expression that is outweighed by the substantial, indeed compelling, governmental interests served by the Act. Moreover, notwithstanding the contribution and solicitation bans, lobbyists and state contractors have ample opportunities to actively express their political support for candidates in innumerable other ways. The fundraising prohibitions are closely drawn to reach only those individuals whose contributions the State reasonably concluded presented the most risk of undue influence and the greatest need to restore public faith in the system.

The State also acted constitutionally in enacting a number of necessary anti-circumvention measures, including the prohibition of contributions or solicitation by spouses and dependent children of contractors and lobbyists, and contributions by Political Action Committees ("PACs") controlled by contractors and lobbyists. Without these measures, affected contractors and lobbyists could easily and lawfully funnel money through the contributions and solicitations of others, and the fundraising prohibitions would be rendered essentially meaningless. The Supreme Court has repeatedly upheld similar anti-evasion measures to prevent circumvention of the basic restrictions enacted by the legislature.

All of these points are discussed in greater detail below. For the reasons stated herein, Defendants' motion for partial summary judgment should be granted.

THE STATUTE AND ISSUES PRESENTED

A. The Relevant Provisions of the Act

The provisions of the Campaign Finance Reform Act at issue on this motion are the provisions prohibiting campaign contributions, and solicitation of campaign contributions, by lobbyists, state contractors, and their family members to specific categories of political candidates and committees. Pursuant to a provision now codified in Conn. Gen. Stat. § 9-610(h),[1] no communicator lobbyist or member of his or her immediate family (or political committee controlled by the lobbyist or member of his family) may make a contribution to (1) a candidate for statewide office (*i.e.*, Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, or Secretary of State) or a candidate for 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. Conn. Gen. Stat. § 9-610(h).[2] The Act defines "immediate family" member to mean the lobbyist's "spouse or a dependent child." *Id.* § 9-601(24).

The Act further provides that no communicator lobbyist, immediate family member, or agent of a communicator lobbyist (or political committee controlled by the lobbyist, family member or agent) may solicit (A) a contribution on behalf of any of the candidates or committees listed above or (B) the purchase of advertising space in a program for a fund-raising

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[1] The provisions of the Act were recently recodified, pursuant to Public Act 07-12, signed by Governor Rell on May 8, 2007. The correct new citations to the Connecticut General Statutes (as well as the former statutory references) can be found on the SEEC's website, located at http://www.ct.gov/seec/lib/seec/t09_additions.pdf. In particular, the provisions relevant to lobbyists, formerly found in Conn. Gen. Stat. § 9-333*l*, are now found in Conn. Gen. Stat. § 9-610, and the provisions relevant to state contractors, formerly found in Conn. Gen. Stat. § 9-333n, are now found in Conn. Gen. Stat. § 9-612.

[2] "Communicator lobbyist" is defined as a lobbyist who (i) is compensated more than $2,000 for lobbying in a calendar year, and (ii) communicates directly (or solicits others to communicate) with an official or his staff in the legislative or executive branch of government, for the purpose of influencing legislative or administrative action. Conn. Gen. Stat. §§ 1-91(v), 1-91(*l*), 9-601(16).

affair sponsored by a town committee. *Id.* § 9-610(i).[3] The Act defines "solicit" to include (A) requesting that a contribution be made; (B) participating in fund-raising activities, including forwarding tickets to potential contributors, receiving contributions for transmission to candidates or committees, or bundling contributions; (C) serving as chairperson, treasurer or deputy treasurer of a political committee; or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions. *Id.* § 9-601(26). The Act explicitly provides, however, that certain other activities are *not* considered solicitation, including: (i) making a contribution otherwise permissible under the Act; (ii) informing any person of a position taken by a candidate or public official; (iii) notifying any person of the activities of, or contact information for, any candidate; or (iv) serving as a member or officer of any party committee that is not otherwise prohibited. *Id.*[4]

The Act adopted similar provisions with respect to state contractors. With respect to contractors with a state agency in the executive branch or with a quasi-public agency, Conn. Gen. Stat. § 9-612(g)(2)(A) provides that no such contractor, prospective contractor, or principal of a contractor or prospective contractor, shall make a contribution to, or solicit a contribution on behalf of, (i) a candidate for state-wide office (Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, or Secretary of State); (ii) a political committee authorized to make contributions to or expenditures for the benefit of such candidates; or (iii) a party committee. *Id.* § 9-612(g)(2)(A). Similarly, with respect to contractors dealing with the General

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[3] Public Act 06-137 amended Section 9-610 to delete Section 9-610(g), a provision requiring communicator lobbyists to make certain filings with the SEEC, effective October 1, 2007. As a result, effective October 1, 2007, Section 9-610(h) discussed in the text will be renumbered as Section 9-610(g), and Section 9-610(i) discussed in the text will be renumbered as Section 9-610(h).

[4] As originally enacted, the Act precluded a lobbyist or contractor from serving as an officer of any candidate committee, PAC or party committee. The Act was amended, however, by Public Act 07-1, enacted and effective February 8, 2007, to permit lobbyists and contractors to serve as officers of such committees, as long as they did not serve as chairperson, treasurer or deputy treasurer.

Assembly, Section 9-612(g)(2)(B) provides that no such contractor, prospective contractor, or principal of a contractor or prospective contractor, shall make a contribution to, or solicit a contribution on behalf of, (i) a candidate for state senator or state representative; (ii) a political committee authorized to make contributions to or expenditures for the benefit of such candidates; or (iii) a party committee. *Id.* § 9-612(g)(2)(B). The Act defines "principal" of a state contractor or prospective state contractor to include any member of its board of directors, any person with an ownership interest of five percent or more, some officers and management personnel, and "the spouse or dependent child who is eighteen years of age or older" of any of the above individuals, as well as any political committee established or controlled by any of the above individuals. *Id.* § 9-612(g)(1)(F).[5] The definition of "solicitation" set out above is equally applicable to the contractor provisions. *Id.* § 9-601(26).

All of the provisions at issue on the instant motion went into effect on December 31, 2006. Oct. 25 Special Session, Public Act 05-5, §§ 29, 31.

B. The SEEC's Declaratory Ruling

In November 2006, the SEEC – in response to questions concerning the scope of the Act, and the solicitation ban in particular – issued a declaratory ruling on the Commission's interpretation of the scope of permissible and prohibited activities under the Act. *See* Declaratory Ruling 2006-1, Lobbyist Contribution and Solicitation Ban ("SEEC Ruling"),

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[5] The Act further defines "dependent child" for purposes of Section 9-612 as a child residing in the individual's household who may legally be claimed as a dependent on the individual's federal income tax return. *Id.* § 9-612(g)(1)(G). As initially enacted, the prohibition on contractor contributions and solicitation applied to dependent children under the age of 18, but the Act with respect to contractors was amended by Public Act 07-1 to exclude dependent children under 18. At the same time, however, Public Law 07-1 also increased from 16 to 18 the general age limit for making contributions in excess of $30, so that contributions by dependent children aged 16 or 17 could not be used, as a practical matter, to circumvent the prohibition of contractor contributions. No similar amendment was adopted with respect to the prohibition of contributions or solicitation by the dependent children of lobbyists, and that prohibition continues to apply to all dependent children.

submitted as Exhibit 1 to the Declaration of Jeffrey Garfield, dated July 11, 2007 ("Garfield Decl."). Among other things, the SEEC Ruling makes clear that the Act's prohibition of "solicitation" does *not* apply to "informing any person of a position taken" by a candidate or public official, informing clients about whether a legislator or public official has been helpful (or not) on any issue, providing information about a candidate's activities, or providing contact information regarding a candidate or his or her campaign. SEEC Ruling at 5. The SEEC Ruling also establishes that it is "clearly permissible" for a lobbyist to inform any person about a candidate's fundraising event, as long as the lobbyist does not request that the person should attend or contribute. *Id.*[6] The SEEC Ruling also includes a long list of political campaign activities in which a lobbyist or contractor can still engage, and explicitly rejects arguments that the Act prevents lobbyists from freely discussing political affairs. *Id.* at 5-6.

C. Plaintiffs' Claims

Count Four of the *Green Party* Complaint alleges that these prohibitions on making and solicitation of contributions by lobbyists, state contractors and their family members deprive the Plaintiffs of their rights to speech and association under the First Amendment. The *Green Party* Plaintiffs include Betty Gallo, a lobbyist who has made and solicited political contributions, and intends to do so in the future. *Green Party* Complaint ¶ 13. Gallo also alleges that she regularly provides clients with information about the effectiveness of legislators, advice about candidates' positions on issues, and advises clients on which candidates to support. *Id.* ¶ 14. Plaintiff Joanne Phillips is the wife of a communicator lobbyist for the Connecticut Bar Association, a non-profit organization. Phillips alleges that she has been politically active on

[6] To constitute a prohibited "solicitation," the lobbyist must make an "express request" that a contribution be made, or make a request that "a reasonably prudent person would not construe as anything other than a request that a contribution be made." SEEC Ruling at 3. Any such "implicit request" must be established by clear and convincing evidence. *Id.* at 3-4.

behalf of State Representative Linda Orange and with the Colchester Democratic Town Committee, including making and soliciting political contributions. *Id.* ¶ 15. Plaintiff Ann Robinson is the Executive Director of the Community Capital Fund, a non-profit corporation that is considered a state contractor because it has received grants awarded by the State Department of Economic and Community Development. *Id.* ¶ 16. Robinson also alleges that she has made contributions to state candidates in the past, and intends to do so in the future. *Id.*[7]

The *Green Party* Complaint alleges that Plaintiffs' First Amendment rights are violated because Plaintiffs will be unable to contribute to candidates and political action committees that contribute to state candidates, or to raise funds for state candidates. *Id.* ¶¶ 44, 50. Plaintiff Phillips further alleges that she will be unable to continue her membership in the Colchester Democratic Town Committee or to be involved in future campaigns of Representative Orange. *Id.* ¶ 44. Plaintiff Gallo alleges that she will be unable to continue to answer clients' questions about candidates or their positions, or to advise clients on whom to support. *Id.* ¶ 45. Plaintiffs also complain that the statute's restrictions on lobbyists apply to lobbyists for non-profit advocacy organizations like the Connecticut Bar Association, even though their primary mission is not lobbying. *Id.* ¶ 46.[8]

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[7] The *Green Party* Plaintiffs also initially included Roger Vann, former Executive Director of the ACLU of Connecticut, (*id.* ¶ 17), but Mr. Vann left that position in March 2007 and the basis for any claims he may continue to have is not clear.

[8] The *Green Party* Plaintiffs also complained that the Act required the SEEC to publish the identities of spouses and dependent children of state contractors on its website, *id.* ¶ 51, and in Count Five of their Complaint, alleged that this provision was a violation of their constitutional right to privacy. *Id.* ¶ 56. However, in the wake of this Court's preliminary injunction in the *SIFMA* case, *Securities Industry & Financial Markets Assn. v. Garfield*, 469 F. Supp. 2d 25 (D. Conn. Jan. 3, 2007), the General Assembly repealed that provision in Public Act 07-1, enacted February 8, 2007, *see* Conn. Gen. Stat. § 9-612(h)(2) (requiring website disclosure only of identity of state contractors, not "principals"), and Plaintiffs have advised Defendants that they no longer intend to pursue their claims in Count Five.

Plaintiffs in the *ACL* action are the Association of Connecticut Lobbyists LLC, an organization whose members are communicator lobbyists, and Barry Williams, a communicator lobbyist. The *ACL* Plaintiffs likewise allege that the Act's provisions barring contributions and solicitation of contributions by lobbyists are unconstitutional under the First Amendment.[9] Plaintiffs allege that the members of the Association and Williams have provided their clients with advice on legislators' positions and effectiveness and on whom to support, *ACL* Complaint ¶ 23; that they and members of their immediate family have contributed to and participated in campaigns, *id.*; that they have solicited contributions to candidates, *id.* ¶ 24; and that, under the Act, they will be barred from these activities. *Id.* ¶ 25.[10]

Count One of the *ACL* Complaint alleges that the Act's restrictions on lobbyist contributions and solicitation are violations of the First Amendment. Count Two alleges that these provisions are also violations of the speech guarantees of Article first, Sections 4 and 5 of the Connecticut Constitution. *Id.* ¶¶ 28, 32. The *ACL* Plaintiffs also allege that these provisions constitute "invidious discrimination" against lobbyists and are arbitrary and capricious, *id.* ¶ 18, and that they are therefore violations of the equal protection clause and due process. *Id.* ¶ 29.

For the reasons explained in detail below, there is no merit to any of these constitutional claims.

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[9] The *ACL* Plaintiffs also allege that the effect of the Act is that political contributions by lobbyists will be treated as unlawful "gifts" subject to state ethics laws, and may therefore improperly subject them to penalties imposed by the Office of State Ethics. *Id.* ¶¶ 19-22. The *ACL* Plaintiffs therefore name as defendants the Executive Director of the Office of State Ethics, and all of the members of that Office, none of whom are named as defendants in the *Green Party* Complaint.

[10] The *ACL* Plaintiffs also broadly and inaccurately allege that the provisions of the Act limit lobbyists' freedom to discuss the candidates and issues, and that they constitute a "total ban" on lobbyists' participation in the state's political system. *Id.* ¶ 18. Similarly, the *ACL* Plaintiffs allege that under the Act they are unable to engage in a long list of activities – such as to "advise their clients whether a candidate for office is likely to win" or "is an effective legislator," or to "make any statement . . . that could conceivably lead that person to conclude that they should consider making a political contribution," or to "express their political support or beliefs in any newspaper," or to "provide advice to any candidate," *id.* ¶ 25 – which the Act in fact does not prohibit at all. *See* pp. 58-60, 85-87, *infra*.

FACTUAL BACKGROUND

A. Legislative History of the Campaign Finance Reform Act

1. Connecticut's Corruption Scandals

As this Court recognized in the *SIFMA* case, *see Securities Industry & Financial Markets Assn. v. Garfield*, 469 F. Supp. 2d 25 (D. Conn. 2007), the legislative history of the Campaign Finance Reform Act begins with the scandals that have engulfed state government in recent years and the "pay-to-play" culture in state government that these scandals revealed. 469 F. Supp. 2d at 28-29. As the Court noted, former Governor John Rowland resigned from office on June 21, 2004 – shortly before the Select Committee of Inquiry of Connecticut Representatives, which was charged with conducting an extraordinary investigation to determine whether the Governor should be impeached, was expected to announce its recommendations – and Governor Rowland ultimately pled guilty to criminal charges relating to the thousands of dollars in gifts and services that he received from state contractors in exchange for the award of state contracts. *Id.*; *see* Declaration of Ira M. Feinberg, dated July 10, 2007 ("Feinberg Decl."), Exhibits 1-4.[11] Peter Ellef, the Governor's co-Chief of Staff, and Ellef's former deputy, Lawrence Alibozek, also pled guilty to criminal charges arising from this scandal, as did William Tomasso, one of the contractors involved, and several of his companies. *See* Feinberg Decl., Ex. 5-10.[12]

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[11] The Feinberg Declaration submitted with this motion attaches as exhibits relevant materials documenting the corruption scandals in Connecticut in recent years. Defendants respectfully ask the Court to take judicial notice of these materials under Rule 201 of the Federal Rules of Evidence. Exhibit 1 to the Feinberg Declaration is a copy of the Information filed against Governor Rowland. Exhibit 2 is a copy of the plea agreement entered into by Governor Rowland, which includes the Governor's stipulation of his offense conduct. Exhibit 3 is the Government's Sentencing Memorandum filed with respect to the Governor's sentencing. Exhibit 4 is the Judgment of Conviction regarding Governor Rowland.

[12] Exhibit 5 to the Feinberg Declaration is the Government's Sentencing Memorandum with respect to Ellef, Tomasso, Tomasso Brothers, Inc., and Tunxis Management Co. Exhibit 6 is the Judgment of Conviction with

But the Rowland scandal was simply the culmination of a long series of scandals involving corruption of state officials. State Treasurer Paul Silvester pled guilty in 1999 to racketeering and money laundering charges arising from his conduct in steering exorbitant "finder's fees" – which he secured from financial institutions seeking to do business with the State Treasurer's Office – to friends and political cronies, who then illegally funneled the money back to Silvester, in part to finance his campaign for re-election as State Treasurer in 1998. *See* Feinberg Decl., Ex. 11. Silvester cooperated with the Government's investigation, and his cooperation led to the conviction in 2003 of at least six other companies and individuals involved in this scheme. Triumph Capital Group, an investment firm, Frederick McCarthy, its Chairman, and Charles Spadoni, its General Counsel, were convicted for their roles in a scheme to pay friends of Silvester (Christopher Stack and Lisa Thiesfeld) $1 million – which Stack and Thiesfeld agreed to split with Silvester – in exchange for Silvester's investment of $200 million in state pension funds with Triumph. *See* Feinberg Decl., Ex. 12-14.[13] Stack and Thiesfeld also pled guilty for their role in these crimes. *See* Feinberg Decl., Ex. 15.[14] Ben Andrews was convicted of involvement in a separate arrangement with Silvester, in which Andrews received a $1.5 million payment from a private equity firm, Landmark Partners – which Andrews agreed to

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respect to Ellef. Exhibit 7 is the Judgment of Conviction with respect to Tomasso. Exhibit 8 is the Judgment of Conviction with respect to Tunxis Management. Exhibit 9 is the Government's Memorandum with respect to the sentencing of Lawrence Alibozek. Exhibit 10 is the Judgment of Conviction with respect to Alibozek.

[13] Exhibit 12 is the plea agreement of McCarthy. Exhibit 13 is the Government's Sentencing Memorandum with respect to Spadoni. Exhibit 14 is Spadoni's Judgment of Conviction.

[14] Exhibit 15 is Thiesfeld's plea agreement, including her stipulation of offense conduct.

split with Silvester and Stack – in exchange for Silvester's investment of $150 million in state pension money with Landmark. *See* Feinberg Decl., Ex. 16-17.[15]

Moreover, in September 2005, State Senator Ernest Newton II pled guilty to diverting $40,000 in campaign contributions over a five year period for his personal use, and to accepting a $5,000 bribe in exchange for helping the director of a job training agency secure a grant from the State Bond Commission, among other crimes. *See* Feinberg Decl., Ex. 18-21;[16] *see also United States v. Newton*, No. 3:05-CR-233 (AHN), 2007 WL 1098479 (D. Conn. Apr. 10, 2007) (Opinion of Nevas, J., denying resentencing), *aff'd*, No. 06-0714-cr, 2007 WL 1857470 (2d Cir. June 28, 2007).

In addition to these statewide scandals, the mayor of Bridgeport, Joseph Ganim, was convicted in 2003 of racketeering and bribery charges arising from yet another scheme to award city contracts in exchange for unlawful payments from contractors. *See United States v. Ganim*, 225 F. Supp. 2d 145 (D. Conn. 2002) (Opinion of Arterton, J., denying motion to dismiss indictment); *Ganim*, No. 3:01-CR-263, 2003 WL 21516581 (D. Conn. June 30, 2003) (denying Rule 29 motion after jury verdict); *Ganim*, 2006 WL 1210984 (D. Conn. May 5, 2006) (denying motion for resentencing). At least three contractors – Alfred Lenoci, Sr.; Alfred Lenoci, Jr.; and Leonard Grimaldi – pled guilty to bribing Ganim as part of this scheme, and part of the bribe paid by Lenoci was that he "agreed to raise funds for the mayor's anticipated campaign for

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[15] Exhibit 16 is the Government's Sentencing Memorandum with respect to Andrews. Exhibit 17 is Andrews' Judgment of Conviction.

[16] Exhibit 18 is the Criminal Information filed against Senator Newton. Exhibit 19 is Senator Newton's plea agreement, which includes his stipulations as to his offense conduct. Exhibit 20 is the Government's Sentencing Memorandum with respect to Newton. Exhibit 21 is Senator Newton's Judgment of Conviction.

governor." *United States v. Lenoci*, 377 F.3d 246, 248 (2d Cir. 2004); *see also Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 7 (D. Conn. 2002).

These scandals received widespread publicity throughout the State, and led to an extraordinary loss of public confidence in the integrity of state government. Attached as Exhibit 22 to the Feinberg Declaration is a sampling of the news media coverage that the Rowland scandal and other Connecticut scandals have received.[17] The United States Attorney's Office put it well in describing the effects of these scandals in its Sentencing Memorandum with respect to Governor Rowland:

> What *is* extraordinary is the extent to which Rowland's actions and the actions of others have caused the loss of public confidence in government. This is nowhere more evident than in the letters submitted to the Court. Average citizens who have no vendetta against the defendant have eloquently and sometimes bluntly told this Court how Rowland has violated their trust and caused them to experience a deep loss of faith in public officials.

Feinberg Decl., Ex. 3 at 21 n.4 (emphasis in original). Similarly, Judge Alan H. Nevas, in denying Senator Newton's motion for resentencing, held that the U.S. Sentencing Guidelines "fail[ed] to adequately account for the loss of public confidence in the honesty and integrity of

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[17] *See, e.g.*, Paul von Zielbauer, *The Nutmeg State Battles the Stigma of Corrupticut*, N.Y. Times, March 28, 2003, at D1 (Governor Rowland scandal creating a "deeper sense of mistrust in the air, within the governor's inner sanctum, . . . under increasing federal scrutiny"); Jon Lender, *Ganim Falls Hard: Former Bridgeport Mayor Sentenced to Nine Years*, Hartford Courant, July 2, 2003, at A1 (reporting that Judge Janet Bond Arterton, who sentenced Ganim, described "[i]n a quiet but intense speech . . . the damage Ganim and his criminal associates had done to public confidence in government by handing out city contracts in exchange for bribes and kickbacks"); Stan Simpson, *Plain Talk About Corruption*, Hartford Courant, Oct. 8, 2003, at B1 ("For its size, little Connecticut – proportionately – just may be the most corrupt state in the union. Hundreds of millions in public money have been compromised. No longer is it a far-fetched notion to link public officials here with jail time."); Richard Jones, *Move Over, New Jersey, New Trend Puts the Con in Connecticut*, N.Y. Times, Nov. 30, 2003, at 37 (Bridgeport Mayor Ganim's transgressions were helping to give "otherwise refined Connecticut an unexpected and unwanted mark of distinction in the region: the state with the most dysfunctional politicians"); Avi Salzman, *He's Leaving. Now The State Has to Restore Its Reputation*, N.Y. Times, June 27, 2004, at 1 ("A half-decade of mounting political scandals have turned Connecticut into a punchline of political backwardness"); Michele Jacklin, *'Corrupticut' No More? Ethics Reforms Welcome*, Hartford Courant, May 1, 2005, at C3 (describing recently introduced ethics bills as "the good-faith effort of Governor M. Jodi Rell and the legislature to redress the wrongs that have come to light in the past couple of years, compliments of our ex-governor, his willing accomplices, greedy contractors, [and] two ne'er-do-well mayors ").

their elected officials" resulting from Newton's conduct, in light of the "virtual epidemic of highly publicized public corruption in Connecticut, which was so widespread that the state earned the unfortunate nickname 'Corrupticut'." *Newton*, 2007 WL 1098479, at *2.

2. Governor Rell's Legislative Initiative

Upon Governor Rowland's resignation, Lieutenant Governor M. Jodi Rell became Governor. Governor Rell moved quickly in an effort to restore the faith of Connecticut citizens in their government and public officials. Among other steps, Governor Rell made campaign finance and ethics reform one of the main themes of her initial State of the State address on January 5, 2005. The Governor cited the history of the state's recent bribery and contractor scandals, noting that they included "countless revelations of corruption and breach of the public trust," "an historic impeachment inquiry," and "indictments handed out and plea bargains reached," and promised that she would promptly send her reform proposals to the legislature. *See* Garfield Declaration, Exhibit 2.[18]

Shortly thereafter, Governor Rell submitted her campaign finance reform proposal, Bill 943, to the General Assembly. *See* Garfield Decl., Ex. 3. Among other things, Governor Rell's bill proposed banning contributions by state contractors, and contributions and solicitation of contributions by lobbyists and lobbyist-controlled political action committees ("PACs"), to any candidate for statewide executive office or the state legislature. *See* Bill 943, §§ 6(g), 6(h), 10(d), 10(e). House and Senate legislative leaders submitted their own campaign finance reform proposals, Senate Bill 61 and House Bill 6670. *See* Garfield Decl., Ex. 4, 5. These bills – unlike the Governor's proposal – included a plan for public financing of election campaigns. However,

[18] The legislative history of the Act is set out in detail in the Garfield Declaration, and all of the referenced transcripts and documents are attached as exhibits.

these bills also differed from the Governor's proposal in that they banned contributions by state contractors only to candidates for state executive offices, and not to candidates for the legislature, and they lowered the pre-existing contribution limits for lobbyists' contributions to candidates for state-wide executive offices and the legislature, but did not ban such contributions entirely. Each of these bills was referred to the General Assembly's joint Government Administration and Elections ("GAE") Committee.

3. The GAE Committee Hearings

The GAE Committee held five public hearings across the state in January and February 2005, and heard from Governor Rell, state election officials, interested organizations and the public on the need for campaign finance reform.[19] Governor Rell urged fundamental change in the way state elections were financed:

> You know, as I know, that there has never been a more universal consensus about the urgent need for fundamental change in the way our State government officials discharge their duties or political campaigns are run, and the way [the] State conducts its business . . . . Everyone in this room, all of you, is familiar with campaigning and the problems that it presents. And I bet you hear the same complaint about it that I do. The public believes that special interests have too much influence.

2/2/05 GAE Tr. at 3. Governor Rell explained that her proposal "seeks to limit the influence of special interests by prohibiting lobbyists and people doing business with the State from contributing to races for statewide office or the Legislature. It also prohibits lobbyists from fundraising or soliciting contributions from their clients." *Id.* at 9.

Defendant Jeffrey Garfield, Executive Director and General Counsel of the SEEC, testified that campaign contributions and gifts to public officials were "two sides of the same

[19] GAE Committee hearings were held on January 19, 28, and 31, and February 2 and 18, 2005. Transcripts of these hearings are attached as Exhibits 6 through 10, respectively, of the Garfield Declaration, and are cited herein as "[DATE] GAE Tr." The Co-Chairs of the GAE Committee, who took a leading role in enactment of the Act, were Senator Donald DeFronzo and Representative Christopher Caruso.

coin," and "create[ ] at least an appearance that donors' interests will be favorably considered by the recipient public official or candidate for public office." 1/28/05 GAE Tr. at 49. Mr. Garfield urged that Governor Rell's proposal to ban contributions by lobbyists and state contractors "will go a long way toward reducing influence of special interests in statewide and legislative campaigns." *Id.* at 50.[20] Mr. Garfield also noted that the prohibition on lobbyists' contributions will "mak[e] campaigns more competitive," especially since "it is well known that lobbyists do not give to challengers." *Id.* at 50-51; *see also* Statement of Joan Andrews, SEEC Principal Attorney, 2/2/05 GAE Tr. at 123-27. Representative James O'Rourke, a member of the Committee, expressed a similar view: "People understand that there's something fundamentally wrong with the very interests that come up here and before Congress, asking for special legislation to benefit themselves over, and over, and over, play such a gigantic role in funding our campaigns." 1/31/05 GAE Tr. at 66.

Charles A. ("Andy") Sauer, CCC's Executive Director, testified about the findings of a report released by CCC entitled *The Rowland Corruption Trail Begins on the Campaign Trail* (hereinafter "*Rowland Corruption Trail*"). *See* 1/31/05 GAE Tr. at 69-75; *see also* Declaration of Andy Sauer, dated July 10, 2007 ("A. Sauer Decl."), ¶ 14.[21] That report analyzed the *legal* campaign contributions to Governor Rowland made by people affiliated with

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[20] Similarly, Mr. Garfield testified at his deposition in this case that Governor Rell, the legislature, and the SEEC all shared the view that strong reforms were needed to restore the public's trust. *See, e.g,* Deposition of Jeffrey Garfield, dated March 2, 2007 ("Garfield Dep."), at 115 (SEEC "felt that there was a problem with lobbyists' contributions being made and solicited in large amounts, in terms of the perception that it created about our government and our electoral process"); *id.* at 116-17 (Governor Rell and legislators felt strong measures were needed because public's confidence in elected officials had been irreparably damaged by the Rowland scandals); *id.* at 143 (to restore the public's trust in government – which had been "irreparably shattered" by scandal – complete bans were the necessary "strong, prophylactic measures"); *id.* at 145 (clearly a problem of perception, if not reality, that "electoral process was compromised by the influence of lobbyists and government contractors in making contributions"). Copies of the referenced excerpts from the Garfield Deposition are attached as Exhibit 1 to the Declaration of Lawrence V. Brocchini, dated July 11, 2007, submitted herewith.

[21] A copy of that CCC report is submitted as Exhibit 1 to the A. Sauer Declaration.

William Tomasso and his construction firm, and showed that the amount of the illegal gifts that Tomasso made to Governor Rowland and his Chief of Staff to obtain preferential treatment on no-bid contracts were dwarfed by the approximately $437,000 in legal campaign contributions made by Tomasso-related individuals and entities to Governor Rowland. *See* 1/31/05 GAE Tr. at 69-70; *see also* A. Sauer Decl. ¶¶ 14-16; *Rowland Corruption Trail*, at 2.[22] Mr. Sauer testified that such substantial campaign contributions were important in giving the Tomassos and other major contributors access to public officials, undue influence and preferential treatment in the contract procurement process. 1/31/05 GAE Tr. at 69-70, 74-75. Phillip Sherwood, Legislative Director of CCAG, made the same point, testifying that he did not think it a coincidence that the Tomassos both made such substantial campaign contributions and were the recipients of substantial no-bid state contracts. 1/31/05 GAE Tr. at 45. Mr. Sherwood also testified that people generally "expect something when [they] give money, more often than not" – "[i]t's an investment." *Id.*[23]

Representative Andrew Fleischman found this testimony persuasive. At the next Committee hearing, he commented that a "great example" of the breaches of public trust of the Rowland Administration was that "there were certain contractors who bundled massive contribution amounts to the Rowland campaign, and then got contracts on a fast-track basis, which appear to have been steered to them." 2/2/05 GAE Tr. at 54. Senator Andrew Roraback, who was testifying before the Committee, replied that "the Governor's recommendation would

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[22] In October 2005 – just before the Act was passed – CCC released another study entitled *There Are No Losers When Everyone's A Giver* (hereinafter "*There Are No Losers*"). A. Sauer Decl. ¶ 17. A copy of this CCC report is attached as Exhibit 2 to the A. Sauer Declaration. This report again shows that large campaign contributors tended to receive significant no-bid construction contracts during the Rowland administration, while at least one other large, well-qualified contractor – who only made $3,500 in campaign contributions – did not receive any no-bid contracts during that time. *There Are No Losers* at 1-2.

[23] Mr. Sherwood later testified that a poll of Connecticut citizens showed that 76% believed that "Rowland's actions in giving out state contracts were a result of campaign contributions." 2/18/05 Tr. at 96-97.

prohibit altogether contributions from people doing business with the State of Connecticut to political candidates [and] would have gone a long way towards preventing exactly that kind of abuse. If people wish to do business with the State of Connecticut, they ought not to be in the business of funding the campaigns of those that are doling out the work." *Id.*

At the GAE Committee hearing on February 18, 2005, Representative Demetrios Giannaros, a member of the Committee, noted that in his view, when people make a substantial $500 or $1,000 contribution to a campaign, "they expect something" – at some point, "they will knock at your door," will "remind you, I'm one of your supporters," and will ask for some action. 2/18/05 GAE Tr. at 40. Betsy Bayless, former Secretary of State of Arizona, testifying about that state's public financing program, confirmed that in her experience, too, lobbyists and state contractors who make campaign contributions feel entitled to direct access to elected officials and support for their interests. 2/18/05 GAE Tr. at 41.

4. The Legislature's Failure to Reach Agreement during the Regular Session

Both the House and Senate Bills were favorably reported out of the GAE Committee. *See* Garfield Decl., Ex. 11, 12 (GAE Reports, dated March 31, 2005, on SB-61 and HB-6670). However, as the June 8 end of the 2005 legislative session approached,[24] Governor Rell and legislative leaders could not reach agreement on a single proposal to achieve campaign finance reforms. Governor Rell supported legislation to ban contributions by lobbyists and state contractors, but did not support full public funding of elections, while the General Assembly insisted on public funding for state-wide elections and differed with respect to the scope of the contribution restrictions applicable to lobbyists and contractors. *See* Garfield Decl. ¶ 7.

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[24] The General Assembly was constitutionally required to end its 2005 regular session no later than midnight on June 8. State Constitution, Article Third, Section 2.

However, on June 2, 2005, Governor Rell – declaring that "[m]issing this opportunity is simply too painful to contemplate" – offered a compromise proposal. Governor Rell agreed to accept public financing for state-wide and legislative elections, if the General Assembly would accept her proposal to ban completely contributions by state contractors, lobbyists and lobbyist-controlled PACs to candidates for all state-wide executive offices and the state legislature. *See* Garfield Decl. Ex. 13 (June 2, 2005 Press Release of Gov. Rell).

Legislative leaders soon agreed to Governor Rell's compromise. On June 7, 2005, the House and Senate each debated – and passed – its own version of a campaign finance reform bill. *See* Garfield Decl., ¶ 9 & Ex. 14, 15. Each of these bills included both a system of public financing and a ban on contributions by lobbyists and state contractors, but the bills differed, *inter alia*, with respect to the timing of when their various provisions would go into effect.

In these debates, many legislators made clear that the state's recent history of political corruption had an important impact on the reform effort.[25] A near-universal refrain in both chambers – even from legislators who voted against the bill – was that legislation was needed to combat the public's clear perception of corruption and undue influence linked to campaign contributions by lobbyists and state contractors.[26] One senator outlined the problem as follows:

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[25] *See, e.g.*, Garfield Decl., Ex. 16 (Transcript of June 7, 2005 Senate Debate on Senate Bill 61 ("6/7/05 Sen. Tr.")), at 405 (Statement of Senator Roraback that Connecticut had been through dramatic times, which call for dramatic changes); Garfield Decl., Ex. 17 (Transcript of June 7, 2005 House Debate on House Bill 6670 ("6/7/05 House Tr.")), at 488 (Statement of Rep. Caruso, "thanking" Governor Rowland and others who were convicted for their role in scandals for the impetus they gave to reform efforts).

[26] *See, e.g.*, 6/7/05 Sen. Tr. at 288 (Statement of Senator Lebeau that bill was "necessary to correct public perception of corruption", citing *Journal Inquirer* article that politicians are all crooks); *id.* at 328, 341-42 (Statements of Senator Roraback, that bill is designed "to eliminate any public perception that governmental decisions are influenced by campaign contributions," and that the "public's greatest disappointment has been with the perceived relationship between contributions from contractors and elected officials"); *id.* at 370-71 (Statement of Senator Cappiello that "when you ask your constituents what's the biggest problem when it comes to campaigns and financing of campaigns, they will say, the influence of special interest groups."); *id.* at 393, 397 (Statement of

> The problem is there's a public perception . . . that our constituents back home . . . , their voices aren't heard because of all the lobbyists up here, because of all the campaign money. The perception is that there is undue influence on us because of that. Sadly, that perception has grown tremendously because of the events of the recent years. It's time to get it out.

6/7/05 Sen. Tr. at 384 (Statement of Senator John McKinney).

In addition, several legislators noted that this was not simply a question of public perception; rather, they acknowledged, campaign contributions are often given with the intent of influencing the outcome of legislative action, and they often succeed. As Representative Caruso, one of the co-chairmen of the GAE Committee, explained: "when support is given, it is expected that support be returned . . . how many times do we look clearly at an issue or do we solely look at it as who supported us and should we return the favor." 6/7/05 House Tr. at 487. Representative Caruso cited several examples – including the "Bottle Bill"[27] – where popular proposed legislation had been killed by lobbyists' efforts before they were even brought up for debate. *Id.* at 485-86. Along the same lines, Representative Robert Heagney noted that lobbyists give money – not because the legislator has a particular view they support – but "because they have an interest in legislation," and that lobbyists' funds coming into legislators' campaigns "may, down the line, make a significant difference in how a legislator would view a given

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Senator Deluca that the ban on lobbyists and contractors addresses a perception that contributions affect how a person votes); 6/7/05 House Tr. at 493-94 (Statement of Rep. Heagney that citizens are full of disdainful talk of politics and wonder what influences outcomes). Indeed, much of the opposition to the legislation argued that its phase-in period was too gradual, and allowed this "gaping opportunity . . . for contributions which tend to erode public confidence in our system," 6/7/05 Sen. Tr. at 336 (Statement of Senator Roraback), to continue for several more years. *See also id.* at 294-300 (Statement of Senator Kissel, supporting bill but calling for immediate ban of contractor and lobbyist contributions); *id.* at 341, 348 (additional statements of Senator Roraback); *id.* at 393-94 (Statement of Senator Deluca).

[27] Lobbyists' influence in killing the "Bottle Bill" is detailed in the report prepared by CCC, entitled *The Sinking of the Bottle Bill*, which was published by CCC in September 2005. A copy of that report is submitted as Exhibit 3 to the A. Sauer Declaration.

matter." *Id.* at 493-95.[28] Representative Caruso also expressed concern about the additional influence that lobbyists can achieve through bundling of contributions from their clients. *Id.* at 486 (noting common practice of asking lobbyists for assistance, leading lobbyists to go "get 5 or 6 checks from their clients" to support incumbent's campaign); *id.* at 573 (prohibiting contributions and solicitation of contributions by lobbyists would allow lobbyists to "simply communicate information advocacy, but [they] would not be expected in return to gather checks on behalf of a candidate from their clients").

Each chamber of the legislature passed its version of a campaign finance reform bill during the evening of June 7, 2005,[29] but the legislative session expired before either chamber could consider the other's bill.

5. The Campaign Finance Reform Working Group

Following the failure of the General Assembly to pass a single campaign finance reform bill, Governor Rell called upon House and Senate leaders to establish a bipartisan Campaign Finance Reform Working Group to seek to reconcile the two competing bills. The Working Group – consisting of twelve legislators, six from the House and six from the Senate – met twelve times, and all of its meetings were open to the public and believed to be televised. Garfield Decl. ¶ 12.[30] During a public hearing on August 4, 2005, several of the Working Group

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[28] *See also*, 6/7/05 House Tr. at 484-85 (Statement of Rep. Caruso, that lobbyists help fund campaigns to try to "change" and "create" legislation); *id.* at 573-74 ("special interests have a tremendous influence on the legislative process"); *id.* at 564-65 (Statement of Rep. Nardello: influence of lobbyists has grown rapidly, raising concern whether desires of lobbyists are driving public policy decisions; citing another example of popular legislation killed by lobbyists).

[29] The House bill passed in a 92-43 vote, and the Senate bill passed in a 24-12 vote. Garfield Decl. ¶ 11.

[30] The Working Group was co-chaired by Sen. Donald DeFronzo and Rep. Robert Heagney, and included as members the following legislators: Sens. Gary LeBeau, Andrew McDonald, Mary Ann Handley, Andrew Roraback and John McKinney; and Reps. Christopher Caruso, Tim O'Brien, David McCluskey, Toni Walker and Livy Floren. The Working Group met on the following dates in 2005: July 12 and 21; Aug. 4, 11, 18, and 30; September 1, 6, 8, 13, 15, and 23. Transcripts of the hearings on July 21, 2005 and August 4, 2005 are attached as Exhibits 18 and 19, respectively, to the Garfield Declaration. The majority of the hearings were not officially transcribed, but DVDs

members explained the need for bans on contributions by lobbyists and contractors, based the clear potential for corruption involved in contributions by these groups. As Senator Roraback explained:

> [M]y constituents think and the public, I think, operates under the impression that when people do business with the State of Connecticut and are funding campaigns, there is a potential perception problem. Similarly, when lobbyists who are up here every day are contributing directly to legislative candidates, there is a perception problem.

8/4/05 WG Tr. at 215; *see also id.* at 100-01 ("my constituents . . . raise concerns about the role of lobbyist contributions and contributions by people that have contracts with the State of Connecticut. . . . I'm suggesting we act now to get rid of those sources of money, which . . . most great[ly] erode the public confidence and trust."[31]

Testimony at the August 4 public session demonstrated that the influence of individual lobbyists is compounded by their common practice of "bundling" donations from clients. Brian Anderson, a lobbyist for the American Federation of State and County and Municipal Employees, testified that "real problem is the bundling," and that merely stopping . . . lobbyists from giving might not be enough. *Id.* at 127. Anderson explained that the legislation should not be limited to prohibiting lobbyists' contributions "because lobbyists, quite often, are just the agents for bigger corporations or bigger interests." *Id.* He went on to give an illuminating example:

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containing video recordings of a number of those hearings are available and attached as Exhibits 20 through 24 of the Garfield Declaration. In addition, for the Court's convenience, Defendants have prepared informal transcripts of cited excerpts of those hearings, and those transcripts are attached as Exhibits 20A, 21A, 23A and 23B to the Garfield Declaration, with the exhibit number corresponding to the exhibit number of the DVD from which the excerpt was taken. The transcripts of the Working Group meetings will be cited herein as "[DATE] WG Tr."

[31] *See also* Garfield Decl. Ex. 21A (excerpt of 9/1/05 WG hearing), at 3 (Statement of Sen. DeFronzo, discussing problems caused by money from lobbyists and contractors flowing into system); *id.* at 3 (Statement of Rep. McClusky, citing proven "nexus" between contractors and corruption); Deposition of Andrew Roraback, dated April 4, 2007 ("Roraback Dep."), at 8 ("the notion was we were going to try to expunge any undue influence that was visited upon the legislative process by what are in the vernacular characterized as special interests"). A copy of the referenced excerpts from the Roraback Deposition is attached as Exhibit 2 to the Brocchini Declaration.

> I think bundling is really the big problem in a lot of this. . . . [T]here is a fascinating article that was printed in yesterday's *Journal Inquirer*. It shows 35 security corporation executives from the same firm donating to Senator Lieberman. Within a 20 day span, they donated $50,000 to him.
>
> If I could quote from the attorney for this corporation, quote, "I can assure that this was certainly not a collective policy, but that it is a matter of individual decision."
>
> Now, does anyone believe that?

Id.; *see also id.* at 102 (Testimony of Karen Hobert Flynn, Executive Director of CCC, pointing out that, through bundling, a lobbyist or contractor could accumulate numerous contributions of $1,500 each in a race for Governor, easily reaching a very substantial sum).

The August 30 meeting of the Working Group focused on whether to ban "ad books" – printed programs for political fundraisers, which could contain ads purchased by individuals and corporations – which were widely viewed as a loophole through which corporations, which were otherwise prohibited from making campaign contributions, could donate to campaigns.[32] In the course of the Working Group's discussion, Representative Caruso argued that if ad books were to be retained, "lobbyists and contractors and others we are prohibiting from contributing in the first place" should also be prohibited from soliciting for ad books. He noted that legislators all knew how "ad books work in campaigns" – *i.e.*, that lobbyists and contractors solicit and bundle contributions to ad books – that this solicitation was "the whole problem with ad books," and that the failure to prohibit solicitation by lobbyists and contractors would allow them to "circumvent[ ] the effort that we're trying to establish." Garfield

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[32] Under prior law, ad book purchases subject to statutory limits were not treated as political contributions. The legislation ultimately changed that by closing the loophole in campaigns for statewide office and the General Assembly, PACs and state party committees. Local party committees were permitted to continue to use ad books, however lobbyists and state contractors were prohibited from making or soliciting these purchases to the same extent as the making or soliciting of campaign contributions. *See* Conn. Gen. Stat. §§ 9-601(10)(A), (B); Conn. Gen. Stat. § 9-610(i)(B).

Decl. Ex. 20A, at 1-2. Senator LeBeau responded that prior discussions had established a consensus that lobbyists and contractors would be prohibited from soliciting donations to ad books. *Id.* at 2.

The September 1 meeting focused largely on PAC contributions, and the Working Group reached a consensus that PACs controlled by lobbyists or contractors should also be precluded from making contributions. Senator DeFronzo proposed that "any political action committee controlled by a lobbying firm or lobbyist, a contractor, or agent of a contractor, or by corporate money . . . would be prohibited in the entirety from contributions to candidate committees," because there was a "firm consensus that those three sources of funds are the most problematic in terms of influence and potential corruption." Garfield Decl. Ex. 21A, at 1; *see also id.* at 3 (Statement of Representative O'Brien, supporting extending ban on lobbyist and contractor contributions to PACs controlled by them).[33]

At the end of September, after three months of meetings, receipt of expert advice, and reviewing materials, the Working Group submitted to the Governor a Summary Report outlining the framework for a new bill. *See* Garfield Declaration, Ex. 26. The Summary Report concluded that lobbyists and contractors should be banned from making contributions for state-wide office:

> Members agreed that due to the appearance of undue influence of lobbyists, a ban on lobbyists contributions to members and candidates for the General Assembly and candidates for statewide offices as well as

[33] At the Working Group meeting on September 6, Defendant Jeffrey Garfield urged the Working Group to ban contributions by contractors and lobbyists to party committees as well as to candidates, explaining that a prohibition of contributions to party committees was necessary to prevent evasion of the direct contribution ban. Garfield Decl., Ex. 23A, at 1. Mr. Garfield reiterated this position at the Working Group meeting on September 13, and recommended that contractors should be prohibited from contributing to candidates, exploratory committees, PACs that contribute to candidates, and party committees. Garfield Decl., Ex. 23B, at 1-3.

incumbents in those offices should be implemented.

Id. at 3. The Working Group also agreed that "lobbyists and lobbyists' PACs should be banned from soliciting and bundling contributions for all candidates to legislative or statewide office," although the Summary Report also noted that these provisions should "not prohibit a lobbyist . . .from . . . informing any person of a position taken by a candidate or notifying any person of the campaign activities of any candidate." *Id.* at 3-4. The Working Group also agreed that contractors doing business with the state (and PACs controlled by such contractors) should be banned from making contributions to General Assembly and statewide offices; that this ban should include contributions to party committees and officeholder PACs; that this prohibition should apply equally to executives of non-profit agencies that exceeded the threshold amount; and that this prohibition should also apply to the CEOs and major stockholders of contractors, as well as to their immediate family members. *Id.* at 4. The Working Group concluded, however, that these restrictions should not be applied to contributions to other candidates and committees, including candidates for local offices. *Id.*

6. The Special Session and Passage of the Act

In late September 2005, Governor Rell convened a Special General Assembly Session for Campaign Finance Reform. Garfield Decl. Ex. 27 (Sept. 29, 2005 Press Release). Governor Rell emphasized that the state could no longer afford a "pay to play" mentality, and that "[t]he very legitimacy of [ ] government is called into question when – rightly or wrongly – the perception exists that a moneyed few play a special role or have a special influence over elections and policy." *Id.* In her proclamation convening the special session, Governor Rell urged that there was a "pressing need for campaign finance reform," driven by the "revelations

of corruption and breach of the public trust" in Connecticut and elsewhere. Garfield Decl. Ex. 27.

General Assembly leaders subsequently reached agreement on a single campaign finance reform bill, Senate Bill 2103, and that was the form in which the Act initially passed. Senate Bill 2103 was debated in both houses of the General Assembly on November 30, 2005. Once again, numerous legislators in both houses urged that the bill was necessary to redress the public perception that special interests had undue influence, particularly in light of the recent political scandals.[34]

Senator DeFronzo – the Senate Chairman of the GAE, Co-Chairman of the Working Group, and one of the General Assembly's most authoritative voices on the purposes of the Act – summarized the rationale for the legislation as follows during the Senate debate:

> I just want to, for purposes of the legislative history be clear with respect to the bans we're proposing on contractors that, where we've come to on that is, where we've come from on that really is a belief that contributions and campaigns lead to access, lead to favoritism, lead to corruption as it's borne out in the recent events of the Rowland Administration and subsequent events there too.

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[34] For relevant statements in the Senate debate, *see, e.g.*, Garfield Decl. Ex. 28 (Transcript of Nov. 30, 2005 Senate Debate), at 55 (Statement of Sen. DeFronzo: "the impetus of the scandals over the last couple of years and the clear nexus between contractor contributions, selling of influence, conviction of a Governor, obviously is compelling with respect to this piece of legislation"); *id.* at 56-57 ("what was said and referred to quite openly and freely [during Working Group meetings] was the fact that the . . . public perception is such that lobbyists wield a huge amount of influence up here and that is something that needed to be regulated"); *id.* at 61-62 (citing large contractor contributions to Governor Rowland that opened the door to potential influence and corruption, and provides a compelling impetus for legislation); *id.* at 108-09 (consensus that there was public perception that "contributions open the door to inappropriate levels of influence and access," and that system is not healthy); *id.* at 29-30 (Statement of Sen. Lebeau: bill necessary to restore public trust to combat public perception that campaign contributions come with strings attached); *id.* at 238 (Statement of Sen. McKinney: because of political corruption scandals, public believes members make policy decisions based on needs of special interest groups); *id.* at 284-85 (Statement of Sen. Gaffey: "My gut feeling is that we have gotten to the point ... where there, at a bare minimum, is the appearance of undue [lobbyist] influence .... And I'm troubled by that.").

For relevant statements in the House debates, *see, e.g.*, Garfield Decl. Ex.29 (Transcript of Nov. 30, 2005 House Debate), at 55-56, 281-82 (Statements of Rep. Caruso: citing perception of corruption by lobbyists and contractors, and noting direct correlation between influence contractors gained through contributions and subsequent bribery); *id.* at 95-97 (Statement of Rep. McCluskey: stating that bill was necessitated by Rowland corruption scandal, satisfied compelling state interest test, and was intended to eliminate actual and perceived corruption).

> And that these events and the realities and the truths that have been uncovered in the time since the impeachment hearings were conducted last summer, I think all of that has created a reasonable cause, a reasonable interest on the part of all of us to believe that campaign contributions can have a debilitating effect on our democracy, can subvert democracy, and can affect all of our decision-making processes in a negative way if we're not careful.
>
> And all this resulted in a very compelling interest to change our public policy to limit contributions from certain interests and to ban them on the part of certain contractors, to ban them on the part of lobbyists who we believe to have undue influence on our system, and to ban them on the part of contractors for the same reason.
>
> And those are the historical precedents that have brought us here, and I want to just put that on the record, so that if in the future there is a discussion in the courts about why, how we got her and how it became a public policy issue, we have a very clear nexus between the occurrences and actions of the last two years in this legislation.

Garfield Decl. Ex. 28, at 352-53; *see also* Affidavit of Donald DeFronzo, dated July 3, 2007 ("DeFronzo Aff."), ¶ 22; Affidavit of Andrew Roraback, dated July 6, 2007 ("Roraback Aff."), ¶ 5 (discussing recommendations of Working Group final report).

The legislation passed the Senate on November 30, 2005 and passed the House in the early morning hours on December 1, 2005.[35] Governor Rell signed the bill into law on December 7, 2005, and it became effective on January 1, 2006, although the Act provided that the contributions bans would go into effect on December 31, 2006. *See* P.A. 05-5, §§ 29, 31.

7. The 2006 Amendments

Shortly after enactment of the Act, Governor Rell, legislative leaders and the SEEC realized that certain provisions were problematic and required amendment. As a result, the General Assembly returned to consider certain aspects of the Act during its regular 2006

[35] The Senate approved the bill by a vote of 27-8, and the House approved it by a vote of 82-65. Garfield Decl. ¶ 17.

legislative session, and adopted a bill, which ultimately became known as Public Act 06-137, containing a number of substantive and technical amendments. Public Act 06-137 was passed in May 2006, signed by Governor Rell on June 6, 2006, and took effect on January 7, 2007 (the "2006 Amendments").

Most of the 2006 Amendments related to the Citizens' Election Program, the public financing system created by the Act, and are not relevant on this motion.[36] However, one provision, relating to the severability of the different components of the Act, could conceivably have an impact on the restrictions on lobbyist and contractor contributions at issue here. The Act as originally adopted in 2005 included a provision that made the entire Act inoperative, permanently, if CEP funding was temporarily enjoined for 72 hours or more. While that provision was designed to ensure that CEP participants could raise alternate funds if CEP funding was cut-off in the midst of an election cycle, Governor Rell and legislators agreed that the permanent annulment of the Act in response to preliminary relief was unwarranted and needed correction. The 2006 Amendments therefore amended this provision. Under the amendment, the effectiveness of the entire Act is suspended if a temporary injunction on CEP funding is imposed after April 15th of a general election year, and the temporary injunction lasts one week or longer – thus allowing participating candidates to secure other funding during that election cycle – but the suspension lasts only until December 31 of that year. Thereafter, the unenjoined parts of the Act resume effect and remain operative, at least through April 15 of the

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[36] In addition to several technical amendments, the 2006 Amendments eliminated a perceived loophole under which PACs controlled by House and Senate leaders could make unlimited campaign expenditures on behalf of legislative candidates participating in CEP funding. P.A. 06-137, § 16, codified at Conn. Gen. Stat. § 9-619(d)(1) The 2006 Amendments also enhanced potential CEP funding for eligible minor party candidates for state-wide executive office, authorizing a "supplemental grant" to any such candidate who incurred a spending deficit and who received a greater percentage of the popular vote than the percentage used to calculate the candidate's initial campaign grant. P.A. 06-137, § 19(c)(3), codified at Conn. Gen. Stat. § 9-705(c)(3).

second year after the injunction begins, thus giving the General Assembly ample time to address the issue.[37] P.A. 06-137, § 17, codified at Conn. Gen. Stat. § 9-717.[38]

B. Additional Evidence of the Compelling Need for the Act's Reforms

1. Sworn Testimony of Past and Present Legislators

In addition to the overwhelming demonstration of the need for the Act contained in the available legislative history, Defendants are submitting with this motion the affidavits and declarations of five present and former legislators: Donald DeFronzo, a Democratic State Senator, the Senate Chairman of the GAE Committee and Co-Chair of the Working Group; Andrew Roraback, a Republican State Senator (and former State Representative), and one of the members of the Working Group; Miles Rapoport, the former Secretary of State of Connecticut, a former State Representative, and a former Chair of the GAE Committee; Jonathan Pelto, a former State Representative and former Deputy Majority Leader; and Claire Sauer, a former State Representative and former member of the GAE Committee. Each of these witnesses was also deposed in this litigation, and referenced excerpts of their deposition testimony – and the testimony of other former legislators and lobbyists who were deposed in this case – are included as exhibits to the Declaration of Lawrence V. Brocchini, dated July 11, 2007 (the "Brocchini Declaration").

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[37] If the legislature took no action and the injunction continued in effect on that April 15, the entire Act would become permanently inoperative. *See* Conn. Gen. Stat. § 9-717(a).

[38] Generally under Connecticut law, "[i]f any provision of any act passed by the general assembly or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of such act." Conn. Gen. Stat. § 1-3. Thus, if this Court were to hold invalid some aspect of the lobbyist/contractor contribution bans at issue here – which, we submit, it should not – the balance of the Act would remain effective. *See* pp. 97-99, *infra*. Section 9-717 deals only with the effectiveness of the Act in the face of an injunction of CEP funding, and does not alter the general rule that valid provisions of the Act are severable from any invalid provisions.

These sworn statements and testimony provide compelling evidence of the realities of political life in Connecticut under the old system, including the great reliance of legislators on contributions from lobbyists (and through lobbyists, their clients) to fund legislators' political campaigns; the undue access and influence that legislators' dependence on lobbyist fundraising has given lobbyists; and the actual impact that this influence has had on the legislature's actions. As these statements and testimony also show, these realities have led to the widespread – and accurate – public perception that contributions by lobbyists and state contractors have given them undue influence on public policy decisions, at the expense of the average Connecticut citizen, and thus demonstrate the compelling need for the prohibition of such contributions adopted by the General Assembly. *See* DeFronzo Aff., ¶ 5 ("At no time in the state's history has the need for comprehensive and aggressive reform been more needed, or justifiable, than in the wake of the corruption scandal involving former Governor John Rowland and high-ranking government officials.").

There can be little doubt that in Connecticut lobbyists have been a very important source of campaign funding for legislators. Lobbyist and lobbyist-solicited contributions often constituted a substantial percentage of legislators' total campaign funds. *See* Declaration of Miles Rapoport, dated July 3, 2007 ("Rapoport Decl."), ¶ 6; *see also* Deposition of Miles Rapoport, dated March 30, 2007 ("Rapoport Dep."), at 7; Roraback Dep. at 34 (lobbyist contributions have historically accounted for a substantial percentage of many candidates' contribution base); Deposition of Donald DeFronzo, dated March 23, 2007 ("DeFronzo Dep."), at 8, 15-16 (financial reliance on lobbyists' contributions is in some cases substantial, accounting

for 15% to 25% of funds, depending on legislative race and district).[39] The influence of individual lobbyists, moreover, is compounded by the common practice of lobbyists' "bundling" donations from multiple clients, thus resulting in a very significant contribution for a legislative race. *See* Rapoport Decl. ¶ 7 ("not uncommon for lobbyists to 'bundle' donations from 12 to 15 clients, at $250 apiece for House races," which would be "a very significant contribution for a House race"). As Jonathan Pelto explains, lobbyists are the primary conduit of campaign funds from special interests and often arrive at fundraising events with an envelope filled with campaign donations and a list of the clients who were donating. Declaration of Jonathan Pelto, dated July 6 2007 ("Pelto Decl."), ¶ 9. As Senator Roraback testified, it was

> pretty widely recognized that it would be an incomplete bill if [the legislature] permitted lobbyists to raise money from their clients on behalf of candidates . . . . If the idea was, which I think it was, to disabuse the public of the perception that lobbyists would win favor with legislators by being a source of funding for their campaigns, that prohibition against lobbyist engaging in fund-raising activities was appropriate.

Roraback Dep. at 11.

Former and current legislators see the clear nexus between lobbyist-generated contributions and access to legislators and influence over policy outcomes. *See* DeFronzo Decl. ¶ 30 ("the political and policy influence of lobbyists has reached pervasive and unhealthy levels in our system"); DeFronzo Dep. at 8 (fundraising established a relationship with officials that resulted in "access to lobbyists and influence on the part of lobbyists that the average citizen just doesn't have"); *id.* at 16 (significant financial contribution "leads to accessibility and levels of influence that otherwise might not exist"); Rapoport Decl. ¶ 5 (because of substantial lobbyist contributions and solicitation, "lobbyists are marbled into the legislative process and the lives of

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[39] Referenced excerpts of the Rapoport Deposition and the DeFronzo Deposition are submitted herewith as Exhibits 3 and 4, respectively, to the Brocchini Declaration.

legislators in other ways that can be detrimental to the primacy of the public interest in determining the fate of legislation"); *id.* ¶ 10 ("no question that all these nexuses, most significantly the ones generated by campaign contributions, give lobbyists a privileged place in the legislative process"); Roraback Dep. at 26 (legislature had concern that lobbyists and their clients enjoyed greater access because of contributions); Roraback Aff. ¶¶ 8, 9 ("Lobbyists request and often receive a good deal of access to legislators, legislative staff and the legislative process, including meetings . . . and input into the drafting of legislation"); Deposition of William Dyson, dated April 4, 2007 ("Dyson Dep."), at 68 (interest groups influence legislation through PACs and campaign contributions); Deposition of Winthrop S. Smith, Jr., dated March 21, 2007 ("Smith Dep."), at 12-13 (public has deep-seated cynicism and think politicians are either corrupt, liars, or both); *see also* Pelto Decl. ¶¶ 3, 8 ("legislative action is often directly influenced by the desire to keep lobbyists satisfied so that legislators can maintain adequate funding for political campaigns"); Affidavit of Claire Sauer, dated July 3, 2007 ("C. Sauer Aff."), ¶ 9 (lobbyist contribution ban is important to restoring public confidence); *id.* ¶ 4 (constituents disgusted with role money plays in politics as far back as first run for office in 1994, since they recognized that "many lobbyists and special interest money often decides who will run for office, who will win, and what they will do after being elected"); Deposition of Claire Sauer, dated March 20, 2007 ("C. Sauer Dep."), at 22-24, 27 (lobbyists' contributions affect public policy).[40]

Former State Senator Win Smith described in particular how campaign contributions – even if not expressly given or accepted as a one-for-one *quid pro quo* – work "a distortion of the system," with the effect of making legislators friendly towards the contributors, more accessible to them than the average voter, and more amenable to supporting the

[40] Referenced excerpts from the Dyson Deposition, the Smith Deposition, and the C. Sauer Deposition are attached as Exhibits 7, 8 and 9, respectively, to the Brocchini Declaration.

contributors' position. Smith Dep. at 13-14. As Smith described it, when a contributor helps a candidate win elections, it is simply human nature to view the contributor more favorably, to give that contributor at least some priority when he or she asks for assistance, to allow the contributor time to make a pitch, and to bend over backwards to help them if you can. *Id.* at 13-15); *see also* DeFronzo Decl. ¶ 21 ("financial support that is established, in many cases, becomes the basis for an ongoing relationship which leads to involvement in important legislative issues. Legislators may be occasionally reminded that certain lobbyists have been supportive . . . and should be consulted on a relevant piece of legislation."); Roraback Dep. at 21-24, 28-29 (legislators, as human beings, remember those who have helped them financially, which "colors" legislators' activities, particularly with respect to legislation where a member does not otherwise have a direct interest in the outcome).

The significant influence wielded by lobbyists in Hartford was so open and notorious that bills were commonly referred to by the name of the lobbyist they "belonged" to, with trucking legislation called "Mike Riley's bill," and beer and soda legislation known as "Pat Sullivan's bills." Rapoport Decl. ¶ 11; *see* Rapoport Dep. at 38-39 ("common practice" in legislature to refer to bills by name of lobbyist promoting it, which had a "significant impact" on how legislators thought about bill). In addition, legislative leaders have often directed members to "work it out" with a lobbyist, or to make sure that a lobbyist was agreeable to a legislative proposal before it was offered or amended. Rapoport Decl. ¶ 12; *see also* Rapoport Dep. at 41 (recounting incident where Speaker urged legislator not to propose amendments and directed him to talk with lobbyist).

Examples of the impact of lobbyists on policy outcomes – where the lobbyists' client's positions win out, whether or not it furthers the public interest – are legion. They include

issues like Medicare reimbursement (Rapoport Decl. ¶ 13; Rapoport Dep. at 23, 51); the "Bottle Bill" (6/7/05 House Tr. at 484 (Statement of Rep. Caruso); Rapoport Decl. ¶ 14; Rapoport Dep. at 20-22); a nutrition bill (6/7/05 House Tr. at 484 (Statement of Rep. Caruso)); clean air legislation (*id.*); workers' compensation legislation (Rapoport Dep. at 23, 58); taxing of certain vending sales (C. Sauer Aff. ¶ 6; C. Sauer Dep. at 15-16); and managed care (*id.* ¶ 8); environmental issues (Smith Dep. at 18-19); and other issues (*see* Rapoport Dep. at 63).[41]

The testimony of these legislators also make clear that Connecticut's preexisting ban on lobbyist contributions during the legislative session – which was itself passed to combat the unseemly practice of committee chairs holding fundraising events the day before the deadline for bills to be reported out of their committees (*see* Rapoport Decl. ¶ 17) – was totally inadequate to prevent these abuses. The sessional ban precluded contributions only during the relatively brief legislative sessions – 90 days in odd-numbered years and 120 days in even-numbered election years, with the latter ending in May, six months before an election (Pelto Decl. ¶ 14), but legislators are considering legislation and lobbyists are retained by clients year-round. DeFronzo Dep. at 44-45; *see also* Deposition of Anita Schepker, dated March 13, 2007 ("Schepker Dep."), at 30.[42] Thus, the sessional ban leaves legislators plenty of time to hold

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[41] During the debates in the House, Representative Caruso described one experience as follows:

> Over two weeks ago, a Bill that came from the Senate, with so much support, died outside this Chamber, because a group of those so called lobbyists, 15 in number, worked so that it would not even be brought up for debate on this floor.
>
> And in so many ways I have said, for example, through five years of trying to clean up the air in Connecticut, by the power plants, and the efforts of lobbyists time and time again, to try to stop that, to almost supplant us as the individuals that set policy in this building.

6/7/05 House Tr. at 6. Representative Nardello recounted a similar experience, where lobbyists were successful in killing legislation that the three relevant state agencies and many others supported. *Id.* at 565.

[42] Referenced excerpts from the Schepker Deposition are attached as Exhibit 10 to the Brocchini Declaration.

fundraising events at which lobbyists are expected to attend, and, indeed, legislators have adapted to schedule fundraisers immediately before and after the legislative session. *See* DeFronzo Aff. ¶ 24; Rapoport Decl. ¶¶ 16-18; Pelto Decl. ¶ 14.[43] While the sessional ban was a step in the right direction, it was simply insufficient to address the real abuses created by lobbyists' contributions and solicitation of contributions, and legislators' reliance on them. *See* Rapoport Decl. ¶¶ 2, 16; DeFronzo Aff. ¶ 24. On the other hand, the Act's prohibition of contributions by lobbyists effectively reduces those risks without impinging on lobbyists' ability to influence legislation by providing information to legislators and to their clients – indeed, the Act may have the beneficial effect of forcing lobbyists to spend more time doing that, and free them from significant fundraising expectations. *See* Smith Dep. at 28-29; Dyson Dep. at 106-07.

These declarations and depositions also provide further evidence for the need to ban contributions by state contractors. As Senator DeFronzo explains, the Rowland corruption scandals demonstrated to him and to the other members of the Working Group that the supposed "safeguards" of the competitive bidding process for state contracts was wholly inadequate, as the Rowland Administration had used "fast track" contracting of major projects – including, for example, eight major construction projects – to avoid competitive bidding and to allow the steering of contracts to political contributors and others. *See* DeFronzo Aff. ¶¶ 13-14; *see also id.* ¶ 12 ("With respect to state contractors, the practice of 'pay to play' was generally well established in the Rowland case") (citing *There Are No Losers* (A. Sauer Decl. Ex. 2)).

Senator DeFronzo also explains that it was important for the ban on lobbyists' contributions to include all communicator lobbyists, whether they worked principally for

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[43] *See also* Brocchini Decl., Ex. 5 (Deposition of Plaintiff Betty Gallo, dated March 8, 2007 ("Gallo Dep.")), at 106-07, 111; Brocchini Decl., Ex. 6 (Sept. 27, 2006 email from Gallo, a lobbyist, stating, six weeks before general election, that she had "spent a not so small fortune on fundraiser [sic] in the last two weeks.").

business corporations or for non-profit organizations, for the simple reason that non-profit organizations do considerable business with the state. DeFronzo Aff. ¶ 18. As Senator DeFronzo points out, $4 billion annually in state funds is contracted through human services, healthcare and other non-profit agencies. *Id.* Indeed, former State Senator Ernest Newton was convicted on federal corruption charges arising from a bribe he was to be paid in exchange for a state grant for a non-profit group. *Id.*; Feinberg Decl. Ex. 19, at 22.[44]

The declarations of these present and former legislators also speak to the need for the Act to address contributions by family members of lobbyists or contractors. Under the preexisting fundraising system, it was common for contributing lobbyists and contractors to give funds in the name of spouses and children. *See* DeFronzo Aff. ¶ 23 ("It is not unusual for family members of contractors or lobbyists to bundle contributions to maximize their financial support"); Pelto Decl. ¶ 15. Failure to extend the contribution ban to family members would permit a loophole to exist that lobbyists and contractors could easily exploit. DeFronzo Aff. ¶ 23; Pelto Decl. ¶ 15; Smith Dep. at 26-27; Roraback Dep. at 11-12 (ban on contributions by family members was a "natural" way to avoid lobbyists' "gaming" the system by passing money through an underground source).

2. Testimony of Lobbyists

Significantly, even some of the lobbyists deposed in this action acknowledged the undue influence that lobbyists' contributions have had on public policy and the need for change. For example, Brian Anderson, a communicator lobbyist for the American Federation of State and County and Municipal Employees and the Connecticut Association of Nonprofits (a state contractor), testified that he supports the Act, including the spousal ban, and, as a member of

[44] Lobbyists for non-profit organizations contribute and/or solicit campaign contributions, just as lobbyists for for-profit corporations do. *See, e.g.*, Gallo Dep. at 31, 69, 85-87, 118.

Plaintiff ACL, voted against bringing this action. *See* Deposition of Brian Anderson, dated March 29, 2007 ("Anderson Dep."), at 7, 19, 43-44.[45] Mr. Anderson testified that he has personally witnessed a linkage between the amount of contributions and public policy determinations, *id.* at 34, 59, and the positive treatment and access accorded to lobbyists who are big fundraisers, *id.* at 73-74. Similarly, James Leahy, a former ACL member and a communicator lobbyist for 15 years, agreed that the public perceives lobbyists as a corrupting influence on the political process. Deposition of James Leahy, dated March 14, 2007 ("Leahy Dep."), at 55; *see also* Schepker Dep. at 127; Deposition of Plaintiff Barry Williams ("Williams Dep."), at 84 (agreeing that public perceives that lobbyists have "undue" and "negative influence on the process").[46] Mr. Leahy reported getting calls from legislators asking him to raise specific amounts of money, and acknowledged that lobbyists who were better fundraisers than he was had better access to lawmakers. Leahy Dep. at 27, 33.[47]

Indeed, the lobbyists' testimony demonstrates that legislative leaders came to expect lobbyists to bundle contributions from their clients, and would commonly ask lobbyists to solicit contributions from their clients to "leadership PACs." *See* Schepker Dep. at 36, 114. Legislative leaders would even convene "solicitor meetings," at which lobbyists would be gathered in a room and be expressly asked to solicit contributions from their clients. Anderson

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[45] Referenced excerpts from the Anderson Deposition are attached as Exhibit 11 to the Brocchini Declaration,

[46] Referenced excerpts from the Leahy and Williams Depositions are attached as Exhibits 12 and 13, respectively, to the Brocchini Declaration,

[47] While this discussion has focused on lobbyists' contributions to and lobbying of the legislature, lobbyists also lobby, and make and solicit contributions for, state agencies and the Governor's office. *See, e.g.*, Gallo Dep. at 31 (Gallo lobbies the legislature, state agencies and the Governor's office); Anderson Dep. at 15 ("I usually register to lobby both" branches of government); Leahy Dep at 15 (Leahy lobbied both executive and legislative branches).

Dep. at 7, 19, 43-44. Legislative leaders would sometimes go so far as to call out names of individual lobbyists' clients from whom they expected contributions. *Id.* at 41-42.

Phil Sherwood, who lobbies for Intervenor-Defendant CCAG, acknowledged that he gains access through campaign contributions – for example, contributing to attend a fundraising event can give him the opportunity to spend time with a legislator that he would not otherwise have had. *See* Deposition of Phillip Sherwood, dated February 23, 2007 ("Sherwood Dep."), at 117-19.[48] And even Plaintiff Roger Vann, former President of the Connecticut American Civil Liberties Union, admitted that there was a public perception that large contributors have easier access to elected officials and undue influence on them. *See* Deposition of Roger Vann, dated March 6, 2007 ("Vann Dep."), at 23, 93, 100-01, 122, 125.[49]

The experience of lobbyists also confirms that the contribution and solicitation bans have not limited lobbyists' ability do their jobs effectively. Anderson Dep. at 24, 49; *see also* Leahy Dep. at 32. Indeed, the former lobbyist for the Connecticut ACLU testified that even though he has not made or solicited contributions, he believes that he has been – and will continue to be – an effective lobbyist. *See* Vann Dep. at 70, 71-72; *see also* Gallo Dep. at 191 (lobbying won't be less effective if cannot give or solicit contributions).

3. Research by the Intervenor-Defendants

The two Intervenor-Defendant organizations, Connecticut Common Cause ("CCC") and Connecticut Citizen Action Group ("CCAG"), have been active for many years in studying campaign finance matters in Connecticut and promoting campaign finance reform. Defendants also submit declarations of Charles A. ("Andy") Sauer, Executive Director of CCC,

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[48] Referenced excerpts from the Sherwood Deposition are attached as Exhibit 14 to the Brocchini Declaration.

[49] Referenced excerpts from the Vann Deposition are attached as Exhibit 15 to the Brocchini Declaration.

and Phillip Sherwood, Legislative Director of CCAG, in support of the motion for summary judgment. These declarations document their observations regarding the influence of lobbyists' campaign contributions on the legislative process and provide the Court with the benefit of the studies that they have performed. Both Mr. Sauer and Mr. Sherwood are themselves registered communicator lobbyists, and are regularly at the Capitol, lobbying for their organizations and observing the activities of other lobbyists.

In his declaration, Mr. Sauer states that preexisting campaign finance practices had granted lobbyists who make and solicit large amounts of political contributions "preferred status" within state government, A. Sauer Decl. ¶ 5, and that such lobbyists were "granted an extraordinary degree of access and favorable treatment from legislators." *Id.* ¶ 9. Mr. Sauer also discusses (and attaches as exhibits) three CCC reports which were publicly released in 2004 and 2005. *Id.* ¶¶ 11 *et seq.* Each of these reports was prepared by Mr. Sauer from publicly available data on campaign contributions. The first report, entitled *The Rowland Corruption Trail Begins on the Campaign Trail*, was released in January 2004, and documents the enormous amount of legal campaign contributions given to the Rowland campaign by the Tomasso family, their construction companies, and their subcontractors, which dwarfs the value of the illegal gifts they gave to Governor Rowland and his staff. The report concludes that these campaign contributions likely had an important influence in securing for the Tomassos favored treatment in winning more than $100 million in no-bid state contracts. A. Sauer Decl. ¶ 16 & Ex. 1 at 3.

The second CCC report, entitled *There Are No Losers When Everyone's A Giver*, was released in October 2005. This report documents the contributions to the Rowland campaign from a number of other construction firms that won no-bid contracts during the Rowland Administration, and again draws the conclusion that campaign contributions played a

significant role in securing favored treatment for these firms. A. Sauer Decl. ¶ 17 & Ex. 2 at 1-2, 11-12.

The third CCC report, *The Sinking of the Bottle Bill*, was released in September 2005, and documents the role of lobbyists and their campaign contributions in the defeat of the 2005 "Bottle Bill," a proposal to expand the coverage of the state's beverage container deposit law to bottled water. The Bottle Bill overwhelmingly passed the State Senate by a vote of 31 to 3 in April 2005, but was never even called up for a vote in the House, and accordingly died. As the CCC report explains, a group of roughly 30 lobbyists worked diligently to kill the Bottle Bill – and had the influence to do so, in part because these lobbyists and their clients had collectively donated more than $700,000 to Connecticut campaigns and PACs from 2002 through 2004. A. Sauer Decl. ¶¶ 18-21 & Ex. 3 at 1-2, 8-10.[50]

Mr. Sauer's declaration also includes the results of additional research he has performed, based on analysis of public records of campaign contributions, which provide additional examples of "bundling" of campaign contributions by lobbyists and lobbyists' use of contributions by spouses to evade existing contribution limits. With respect to bundling, Mr. Sauer documents a number of instances where clients of the state's largest lobbying firm, Gaffney Bennett and Associates, Inc. ("Gaffney Bennett"), made contributions to political campaigns on the same day, in amounts that far exceeded the amount that any one individual could have contributed. *Id.* ¶¶ 36-43. This evidence strongly suggests that Gaffney Bennett lobbyists were engaged in fundraising activity for the candidates and had played a role in accumulating these large contribution amounts. *Id.* ¶ 44. With respect to contributions by spouses, Mr. Sauer documents a number of instances where Gaffney Bennett lobbyists and their

[50] Representative Caruso made reference to the demise of the Bottle Bill in the legislative debates on the Act, as a gross example of undue lobbyist influence. *See* 6/7/05 House Tr. at 486; *accord* Rapoport Dep. at 21-22, 60.

spouses made apparently coordinated contributions, allowing them jointly to give candidates or PACs more than the law would permit any individual to give. *Id.* ¶¶ 29-34. While there was presumably nothing unlawful about these contributions, these example provide a vivid demonstration of how easy it would be for lobbyists to continue to contribute through their spouses or children if the law did not also prohibit contributions by immediate family members. *Id.* ¶ 35.

Similarly, in his declaration, Phil Sherwood sets out his observation that the ability of lobbyists to make and solicit contributions give them "disproportionate access to, and favorable treatment from, elected officials." Declaration of Phillip Sherwood, dated July 3, 2007 ("Sherwood Decl."), ¶ 3; *see also id.* ¶¶ 5-8. Mr. Sherwood's declaration also provides the Court with the results of a 1999 CCAG study entitled "The Cost of Leadership, An Analysis of Contributions to Senate Leadership PACs." Sherwood Decl. Ex. A. This CCAG study shows that a grossly disproportionate percentage – almost 50% – of contributions to four State Senate Leadership PACs (two Republican and two Democratic) came from lobbyists, their families and their clients, highlighting the enormous leverage that lobbyists could obtain through their ability to deliver such substantial sums to legislative leaders. Sherwood Decl. ¶ 4. The study also shows that the same lobbyists are giving to the leadership of both political parties, making it crystal clear that the contributions are being made to buy access and influence, not to advance a political position in which the lobbyists' believe. *Id.* Finally, the CCAG study also demonstrates the importance of restricting solicitation of contributions by lobbyists, as well as the contributions they make on their own behalf, since it documents the extensive contributions given by lobbyists' clients as well as from the lobbyists themselves. *See id.* ¶ 5 & Ex. A at unnumbered pages 5-7.

4. Expert Testimony

Finally, Defendants are submitting the declarations of two experts to support their motion for summary judgment. First, Defendants submit the Declaration of Dr. Thomas Stratmann, a professor in the Department of Economics at George Mason University, who has made the analysis of the intent and effect of campaign contributions a significant focus of his research and writing. Dr. Stratmann's research – based largely on the analysis of voting records and contribution patterns relating to several pieces of federal legislation – shows that there is a clear correlation between campaign contributions and legislative voting behavior; *i.e.*, that contributions are intended to and *do* alter politicians' voting behavior, *see* Declaration of Thomas Stratmann, dated July 9, 2007, ¶¶ 2, 4-9, and that these changes in voting behavior *can* affect the ultimate policy outcome. *Id.* ¶¶ 2, 10-19. This is particularly true with respect to relatively obscure pieces of legislation, that do not attract great public attention, where contributions can be most effective in influencing legislators' votes and affecting public policy decisions. *Id.* ¶ 12 & n.10. As Professor Stratmann notes, the award of government contracts is another decision that can be influenced by campaign contributions, because these actions are often not well publicized, the resulting costs are dispersed among the electorate, and contributors can see a clear potential benefit. *Id.* ¶ 12 n.10. While Dr. Stratmann's studies focused on federal legislation, his analysis would apply equally in Connecticut. *Id.* ¶ 20. Plaintiffs proffer no academic expert or studies to counter Dr. Stratmann's analysis and conclusions.

Second, Defendants offer the testimony of Dr. Robert G. Meadow with respect to public attitudes about the campaign finance system. Dr. Meadow is a partner in Lake Research Partners, a national public opinion research firm, and is an expert in public opinion research, based on his formal academic training, his years teaching that discipline, and his extensive

experience as a professional pollster. Declaration of Robert G. Meadow, dated May 24, 2007 ("Meadow Decl."), ¶¶ 1-6. His declaration discusses in detail public opinion data concerning voters' perceptions of the impact of campaign contributions on the political system.

Dr. Meadow's declaration shows that the Connecticut General Assembly correctly understood the widespread public perception that political contributions do in fact result in favored treatment for special interests, at the expense of the public at large. Seventy-eight percent of Connecticut voters agree (49% strongly and 29% somewhat) that the old way of campaign financing encouraged candidates to grant special favors and preferential treatment to contributors. Meadows Decl. ¶ 20. The public also understands that this favoritism translates into policy, with several polls showing that large financial contributions, not the merits or constituent desires, are assumed to drive policy outcomes.[51] A staggering four out of five Connecticut citizens agree (57% strongly agree; 25% agree) that if big business is allowed to keep influencing politics by pouring money into election campaigns, citizens' lives will not improve. *Id.* ¶ 28. Voters clearly see a relationship between contributions and policy outcomes, with 65% of respondents in one national poll believing that elected officials in Washington make policy decisions or take action as a direct result of campaign contributions. *Id.* ¶ 25.

The polling data discussed by Dr. Meadow shows the views of Connecticut voters reflect those of the rest of the nation. Most voters nationwide are dissatisfied with the existing

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[51] For example, a bi-partisan national poll indicated that fully 84% of voters believe that campaign contributions influence how elected officials vote on environmental issues, with 45% indicating that such contributions have "a lot" of influence. Meadow Decl. ¶ 21. In another poll, 78% of respondents believed that big contributions to political parties impact (23%) or have a "great impact" (55%) on federal decision makers, with 82% of respondents feeling that it was likely (41% very likely, 41% somewhat likely) that high level contributors would receive special consideration from Congressional recipients. *Id.* ¶ 22. Other data from the same report show that 68% of respondents agreed that "big contributors to political parties sometimes block decisions by the government . . . that could improve people's everyday lives," and 84% agreed that Members of Congress will be more likely to listen to those who give money to their political party in response to solicitations for large donations. *Id.* ¶ 23.

campaign finance system and clamor (70% strongly in favor, with 47% very strongly and 23% somewhat strongly) for reform. Meadow Decl. ¶ 31. To many, the system is rotten at its core (89%), and needs to be fundamentally changed (50%). *Id.* ¶ 33. Shockingly, *the widely held belief is that corruption is the rule*: 77% of respondents in one poll say that Congressional bribery scandals simply reflect "the way things work" in Washington; and 58% in another poll view the Jack Abramoff corruption scandal as evidence of widespread corruption. *Id.* ¶ 11.

In large part, this public dissatisfaction lies in the belief that elected officials pay special attention to campaign contributors, affording them special treatment, access, favors and other benefits.

As Dr. Meadow shows, the influence of *lobbyists and special interest groups* are of special concern to the vast majority of voters (75% of respondents – 46% very concerned and 29% somewhat concerned), who see themselves as being the lowest priority for national legislators, trailing well behind lobbyists and special interests. Meadow Decl. ¶ 26. Nearly 90% assume that lawmakers vote to please campaign contributors a lot of the time or some of the time; only a small fraction (9%) doubt it happens much. *Id.* ¶ 29. Connecticut residents agree: by nearly a three-to-one margin, likely voters believe that Connecticut officials were more concerned with campaign contributors than with their needs. *Id.* ¶ 28. This direct linkage specifically extends to contributions and state contracts, as 76% of Connecticut residents believe that campaign contributions influenced Governor Rowland's award of government contracts. *Id.* ¶ 30.[52]

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[52] *See also* 2/18/05 GAE Tr. at 96-97 (Statement of Phil Sherwood, citing this polling data.); Sherwood Dep. at 71, 116-17 (relating his experience knocking on 8,000 doors to talk to people about campaign finance reform, which confirmed polling data that state contractors and lobbyists who make campaign contributions are perceived as having undue influence.)

Since lobbyists are particularly perceived to have undue influence as a result of their contributions, voters overwhelmingly support banning contributions from lobbyists. Meadow Decl. ¶ 34 (67% and 54%, respectively favor outlawing lobbyists' contributions to, and organization of fundraisers for, Congressional candidates). Another poll shows that 52% believe that that single reform – one of the centerpieces of the Connecticut Act – would make a "big difference" in making government work better. *Id.* ¶ 35.[53]

Fortunately, despite their dissatisfaction with campaign finance laws, voters are optimistic that reform is worthwhile pursuing. *Id.* ¶ 32. More than simply something worth trying, Connecticut's reform law is an undeniably necessary and, as discussed below, constitutionally-appropriate step, to put its badly damaged political system right. We now turn to address the constitutionality of Connecticut's campaign contribution and solicitation restrictions.

ARGUMENT

I. LEGAL STANDARDS APPLICABLE TO SUMMARY JUDGMENT

Summary judgment is appropriate when – as here – "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Summary judgment should be granted where the opposing party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. Once a moving party demonstrates the absence of any disputed material facts, the burden shifts to the non-moving party to demonstrate that summary judgment should not be granted. *Gutwein v. Roche*

[53] Dr. Meadow's testimony is unrefuted and apparently not disputed. Plaintiffs did not retain their own polling expert, and did not take advantage of the opportunity to depose Dr. Meadow.

Labs., 739 F.2d 93, 95 (2d Cir. 1984). A fact is "material" only where it affects the outcome of the suit under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[R]eliance upon conclusory statements or mere allegations is not sufficient to defeat a summary judgment motion." *Davis v. State of New York*, 316 F.3d 93, 100 (2d Cir. 2002).

In this case, no material facts are in dispute. The State of Connecticut has a vital interest in preventing actual and perceived corruption. The State reasonably concluded that banning campaign contributions and solicitation from state contractors, lobbyists, and their immediate family members for candidates for certain offices was necessary to advance this interest, particularly in light of the corruption scandals that have plagued Connecticut in recent years and the widespread loss of public confidence in the integrity of State government. Moreover, the contribution and solicitation bans are narrowly focused on the groups and activities that present a significant risk of actual or apparent corruption, yet leave lobbyists and contractors amply other avenues to exercise their constitutionally-protected rights of speech and association. Accordingly, the provisions of the Campaign Finance Reform Act at issue on this motion are constitutional, and summary judgment should be granted in favor of Defendants.

II. THE ACT'S PROHIBITIONS ON MAKING AND SOLICITING POLITICAL CONTRIBUTIONS DO NOT VIOLATE THE FIRST AMENDMENT RIGHTS OF LOBBYISTS, STATE CONTRACTORS OR THEIR FAMILY MEMBERS

A. The Governing Constitutional Principles

The Supreme Court has repeatedly upheld the constitutionality of state and federal laws imposing limitations on campaign contributions. *See, e.g., McConnell*, 540 U.S. at 133-56 (upholding limits on "soft money" donations in Bipartisan Campaign Reform Act); *Shrink Missouri Government*, 528 U.S. at 386-97 (upholding Missouri limits on the amounts of contributions permissible in state elections); *Buckley*, 424 U.S. at 23-29 (upholding federal

individual contribution limits); *see also Colorado Republican Federal Campaign Comm. v. Federal Election Commission*, 518 U.S. 604, 610 (1996) (opinion of Breyer, J.) (explaining, in summarizing Supreme Court campaign finance precedents, that "[t]he provisions that the Court found constitutional mostly imposed *contribution* limits") (emphasis in original). Since the Court's seminal 1976 decision in *Buckley v. Valeo*, the Court has consistently held that contribution restrictions impose far less of a burden on First Amendment rights than expenditure limits and other campaign finance regulations, and are subject to a less rigorous level of scrutiny. As a result, it has "been plain ever since *Buckley* that contribution limits would more readily clear" constitutional hurdles. *Shrink Missouri Government*, 528 U.S. at 387.

In *Buckley*, the Supreme Court drew a distinct line between the constitutional treatment of contribution restrictions contained in the Federal Election Campaign Act (which the court upheld) and the expenditure restrictions in the Act (which the court struck down). *See* 424 U.S. at 19-21. Central to the Court's reasoning was its view that restrictions on campaign contributions "entail[ ] only a marginal restriction upon the contributor's ability to engage in free communication." *Id.* at 20; *accord McConnell*, 540 U.S. at 135.[54] As the Court in *Buckley* explained, a restriction on campaign contributions "does not in any way infringe the contributor's freedom to discuss candidates and issues." 424 U.S. at 21; *accord Randall v. Sorrell*, 126 S. Ct. 2479, 2488 (2006) (opinion of Breyer, J.); *Shrink Missouri Government*, 528 U.S. at 387 ("limiting contributions le[aves] communication significantly unimpaired"); *California Medical Assn. v. Federal Election Commission*, 453 U.S. 182, 194-95 (1981) ("contribution restrictions [do] not directly infringe on the ability of contributors to express their own political views"). While the Court acknowledged that there is a modest element of

[54] In contrast, limits on expenditures "impose direct and substantial restraints on the quantity of political speech." *Buckley*, 424 U.S. at 39.

"symbolic" speech involved in the act of making a contribution, the principal First Amendment relevance of a contribution is not that it represents speech of the donor, but that it can facilitate the speech of others, *i.e.*, the candidate or party receiving the contribution. *See Buckley*, 424 U.S. at 21; *accord McConnell*, 540 U.S. at 135.

Accordingly, the principal First Amendment interest at stake in evaluating contribution restrictions is the right of association. *See Shrink Missouri Government*, 528 U.S. at 388. "Making a contribution, like joining a political party, serves to affiliate a person with a candidate." *Buckley*, 424 U.S. at 22. But, as the Court in *Buckley* explained, while contribution restrictions "limit one important means of associating with a candidate," they do not significantly restrict the right of association, because they "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." *Id.* Thus, contribution restrictions have a "severe impact," and run into serious constitutional objections, only where their overall effect is to "prevent[ ] candidates and committees from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21; *accord McConnell*, 540 U.S. at 135; *Randall*, 126 S. Ct. at 2491.[55]

The Supreme Court's favorable treatment of contribution limitations reflects not only the "limited burdens they impose on First Amendment freedoms," but also "the importance of the interests that underlie contribution limits – interests in preventing 'both the actual corruption threatened by large financial contributions and the eroding of public confidence in the

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[55] It was only because of application of this principle that the Court in *Randall* held that the exceptionally low contribution limits of Vermont's Campaign Finance Reform Act, applicable across-the-board to all Vermont citizens, were unconstitutional, because the combined effect of those contribution limits and other provisions of the Vermont law imposed "substantial restrictions on the ability of candidates to raise the funds necessary to run a competitive election, on the ability of political parties to help their candidates get elected, and on the ability of individual citizens to volunteer their time to campaigns." 126 S. Ct. at 2495 (Opinion of Breyer, J.). As discussed below, Plaintiffs do not make this argument here, and in any event, this case does not implicate the concerns relied upon by Justice Breyer's plurality opinion in *Randall*.

electoral process through the appearance of corruption.'" *McConnell*, 540 U.S. at 136 (quoting *Federal Election Commission v. National Right to Work Comm.*, 459 U.S. 197, 208 (1982)); *accord Wisconsin Right to Life*, 2007 WL 1804336, at p. 19 (Opinion of Roberts, C.J.). These important interests – overwhelmingly present in the instant case – "directly implicate 'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.'" *McConnell*, 540 U.S. at 136-37 (citation omitted).

Moreover, the governmental interests at stake extend well beyond the prevention of outright bribery. "Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.'" *Id.* at 150-52 (quoting *Federal Election Commission v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 441 (2001)). As the Court explained, "[m]any of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley* . . . were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the 'appearance of such influence.'" *Id.* (internal citations omitted). The Court further explained that the undue influence or unfair access stemming from a contributor's ability to direct large sums of money to political campaigns can be just as dangerous to our system of government:

> Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and remove the temptation.

540 U.S. at 153; *see also Shrink Missouri Government*, 528 U.S. at 390 ("[T]he perception of corruption 'inherent in a regime of large individual financial contributions' to candidates for public office" is a "source of concern 'almost equal' to quid pro quo improbity. . . . Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.") (quoting *Buckley*, 424 U.S. at 27).

Accordingly, in light of their limited impact on First Amendment freedoms and the importance of the governmental interests at stake, the Supreme Court has emphasized that, when analyzing contribution restrictions, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" *McConnell*, 540 U.S. at 137 (internal citations omitted). Instead, "a contribution limit involving even 'significant interference' with associational rights is nevertheless valid if it satisfies the 'lesser demand' of being 'closely drawn' to match a 'sufficiently important interest.'" *Id.* at 136 (internal citations omitted); *accord Buckley*, 424 U.S. at 25; *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-60 (1986) ("We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending."); *Shrink Missouri Government*, 528 U.S. at 387 (same); *Federal Election Commission v. Beaumont*, 539 U.S. 146, 161-62 (2003) ("restrictions on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment").

In applying this "less rigorous standard of review," the Supreme Court has also emphasized that the courts must show "proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise." *McConnell,* 540 U.S.

at 137; *see also Beaumont*, 539 U.S. at 155 ("such deference to legislative choice is warranted particularly when Congress regulates campaign contributions, carrying as they do a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption"). In *Shrink Missouri Government*, the Court indicated that the same level of deference should be shown to a state legislature's efforts to limit political contributions. *See* 528 U.S. at 392 n.5 (Court will not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared") (quoting *National Right to Work Comm.*, 459 U.S. at 210); *see also Randall*, 126 S. Ct. at 2492 (Opinion of Breyer, J.) ("In practice, the legislature is better equipped to make such empirical judgments [about the need for contribution restrictions and their impact on election contests], as legislators have 'particular expertise' in matters relating to the costs and nature of running for office.").

For similar reasons, the Supreme Court has upheld many provisions that are designed to ensure that contribution limits will be effective, and to prevent circumvention of such limits. *See McConnell*, 540 U.S. at 138-39. The Court has recognized that the "history of Congress' efforts at campaign finance reform well demonstrates that 'candidates, donors, and parties test the limits of the current law,'" *id.* at 174-75 (quoting *Colorado Republican Federal Campaign Comm.*, 533 U.S. at 457), and has therefore deferred to the legislative judgment that particular measures are necessary to avoid evasion of contribution limits. The Court has analyzed such anti-circumvention measures as an adjunct to the contribution restrictions that they were intended to protect. Accordingly, the "relevant inquiry is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit . . . , burdens speech in a way that a direct restriction on the contribution itself would not." *McConnell*, 540 U.S. at 138-39. In *McConnell*, the Court, in addition to upholding the contribution limits of the

Bipartisan Campaign Reform Act of 2002 ("BCRA"), sustained the constitutionality of several provisions designed to ensure that the Act's contribution limits would in fact be effective. *See, e.g.*, *id.* at 139-40 (sustaining constitutionality of provision precluding political parties from soliciting "soft money" contributions, in part to avoid circumvention of contribution limits); *id.* at 174-78 (upholding provision banning solicitation of contributions from tax-exempt organizations engaged in political activity as "reasonable" measure to avoid circumvention of contribution limits); *see also Beaumont*, 539 U.S. at 155 (upholding constitutionality of prohibition on contributions by corporations, in part, as proper measure to prevent evasion of individual contribution limits); *California Medical Ass'n*, 453 U.S. at 197-98 (upholding constitutionality of limits on amount unincorporated association could contribute to PAC, in part, in order to avoid evasion of individual contribution limits upheld in *Buckley*).

B. The Act's Prohibitions of Contributions by Lobbyists and Contractors Do Not Violate the First Amendment

1. The Act's Prohibitions Serve Vitally Important State Interests

Applying these principles here, the Act's prohibitions of contributions by lobbyists and state contractors are constitutional. The record overwhelmingly establishes that the Act's prohibitions on campaign contributions were adopted to effectuate the State's vitally important interest in restoring public confidence in the integrity of state government. In the wake of the numerous scandals involving Governor Rowland and other prominent state officials, there was a widespread public perception that the State's government was deeply corrupted, and that government decisions were being made to reward special interests that had purchased their influence, not to serve the public interest. As Governor Rell recognized in September 2005, in calling for a special legislative session, the "very legitimacy of [state] government is called into

question when – rightly or wrongly – the perception exists that a moneyed few play a special role or have a special influence over elections and policy." Garfield Decl. Ex. 27. The legislative history detailed above demonstrates that legislators on both sides of the aisle recognized the urgent need to eliminate the perception that state contractors could obtain favorable results in state contracting by making political contributions and that lobbyists had undue influence on legislative decisions as a result of their contribution and fundraising abilities.[56] Moreover, the legislature's understanding of this public perception is fully supported by the actual polling data set out in the Declaration of Dr. Robert Meadow, which documents the widespread public belief that restrictions on campaign contributions by contractors and lobbyists is required to restore public confidence in the election process. *See, e.g.*, Meadow Decl. ¶¶ 26, 28, 29, 30, 34.

Nor was the legislature's concern about corruption in state government limited merely to the "appearance" of corruption. The Rowland, Silvester, Newton and Ganim scandals all involved public officials' dealings with contractors who curried favor with politicians to secure lucrative contracts for themselves, and all involved some degree of actual corruption related to financing their election campaigns. *See* pp. 12-15, *supra*. Moreover, the record before the General Assembly demonstrated that the corrupt contractors who were so successful in obtaining in excess of $100 million in no-bid contracts from the Rowland Administration had achieved their influence in large part through lawful campaign contributions, which dwarfed

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[56] *See, e.g.*, Garfield Ex. 26 (Report of Campaign Finance Working Group), at 3 ("Members agreed that due to the appearance of undue influence of lobbyists, a ban on lobbyist contributions to members and candidates for the General Assembly and candidates for statewide office . . . should be implemented."); 6/7/05 Sen. Tr. at 288 (Statement of Senator Lebeau that bill was "necessary to correct public perception of corruption"); *id.* at 336, 341-42 (Statements of Senator Roraback, that bill is designed "to eliminate any public perception that governmental decisions are influenced by campaign contributions," and that "public's greatest disappointment has been with the perceived relationship between contributions from contractors and elected officials").

their unlawful bribes in size. *See* 1/31/05 GAE Tr. at 69-70 (testimony of Andy Sauer); 2/2/05 GAE Tr. at 54 (statement of Rep. Fleischman); *see also* A. Sauer Decl. ¶ 16; *id.* Ex. 1, at 2.

Similarly, with respect to lobbyists, the legislative history shows great concern that lobbyists had in fact gained undue access to legislators and undue influence on the legislative process, largely through their ability to make and gather substantial campaign contributions on which legislators were dependent to finance their campaigns.[57] This legislative history is supplemented by the testimony of legislators submitted with this motion, which shows how lobbyists exercised undue influence on policy decisions. *See* pp. 33-36, *supra.*

As detailed above, the Supreme Court has repeatedly recognized that the State's interest in "the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits." *McConnell*, 540 U.S. at 143; *see also Shrink Missouri Government,* 528 U.S. at 388; *Buckley*, 424 U.S. at 25-26. Moreover, this important interest extends well beyond the prevention of narrow quid pro quo arrangements, and extends "to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.'" *McConnell*, 540 U.S. at 150; *see Shrink Missouri Government*, 528 U.S. at 389 (state interest "extend[s] to the broader threat from politicians too compliant with the wishes of large contributors"). The State may also seek to restrict campaign contributions in furtherance of ridding the electoral system of the *appearance* of corruption or undue influence. *McConnell*, 540 U.S. at 143; *Shrink Missouri Government*, 528 U.S. at 390; *Buckley*, 424 U.S. at 30. Perception of corruption, undue influence and unfair access arising from campaign contributions

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[57] *See, e.g.*, 6/7/05 House Tr. at 484-85 (Statement of Rep. Caruso, that lobbyists help fund campaigns to try to "change" and "create" legislation); *id.* at 487 (Statement of Rep. Caruso: "when support is given, it is expected that support be returned"); *id.* at 573-74 (Statement of Rep. Caruso: "special interests have a tremendous influence on the legislative process"); *id.* at 564-65 (Statement of Rep. Nardello: influence of lobbyists has grown rapidly, raising concern whether desires of lobbyists are driving public policy decisions).

may be just as damaging as actual corruption because it creates in voters "the cynical assumption that large donors call the tune," and "could jeopardize the willingness of voters to take part in democratic governance." *Shrink Missouri Government*, 528 U.S. at 390.

Nowhere has this danger of actual or perceived corruption been more real or more urgent than in Connecticut in the wake of its serious corruption scandals. In the *SIFMA* case, this Court recognized that the statute promotes "several substantial state interests," among them "to restore public confidence in the integrity of state government," "to eliminate corruption and undue influence flowing from campaign contributions given or solicited by certain special interests," and "to respond to documented instances of corrupt dealings between state contractors, their immediate family members, and officials at the highest levels of state government." *SIFMA*, 469 F. Supp. 2d at 38. As the Court noted, "[t]he Second Circuit has already found these and similar interests further 'a substantial, possibly even compelling, state interest.'" *Id.* at 39 (quoting *Kaplan v. Board of Education*, 759 F.2d 256, 261 (2d Cir. 1985)). While the Supreme Court's constitutional jurisprudence makes clear that a compelling state interest is not necessary to sustain restrictions on campaign contributions, *see McConnell*, 540 U.S. at 137, the interests advanced by the State of Connecticut here are in fact compelling, as other courts have explicitly held. *See, e.g., North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 715 (4th Cir. 1999) (prohibition of lobbyist contributions during legislative session serves compelling state interest in preventing corruption or appearance of corruption); *Blount v. SEC*, 61 F.3d 938, 944-45 (D.C. Cir. 1995) (SEC Rule limiting contributions by professionals in municipal bond market to candidates for municipal offices serves compelling government interest in avoiding corruption); *Wachsman v. City of Dallas*, 704 F.2d 160, 173-74 (5th Cir. 1983) (charter provision prohibiting

contributions by city employees to city council elections serves compelling government interest in preventing corruption and improper influence).

2. The Act's Prohibitions Do Not Significantly Interfere with the First Amendment Rights of Lobbyists or State Contractors

As discussed above, in light of the importance of the governmental interests at stake, contribution limits involving even "significant interference" with First Amendment rights are nevertheless valid as long as they are sufficiently "closely drawn." *McConnell,* 540 U.S. at 137; *accord Buckley*, 424 U.S. at 25; *Shrink Missouri Government*, 528 U.S. at 387; *Beaumont*, 539 U.S. at 161-62. Here, however, the Act's prohibitions on campaign contributions by lobbyists and state contractors involve relatively minor restrictions on their First Amendment rights. As the Supreme Court has explained, the act of making a contribution involves only a limited component of symbolic speech, *Buckley*, 424 U.S. at 20; *accord McConnell*, 540 U.S. at 135, and a restriction on campaign contributions "does not in any way infringe the contributor's freedom to discuss candidates and issues," "to become a member of any political association," or "to assist personally in the association's efforts." *Buckley*, 424 U.S. at 21; *accord Shrink Missouri Government*, 528 U.S. at 387.

The Act's prohibitions on contributions leave Connecticut lobbyists and state contractors free to engage in an almost unlimited variety of political speech and association. As the SEEC explained in its Declaratory Ruling, without running afoul of the contribution prohibitions, a contractor or lobbyist may:

- Express support for a candidate or for a candidate's views;
- Advise someone whether a candidate is likely to be elected;
- Communicate his or her evaluations of a candidate or public official;

- Volunteer for and participate in a political campaign in numerous ways, provided the lobbyist or contractor is not involved in fundraising;
- Put a campaign sign on his or her lawn;
- Make get out the vote calls;
- Host a non-fundraising event for a candidate at the lobbyists' home and expend up to $200 on invitations, food, and beverages;
- Contribute to a political committee that is not established or controlled by a candidate covered by the Act;
- Make independent expenditures on behalf of a candidate;
- Run for office;
- Provide advice to a candidate for public office;
- Attend campaign events that do not involve fundraising;
- Contribute to, or solicit on behalf of, campaigns of municipal and other officials not covered by the Act.

SEEC Ruling at 5-7; *see also* Robinson Dep. at 63-64 (acknowledging that contribution restrictions will not prevent contractors from soliciting votes, making speeches, volunteering on campaigns, or making non-fundraising phone-bank calls, among other things).[58] The SEEC also explicitly rejected some of the exaggerated fears that have been expressed about the alleged impact of the Act's prohibitions, some of which are repeated in the *ACL* Complaint in this case. *See ACL* Complaint ¶¶ 18, 25. Among other things, the SEEC made clear that there is no basis for the suggestion that the Act will prevent lobbyists or contractors from "freely discuss[ing] political affairs, candidates or elected officials without fear of prosecution," or for the claim that

[58] Under Conn. Gen. Stat. § 4-176(h), the SEEC's Declaratory Ruling has the same status and binding effect as an order in a contested case. Moreover, the Connecticut Supreme Court has held that the courts should afford deference to the SEEC's construction of a statute which the agency is empowered by law to enforce, and should give "considerable weight" to the SEEC's discretionary determinations as to how the statute should be enforced. See *Sweetman v. State Elections Enforcement Comm'n*, 249 Conn. 296, 305, 732 A.2d 144, 153 (1999); *see also id.*, 249 Conn. at 315-19, 732 A.2d at 158-60 (endorsing SEEC's efforts to interpret statute and provide guidance to public).

the Act could be construed to penalize a lobbyist or contractor for making a statement about political affairs, simply because that statement might lead someone else to consider making a campaign contribution. SEEC Ruling at 6.[59]

Defendants recognize that the Act imposes a complete prohibition on lobbyists' or contractors' contributions to covered candidates or committees, rather than a limitation on the amount of the contribution that the lobbyist or contractor can make, but this does not make any constitutional difference. As explained above, the speech component involved in making a contribution is relatively minor, and a lobbyist or contractor has numerous other ways to express his or her support for a candidate or party, and can participate in extensive political party activities other than fundraising. Moreover, the Supreme Court has held that the relevant test for whether a law restricting contributions is unconstitutional is whether the overall effect of the statute is so severe as to have an adverse impact on the ability of the candidate to mount an effective campaign. *See Buckley*, 424 U.S. at 21; *McConnell*, 540 U.S. at 135; *Randall*, 126 S. Ct. at 2491. Apart from this extraordinary situation – which Plaintiffs do not even allege is the case here – the Supreme Court has consistently deferred to the judgment of the legislature in assessing contribution limits, and has upheld the limits, regardless of amount, because they did

[59] The courts have often relied on the similar breadth of other opportunities for individuals to express their First Amendment rights in upholding analogous statutes. *See, e.g., Casino Assoc. of La. v. State*, 820 So. 2d 494, 502 (La. 2002) (upholding ban on campaign contributions from gambling industry employees in part because the ban left the employees free to (1) become members of political associations, (2) assist in campaigns, (3) urge others to support or oppose candidates, (4) openly display support for a candidate, and (5) sponsor phone banks to encourage persons to vote); *Blount*, 61 F.3d at 947-48 (upholding SEC rule limiting contributions by participants in municipal bond industry to municipal candidates, in part because brokers and underwriters could still engage in the "vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events." *Id.* at 948.

not adversely affect the fundraising of candidates or political parties. *See McConnell*, 540 U.S. at 138, *Shrink Missouri Government*, 528 U.S. at 395; *Buckley*, 424 U.S. at 21-22.[60]

It is also important to recognize that the First Amendment concerns at stake here are substantially diminished by the fact that many lobbyist and contractor contributions are intended to buy access and influence, rather than to be an expression of political views worthy of First Amendment protection. The record here shows, for example, that many Connecticut lobbyists give money equally to candidates from both major political parties. *See* Supplemental Declaration of Jeffrey Garfield, dated July 10, 2007, ¶¶ 4-9 (demonstrating from review of public filings by lobbyists and lobbyist-controlled PACs that they often give substantial contributions to PACs identifiable with both parties); Sherwood Decl. ¶ 4 & Ex. A (CCAG study shows lobbyists gave to "leadership PACs" of both parties). The Supreme Court relied on this point in *McConnell*, upholding the restrictions of the BCRA on soft money contributions in part because those contributions were geared to buy access rather than as an expression of political support. The Court noted that the largest donors of soft money to political parties "often made substantial contributions to both parties," which indicated that they "were motivated by a desire for access to candidates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties." 540 U.S. at 124-25. Indeed, the Court held that such contributions to both sides of the political aisle "le[ft] room

[60] Plaintiffs here do not argue that the overall effect of the contractor and lobbyists bans is to make it difficult for Connecticut candidates to raise sufficient funds to run effective election campaigns, and there would be no basis for such an argument even if they did. There is no evidence in this case and no reason to believe that a prohibition on the ability of lobbyists and contractors to make contributions will have any significant impact on the ability of candidates or parties to mount effective campaigns. This is especially true in light of the provisions of the Act creating the public financing program, which is intended to make extensive fundraising of the kind that has characterized elections in recent years unnecessary.

for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology." *Id.* at 148.

While the Supreme Court has never addressed a prohibition on individual campaign contributions,[61] the courts that have addressed this issue have held that targeted bans – prohibiting specific groups from making contributions where there is sufficient justification for the prohibition – are constitutional. *See Institute of Government Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183, 1191 (E.D. Cal. 2001) (upholding constitutionality of California statute prohibiting contributions by lobbyists to offices they lobby, and explaining that statute "is not unconstitutional simply because it *bans*, rather than limits, contributions by certain lobbyists"); *see also Wachsman*, 704 F.2d at 174 (upholding city charter provision prohibiting contributions by city employees to city council elections); *Casino Assoc. of La. v. State*, 820 So. 2d 494, 502-04 (La. 2002) (upholding state law banning campaign contributions from gambling industry employees); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 617-20 (Ak. 1999) (upholding Alaska statute prohibiting lobbyist contributions to legislators outside their residence district); *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61, 65-67 (Ill. 1976) (upholding Illinois law prohibiting contributions by liquor licensees); *Soto v. State*, 565 A.2d 1088 (N.J. Super. 1989) (upholding New Jersey statute prohibiting contributions by casino employees). In holding that the statutes at issue did not unconstitutionally infringe the individuals' First Amendment rights, these courts emphasized the important government interests at stake, *see, e.g.*, *Institute of Government Advocates*, 164 F. Supp. 2d at 1189; *Casino Assoc.*, 820 So. 2d at 507; *Alaska Civil Liberties Union*, 978 P.2d at 619; the limited nature of the asserted First Amendment interest, *see, e.g.*, *Casino Assoc.*, 820 So. 2d at 502; *Soto*, 565 A.2d at 1104; *Schiller*

[61] The Supreme Court has, however, squarely upheld absolute prohibitions on campaign contributions by corporations. *See, e.g.*, *Beaumont*, 539 U.S. at 157-59.

Park, 349 N.E.2d at 67; and the fact that these individuals had ample other opportunities to express their views and to engage in campaign activities, including the right – as lobbyists and contractors in Connecticut also do – to make unlimited independent expenditures on behalf of a candidate, *see, e.g.*, *Institute of Government Advocates*, 164 F. Supp. 2d at 1192-93; *Casino Assoc.*, 820 So. 2d at 502; Alaska Civil Liberties Union, 978 P.2d at 619.

3. The Act's Prohibitions Are Closely Drawn to Serve the Important State Interests in Preventing Corruption and its Appearance

(a) Introduction: The Deference Owed to the Measures Adopted By The Legislature to Combat Corruption

The Act's contribution bans are narrowly focused on two groups – lobbyists and state contractors – whose political influence creates especially great dangers of corruption, undue influence, improper favoritism, and the appearance of corruption arising from their campaign contributions. Defendants discuss the contractor and lobbyist contribution bans separately and in detail below, but it is important to first note a more general point applicable to both sets of provisions.

Given contractors' prominent place in the state's corruption scandals, and the evidence before the General Assembly that contractors had in fact used political contributions to solidify favored treatment by the Rowland Administration, it was reasonable for the legislature to conclude that it was important to ban campaign contributions by state contractors to the branch of government with which they are contracting. This is patently a reasonable step to avoid the obvious conflicts of interest that would otherwise be created and the appearance, if not reality, of corruption and improper favoritism. Similarly, given the Legislature's familiarity with lobbyists and the undue access and influence they had achieved through their ability to raise funds for legislators – which is thoroughly documented in the legislative history set out above, and the

supplemental testimony of legislators and lobbyists submitted with this motion – it was reasonable for the General Assembly to conclude that it was important to ban campaign contributions by lobbyists, too, to restore public confidence in Connecticut government.[62]

The Supreme Court has made clear that the courts should grant substantial deference to legislative determinations as to what measures are required to eliminate corruption and the appearance of corruption in campaign finance matters, *see McConnell*, 540 U.S. at 137, and should not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *Shrink Missouri Government*, 528 U.S. at 393 n.5; *accord National Right to Work Comm.*, 459 U.S. at 210; *see also Beaumont*, 539 U.S. at 155 ("such deference to legislative choice is warranted particularly when Congress regulates campaign contributions"); *Federal Election Commission v. National Conservative Political Action Comm.*, 470 U.S. 480, 500 (1985) (observing that Court in *Buckley* "defer[red] to a congressional determination of the need for a prophylactic rule where the evil of potential corruption had long been recognized"). As Justice Breyer explained in *Randall*, this is in part a question of institutional competence: "the legislature is better equipped to make such empirical judgments [about the need for contribution restrictions and their impact on election contests], as legislators have 'particular expertise' in matters relating to the costs and nature of running for office." *Randall*, 126 S. Ct. at 2492.

The Act's prohibitions on campaign contributions by lobbyists and state contractors were intended to send a strong message to the people of Connecticut that their state

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[62] Concern with the potential for corruption arising from political contributions from lobbyists and contractors is obviously not limited to the State of Connecticut, and is in fact a nationwide phenomenon. In just the past two years, there have been major national scandals involving the lobbyist Jack Abramoff, Ohio Congressman Bob Ney and Texas Congressman (and former House Majority Leader) Tom DeLay which illustrate the potential for corruption arising from political contributions from lobbyists, and the scandal involving California Congressman Randy ("Duke") Cunningham, involving improper favors from government contractors. *See* Feinberg Decl., Ex. 23.

government was not for sale, and was there to serve the people's interests – not to serve special interests who could afford to buy influence, access and favored treatment. The Court should not second-guess the determination of the Governor and legislature that, given the State's recent history, this strong measure was important to restore public confidence in state government. *See North Carolina Right to Life*, 168 F.3d at 717-18 ("This effort on the part of the state legislature to protect itself from the damaging effects of corruption should not lightly be thwarted by the courts. Here the proper judicial posture should be one of restraint.").

(b) The Act's Ban on Contributions by State Contractors and Prospective Contractors is Closely Drawn in Applying to Those Seeking to Obtain Business from the State

The courts have recognized the obvious dangers of corruption when individuals or corporations who do business with the government – including state contractors or prospective state contractors – are able to contribute large sums of money to the very officials from whom they seek to win business. In *Blount*, the court found the danger of corruption or undue influence posed by campaign contributions from underwriters and securities dealers in the municipal bond industry to the public officials who provide them with their business to be "self-evident," "obvious and substantial." 61 F.3d at 944-45. The court, in upholding an SEC rule limiting such contributions, rejected the plaintiffs' argument that the SEC had not presented sufficient evidence to substantiate its interest, stating that "no smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic." *Id.* at 945. Indeed, the court found the SEC's interest to be a "compelling governmental interest" sufficient to meet the strict scrutiny standard. *Id.* at 944.[63]

[63] The court in *Blount* found it unnecessary to decide whether contribution restrictions should be evaluated using strict scrutiny, because the court held that the SEC regulation at issue was narrowly drawn to serve a compelling government interest. 61 F.3d at 943, 947-48. The Supreme Court, in *Shrink Missouri Government*,

The courts have also repeatedly upheld limitations on contributions by individuals in a regulated industry to state officials involved in their regulation, again recognizing the obvious potential for corruption inherent in these specific relationships. *See Casino Assoc.*, 820 So. 2d at 506-07 (gambling industry); *Schiller Park*, 349 N.E.2d at 65-66 (liquor licensees); *Soto*, 565 A.2d at 1096-98 (casino employees); *see also Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890, 892 (Ga. 1993) (upholding statute prohibiting insurers from making campaign contributions to candidates for Commissioner of Insurance, because of state's interest in "preserving the integrity of the democratic process by forbidding a regulated entity from contributing to the holder of the office which oversees the regulation of the entity").

The State of Connecticut's recent political history includes a number of sordid examples of government officials abusing the power of their offices for the benefit of state contractors, and this was beyond question the driving force behind the Act's prohibition of campaign contributions by contractors and prospective contractors. *See* DeFronzo Dep. at 6 ("the real impetus that led to the passage had to do with a number of factors; one dealing with the heightened sensitivity to the entire issue of corruption resulting from the Rowland ... scandals"); Garfield Decl. Ex. 27 (Governor Rell's proclamation convening special session, declaring that the "pressing need for campaign finance reform" was driven by the "revelations of corruption and breach of the public trust" in Connecticut and elsewhere). Senator DeFronzo, one of the co-sponsors of the legislation, testified that the law was designed, in part, to root out the "actual corruption" and "clear privileged treatment that certain contractors got" when dealing with the Rowland Administration. DeFronzo Dep. at 56; *see also, e.g.*, Garfield Decl. Ex. 28 (11/30/05

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subsequently clarified that a reduced level of scrutiny – whether the regulation is "closely drawn" to match a "sufficiently important interest" – is the proper test to apply. 528 U.S. at 388.

Senate debates), at 352-53 (Statements of Sen. DeFronzo, explaining reasons for ban on contractor contributions and "clear nexus" between legislation and Rowland scandal); Garfield Decl. Ex. 29 (11/30/05 House debates), at 95-97 (Statement of Rep. McClusky, citing Rowland scandal and compelling state interest in eliminating actual and perceived corruption); 6/7/05 House Tr. at 488 (Statement of Rep. Caruso, citing Rowland, Silvester and Ganim scandals). The Act was also intended to eliminate the conflict of interest and potential for future corruption that campaign contributions to state officials by people seeking business with the state obviously creates. *See, e.g.*, 8/4/05 WG Tr. at 215 (Statement of Sen. Roraback, quoted at p. 24, *supra*); 6/7/05 Senate Tr. at 393-94 (Statement of Sen. Deluca, explaining need to ban contractors' contributions to avoid perception of corruption); 2/2/05 GAE Tr. at 54 (Statement of Sen. Roraback: "if people wish to do business with the State of Connecticut, they ought not be in the business of funding the campaigns of those that are going to be doling out the work"); Garfield Decl. Ex. 23B (excerpt of 9/13/05 WG hearing), at 1 (noting that three of six states with bans on contractor contributions include prospective contractors, and urging Working Group to extend ban to prospective contractors in order to "protect the integrity of the contracting process . . . as well as campaigns").

In adopting a prohibition on campaign contributions by state contractors and prospective state contractors, the Act focused narrowly on one of the principal potential sources of political corruption revealed by Connecticut's recent history. The statute was therefore "closely drawn" to meet the vital state purpose of avoiding actual and potential corruption and restoring public confidence in state government. *See McConnell*, 540 U.S. at 137; *Buckley*, 424 U.S. at 25 (restriction on campaign contributions permissible if "closely drawn" to match a important government interest). The Act's ban on contributions by contractors and prospective

contractors applies only to those doing business with the State or seeking to do business with the State, and prohibits them from making campaign contributions that could influence the office holders or candidates for elected office who could have a voice in allocating the state contracts they are seeking. The Act's application to prospective state contractors is plainly reasonable, as the potential for corruption presented by campaign contributions is at least as great, if not greater, when a prospective state contractor is trying to secure a contract for the first time.

The prohibition of contractor contributions is also narrowly drawn in that the Act only prohibits state contractors or prospective state contractors from contributing to office holders or prospective officeholders in the particular branch of government with which the contractor is doing business. A contractor who is seeking or receives a contract from an executive branch agency is not precluded from contributing to candidates for the legislature, *see* Conn. Gen. Stat. § 9-612(g)(2)(A); similarly, a contractor dealing only with the legislature is not precluded from making political contributions to candidates for executive offices, *see* Conn. Gen. Stat. § 9-612(g)(2)(B). In this respect, the Act is no broader than necessary to accomplish its important purposes. *See Blount*, 61 F.3d at 947-48 (upholding SEC rule because it was closely drawn to impact only those doing business in the municipal bond markets); *Gwinn*, 262 S.E.2d at 892 (Georgia statute narrowly tailored because it only prohibited insurer contributions to candidates for Commissioner of Insurance and left insurers "free to contribute to all other political campaigns"); *Wachsman*, 704 F.2d at 173 (provision of Dallas city charter prohibiting city employees from making contributions to city council candidates narrowly tailored because it

applied only to "*city employees* . . . contributing to *city council* elections") (emphasis in original).[64]

The Act also prohibits state contractors and prospective state contractors from contributing to certain political or party committees, in addition to candidates for political office. *See* Conn. Gen. Stat. §§ 9-612(g)(2)(A), (B). Plaintiff Robinson complains that this provision will preclude her from giving to political action committees that contribute to candidates for state-wide office, including certain women's advocacy groups. *See Green Party* Complaint ¶ 50. However, extension of the contractor contribution ban to political or party committees is justified as a reasonable measure to prevent state contractors and prospective state contractors from circumventing or evading the primary contribution limits. *See* Garfield Decl. Ex. 26 (Working Group Summary Report); Garfield Decl. Ex. 23A (excerpt of 9/6/05 WG hearing), at 1 (Statement of Jeffrey Garfield). As noted above, the Supreme Court – recognizing the reality of the pressures faced by both candidates and potential contributors – has given the legislature substantial leeway to make sure campaign finance legislation is effective, and repeatedly upheld provisions intended to prevent the use of parties and committees to circumvent individual contribution limits. *See also California Medical Ass'n,* 453 U.S. at 198-200 (noting that contribution limits could "be easily evaded" if the individuals were allowed to contribute unlimited sums to political committees, and that Congress' action to close this loophole was "an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld in *Buckley*"); *McConnell*, 540 U.S. at 139-40 (sustaining constitutionality of provision precluding political parties from soliciting "soft money" contributions); *Beaumont*, 539

[64] In addition, the Act's ban on contractor contributions applies only to state contractors or prospective contractors who have or are seeking state contracts valued at or in excess of $50,000, *see* Conn. Gen. Stat. § 9-612(g)(1)(C), thereby excluding small contracts that do not present the same dangers of corruption or potential corruption.

U.S. at 155 (upholding prohibition on contributions by corporations, in part as measure to prevent evasion of individual contribution limits).

Moreover, Plaintiffs overstate the effect of the Act's prohibition of contributions to "a political committee authorized to make contributions" to covered candidates, Conn. Gen. Stat. §§ 9-612(g)(2(A), (B). As SEEC Executive Director Jeffrey Garfield testified at his deposition in this case, this provision prohibits contributions only to political committees that are registered with the SEEC and authorized to make contributions to Connecticut candidates. *See* Garfield Dep. at 146-47. Thus, Robinson is free to contribute to the National Organization of Women or NARAL, both of which are advocacy organizations under Section 501(c)(4) of the Internal Revenue Code; or to their charitable arms, which are tax deductible organizations under Section 501(c)(3); or even to their national political action committees, which make contributions to candidates nationwide. Robinson is precluded from contributing only to NARAL's Connecticut PAC ("Connecticut NARAL Pro-Choice CT PAC") which is registered with the SEEC, as reflected in public filings on the SEEC website, and is authorized to contribute to Connecticut candidates. This narrow prohibition, which merely cuts off a readily available alternative that Robinson and others could easily use to make prohibited contributions to candidates, is a reasonable measure adopted by the General Assembly to prevent circumvention of the basic contribution ban, and should be upheld.

Finally, Plaintiffs also complain that the Act is overbroad because it applies to non-profit organizations that have contracts with the State, like Robinson's Community Capital Fund, as well as to large for-profit business operations. *See Green Party* Complaint ¶ 50. But the General Assembly could readily conclude that the same dangers of corruption and potential corruption were presented by non-profit state contractors, and the legislature was not

constitutionally required to attempt to draw a line between them. *See* Garfield Decl. Ex. 25, (Working Group Summary Report), at 4; *see also* Garfield Decl. Ex. 23B (excerpt of 9/13/05 WG hearing), at 2 ("general consensus" that contractor contribution ban should apply to non-profit organizations that receive state contracts). Indeed, at least one of the corruption scandals that have plagued Connecticut – the Newton scandal – involved non-profit organizations. *See* pp. 14, 37-38, *supra*. The Supreme Court has repeatedly rejected overbreadth arguments similar to the one advanced by Plaintiffs here, and has held that legislatures are not constitutionally required to distinguish between profit-making and non-profit organizations in adopting campaign finance restrictions. *See McConnell*, 540 U.S. at 209-11 (upholding application of BCRA's prohibition of use of corporate funds for electioneering communications to non-profit corporations); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 661 (1990) (rejecting argument that Michigan statute prohibiting independent corporate expenditures could not constitutionally be applied to non-profit corporations); *National Right to Work Comm.*, 459 U.S. at 210 (Congress could constitutionally preclude solicitation of contributions by non-profit corporation, and Court will not "second guess a legislative determination" that the potential for corruption demands such regulation).

(c) The Act's Ban on Contributions by Lobbyists is Closely Drawn in Focusing on Those Who are Paid to Influence Elected Officials

Similarly, the Act's prohibition of contributions by lobbyists focuses narrowly on another group whose contributions present a serious risk of corruption and undue influence on governmental decision-making. Lobbyists hold a privileged position in the governmental decision-making process. Lobbyists interact on a daily basis with elected officials, and no doubt often provide elected officials with useful information relevant to government decisions. At the

same time, however, lobbyists' responsibilities are to zealously represent the interests of their clients, not the public interest, and they are compensated for their ability to influence elected officials. Moreover, lobbyists enjoy tremendous access to elected officials that is not available to the general public, and often wield substantial influence over government decisions.

These characteristics create an extraordinary risk of corruption or undue influence, or the appearance thereof, arising from lobbyist contributions to politicians. As the Fourth Circuit explained:

> With respect to actual corruption, lobbyists are paid to effectuate particular political outcomes. The pressure on them to perform mounts as legislation winds its way through the system. . . . While lobbyists do much to inform the legislative process, and their participation is in the main both constructive and honest, there remain powerful hydraulic pressures at play which can cause both legislators and lobbyists to cross the line. State governments need not await the onset of scandal before taking action. . . . Even if lobbyists have no intention of directly "purchasing" favorable treatment, appearances may be otherwise.

North Carolina Right to Life, 168 F.3d at 715-16. For similar reasons, the courts have historically held that states and the federal government have an important and even compelling interest in regulating lobbyists. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *United States v. Harriss*, 347 U.S. 612 (1954); *Maryland Right to Life State Political Action Comm. v. Weathersbee*, 975 F. Supp. 791 (D. Md. 1997).

Moreover, apart from these general observations, the record in this case establishes that lobbyists in Connecticut play a uniquely influential role in the legislative process, raising very substantial concerns that lobbyists' contributions create both the potential for real corruption and the public perception of improper influence. The legislative history of the Act shows broad recognition, across party lines, that lobbyists in Connecticut exercise great influence

on legislative decisions.[65] In addition, the declarations and deposition testimony in this case provide further detail regarding the great influence wielded by lobbyists in the General Assembly. The record establishes that lobbyists exercise undue influence on the substance of legislative decisions and government policy, *see, e.g.,* DeFronzo Dep. at 8, 15; Roraback Decl. ¶¶ 8, 9; Rapoport Decl. ¶¶ 5, 11, 12; that lobbyists have repeatedly wielded their influence to derail proposed legislation, even proposed legislation that had enormous public support, *see, e.g.,* 6/7/05 House Tr. at 484-86 (Statements of Rep. Caruso); *id.* at 495, 573-74 (Statements of Rep. Heagney); *id.* at 564-65 (Statements of Rep. Nardello); Rapoport Decl. ¶ 13; Rapoport Dep. at 23, 51, 58, 63; C. Sauer Aff. ¶ 6; that lobbyists who bring in substantial campaign contributions have access to legislative leaders and a chance to affect public policy that others simply do not have, *see, e.g.*, DeFronzo Aff. ¶ 30; DeFronzo Dep. at 8, 15; Rapoport Decl. ¶¶ 5, 10; Roraback Dep. at 26; Roraback Aff. ¶¶ 8.9; Dyson Dep. at 68; Smith Dep. at 12-13; Sherwood Dep. at 117-19; and that lobbyists in Hartford have such ownership and involvement in the legislative process that bills are known by the name of the lobbyist promoting them rather than the legislator introducing them, *see* Rapoport Decl. ¶¶ 11, 12; Rapoport Dep. at 38-39, 41. Moreover, the record establishes that one of the keys to the great influence that lobbyists possess in the Capitol is their ability to deliver substantial campaign contributions to favored legislators. See, e.g., 6/7/05 House Tr. at 486, 573; Roraback Dep. at 34; DeFronzo Dep. at 8, 15-16; Rapoport Decl. ¶¶ 6, 7; Pelto Decl. ¶ 9.

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[65] *See, e.g.*, 6/7/05 House Tr. at 486 (Statement of Rep. Caruso, citing several examples where popular proposed legislation had been killed by lobbyists' efforts before they were even brought up for debate; *id.* at 495 (Statement of Rep. Heagney, noting that lobbyists give money – not because the legislator has a view they support – but "because they have an interest in legislation" and that lobbyists' contributions "may, down the line, make a significant difference in how a legislator would view a given matter"); *see also* pp. 33-36, *supra.*

The legislative history also reveals that many legislators recognized that – wholly apart from their views on the actual degree of undue influence possessed by lobbyists – there was a widespread public perception in Connecticut that lobbyists had improper influence, and that this was a major source of loss of public confidence in the integrity of state government.[66] This understanding of public views is consistent with the actual polling data presented in the Declaration of Dr. Robert Meadow. As Dr. Meadow's research shows, the public perception – in Connecticut and elsewhere – that campaign contributions by lobbyists lead to improper access and influence is real and strong. The vast majority of voters (75%) are concerned about the influence of lobbyists and special interest groups, and see their interests getting a lower priority. Meadow Decl. ¶ 26. Connecticut residents agree: by nearly a three-to-one margin, likely voters believe that Connecticut officials were more concerned with campaign contributors than with their needs. *Id.* ¶ 28. Since lobbyists are particularly perceived to have undue influence as a result of their contributions, voters overwhelmingly support banning contributions from lobbyists. *Id.* ¶ 34 (67% and 54%, respectively favor outlawing lobbyists' contributions to, and organization of fundraisers for, congressional candidates). Another poll shows that the majority of respondents believe that this single reform would make a "big difference" in making government work better. *Id.* ¶ 35.[67]

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[66] *See, e.g.*, Garfield Decl. Ex. 28 (Transcript of Nov. 30, 2005 Senate Debate), at 56-57 ("what was said and referred to quite openly and freely [during Working Group meetings] was the fact that the . . . public perception is such that lobbyists wield a huge amount of influence up here and that is something that needed to be regulated."); *id.* at 29 (Statement of Sen. Lebeau: Bill necessary to restore public trust to combat public perception that campaign contributions come with strings attached); *id.* at 284-85 (Statement of Sen. Gaffey: "My gut feeling is that we have gotten to the point ... where there, at a bare minimum, is the appearance of undue [lobbyist] influence .... And I'm troubled by that."); Garfield Decl. Ex. 29 (Transcript of Nov. 30, 2005 House Debate), at 55-56, 281-82 (Statement of Rep. Caruso, citing perception of corruption by lobbyists and contractors).

[67] Public concern regarding lobbyist influence is by no means confined to Connecticut, and is reflected in the fact that two of the leading contenders for the Democratic nomination for President in 2008, Barack Obama and John Edwards, have publicly declared that they will not accept campaign contributions from lobbyists. *See* BarackObama.com | Contribute, https://donate.barackobama.com/page/ contribute/main (last visited July 13, 2007)

In light of the actual influence of lobbyists and this widespread public perception, the General Assembly reasonably found it imperative to take action to restore public confidence in the integrity of state government, by eliminating the influence that lobbyists could obtain through making (and raising) political contributions. The action taken by the General Assembly was no broader than necessary to eliminate the reality and appearance of undue influence engendered by lobbyists' contributions to public officials' campaigns. The State has long recognized the potential for corruption involving lobbyists' contributions, and has had in place for the last seventeen years a prohibition on campaign contributions to state legislators during the legislative session. *See* Conn. Gen. Stat. § 9-610(e). But the record before the Court shows clearly that the session ban was much too easy to circumvent, and was ineffective in preventing lobbyists from acquiring undue influence through their ability to generate campaign contributions. *See, e.g.*, DeFronzo Aff. ¶ 24; Rapoport Decl. ¶¶ 2, 16; *see also* pp. 36-37, *supra*. Among other things, legislative leaders would circumvent the session ban by having major fundraising events shortly before the session opened, even at breakfast on the first day. *See, e.g.*, DeFronzo Aff. ¶ 24; Rapoport Decl. ¶¶ 16-18; Pelto Decl. ¶ 14; Gallo Dep. at 106-07, 111. The fact is that lobbyists are active year-round in their dealings with legislators and executive branch and agency officials, and legislators do not suddenly stop considering proposed legislation or lose their influence simply because the General Assembly is not in session. *See, e.g.*, DeFronzo Dep. at 44-45; Schepker Dep. at 30; Pelto Decl. ¶ 17. The General Assembly was surely entitled to consider these facts in deciding to extend the lobbyist contribution ban year round. As the court held in *Institute of Governmental Advocates*, in upholding the constitutionality of a year-

("We don't take money from lobbyists or political action committees, and we're going to build a broad base of individual donors to ensure that this campaign answers to no one but the people."); John Edwards for President – Contribute, https://www.johnedwards.com/action/contribute/thank-you/ (last visited July 13, 2007) ("John Edwards for President has chosen not to accept contributions from PACs and lobbyists.").

round ban on lobbyist contributions, "the court is not persuaded that the danger of corruption in California is any different when the Legislature is in session than when it is not." 164. F. Supp. 2d at 1192.

Moreover, the contribution ban applies only to lobbyists who are paid to have direct dealings with and attempt to influence legislators and executive branch officials. The Act applies only to "communicator lobbyists," Conn. Gen. Stat. § 9-610(h), which by definition includes only "a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislature or executive branch of government or in a quasi-public agency" and does so expressly "for the purpose of influencing legislative or administrative action." Conn. Gen. Stat. § 1-91(v). The contribution ban excludes lobbyists who do not earn a substantial amount from their lobbying activity – and therefore excludes people who have more infrequent or casual contacts with legislators, who do not present the same risk of undue influence – by incorporating the threshold requirement that a lobbyist has to earn $2,000 or more from lobbying activities to be subject to the Act. *See* Conn. Gen. Stat. §§ 1-91(*l*), 9-610(h); DeFronzo Decl. ¶ 17 ($2,000 threshold a reasonable and established limit in Connecticut regulation of lobbyists, and General Assembly incorporation of this limit was intended to exempt individuals whose lobbying activities are only incidental or who only lobby for a very short period of time).

While the contribution ban for lobbyists – unlike the contractor ban – provides that a lobbyist may not contribute to candidates for either legislative seats or executive offices, and is not limited to the branch of government the lobbyist is dealing with, the General Assembly could reasonably conclude that the broader ban was necessary with respect to lobbyists. Connecticut law does not require separate registration for lobbyists seeking to lobby

the legislature and lobbyists seeking to lobby the executive branch, and therefore any registered lobbyist could lawfully lobby either or both during the same time period. In fact, the record here shows that many lobbyists do in fact work in both the executive branch and legislature at the same time. *See, e.g.*, Gallo Dep. at 31; Anderson Dep. at 15; Leahy Dep at 15; *see* p. 38 & n.44, *supra*. Thus, the General Assembly could reasonably conclude that it was not feasible to attempt to have a more limited contribution ban applicable to lobbyists, limited to the branch that the lobbyist was seeking to influence, particularly since the danger of corruption is equally great in both instances. Significantly, the Act does not prohibit lobbyists from contributing to local or town election races.

Plaintiffs again complain that the lobbyist contribution ban is overbroad because it applies to non-profit advocacy groups like the Connecticut Bar Association or the ACLU. *See Green Party* Complaint ¶ 46. But, as discussed above (*see* pp. 70-71, *supra*), the General Assembly could properly conclude that non-profit organizations as a whole presented the same dangers of corruption and potential corruption, and the legislature was not constitutionally required to attempt to draw a line between them. *See McConnell*, 540 U.S. at 209-11; *Austin*, 494 U.S. at 661; *National Right to Work Comm.*, 459 U.S. at 209-10. Similarly, to the extent that Plaintiffs complain that the Act also prohibits lobbyist contributions to certain political or party committees, *see* Conn. Gen. Stat. §§ 9-610(h), this provision is a reasonable measure to prevent lobbyists from circumventing the contribution limits. *See* Garfield Decl. Ex. 23A (excerpt from 9/6/05 WG hearing), at 1 (Statement of Jeffrey Garfield). As explained above (*see* pp. 53-54, *supra*), the Supreme Court has given the legislature substantial leeway to take steps to make sure campaign finance legislation is effective, and has repeatedly upheld provisions intended to prevent the use of parties and committees to circumvent individual contribution limits. *See*

California Medical Ass'n,, 453 U.S. at 198-200; *McConnell*, 540 U.S. at 139-40; *Beaumont*, 539 U.S. at 155.[68]

The Act's prohibition on campaign contributions by lobbyists is thus closely drawn to serve the vital state interest in preventing actual and perceived corruption arising from lobbyists' political contributions. As the Fourth Circuit aptly put it, the Act "does nothing more than recognize that lobbyists are paid to persuade legislators, not to purchase them." *North Carolina Right to Life,* 168 F.3d at 718. Accordingly, the Act is constitutional, and indeed, that is what the majority of courts that have addressed similar prohibitions have concluded. In particular, a federal district court in California upheld the constitutionality of a California law prohibiting registered lobbyists from making contributions to candidates for offices they are registered to lobby, *see Institute of Governmental Advocates,* 164 F. Supp. 2d at 1194, and the Alaska Supreme Court upheld the constitutionality of a state statute prohibiting lobbyists from making contributions to any candidate for legislative office (other than candidates in the district in which the lobbyist is eligible to vote). *Alaska Civil Liberties Union*, 978 P.2d at 617-20. In addition, two courts have upheld the constitutionality of bans on lobbyists' contributions to legislators during the legislative session. *North Carolina Right to Life,* 168 F.3d at 717-18; *Kimbell v. Hooper*, 665 A.2d 44, 46-51 (Vt. 1995).[69]

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[68] Moreover, the prohibition of contributions by *lobbyists* to political committees is narrower than the prohibition of contributions by *contractors* to political committees. Unlike Conn. Gen. Stat. §§ 9-612(g)(2(A), (B). the prohibition as to lobbyists does *not* prohibit contributions to a political committee that is merely "authorized to make contributions" to covered candidates. Rather, the lobbyist prohibition prohibits contributions only to (1) candidate committees, (2) political committees controlled by the candidate, (3) legislative leadership or caucus committees, or (4) party committees. Conn. Gen. Stat. § 9-610(h). Accordingly, the issue discussed above with respect to contractor contributions is not even presented with respect to lobbyists.

[69] In *Fair Political Practices Comm'n v. Superior Ct.*, 25 Cal. 3d 33, 599 P.2d 46 (1979), a divided California Supreme Court held unconstitutional a very broad ban on lobbyist contributions, but the statute it was dealing with is quite distinguishable from the Act at issue here. The statute at issue in the California case was a blunderbuss measure adopted by statewide initiative, *see* 25 Cal.3d at 37-38, and did not reflect the kind of careful tailoring

C. The Act's Prohibitions of Solicitation of Contributions by Lobbyists and Contractors Is Likewise Constitutional

In addition to prohibiting lobbyists and state contractors from contributing to certain candidates, the Act also prohibits covered lobbyists and contractors from soliciting campaign contributions for the same candidates to whom they are barred from contributing. *See* Conn. Gen. Stat. §§ 9-610(i) (lobbyists), 9-612(g)(2) (contractors). These prohibitions of solicitation of contributions serve two vitality important purposes. First, they serve as an adjunct to the contribution restrictions, preventing a covered lobbyist or contractor from circumventing the contribution ban simply by asking others to make contributions that the lobbyist or contractor herself could not lawfully make. Without this essential anti-circumvention measure, the contribution bans would be largely meaningless. As the Supreme Court in *McConnell* observed, "the entire history of campaign finance regulation" has "taught the hard lesson of circumvention," *i.e.*, that donors will always "scrambl[e] to find another way to purchase influence." 540 U.S. at 165.

Second, the solicitation prohibitions serve an independent role in seeking to eliminate the undue influence of state contractors and lobbyists. The Connecticut legislature recognized the danger of corruption and appearance of corruption posed by lobbyists and contractors "bundling" large amounts of campaign contributions by soliciting clients and

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required by the Constitution and followed by the Connecticut legislature here. Among other things, the California enactment prohibited any contribution to any candidate for political office, and was not limited to candidates for offices that the lobbyists might have occasion to lobby. 25 Cal.3d at 45. The California statute also did not define with precision the "lobbyists" subject to the ban, and swept in individuals who simply appeared before administrative agencies. *Id.* Accordingly, the court found the enactment "not narrowly directed to the aspects of political association where potential corruption might be identified." *Id.* The court in *Institute of Governmental Advocates* upheld the constitutionality of a subsequent California statute because it applied to a narrower group of "lobbyists" and excluded those who merely appeared before administrative agencies, and because it did not ban all political contributions, only contributions to candidates for offices for which the lobbyist was registered to lobby. 164 F. Supp. 2d at 1189-90. *See also Alaska Civil Liberties Union*, 978 P.2d at 619 n.134 (distinguishing and declining to follow *Fair Political Practices Commission*).

associates to make contributions to candidates with whom they wanted to curry favor. Indeed, the undue influence of lobbyists and contractors is arguably more directly related to their ability to solicit and bundle large sums of money for candidates than to the smaller individual donations that the lobbyists or contractors can make themselves.

1. The Solicitation Prohibitions Are Necessary to Avoid Circumvention of the Contribution Prohibitions

The Act's prohibition of solicitation of contributions by lobbyists and state contractors serves as a crucial anti-circumvention measure necessary to bolster the effectiveness of the Act's prohibitions on contributions by these individuals. As discussed above (*see* pp. 69-70, *supra*), the Supreme Court has frequently upheld provisions in campaign finance laws that are designed to ensure the effectiveness of contribution limits and to prevent their circumvention. The Court's decisions reflect a realistic appreciation that "[m]oney, like water, will always find an outlet," *McConnell*, 540 U.S. at 224 – *i.e.*, that candidates and donors inevitably will "test the limits of the current law," *id.* at 174-75 (quoting *Colorado Republican Federal Campaign Comm.*, 533 U.S. at 457) – and deferred to the legislative judgment that particular measures are necessary to avoid evasion of contribution limits. The Court has analyzed such anti-circumvention measures as adjuncts to the contribution restrictions they were intended to protect, and applied the same standard of review.

In particular, the Supreme Court has upheld limitations on the solicitation of campaign contributions by certain individuals or groups, when imposed in conjunction with – and to prevent circumvention of – contribution limitations, and has held that they are subject to the same level of scrutiny. In *McConnell*, the Court upheld the constitutionality of Section 323(a) of the BCRA, which prohibits the solicitation of soft money contributions by national

party committees and their officers, *id.* at 133-40, 157-58, and expressly rejected the argument that strict scrutiny must be applied because the provision applied to the solicitation of funds as well as contributions. *Id.* at 138-40. The Court similarly upheld Section 323(d)'s ban on solicitations by national party committees to tax-exempt organizations engaged in political activity as a "reasonable" measure to prevent circumvention of the limits on soft-money contributions. *Id.* at 174-78. The Court applied *Buckley's* "less rigorous standard of review" and upheld the solicitation prohibitions as a necessary analogue to the contribution limits. *Id.* at 178. *See also National Right to Work Comm.*, 459 U.S. at 206-10 (upholding ban on corporate PACs soliciting contributions from the general public).

Without the prohibitions on solicitation of contributions, the Connecticut Act would contain an enormous loophole that would leave virtually intact the undue influence that lobbyists have had on the legislative process and that contractors have had in state contracting. The legislative history indicates that Connecticut legislators were well aware that the problematic influence of lobbyists and state contractors was due in substantial part to their ability to solicit contributions from their clients and associates, and to deliver them – in a process commonly referred to as "bundling" – to candidates in large lump sums.[70] The record also contains substantial additional evidence – from legislators, from lobbyists and from review of campaign finance records – of the pervasive impact of "bundling" of contributions. *See* Pelto Decl. ¶ 9 (lobbyists often arrive at fundraising events with envelopes filled with campaign donations,

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[70] *See* 6/7/05 House Tr. at 486 (Statement of Rep. Caruso, noting common practice of lobbyists "get[ting] 5 or 6 checks from their clients" to support an incumbent's campaign); *id.* at 574-75 (prohibiting solicitation of contributions by lobbyists would benefit lobbyists, by allowing them to do their job of "communicat[ing] information," without being "expected in return to gather checks on behalf of a candidate from their clients"); *see also* 8/4/05 WG Tr. at 127 (Testimony of lobbyist Brian Anderson, that "bundling is really the big problem in a lot of this"); *id.* at 102 (Testimony of Karen Hobert Flynn, Executive Director of CCC, pointing out that, though bundling, a lobbyist or contractor could accumulate numerous contributions for a candidate, easily contributing a substantial sum far in excess of the individual contribution limits).

together with a list of the clients donating); Rapoport Decl. ¶ 7 (not uncommon for lobbyists to bundle donations from 12 to 15 clients); Schepker Dep. at 36, 114; Anderson Dep. at 7, 19, 41, 43-44; *see* pp. 33, 39-40, 42-43, *supra*; *see also* A. Sauer Decl. ¶¶ 36-43 (documenting instances where Gaffney Bennett clients made numerous contributions to political campaigns on the same day, in amounts far exceeding the amount that any one individual could have contributed). As Senator Roraback testified in his deposition, the bill would be "incomplete" if it did not prohibit lobbyists from raising funds from their clients, as this was important to "disabuse the public of the perception that lobbyists would win favor with legislators by being a source of funding for their campaigns." Roraback Dep. at 11. Moreover, the Rowland scandal clearly demonstrated that the same risks were present with respect to state contractors, as the Tomasso construction companies achieved their favored position, in large part, by contributing enormous amounts to the Rowland campaign, gathered from family members, business associates and others with a vested interest in the Tomassos winning state contracts. *See, e.g.*, A. Sauer Decl. ¶ 16 & Ex. A; 1; 1/31/05 GAE Tr. at 69-70 (testimony of Andy Sauer); 2/2/05 GAE Tr. at 54 (statement of Rep. Fleischman).

In light of this compelling evidence that the ability of lobbyists and contractors to gather and bundle contributions from clients and associates was a major source of their undue influence, any legislation to ban contributions by lobbyists and contractors that did not also address the need to also limit their solicitation of contributions would have been doomed to failure and ineffectiveness. *See* Garfield Decl. Ex. 23B (excerpt of 9/13/05 WG hearing), at 2-3 (Statement of Jeffrey Garfield, suggesting that solicitation of contributions should be banned as an "anti-evasion measure"). The Supreme Court's campaign finance decisions make clear that

the Connecticut legislature was not relegated to such a dismal fate, and was entitled to enact reasonable measures to ensure the effectiveness of its reform legislation.

The D.C. Circuit in *Blount* addressed a similar restriction on solicitation of campaign contributions, and adopted this view. In *Blount*, the D.C. Circuit held that the SEC could reasonably find that SEC rules limiting contributions by participants in the municipal bond industry would not be effective by themselves, and that it was necessary to also adopt a rule prohibiting industry participants' solicitation of contributions. As the court explained, "without the prohibitions . . . on soliciting contributions, directly or indirectly, underwriters could easily circumvent the prohibition against direct contributions," 61 F.3d at 947, and, without both prohibitions, "none of the alternatives presented would be even *almost* equally effective" in protecting the integrity of the municipal bond market. *Id.* (emphasis in original).

2. The Solicitation Prohibitions Also Serve an Important Independent Role in Preventing Corruption and Undue Influence

The facts set out above also demonstrate that the problem of bundling of contributions by lobbyists and state contractors is also independently a very grave problem that the General Assembly was constitutionally entitled to address. The evidence before the legislature and before the Court shows that the ability of lobbyists and contractors to solicit contributions from clients and associates – and thus to present candidates with very substantial amounts to fund their campaigns – is a major source of the undue influence possessed by lobbyists and contractors and a major reason for the widespread public perception of corruption. The General Assembly was not required to tolerate the continuation of these practices, and could constitutionally take action to prohibit solicitation of contributions by lobbyists and state contractors, without running afoul of the First Amendment.

While there is no question that a solicitation of funds is generally a form of speech entitled to some degree of First Amendment protection, *see Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 629-33 (1980), the Supreme Court has also made clear that the solicitation of funds "is undoubtedly subject to reasonable regulation," as long as that regulation is "undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes." *Id.* at 632. The Court has further indicated that such government interests as the interest in preventing fraud and protecting the privacy of residents are sufficient to justify the solicitation of funds, *see Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 164-65 (2002), and has also stated – albeit in a very different context – that the government's interest in "protecting the electoral process" would likewise support regulation of the solicitation of funds. *Id.* at 167. *See also Assoc. of Community Organizations for Reform Now v. Town of East Greenwich*, 453 F. Supp. 2d 394, 402 (D.R.I. 2006) (key is whether regulation "strikes an appropriate balance between [the government's] interests and the effect of the regulation[ ] on First Amendment rights") (internal quotations omitted).

Thus, there should be no question that the state's important – even compelling – interest in avoiding corruption and the appearance of corruption in the financing of its election campaigns provides a sufficient basis for the state to regulate the solicitation of campaign contributions by lobbyists and state contractors. Indeed, the Supreme Court in *McConnell* applied the basic principles set out above, and held that the BCRA's prohibition of solicitation of soft money contributions by national parties was constitutional. 540 U.S. at 139-40. The Court emphasized that the statute's prohibition of solicitation of funds did not impair the parties' ability

to communicate their political message that would ordinarily be "intertwined" with the solicitation.

Similarly, the Act's restrictions on the solicitation of campaign contributions by lobbyists and contractors are a proper regulation of the solicitation of funds that does not interfere with the ability of lobbyists and contractors to express their political views. In prohibiting the solicitation of contributions, the General Assembly took great care to make clear that there would be no infringement of the right of lobbyists and contractors to exercise their free speech rights. The Act includes a specific definition of the meaning of "solicit" under the Act, and makes clear, for example, that "informing any person of a position taken by a candidate or public official" or "notifying any person of the activities of, or contact information for, any candidate" is not "solicit[ing]" a contribution within the meaning of the Act. Conn. Gen. Stat. § 9-601(26).

In addition, as noted above (*see* pp. 8-9, 58-60, *supra*), since enactment of the statute, the SEEC has taken further steps to clarify the prohibition and to make clear that the "solicitation" covered by the Act does not impermissibly intrude on protected speech and advocacy by affected persons. The Declaratory Ruling promulgated by the SEEC in November 2006 put to rest any lingering confusion or uncertainly about the scope of the Act. As discussed in greater detail above, the Declaratory Ruling included a long list of activities that are not considered solicitation under the Act, including "express[ing] support for a candidate or his or her views," "advis[ing] someone whether a candidate is likely to be elected," and "communicat[ing] his or her evaluations of a legislator or candidate," whether or not those statements lead someone else to make a contribution to the candidate's campaign. SEEC Ruling

at 5-6.[71] The Declaratory Ruling also explicitly rejected some of the concerns that have been expressed about the scope of the solicitation prohibition. The SEEC rejected the contention that the Act could be construed to penalize a lobbyist or contractor for making a statement about political affairs if that statement led another person to make a campaign contribution, explaining that the SEEC will use an "objective test," under which no lobbyist or contractor statement can be deemed to be a prohibited "solicitation" unless the lobbyist or contractor makes an "express request" for a contribution, or an "implicit request [that is] capable of no other construction by an ordinarily reasonably prudent person." SEEC Ruling at 5.[72] The SEEC also provided a number of specific examples to provide guidance as to how a lobbyist (or contractor) could engage in protected political speech while refraining from making a solicitation violative of the Act. For example, the SEEC explained:

> [A] communicator lobbyist may make calls as a volunteer urging voters to support a certain candidate. However, if the voter asked how to contribute to the campaign, the communicator lobbyist should explain that they cannot be involved in fundraising, put another staffer on the phone, and/or provide contact information for the campaign or someone who could assist them.

Id. at 9. The SEEC also invited lobbyists to seek guidance from the SEEC if there remained any further questions, and made clear that a request could be made anonymously. *Id.* at 10.

As the agency charged with enforcement of the Act, the SEEC's views on the scope of the solicitation prohibition are entitled to substantial deference. *See* p. 59 n.58, *supra*;

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[71] Although the Declaratory Ruling was largely addressed to the scope of the lobbyist solicitation ban, the SEEC explained that the same analysis governed the Act's prohibition of solicitation by contractors. SEEC Ruling at 8.

[72] Although the SEEC's Declaratory Ruling was issued in November 2006, it is striking how the test adopted by the SEEC comports with the latest constitutional test adopted by the Supreme Court in June 2007. In *Wisconsin Right to Life*, the plurality opinion of Chief Justice Roberts held that an advertisement within 60 days of an election could constitutionally be barred if it "express[ly]" advocated the election of a candidate or "if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate." 2007 WL 1804336, at p. 14.

Sweetman v. State Elections Enforcement Comm'n, 249 Conn. at 305, 732 A.2d at 153. In light of the SEEC's Ruling and the Act's explicit definition of "solicit," the Act makes clear that – while the solicitation of contributions is prohibited – the Act does *not* impair the ability of a lobbyist or contractor to communicate the type of political message that the Court in *Schaumburg* noted is "characteristically intertwined" with the solicitation. 444 U.S. at 632.

Thus, there is no merit to Plaintiffs' contentions that the Act interferes with constitutionally protected rights. Plaintiff Gallo alleges that she will no longer be able to be an effective lobbyist, because she will no longer be able to answer clients' questions about candidates or their positions on the issues, *see Green Party* Complaint ¶ 45, but this is manifestly not true. Similarly, the ACL's claim that the solicitation ban "constitutes a total ban on participation in the political system of the State of Connecticut," *ACL* Complaint ¶ 18, is grossly exaggerated and untrue, as are the ACL's claims that its members (1) will not be able to "advise their clients whether a candidate for office is likely to win," or (2) will not be able to "advise their clients whether a candidate . . . is an effective legislator," or (3) will not be able to "communicate their evaluations" of a candidate or "their assessment of [her] likely leaning on a new issue," or (4) will not be able to "express their political support or beliefs in any newspaper," or (5) will not be able to "provide advice to any candidate," or (6) will not be able to "make any statement to any person which could conceivably lead that person" to make a contribution. *ACL* Complaint ¶ 25. All of these claims are simply untrue and completely without merit.[73]

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[73] The Court should be aware that the ACL filed its Second Amended Complaint in January 2007, two months after the SEEC's well-publicized Declaratory Ruling, yet the *ACL* Complaint ignores the Declaratory Ruling completely and makes no effort to address its impact on their claims, or to revise Plaintiffs' allegations in light of the Declaratory Ruling.

D. The Act's Inclusion of Family Members within the Scope of the Contribution and Solicitation Bans Is Constitutional

The Act includes certain immediate family members of state contractors and lobbyists within the scope of the Act's prohibition of contributions and solicitation of contributions. With respect to lobbyists, the Act precludes contributions and their solicitation by the spouse or dependent child of a lobbyist subject to the Act. Conn. Gen. Stat. §§ 9-610(h), 601(24). With respect to contractors, the Act precludes contributions and solicitation by the spouse or dependent child over the age of 18 of anyone who is a "principal" of a contractor subject to the Act. Conn. Gen. Stat. §§ 9-612(g)(2)(A), 9-612(g)(2)(B), 9-612(g)(1)(F).

Plaintiffs also challenge these provisions. In particular, Plaintiff Joanne Phillips is the wife of a communicator lobbyist subject to the Act, and alleges that it violates her First Amendment rights. *Green Party* Complaint ¶¶ 44, 56. This contention should be rejected. The prohibitions on contributions by spouses and dependent children are essential to prevent circumvention of the ban on contributions by lobbyists and contractors, and to close off what would otherwise be a very easy way for lobbyists and contractors to get around the statutory prohibitions. *See SIFMA*, 469 F. Supp. 2d at 38-39 (noting that this provision is "a prophylactic measure to prevent state contractors from circumventing the statute by using their immediate family as a conduit").

As discussed above, it is well settled that the legislature is entitled to adopt reasonable measures to prevent efforts to circumvent campaign finance laws and to ensure that contribution limits will be effective. *See, e.g., McConnell*, 540 U.S. at 138-39, 174-75, 224; *Colorado Republican Federal Campaign Comm.*, 533 U.S. at 457 (upholding limits on political parties' coordinated spending, despite absence of direct evidence of actual abuse, because

"substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law"); *Buckley*, 424 U.S. at 35-36 (upholding contribution limits on political committees because they "serve the permissible purpose of preventing individuals from evading applicable contribution limitations by labeling themselves committees"). The Supreme Court has therefore directed the courts to give substantial deference to legislative judgments that particular measures are necessary to avoid evasion of contribution limits. *See, e.g., Shrink Missouri Government*, 528 U.S. at 393 n.5 (Court will not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared"). The Court has also emphasized that the government need not wait for the loopholes in a campaign finance system to become apparent before taking action to prevent such a result. As the Court held in *McConnell*, "[w]e 'must accord substantial deference to the predictive judgments of Congress,' particularly when, as here, those predictions are so firmly rooted in relevant history and common sense." 540 U.S. at 165 (internal citation omitted).

Thus, the General Assembly had ample authority to prohibit contributions and solicitation by family members of the lobbyists and contractors covered by the Act. Common sense suggests that it would be very easy for a covered lobbyist or contractor to have his spouse or child make a contribution on his behalf, and that the failure to block this path of circumvention would leave an obvious loophole in the statutory scheme. Moreover, the facts indicate that this is in fact a very realistic possibility that the General Assembly could reasonably take action to block. *See, e.g.*, DeFronzo Aff. ¶ 23 ("It is not unusual for family members of contractors or lobbyists to bundle contributions to maximize their financial support"); Pelto Decl., ¶ 15 ("Traditionally, it has been very common for Connecticut candidates to ask large donors to maximize their contribution amounts by having spouses, or even children, contribute as well.");

see also pp. 38, 42-43, *supra*. The research conducted by CCC shows that the spouses of Connecticut lobbyists have frequently made contributions to specific campaigns in addition to those of the lobbyist, thus enabling the two of them combined to exceed the contribution limits otherwise available. *See* A. Sauer Decl. ¶¶ 30, 31. Similarly, a review of the reports filed by lobbyists for Gaffney Bennett & Associates, the State's largest lobbying firm, indicates that Gaffney Bennett lobbyists have been able to circumvent the $1,000 per person annual limit on contributions to the Gaffney Bennett PAC (called "BACPAC") by having their spouses also contribute that amount. *See* A. Sauer Decl. ¶¶ 33, 34. While these contributions were presumably lawful, these examples show how easily lobbyists could use contributions by their family members to circumvent the Act's contribution ban.[74]

In this light, it was entirely reasonable for the General Assembly to conclude that banning contributions by family members was necessary to make the Act effective. The legislature must be given wide latitude when drafting legislation regarding campaign contribution limits. *See, e.g., North Carolina Right to Life*, 168 F.3d at 717-18.[75]

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[74] The same danger of circumvention of the Act exists for state contractors. For example, the facts of the Rowland corruption scandal show that the Tomasso construction firms were able to achieve their favored position in part with large campaign contributions, which were in part derived from family members. *See* A. Sauer Decl. ¶ 16 & Ex. A at p. 4.

[75] It is also worth noting that claims of Dr. Philips, the only Plaintiff who is affected by the spousal contribution ban, that it will dramatically impair her ability to participate in the political process, *see Green Party* Complaint ¶ 45, are completely overstated. During her deposition, Philips admitted that her fears that she would be unable to meaningfully participate in the political process because of her husband's status as a lobbyist were largely unfounded. She acknowledged that the law did not prevent her from continuing to have a significant role in the campaigns of State Representative Linda Orange. *See* Brocchini Decl. Ex. 16 (excerpt of Deposition of Dr. Joanne P. Philips ("Philips Dep.")) at 101-09. She also acknowledged that the Act does not prevent her from continuing to serve on the Colchester Democratic Town Committee, although it might prevent her from having to make the minimum annual donation of $65. *Id.* at 43-50. In fact, Dr. Philips acknowledged that she could continue to freely participate in the political process in the same manner she had done so in the past, including giving and soliciting donations to several federal campaigns; she simply could not give or solicit donations to a limited set of Connecticut campaigns. *Id.* at 30.

Finally, it should be noted that, with respect to the application of the contribution ban to dependent children, there is no plaintiff who has standing to challenge this provision. None of the plaintiffs is a dependent child; nor is there any allegation that any of the plaintiffs is a parent who has a dependent child whose wants to make or solicit contributions or whose rights are otherwise alleged infringed by the Act. There is therefore no plaintiff who has suffered an "injury in fact" by the contribution/solicitation ban on dependent children. *See generally Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (to have standing, plaintiff must have (1) sustained an injury in fact which is (a) concrete and particularized and (b) actual and/or imminent; (2) there must be a causal conduction between the injury and the conduct complained of, and (3) it must be likely that the injury will be redressed by a favorable decision).

III. THERE IS NO MERIT TO THE *ACL* PLAINTIFFS' EQUAL PROTECTION OR DUE PROCESS CLAIMS

In addition to their First Amendment claims, the *ACL* Plaintiffs contend that the Act's prohibitions of contributions and solicitations by lobbyists deprive the ACL's members of their rights to equal protection and due process under the Fourteenth Amendment. *See ACL* Complaint ¶ 29. The *ACL* Plaintiffs complain about four different distinctions the State has drawn in prohibiting certain contributions. First, Plaintiffs protest that the Act's threshold of $2,000 per year in income from lobbying, which determines which lobbyists are covered by the Act, is arbitrary and capricious. Second, Plaintiffs complain that the Act violates the equal protection clause because it prohibits spouses of lobbyists (including parties to civil unions) from making or soliciting contributions, but does not apply to "persons who live as a family without the benefit of either marriage or civil union." Third, Plaintiffs object that the statute applies only to lobbyists registered to lobby in Connecticut, and does not apply to "persons engaged in

lobbying in other states, or lobbying the United States Government, or persons who will register after the election is conducted." Finally, Plaintiffs complain that the Act is unconstitutional because it applies "communicator lobbyists" under Connecticut law, and does not apply to "other similarly situated advocates whose methods of compensation differs from that of the communicator lobbyists." *Id.*

The *ACL* Plaintiffs' Fourteenth Amendment arguments are groundless. Under the Equal Protection Clause, legislation is "presumed to be valid and will be sustained if the classification is rationally related to a legitimate state interest." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 81 (1988) (internal quotation marks and citation omitted); *see also Roe v. Marcotte*, 193 F.3d 72, 82 (2d Cir. 1999). When considering an equal protection challenge, unless a statutory scheme relies on an inherently suspect classification, like race or sex, it "must be sustained unless 'the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective." *Harris v. McRae*, 448 U.S. 297, 322 (1980) (quoting *McGowan v. Maryland*, 366 U.S. 420, 425 (1961)) (alterations in original). Under the Due Process Clause, legislation is also valid as long as it is "rationally related to a legitimate state interest." *Beatie v. City of New York*, 123 F.3d 707, 711 (2d Cir. 1997) (citation omitted). Because the Act does not involve any suspect classification and because the distinctions it draws are rational and closely related to the State's goal of reducing the corruption and appearance of corruption arising from lobbyist contributions, the Act's constitutionality must be sustained.

The $2,000 threshold adopted by the Act is plainly a reasonable dividing line between the professional lobbyists from whom the Act found it necessary to prohibit contributions and others who do not engage in lobbying as a significant business activity.[4] The General Assembly reasonably chose to prohibit contributions from professional lobbyists,

because it was professional lobbyists who have obtained undue access and influence in the Capitol and who provided the greatest threat of corruption or the appearance of corruption. The legislature was not constitutionally required to impose the Act's restrictions on any individual who might on occasion engage in activity that could be considered lobbying, since there was no reason to believe that such individuals present the same danger of corruption. The $2,000 limitation is well established in Connecticut regulation of lobbyists, *see* DeFronzo Decl. ¶ 17, distinguishing between those persons who must register as lobbyists from those that are not required to do so. *See* Conn. Gen. Stat. § 1-94; *see also id.* § 1-91(l)(8). It plainly provides a rational basis for distinguishing between the lobbyists who should be covered by the Act and others who are not.

For similar reasons, there is no basis for the *ACL* Plaintiffs' claim that the Act is invalid because it draws a distinction between communicator lobbyists under Connecticut law and "other advocates." As discussed above (*see* p. 72, *supra*), the Supreme Court has long held that lobbyists may be validly subject to special regulation, *see United States v. Harriss*, 347 U.S. 612 (1954), and Connecticut has historically subjected lobbyists to such regulation. Moreover, it is the professional lobbyists who earn a living by trying to influence legislative and executive action whose contributions create the potential for and appearance of corruption, and there is no reason to believe that contributions by "other advocates" raise any similar issue. Thus, drawing a distinction between professional lobbyists required to register under Connecticut law and other advocates rationally accomplishes the legislature's purpose, and easily satisfies the deferential standard for reviewing legislation based on non-suspect classifications. As the Supreme Court has emphasized, "[t]he problem of legislative classification is a perennial one, admitting of no

doctrinaire definition. . . . The prohibition of the Equal Protection Clause goes no further than invidious discrimination." *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 489 (1955).

The *ACL* Plaintiffs claim that the Act is unconstitutional because it applies only to lobbyists registered to lobby in Connecticut is frivolous. Since the purpose of the Act is to prevent actual and perceived corruption of the *Connecticut* government, it was obviously rational for the General Assembly to restrict the scope of the Act to those lobbyists who attempt to influence state government activity.

Finally, there is no merit to the *ACL* Plaintiffs' claim that the Act is unconstitutional because it applies only to married lobbyists or those in civil unions, and not to others living together.[76] As discussed above, the purpose of the Act's inclusion of immediate family members within the Act's scope is to ensure that lobbyists cannot easily circumvent its contribution and solicitation restrictions. It was rational for the General Assembly to draw the line of regulation at the lobbyist's spouse and dependent children, rather than attempting a broader definition of other individuals over whom a lobbyist might have influence. Moreover, it is difficult to conceive of alternative statutory language to address others "living as a family" without raising substantial additional definitional issues. The General Assembly was entitled to take the important step of prohibiting contributions by spouses as an anti-evasion measure, without necessarily taking further steps that might be possible. *See Buckley*, 424 U.S. at 105 ("reform may take one step at a time, addressing itself to the phase of the problem that seems most acute," without constituting invidious discrimination).

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[76] *See* Conn. Gen. Stat. § 46b-38oo (requiring that persons in civil unions be treated the same as spouses for all purposes).

Because the Act's classifications are rational, and rationally related to the State's legitimate objective of preventing corruption and the appearance of corruption, the Act does not violate Plaintiffs' rights under the Fourteenth Amendment.

IV. THERE IS NO MERIT TO THE *ACL* PLAINTIFFS' CLAIMS UNDER THE CONNECTICUT CONSTITUTION

In addition to their claims under the United States Constitution, the ACL Plaintiffs also allege in Count Two violations of their free speech rights protected by Article first, Sections 4 and 5, of the Connecticut Constitution. *See ACL* Complaint ¶ 32. Article first, Section 4 provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty." Article first, Section 5, provides: "No law shall ever be passed to curtail or restrain the liberty of speech or of the press."

However, the proper analysis of the ACL Plaintiffs' claims under the State Constitution is no different than the analysis set out above with respect to their First Amendment claims. The Connecticut Supreme Court has consistently held that the decisions of the United States Supreme Court are "persuasive authority to be afforded respectful consideration" on questions of fundamental rights. *Horton v. Meskill*, 172 Conn. 615, 641-42, 376 A.2d 359, 372 (1977); *see also State v. Davis*, 199 Conn. 88, 94, 506 A.2d 86, 89 (1986). With respect to issues of free speech in particular, Connecticut courts follow the decisions of the United State Supreme Court "when they provide no less individual protection than is guaranteed by Connecticut law." *Horton*, 172 Conn. at 641-42, 376 A.2d at 372; *see also Grievance Comm. for Hartford-New Britain Judicial Dist. v. Trantolo*, 192 Conn. 15, 23, 470 A.2d 228, 233 (1984) ("tak[ing] guidance" from U.S. Supreme Court in analyzing claim of protected commercial speech); *Caldor, Inc. v. Heslin*, 215 Conn. 590, 600, 577 A.2d 1009, 1015 (1990) ("In determining the protection

afforded commercial speech by the state constitution, we are guided by the United States Supreme Court's decisions in this area."); *French v. Amalgamated Local Union 376, UAW*, 203 Conn. 624, 628, 526 A.2d 861, 863 (1987) (applying federal First Amendment principles to claims brought under both federal and Connecticut Constitutions); *State v. Weber*, 6 Conn. App. 407, 414-15, 505 A.2d 1266, 1270-71 (1986) (applying "fighting words" doctrine developed under federal constitution to speech claim under Connecticut Constitution); *State v. Torwich*, 38 Conn. App. 306, 311, 661 A.2d 113, 117 (1995) (same).

While the Connecticut Supreme Court reserves the right to interpret fundamental rights under the Connecticut Constitution more broadly than federal rights, *State v. Linares* 232 Conn. 345, 377, 655 A.2d 737, 753 (1995), as a practical matter, its decisions in the free speech area track federal First Amendment jurisprudence. For example, in *Cologne v. Westfarms Assocs.*, 192 Conn. 48, 469 A.2d 1201 (1984), the Connecticut Supreme Court rejected the contention that the Connecticut Constitution afforded greater rights to engage in political speech on private commercial property than had been recognized under the federal constitution. 192 Conn. at 63, 469 A.2d at 1209; *see also State v. Andrews*, 150 Conn. 92, 96, 186 A.2d 546, 549 (1962) (following federal precedent in obscenity case); *Ramos v. Town of Vernon*, 254 Conn. 799, 817, 761 A.2d 705, 718 (2000) (relying on federal decisions in rejecting claims under Connecticut Constitution arising out of curfews).[77]

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[77] Even in the rare cases where the Connecticut Supreme Court has articulated a departure from prevailing First Amendment doctrine, the Court has chosen as its alternative a different test developed under federal First Amendment jurisprudence, and come to the same result as federal law. Thus, in *Linares*, the Court, in considering the constitutionality of a Connecticut statute outlawing disturbances in the General Assembly, declined to follow more recent U.S. Supreme Court case law and concluded that the "more speech protective" test set forth in *Grayned v. Rockford*, 408 U.S. 104 (1972) – which by that time had been supplanted in federal jurisprudence – was more in keeping with the language and purpose of the Connecticut Constitution. 232 Conn. at 345, 655 A.2d at 737. Despite the different test, however, the Connecticut Supreme Court concluded that the statute was constitutional under either constitution. 232 Conn. at 385; 655 A.2d at 756. *See also Leydon v. Town of Greenwich*, 257 Conn.

Accordingly, there is no basis upon which the Court could conclude that the Connecticut Supreme Court would adopt an analytical approach regarding the constitutionality of the Act any different from the approach developed by the federal courts over the past three decades, since *Buckley v. Valeo* was decided.

In any event, should the Court decide to grant summary judgment to Defendants on Plaintiffs' federal claims, the Court should decline to exercise supplemental jurisdiction over the remaining state constitutional claims, since consideration of those claims would require this Court "to interpret state law in the absence of state precedent." *Swain v. Doe*, No. 3:04-CV-1020 (SRU), 2006 WL 1668768, at *6 (D. Conn. June 2, 2006) (Underhill, J.).

V. ANY CONSTITUIONAL INFIRMITY IN THE ACT IS SEVERABLE, AND THE VALIDITY OF THE ACT AS A WHOLE SHOULD BE SUSTAINED

To the extent that the Court may conclude that some aspect of the Act's prohibitions on lobbyist and contractor contributions and solicitation is invalid – which, we submit, it should not – the balance of the Act should remain effective under applicable Connecticut law and Supreme Court precedent. Whether a statute is severable is a question of state law. *See Leavitt v. Jane L.*, 518 U.S. 137, 139-44 (1996); *Watson v. Buck*, 313 U.S. 387, 395-96 (1941); *National Advertising Co. v. Town of Niagara*, 942 F.2d 145, 148 (2d Cir. 1991). The general rule under Connecticut law is that, "[i]f any provision of any act passed by the General Assembly or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of such act." Conn. Gen. Stat. § 1-3; *see also Payne v. Fairfield Hills Hosp.*, 215 Conn. 675, 685, 578 A.2d 1025, 1030 (1990) (reading Section 1-3 to mean that "courts should presume the severability of the provisions and

318, 347-49, 777 A.2d 552, 574-75 (2001) (taking a similar approach with respect to analysis of validity of Town of Greenwich ordinance banning non-resident access to town beaches under state and federal constitutions).

the applications of statutes"). In order to overcome this presumption of severability, a party must show "that the portion declared invalid is so mutually connected and dependent on the remainder of the statute as to indicate an intent that they should stand or fall together, and that this interdependence would warrant a belief that the legislature would not have adopted the remainder of the statute independently of the invalid portion." *State v. Menillo*, 171 Conn. 141, 145, 368 A.2d 136, 138-39 (1976) (citation omitted).

There is no basis for any conclusion here that the entire Act must fall even if some aspect of the lobbyist or contractor prohibitions is held invalid. In analogous cases, the Supreme Court has severed unconstitutional portions of campaign finance laws from the portions that the Court upheld. For example, in *McConnell*, although the Court invalidated certain aspects of BCRA, it severed the unconstitutional portions and upheld the remainder of the law, including its contribution restrictions. 540 U.S. at 195-96 n.80, 231, 233. Similarly, in *Buckley*, the Court upheld the contribution restrictions and public financing aspects of the Federal Election Campaign Act while striking down the Act's expenditure limits. With respect to severability, the Court explained: "Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." 424 U.S. at 108-09 (quoting *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210, 234 (1932)).

Moreover, there is no need for the Court to guess at the legislative intent in this case, because the General Assembly has specifically addressed the severability issue and concluded that the Act should remain effective except in one very narrow circumstance. As discussed above (*see* pp. 29-31, *supra*), the Connecticut legislature considered the severability of the Act in the 2006 Amendments, and concluded that the only circumstance in which

invalidation of one portion of the Act should have an impact on the validity of the remainder of the Act's provisions was in the event that the CEP was invalidated. *See* Conn. Gen. Stat. § 9-717. But the legislature adopted no such rule with respect to invalidity of any aspect of the contractor or lobbyists bans, and, in the absence of any such provision, the general Connecticut rule of severability should control.

CONCLUSION

For the foregoing reasons, this court should grant the Defendants' motion for partial summary judgment, dismissing Count Four of the *Green Party* Complaint and dismissing the ACL Complaint in its entirety.

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Respectfully submitted,

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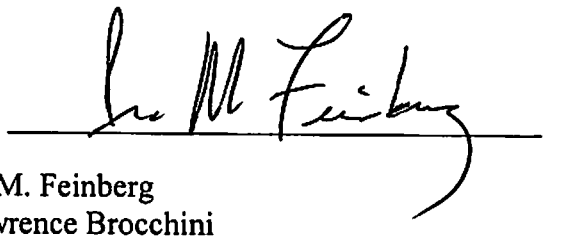
By: 

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