UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Connecticut Statutes

Connecticut Agency Regulations

Additional Connecticut Statutes

Public Acts

Other Authorities

INTRODUCTION

This case challenges the constitutionality of certain Connecticut statutes as enacted and amended by *An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices*, Pub. Act. No. 05-5 (Dec. 7, 2005) (the "December 2005 Act"), as further amended by *An Act Concerning the Campaign Finance Reform Legislation and Certain Election Law and Ethics Provisions*, Pub. Act. No. 06-137 (June 6, 2006) (the "June 2006 Act"), and as further amended by *An Act Concerning the State Contractor Contribution Ban and Gifts to State and Quasi-Public Agencies*, Pub. Act No. 07-1 (Feb. 8, 2007) (the "February 2007 Act") (collectively referred to as the "Campaign Finance Reform Act" or the "CFRA"). Plaintiffs' motion for summary judgment concerns Count Four of the Amended Complaint (Dkt. No. 17, filed Sept. 29, 2006) and addresses Connecticut General Statutes §§ 9-610(h)-(k), 9-612(g),[1] those parts of the CFRA that ban lobbyists and their immediate family members, state contractors, prospective state contractors, and principals of state contractors and prospective state contractors from making or soliciting certain campaign contributions. The bans impose unprecedented limitations on the ability of the aforementioned groups to give money to or fundraise on behalf of political committees, party committees, and candidates for statewide and legislative office. These restrictions unjustifiably prohibit permissible expression and association and contravene the First and Fourteenth Amendments of the United States Constitution.

[1] The relevant provisions of the CFRA were re-codified in January 2007 such that statutes formerly numbered § 9-333 *et seq*. are now numbered § 9-600 *et seq*. Plaintiffs refer to the old codification throughout the Amended Complaint. In this memorandum, plaintiffs will refer to the current statutory provisions excepting only historical references to the law at the time of the enactment of the CFRA.

Plaintiffs are involved in Connecticut electoral politics in varying capacities and are affected by the CFRA in multiple ways. Plaintiffs Elizabeth Gallo ("Gallo") and Roger Vann[2] ("Vann") are communicator lobbyists, plaintiff Ann Robinson ("Robinson") is a principal of a state contractor, and plaintiff Joanne Philips ("Philips") is the spouse of a communicator lobbyist. Collectively, plaintiffs' claims present a composite picture of the extensive manner in which the CFRA infringes core First Amendment rights. The contribution and solicitation prohibitions radically depart from clearly established case precedent and have no support in fact or law. For the reasons set forth below, plaintiffs are entitled to summary judgment and the offending prohibitions should be permanently enjoined.

FACTUAL BACKGROUND

I. LOBBYISTS AND MEMBERS OF THEIR IMMEDIATE FAMILIES

The extensive record developed by the parties provides a detailed picture concerning the role of lobbyists in relation to the legislative process and political campaigns. Lobbyists represent diverse and important interests in the State of Connecticut. They represent businesses, unions, trade associations, and advocacy organizations. The access and influence they exert on the legislative process is directly attributable to the importance of their clients in the affairs of the state. Lobbyists facilitate the legislative process in numerous ways that are both desirable and essential in a responsive democracy.

The record also demonstrates that some lobbyists are involved in political campaigns by, among other things, making contributions and raising money. The amount of money contributed

[2] Plaintiff Roger Vann has resigned from his position as the Executive Director of the American Civil Liberties Union of Connecticut. The organization has hired a new executive director who will begin his tenure on September 10, 2007. Mr. Vann remains registered as a communicator lobbyist.

by lobbyists as a group is modest, and there is nothing in the record to suggest that lobbyists systematically funnel large amounts of money raised from their clients (or from elsewhere) into political campaigns. Moreover, the record suggests that fundraising is not an essential element of effective advocacy and that the CFRA's bans will not affect the role of lobbyists in the legislative process.

A. Restrictions Imposed by the CFRA

The CFRA imposes a ban on contributions[3] by communicator lobbyists[4] (hereinafter "lobbyists"), members of the immediate families[5] of lobbyists, and political committees[6]

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[3] A "contribution" is:

> (1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party;
> (2) A written contract, promise or agreement to make a contribution for any such purpose;
> (3) The payment by any person, other than a candidate or campaign treasurer, of compensation for the personal services of any other person which are rendered without charge to a committee or candidate for any such purpose;
> (4) An expenditure when made by a person with the cooperation of, or in consultation with, any candidate, candidate committee or candidate's agent or which is made in concert with, or at the request or suggestion of, any candidate, candidate committee or candidate's agent, including a coordinated expenditure; or
> (5) Funds received by a committee which are transferred from another committee or other source for any such purpose.

Conn. Gen. Stat. § 9-601a.

[4] The CFRA defines the terms "lobbyist" and "communicator lobbyist" by reference to the Code of Ethics for Lobbyists. *See* Conn. Gen. Stat. § 9-601(16). A "communicator lobbyist" is "a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action." *Id*. § 1-91(v). A "lobbyist," in turn, is defined as "a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures, or receives or agrees to receive compensation, reimbursement, or both, and such compensation, reimbursement or expenditures are two thousand dollars or more in any calendar year or the combined amount thereof is two thousand dollars or more in any such calendar year." *Id*. § 1-91(l). "Lobbying" means "communicating directly or soliciting others to communicate with any official or his staff in the legislative or executive branch of government or in a quasi-

established or controlled by lobbyists or members of the immediate families of lobbyists to, or for the benefit of:

(1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative;
(2) a political committee established or controlled by any such candidate;
(3) a legislative caucus committee or a legislative leadership committee; or
(4) a party committee.

Conn. Gen. Stat. § 9-610(h). The only "state-level" contributions lobbyists may make are to unaffiliated political committees ("PACs") established by advocacy groups or other organizations. But the lobbyists have no control over how the PACs choose to spend this money, because the contributions cannot be "earmarked" for the lobbyists' candidates of choice. *See* State Elections Enforcement Commission, Revised Contribution Limits & Restrictions (Apr. 17, 2007), attached as **Exhibit 1**; *see also* Conn. Gen. Stat. §§ 9-605, 9-613, 9-615, 9-618 (describing various restrictions applicable to different types of political committees). Contributions to PACs are not a substitute for direct contributions to candidates.

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public agency, for the purpose of influencing any legislative or administrative action." *Id*. § 1-91(k). For the purposes of these provisions, "legislative action" includes "any matter which is within the official jurisdiction or cognizance of the legislature." *Id*. § 1-91(j). "Administrative action" includes any matter which is within the official jurisdiction or cognizance of any executive or quasi-public agency. *Id*. § 1-91(a).

[5] "Immediate family" includes "the spouse or a dependent child of an individual." Conn. Gen. Stat. § 9-601(24).

[6] "Political committee" is defined as

> (A) a committee organized by a business entity or organization, (B) persons other than individuals, or two or more individuals organized or acting jointly conducting their activities in or outside the state, (C) an exploratory committee, (D) a committee established by or on behalf of a slate of candidates in a primary for the office of justice of the peace, but does not mean a candidate committee or a party committee, (E) a legislative caucus committee, or (F) a legislative leadership committee.

Conn. Gen. Stat. § 9-601(3).

The CFRA also prohibits lobbyists, immediate family members of lobbyists, and their political committees from soliciting contributions on behalf of statewide and state legislative candidates, political committees established by any such candidate, legislative caucus and leadership committees, and party committees.[7] *Id*. § 9-610(i). The CFRA defines the term solicit as:

> (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, campaign treasurer, deputy campaign treasurer or any other officer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee.

Id. § 9-601(26). In addition, lobbyists are prohibited from purchasing advertising space in a program for fundraising affairs sponsored by town committees.[8] *Id.* § 9-610(i). The penalty for violating these provisions is a civil fine imposed by the State Elections Enforcement Commission (the "SEEC") of "not more than five thousand dollars or twice the amount of any

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[7] A "party committee" is a state central committee or town committee. Conn. Gen. Stat. § 9-601(2). The terms "legislative caucus committee" and "legislative leadership committee" are defined by reference. *Id.* § 9-601(22)-(23). Section 9-605(e)(2) explains that members of the same political party in a house of the General Assembly are permitted to establish one legislative caucus committee. *Id*. § 9-605(e)(2). The speaker of the House of Representatives, the majority leader of the House of Representatives, the president pro tempore of the Senate, and the majority leader of the Senate may each establish one legislative leadership committee, while the minority leader of the House of Representatives and the minority leader of the Senate may each establish two legislative leadership committees. *Id*. § 9-605(e)(3). Thus, there are four permitted caucus committees and eight permitted leadership committees. In addition, the CFRA amended Connecticut's law to prohibit individuals from establishing or controlling more than one political committee. *Id*. § 9-605(e)(1). Under the previous regime, leaders and prospective leaders in the legislature had formed approximately 30 PACs in order to contribute, in turn, to other candidates and to mitigate the significance of contribution limits. Pelto Dep. at 12-14, attached as **Exhibit 2**; Dyson Dep. at 35-41, attached as **Exhibit 3**.

[8] This provision will no longer be effective after September 30, 2007. *See June 2006 Act*, § 25 (repealing § 24 of the *December 2005 Act* and re-drafting § 9-333l (presently § 9-610), effective October 1, 2007).

contribution donated or solicited in violation of this subsection, whichever is greater." *Id*. § 9-610(k).

To clarify the scope of the prohibition, the SEEC has provided two declaratory rulings. The first addressed the meaning of the term solicit in Section 9-601(26). *See* State of Connecticut, State Elections Enforcement Commission, Declaratory Ruling 2006-1, Lobbyist Contribution and Solicitation Ban (hereinafter "SEEC Declaratory Ruling 2006-1"), attached as **Exhibit 4.** "[R]equesting that a contribution be made" means an express request or a request that "a reasonably prudent person would not construe . . . as anything other than a request" that a contribution be made. *Id*. at 3. "[P]articipating in any fund-raising activities" includes attending a fundraiser, even if a ticket is not purchased, as well as forwarding tickets. *Id*. at 4. However, considerable confusion remains regarding the scope of the solicitation ban. *See, e.g.*, Garfield Dep. at 79 (lobbyist should remove himself from "meet and greet" if candidate, *sua sponte*, requests contributions), attached as **Exhibit 5**; DeFronzo Dep. at 34 (lobbyists should disengage and avoid direct involvement), attached as **Exhibit 6**; Philips Am. Decl. ¶ 22 (expressing concern about speech relating to candidates), attached as **Exhibit 7**.

The SEEC's second declaratory ruling delved into the construction of the term "established" and "controlled" in reference to PACs covered by the CFRA's prohibitions. *See* State of Connecticut, State Elections Enforcement Commission, Declaratory Ruling 2006-2, Political Committees Established or Controlled by Communicator Lobbyists (hereinafter "SEEC Declaratory Ruling 2006-2"), attached as **Exhibit 8**. A political committee was "established" by a communicator lobbyist if a communicator lobbyist was involved in its "organization, origination, formation or foundation . . . ." and that communicator lobbyist remains presently

registered as one.[9] *Id*. at 3-4. The SEEC engages in a fact-based determination to decide whether a political committee is "controlled" by a communicator lobbyist. *Id*. at 4. Among the factors the SEEC may consider are whether the communicator lobbyist: (1) has "substantial involvement or influence" in the decisions regarding the making or soliciting of contributions; (2) "directs or participates" in the selection of the officers of the committee; or (3) serves as an officer for the committee. *Id*. PACs that rely on the advice of lobbyists are considered to be "controlled" by the lobbyist. Garfield Dep. at 64 (Pl. Ex. 5).

The threshold for qualification as a lobbyist is quite low. An individual who receives or spends as little as $2,000 per year for lobbying activities is considered to be a lobbyist. Conn. Gen. Stat. § 1-91(l). As a result, a broad spectrum of individuals, many of whom are not primarily engaged in lobbying activities, is severely restricted by the CFRA. Presently, there are 622 registered communicator lobbyists in Connecticut. Office of State Ethics: Lobbyist Registration Portal, List of Active Communicator Lobbyists for 2007-08, *available at* https://www.ctose.net/forms/search/registeredList.asp (last visited July 4, 2007). However, only fifty of the registered communicator lobbyists are regularly involved in legislative activities. Gallo Am. Decl. ¶ 11, attached as **Exhibit 9**. It has not been determined exactly how many individuals are affected by section § 9-610(h)-(k), because neither the Office of State Ethics nor the SEEC has compiled a comprehensive list of spouses and dependent children of communicator lobbyists. Garfield Dep. at 106 (Pl. Ex. 5).

[9] SEEC Declaratory Ruling 2006-2 explains that the term "communicator lobbyist" was not added to the Code of Ethics for Lobbyists until the adoption of Public Act No. 95-144. SEEC Declaratory Ruling 2006-2 at 4. As a result, no committee established before June 28, 1995, the effective date of Public Act No. 95-144, is considered a committee established by a communicator lobbyist by the SEEC. *Id*.

In addition, hundreds of PACs are affected by the CFRA. Most PACs, other than those formed by candidates or affiliated with political parties, have been established by entities that are clients of lobbyists. *See* Memorandum on Proposed Ban on Contributions by Lobbyists from Jeffrey B. Garfield, Executive Director and General Counsel to the SEEC, to the Members of the Campaign Finance Working Group, Sept. 1, 2005 (hereinafter "Garfield Lobbyist Memo"), at 2, attached as **Exhibit 10**. PACs that regularly rely on the advice of lobbyists are considered to be "controlled" by the lobbyist, Garfield Dep. at 64 (Pl. Ex. 5); SEEC Declaratory Ruling 2006-2 at 4 (Pl. Ex. 8), and many of these PACs have historically relied heavily upon such information from lobbyists.[10] *See, e.g.*, Gallo Am. Decl. ¶¶ 41-46 (Pl. Ex. 9).

B. Prior Restrictions on Lobbyists and Their Immediate Family Members

Prior to the enactment of the CFRA, lobbyists, members of their immediate family, and PACs established or controlled by them were subject to significant restrictions on their political activities. Lobbyists and political committees established by or on behalf of lobbyists (either communicator or client) were prohibited from making contributions to or soliciting contributions on behalf of "a candidate or exploratory committee established by a candidate for nomination or election to the General Assembly or a state office or . . . a political committee" while the General Assembly was in session.[11] Conn. Gen. Stat. § 9-333*l*(e) (2005). Connecticut's General

[10] If a lobbyist divests control over the PAC, the PAC is no longer subject to the CFRA's restrictions. *See* Letter from State Elections Enforcement Commission to Attorney Paul McCormick, Opinion of Counsel 06-3 (Aug. 25, 2006), at 3, attached as **Exhibit 11**.

[11] The recipient political committees affected by this restriction included political committees: "(i) established for an assembly or senatorial district, (ii) established by a member of the General Assembly or a state officer or such member or officer's agent, or in consultation with, or at the request or suggestion of, any such member, officer or agent, or (iii) controlled by such member, officer or agent, to aid or promote the nomination or election of any candidate or candidates to the General Assembly or a state office." Conn. Gen. Stat. § 9-333*l*(e) (2005).

Assembly is in regular session from January until June in years following state elections and from February until May in the years of state elections. A. Sauer Dep. at 207, attached as **Exhibit 12**. General contribution limits applied to contributions made by lobbyists when the General Assembly was not in session. *See* Conn. Gen. Stat. §§ 9-333*l*(e) (2005) (in-session restriction), 9-333m (2005) (limits set at $2,500 for Governor, $500 for State Senate, and $250 for State Representative; aggregate total limited at $15,000).[12] Contributions by PACs established by lobbyists were governed by the applicable limitations. *See* Conn. Gen. Stat. §§ 9-333o (2005) (business entity PACs); 9-333q (2005) (organizational PACs).

Although the CFRA bans are generally broader, the in-session ban remains in effect. *See* Conn. Gen. Stat. § 9-610(e). In addition, anyone under eighteen years of age remains prohibited from making contributions in excess of $30. *Id*. § 9-611(e) (formerly § 9-333m(e)). Also, all persons remain prohibited from making contributions on behalf of others. *Id*. § 9-622(7) (formerly § 9-333x(7)). Contributions must be made to the campaign treasurer or to a solicitor,[13] who is appointed by the campaign treasurer. *Id*. § 9-602(b) (formerly 9-333d). If a solicitor is appointed, the campaign treasurer must "receive and report all contributions made or promised to each solicitor" and the solicitor is required to "submit to the campaign treasurer a list of all contributions made or promised to him." *Id*. § 9-606(c) (formerly § 9-333h).

Prior to the CFRA bans, lobbyists who, in combination with members of their immediate families, contributed more than $1,000 to political committees (including candidate committees, party committees, and PACs) during any reporting year (July 1 to June 30), were required to file

[12] The CFRA raised the limits for contributions to candidates for most state offices. Conn. Gen. Stat. § 9-611(a) (limits set at $3,500 for Governor, $1,000 for State Senate, and $250 for State Representative; aggregate total limited at $15,000).

[13] "Solicitor" means "an individual appointed by a campaign treasurer of a committee to receive, but not to disburse, funds on behalf of the committee." Conn. Gen. Stat. § 9-601(14).

sworn statements with the Secretary of the State's Office in which the lobbyists made a detailed disclosure regarding these contributions. Conn. Gen. Stat. § 9-333*l*(g) (2005); *see also* Itemized Disclosure of Campaign Contributions and Purchases by a Lobbyist, Elizabeth Gallo, June 30, 2005, attached as **Exhibit 13**. Each lobbyist who, in conjunction with members of his immediate family, contributed less than $1,000 was nevertheless required to file a sworn statement of exemption. Conn. Gen. Stat. § 9-333*l*(g) (2005); *see also* Certification of Exemption from Filing Itemized Disclosure of Contributions and Purchases by a Lobbyist, Barry R. Williams, July 10, 2006, attached as **Exhibit 14**. In 2007, lobbyists must submit these forms to the SEEC.[14] *Id*. § 9-610(g). Lobbyists were and remain subject to numerous reporting requirements under the Code of Ethics for Lobbyists. *See* Factual Statement, I.H, *infra*.

C. Contributions Made by Lobbyists and Lobbyist-Controlled PACs

Lobbyists contribute modest amounts of money to political campaigns in Connecticut. The National Institute on Money in State Politics (the "National Institute") reports that lobbyists contributed $262,788 of the $25.2 million (1.04%) in total receipts for state candidates and committees in 2006 and $209,805 of the $10.6 million (1.97%) raised by state candidates and committees in 2004. National Institute on Money in State Politics, State at a Glance, Connecticut 2006, Contribution Totals by Economic Interest, attached as **Exhibit 15**; National Institute on Money in State Politics, State at a Glance, Connecticut 2004, Contribution Totals by Economic Interest, attached as **Exhibit 16**.[15]

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[14] This reporting provision will not be effective after October 1, 2007 if plaintiffs' motion for summary judgment is denied. *See June 2006 Act* § 25 (repealing § 24 of the *December 2005 Act* and re-drafting § 9-*333l*, effective October 1, 2007).

[15] The National Institute describes itself as a nonpartisan organization "dedicated to accurate, comprehensive and unbiased documentation and research on campaign finance at the state level." National Institute on Money and State Politics, About the Institute, Mission and History,

A report produced by the Office of Legislative Research ("OLR") regarding 2002 statewide and 2004 legislative election receipts and an analysis of certain candidate disclosures from 2006 corroborate the data from the National Institute. *See* Office of Legislative Research, Report on Contributions by Communicator Lobbyists, Feb. 6, 2007, attached as **Exhibit 17**; Report on Contributions to Connecticut's Candidates for Governor and the General Assembly in 2006 (hereinafter "Report on 2006 Campaign Receipts"), attached as **Exhibit 18**. In 2002, communicator lobbyists contributed 2.79% of the amount raised by Governor John Rowland, 0.62% of the amount raised by Secretary of the State Susan Bysiewicz, 1.84% of the amount raised by State Treasurer Denise Nappier, 3.04% of the amount raised by State Comptroller Nancy Wyman, and 0.01 % of the amount raised by Attorney General Richard Blumenthal. Report on Contributions by Communicator Lobbyists at 4 (Pl. Ex. 17). The amount contributed by communicator lobbyists to candidates for the House of Representatives and the Senate in 2004 is comparable. Communicator lobbyists contributed 2.22% of the $4.36 million raised by all candidates for the House of Representatives. *Id*. at 8-18. Only seven candidates for State Representative raised more than $2,000 from communicator lobbyists (five of which raised less than $2,500). *Id*. In the Senate, communicator lobbyists contributed 1.90% of the $4.37 million raised by all candidates. *Id*. at 5-7. Eight candidates for State Senate raised more than $3,000 from communicator lobbyists (with one raising in excess of $5,000). *Id*.

Data from the 2006 legislative races tells much of the same story. Lobbyists contributed 1.98% of the $3.51 million raised by all candidates for seats in the Senate. Report on 2006 Campaign Receipts (Pl. Ex. 18) at 1-3. Only 7 of 64 candidates reporting receipts received more

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available at http://www.followthemoney.org/Institute/index.phtml (last visited July 8, 2007). Defendants have previously relied on data supplied by the National Institute. *See* Letter from Suzanne Novak and Perry A. Zinn Rowthorn to Judge Stefan R. Underhill (Dkt. No. 115).

than $3,000 from lobbyists (only two of which exceed $4,000). *Id*. Candidates for the House of Representatives in the eleven most competitive districts (based on popular vote) reported that 0.73% of their $315,150 in total receipts came from lobbyists. *Id*. at 4. None of the seven candidates (out of 22 total) who reported contributions from lobbyists received more than $900 in contributions from lobbyists. *Id*. The candidates for seats in the House of Representatives who were in the top thirty for total receipts[16] reported that 2.19% of the $971,185 they raised came from lobbyists. *Id*. at 5-6. Only four of these thirty candidates reported receiving more than $2,000 in contributions from lobbyists. *Id*.

A review of the itemized disclosure and exemption forms submitted by lobbyists to the Secretary of the State's office in 2003 and 2005 reveals that few lobbyists, even when their contributions and purchases are combined with their immediate family members, make substantial contributions. *See* Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2003, attached as **Exhibit 19**; Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2005, attached as **Exhibit 20**. As explained above, lobbyists are required to file itemized disclosures (previously with the Secretary of the State and currently with the SEEC) if their contributions to and purchases from committees (when combined with those of their immediate family members) exceed $1,000 annually. Conn. Gen. Stat. § 9-610(g). In 2005, only 97 out of 721 (13.5%) lobbyists were required to submit itemized disclosures. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2005 at 54 (Pl. Ex. 20). For those

[16] The list of thirty candidates for state representative with the highest total expenditures was derived from information on the National Institute's website. *See* National Institute for Money in State Politics, State at a Glance, Connecticut 2006, *available at* http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?si=20067&p=O01A01A01A#house (last visited July 9, 2007). Five candidates for the House (Robert Heagney (R-16); Susan Karp (R-31); Derek E. Donnelly (D-61); Ruth Fahrback (R-61); and Tom Christiano (D-134)) appear in both the top fundraisers and most competitive districts lists.

lobbyists required to provide itemized disclosures, their average contribution total for the reporting year (July 1, 2004 to June 30, 2005) was $2,477.95. *Id.* In 2003, approximately the same number of lobbyists (109) were required to submit itemized disclosures, though that group represented a higher percentage (18.7%) of all lobbyists reporting. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2003 at 73 (Pl. Ex. 19). The average contribution total for the reporting year was slightly higher as well ($3,065.48).[17] *Id.*

The amount of money contributed by PACs "controlled" by communicator lobbyists is a separate measure of the relatively small role played by lobbyists in making campaign contributions. *See* Office of Legislative Research, Report on Contributions by Lobbyists and Lobbyist-Controlled PACs, Oct. 19, 2006, attached as **Exhibit 21**. During the 2002 election, PACs controlled by communicator lobbyists contributed $109,100 of the approximately $10.2 million (1.07%) that was raised by candidates for statewide office. *Id.* at 3. The amount contributed by these PACs to candidates for the House and Senate during the 2004 election cycle is somewhat greater as a percentage (4.95% for the Senate; 5.59% for the House), but the amounts are still modest.[18] *Id.* at 4-18.

D. Fundraising Activities by Lobbyists

Prior to the implementation of the ban on solicitation, some lobbyists solicited contributions on behalf of candidates. *See, e.g.*, Gallo Am. Decl. ¶¶ 55-59 (Pl. Ex. 9). They

[17] The average contribution totals in both 2003 and 2005 were far below the $15,000 aggregate limitation for contributions by Connecticut residents. *See* Conn. Gen. Stat. § 9-611(a).

[18] Candidates for the Senate received $216,430 from lobbyist-controlled PACs, and reported total receipts of more than $4.37 million. Report on Contributions by Lobbyists and Lobbyist-Controlled PACs at 4-6 (Pl. Ex. 21). The amount of money contributed by lobbyist-controlled PACs to House candidates totaled $242,060. *Id.* at 7-18. Candidates for State Representative reported receipts in excess of $4.36 million. *Id.*

were not, however, required to disclose to the state any information regarding the contributions they solicited or collected from their clients or any other source. *Id*. ¶ 87. If a lobbyist was appointed as "solicitor" by a campaign treasurer, the lobbyist (like any other individual) was required to report all contributions collected on behalf of the campaign. Conn. Gen. Stat. § 9-333h (2005). Solicitors, however, were not (and are still not) required to report any of this information to the SEEC. Garfield Dep. at 74 (Pl. Ex. 5).

Lobbyists solicited contributions both in their capacity as lobbyists and in their individual or private capacities. When lobbyists solicited contributions from their friends, neighbors, and associates, they were acting in their personal capacity. When lobbyists solicited from clients, they were acting in a professional capacity. They were providing a service to their clients by offering advice regarding contributions to the candidates that were most supportive of the issues that were important to the client. Unless the lobbyist actually collected the contributions, however, the lobbyist had no way of knowing whether his suggestion was acted upon. The candidate also would not have known that a contribution was made at the suggestion of a lobbyist unless it was collected and delivered to the candidate by the lobbyist. In any event, the record establishes that effectiveness as a fundraiser did not enable lobbyists to ensure success of the bills supported by their clients. Leahy Dep. at 37 ("if you're a good fundraiser and you're not a good lobbyist, your bills are still going to die"), attached as **Exhibit 22**; *see also* Gallo Am. Decl. ¶ 74 (Pl. Ex. 9).

E. Reasons That Lobbyists Made and Solicited Contributions

Prior to the enactment of the CFRA, lobbyists made and solicited contributions for a variety of reasons – both professional and personal. The record demonstrates that it is a misperception that lobbyists made or solicited contributions primarily to further the interests of

their clients. *See* Gallo Am. Decl. ¶ 49 (Pl. Ex. 9). Many lobbyists are politically active in their private capacities and, like other members of the populace, they contribute or raise money for candidates with whom they agree as a matter of personal ideology. Gallo Dep. at 85-86 (raised money for candidates she supports because they have faced vehement opposition from anti-choice and anti-gay opponents), attached as **Exhibit 23**; Gallo Am. Decl. ¶ 56 (Pl. Ex. 9) (raised money to support the ascendancy of woman into legislative leadership positions); *see also* Williams Dep. at 27 (testifying that he supported candidates with "who[se] philosophy I agree with"), attached as **Exhibit 24**. State Representative William Dyson, a legislator for more than three decades, emphasized that lobbyists who attended his fundraising events did so because they shared his views. Dyson Dep. at 29 (Pl. Ex. 3). Even witnesses for the defendants admitted that lobbyists, like others, make contributions based on the political views of the candidate and to demonstrate agreement or support with the particular candidate's perspective. Anderson Dep. at 70, attached as **Exhibit 25**; Sherwood Dep. at 123, attached as **Exhibit 26**.

In addition, based on the intimacy and intensity of their collaboration with legislators, lobbyists develop personal connections to legislators and made contributions to support candidates with whom they developed personal ties. Gallo Dep. at 37-38 (Pl. Ex. 23) (financially supported candidates with whom she has collaborated on contentious issues); Schepker Dep. at 87 (given money to legislators with whom she had worked in the past and with whom she felt comfortable), attached as **Exhibit 27**; Sherwood Dep. at 12 (Pl. Ex. 26) (consistently made contributions to candidates he considered to be "personal friend[s]").

It is also clear that legislators are not influenced, with regard to actual votes, by contributions from or solicited by lobbyists. Anita B. Schepker, the President of the Connecticut Lobbyists Association, testified that she had never heard of an officeholder or candidate who

implied that her likelihood of success lobbying a bill would improve if she gave or solicited contributions. Schepker Dep. at 114 (Pl. Ex. 27). Barry Williams, a long-time lobbyist, affirmed that political contributions do not play a role in affecting a legislator's position on issues. Williams Dep. at 63 (Pl. Ex, 24); *see also* Gallo Am. Decl. ¶ 52 (Pl. Ex. 9) (legislators not affected by political contributions). James Leahy, another veteran lobbyist, went as far as to call it "naïve" for a lobbyist to believe that contributions could equate to "yes votes." Leahy Dep. at 40 (Pl. Ex. 22). Two of the defendants' key witnesses testified that political contributions had not influenced any of their votes or the votes of other legislators. Pelto Dep. at 87-88 (Pl. Ex. 2) (contribution to his political campaign or to a committee organized by him never influenced him to vote in a way inconsistent with the interests of his constituency); DeFronzo Dep. at 31-32, 50-51 (Pl. Ex. 6); *see also* Smith Dep. at 17 (would not have changed stance regardless of whether lobbyist had helped in campaign, asked for support, or was campaign manager), attached as **Exhibit 28**; Dyson Dep. at 68 (Pl. Ex. 3) (no example in which money or contributions affected legislative outcome).

F. Elements of Being an Effective Lobbyist

Lobbyists are effective due to their variety of advocacy skills; their success does not hinge on their ability to raise money for candidates. Witnesses repeatedly testified about the variety of nuanced skills required of effective lobbyists. Vann Dep. at 96 (pointing to knowledge of issues, hard work, and garnering respect from legislators), attached as **Exhibit 29**; *see also* Leahy Dep. at 49-50 (Pl. Ex. 22) (enumerating multiple skills required); Gallo Am. Decl. ¶¶ 27-37 (Pl. Ex. 9) (same). Personal rapport with legislators is of the utmost significance. A. Sauer Dep. at 12 (Pl. Ex. 12); *see also* Schepker Dep. at 25 (Pl. Ex. 27) (developed strong connections to legislators from committees that she regularly lobbied); Williams Dep. at 49-50 (Pl. Ex. 24);

Gallo Am. Decl. ¶ 35 (Pl. Ex. 9). Credibility, with respect to the information presented, is also vital. Vann Dep. at 96 (Pl. Ex. 29) (discussing Gallo's success); Gallo Am. Decl. ¶ 32 (Pl. Ex. 9) (discussing the need to be candid with legislators).

Knowledge of the legislative process, mobilization of constituents, use of the media, and persuasiveness of the information presented on an issue were also cited as key components of effective advocacy by lobbyists. Gallo Am. Decl. ¶¶ 28-30, 34 (Pl. Ex. 9); A. Sauer Dep. at 25 (Pl. Ex. 12) (discussing need to keep "votes in the room" when amendments added to bills in committee); DeFronzo Dep. at 35 (describing importance of knowledge of legislative process). Utilizing the media and mobilizing constituents to put pressure on legislators is also effective. Gallo Am. Decl. ¶¶ 29-30 (Pl. Ex. 9); *see also* A. Sauer Dep. at 155-56 (Pl. Ex. 12) (describing use of media and grassroots efforts); Williams Dep. at 84-86 (Pl. Ex. 24) (describing importance of grassroots efforts). In addition, lobbyists must know their issues and must be able to convince legislators about the merit of their client's position. Vann Dep. at 44 (Pl. Ex. 29) ("the power of the issues and the power of your arguments rule the day"); DeFronzo Dep. at 36 (Pl. Ex. 6) (most effective lobbyists show all sides of an issue and explain why their position is most meritorious); Gallo Am. Decl. ¶ 34 (Pl. Ex. 9); Smith Dep. at 50-51 (Pl. Ex. 28) (lobbyists most effective when they could break down bills and identify districts impacted); Dyson Dep. at 97 (Pl. Ex. 3) (explaining significance of information provided by lobbyists).

G. Role of Lobbyists in the Legislative Process

Lobbyists, especially those who are regularly in attendance at the State Capitol, have constant interaction with legislators while the General Assembly is in session. DeFronzo Dep. at 31 (Pl. Ex. 6); Gallo Am. Decl. ¶ 38 (Pl. Ex. 9). They are not granted such "access" because they make contributions or raise money for legislators; instead, lobbyists are an integral part of

the legislative process by doing a variety of work at the behest of legislators. Gallo Am. Decl. ¶¶ 21-23 (Pl. Ex. 9). Part of the need for such regular assistance from lobbyists is based on the fact that legislators have minimal support staff upon which they can rely. Gallo Am. Decl. ¶¶ 21-26 (Pl. Ex. 9); Leahy Dep. at 35-36 (Pl. Ex. 22) (lobbyists perform the important function of helping understaffed legislators); Dyson Dep. at 59-60 (Pl. Ex. 3) (State Representative shares assistant with three other legislators).

Lobbyists galvanize support for or opposition to legislation, often at the request of legislators. *See*, *e.g.*, Stolberg Dep. at 19-20 (lobbyists used to create consensus), attached as **Exhibit 30**; A. Sauer Dep. at 157 (Pl. Ex. 12). Along these lines, lobbyists facilitate communications among legislators. Gallo Dep. at 39 (Pl. Ex. 23) (lobbyists frequently rely on legislators to speak with their colleagues). Lobbyists regularly draft bills and amendments at the request of lawmakers. Schepker Dep. at 111 (Pl. Ex. 27) (occasionally drafts legislation); Williams Dep. at 66-67 (Pl. Ex. 24) (lobbyists and legislators regularly pass back and forth drafts of bills). Lobbyists also connect legislators to the opinions of their constituents. Vann Dep. at 22 (Pl. Ex. 29) (lobbyists make legislators aware of the "opinions and views of the minority voices . . . throughout the state").

Most significantly, lobbyists provide valuable information that educates lawmakers about issues and about the implications of legislation. Gallo Am. Decl. ¶ 24 (Pl. Ex. 9). Current and former legislators unanimously testified that lobbyists provide valuable information that assisted them in making difficult decisions. Roraback Dep. at 29 (lobbyists "are a source of information"), attached as **Exhibit 31**; Stolberg Dep. at 19 (Pl. Ex. 30) (lobbyists provide "valuable and useful" information); Rapoport Dep. at 20 (former legislator and Secretary of the State explained "lobbyists . . . do have a constructive role, in providing information to legislators,

in giving legislators different points of view on a topic, et cetera"), attached as **Exhibit 32**; C. Sauer Dep. at 18-19 ("I found it was helpful when I wanted more information about a particular issue to talk to lobbyists, that lobbyists have information which can be provided and they can be very influential."), attached as **Exhibit 33**; DeFronzo Dep. at 32 (Pl. Ex. 6) (lobbyists provide a valuable resource when it comes to information).

The centrality and significance of their role when combined with the importance of the interests they represent ensures that lobbyists regularly interact with legislators. Dyson Dep. at 63 (Pl. Ex. 3) ("Lobbyists are employed to have a presence, to promote those things that their people want to hire them to do."). It is a misperception that lobbyists are so central and so influential in the legislative process because of their ability to secure funds for legislators. Dyson Dep. at 102-03 (Pl. Ex. 3). Witnesses for the defendants candidly testified that the access and influence of lobbyists will not be affected by the CFRA law because influence flows from the importance of the interests represented by their clients – not from how much money they contribute or raise. *See*, *e.g.*, DeFronzo Dep. at 47, 60 (Pl. Ex. 6).

H. Extensive Regulation of Lobbyists

Prior to the enactment of the CFRA, lobbyists were required to make extensive disclosures about their professional and political activities. Gallo Am. Decl. ¶¶ 77-87 (Pl. Ex. 9); Schepker Dep. at 81-82 (Pl. Ex. 27); *see also* Stolberg Dep. at 18 (Pl. Ex. 30) (describing Connecticut's regulation of lobbyists as stricter than that of lobbyists in Washington, D.C.); Anderson Dep. at 50-51 (Pl. Ex. 25) (describing extensive regulations as "fairly complicated"). First and foremost, lobbyists are subject to random and extensive audits of their business records.

The Code of Ethics requires all lobbyists to register with the Office of State Ethics. Conn. Gen. Stat. § 1-94. Every two years, lobbyists must complete a form that provides

information about the lobbyists' clients, the terms of compensation for lobbying, and the areas of legislative or administrative action on which the lobbyist expects to lobby. *Id*. § 1-95; A. Sauer Dep. at 205 (Pl. Ex. 12). Every January, communicator lobbyists must submit reports regarding the compensation and reimbursements they received from each lobbying effort during the previous year. Conn. Gen. Stat. § 1-96b. In addition, communicator lobbyists must make annual disclosures of the terms of their contracts with their clients, including the categories of work to be performed and the dollar value or compensation rate of the contract. *Id*. On a quarterly basis, communicator lobbyists must disclose any expenditure for the benefit of public officials in the legislative or executive branch which is unreimbursed. *Id*. Within thirty days of paying or reimbursing a public official or state employee ten dollars or more for a necessary expense,[19] a lobbyist must file a form that names the individual given the payment and the amount of the expense. *Id*. § 1-96e. The Office of State Ethics, which administers and enforces the Code of Ethics for Lobbyists, may require any lobbyist to make all documents substantiating his financial reports concerning lobbying activities available for an extensive audit.[20] *Id*. § 1-96a; Gallo Am. Decl. ¶¶ 85-86 (Pl. Ex. 9).

In addition, lobbyists are required to make itemized disclosures of their campaign contributions if they exceed $1,000 annually, *see* Factual Statement I.B, *supra*, and were previously prohibited from making contributions during the legislative session. They are still

[19] "Necessary expense" is defined as:

> a public official's or state employee's expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees.

Conn. Gen. Stat. § 1-79(q).

[20] The lobbyists to be audited are selected "by lot" and no lobbyist can be subject to an audit more than once in any three-year period. Conn. Gen. Stat. § 1-96a.

required to wear a visible identification tag when engaged in lobbying activities. Conn. Gen. Stat. § 1-101; Vann Dep. at 142-43 (Pl. Ex. 29). Lobbyists are prohibited from giving a gift to a state employee, public official, candidate for public office, or a member of any such person's staff or immediate family. Conn. Gen. Stat. § 1-97(a) (citing *id*. § 1-91(g)). Lobbyists are also prohibited from being compensated contingent upon the outcome of administrative or legislative action. *Id*. § 1-97(b). Lobbyists who violate the Code of Ethics are subject to a fine of up to $10,000 and may be prohibited from engaging in the profession of lobbying for up to two years. *Id*. § 1-99(a). As Brian Anderson, an experienced lobbyist, explained, lobbyists had "to be careful with so many other things . . . " prior to the enactment of the CFRA. Anderson Dep. at 50 (Pl. Ex. 25).

I. Lack of Evidence of Wrongdoing by Lobbyists

Though lobbyists are subject to intense scrutiny, their activities have caused limited concern. Several long-time lobbyists testified that none have had an ethics complaint filed against them. Williams Dep. at 10 (Pl.. Ex. 24); Gallo Dep. at 17 (Pl. Ex. 23); Leahy Dep. at 45 (Pl. Ex. 22). Current and former legislators agreed that there have been no findings of widespread misconduct by lobbyists. Roraback Dep. at 18-19 (Pl. Ex. 31) (no findings of actual misconduct or corruption); Stolberg Dep. at 18 (Pl. Ex. 30) (no evidence of actual corruption); C. Sauer Dep. at 22-23 (Pl. Ex. 33) (no concrete examples of wrongdoing or corruption); DeFronzo Dep. at 16-17 (Pl. Ex. 6) (had not witnessed anything unethical, immoral, or unlawful occurring between a lobbyist and legislator); Dyson Dep. at 120-121 (Pl. Ex. 3) (had not observed any abuses of system by lobbyists).

When asked about the scandals involving Governor John Rowland, State Treasurer Paul Silvester, and Senator Ernest Newton, both Andy Sauer and Jeffrey Garfield ("Garfield"), strong

proponents of the CFRA, admitted that no lobbyists were involved. A. Sauer Dep. at 185-88 (Pl. Ex. 12); Garfield Dep. at 57-58 (Pl. Ex. 5); *see also* Schepker Dep. at 143 (Pl. Ex. 27) (no lobbyists involved in the scandal involving Senator Newton); Williams Dep. at 89-90 (Pl. Ex. 24) (no lobbyists involved in the scandals involving Governor Rowland). In addition, Garfield testified that he was unaware of any complaints filed with the SEEC regarding a lobbyist violating the in-session ban or general contribution limits. Garfield Dep. at 54, 72 (Pl. Ex. 5). Garfield was examined extensively on this topic and was shown a stack of complaints filed with the SEEC and Garfield confirmed that none involved infringement of the campaign contribution laws by lobbyists. Garfield Dep. 53-54 (Pl. Ex. 5).

J. Ability of CFRA's Lobbyist Bans to Effectuate Purported Goals

The CFRA's bans on contributions made and solicited by lobbyists will not affect legislators' reliance on money from special interest groups. Williams Dep. at 91 (Pl. Ex. 24) (legislators will remain reliant on contributions from special interests); Pelto Dep. at 111-112 (Pl. Ex. 2) (despite the CFRA bans, deep-pocketed clients that lobbyists represent will continue to provide significant funding to legislators). The major contributors to political campaigns are not the lobbyists, but the interests they represent. PACs established by businesses, labor organizations, and trade associations will continue to finance campaigns. Roraback Dep. at 34 (Pl. Ex. 31) (special interest money not eliminated by lobbyist ban). Senator DeFronzo, who expressed concerns about inequities in "access" to lawmakers, added that certain lobbyists do not enjoy greater or lesser access to him now that the CFRA's bans are in place.[21] DeFronzo Dep. at 43 (Pl. Ex. 6); *see also id.* at 60 (lobbyists who are effective enjoy more access and their access

[21] Senator DeFronzo and Pelto testified about gaps in the CFRA that permitted lobbying firms to remain involved in fundraising. DeFronzo Dep. at 52 (Pl. Ex. 6) (individuals not registered as lobbyists could collect contributions); Pelto Dep. at 39-42, 58-59 (Pl. Ex. 2) (indirect lobbyists not covered by the CFRA's bans).

level does not change with new law). Additionally, legislators show a good deal of concern for business interests because they want to keep Connecticut's economy strong. Gallo Am. Decl. ¶ 88 (Pl. Ex. 9).

Other provisions of the CFRA will directly target the perceived problem of special interest money without unnecessarily interfering with the First Amendment rights of lobbyists. First, the CFRA eliminated a loophole to the prohibition of contributions or expenditures made by business entities. *See* Conn. Gen. Stat. § 9-613(a). Prior to the enactment of the CFRA, the term "contribution" did not mean "[t]he purchase of advertising space . . . in a program for a fund-raising affair" that did not exceed $250 in value. *Id*. § 9-333b(b) (2005). Such advertisements are now contributions and are, therefore, prohibited expenditures by business entities. Garfield Dep. at 16-17 (Pl. Ex. 23). Pelto testified that, based on his review of fundraising by legislative leadership, at least one quarter of the money raised came from advertisement purchases. Pelto Dep. at 15, 30-32 (Pl. Ex. 2); *see also* Smith Dep. at 48-49 (Pl. Ex. 28) (estimating that most of money raised by lobbyists on his behalf came from advertisements); DeFronzo Dep. at 28-29 (Pl. Ex. 6) (estimating that bulk of contributions raised from lobbyists came through PAC contributions and ad books). An analysis of advertising book receipts for the 2002 statewide and legislative races estimates that revenues arising from advertising books totaled $1,351,826. State Elections Enforcement Commission, Review of Advertising Book Receipts, Feb. 14, 2005, at 1, attached as **Exhibit 34**. Such receipts constituted 6.40% of the total revenues raised by candidates during the 2002 elections. *See* National Institute on Money in State Politics, State at a Glance, Connecticut 2002, Contribution Totals by Economic Interest, *available at* http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?si=20027 (last visited July 5, 2007).

Second, the CFRA limits the number of legislative PACs and, therefore, reverses previous trends of raising money for the purpose of securing a place in the leadership. DeFronzo Dep. at 29-30 (Pl. Ex. 6) (describing limitation on PACs controlled by candidates); Pelto Dep. at 62-63 (Pl. Ex. 2) (describing previous reliance on legislative PACs for fundraising); Dyson Dep. at 35-41 (Pl. Ex. 3) (same). Prior to the enactment of the CFRA, legislators were free to control more than one political committee and could solicit multiple contributions from the same groups. Pelto Dep. at 11-13 (Pl. Ex. 2). State Representative Dyson testified that he created several PACs during previous elections for the purpose of assisting other legislators to raise money so that they, in turn, would support his candidacy for a leadership position. Dyson Dep. at 35-41 (Pl. Ex. 3); *see also id*. at 46-47 (necessary to financially assist other legislators in order to be elected as majority leader); DeFronzo Dep. at 62-63 (Pl. Ex. 6) (multiple PACs created to support political allies and to gain support for leadership position). Connecticut law prohibits candidate committees from contributing to other candidate committees, so these additional PACs were a necessary by-product of efforts to garner support among legislators. Conn. Gen. Stat. § 9-616(a)(5); Dyson Dep. at 37 (Pl. Ex. 3) (in order to legally assist other legislators with money, one must form a separate PAC). Under the reforms created by the CFRA, legislative candidates can only control one political committee.[22] Conn. Gen. Stat. § 9-616. Because there will be fewer legislative PACs, less money will be raised from special interest groups. Smith Dep. at 46-47 (Pl. Ex. 28).

Third, the CFRA created the Citizens' Election Program ("CEP"). Conn. Gen. Stat. §§ 9-700 *et seq*. The CEP establishes a system for public financing of state-level candidates for the

[22] Pelto testified that the restriction on legislative PACs is likely to have the effect of solidifying the place of those already in leadership because challengers no longer can raise money to give directly to other legislative candidates. Pelto Dep. at 64-65 (Pl. Ex. 2).

express purpose of "limit[ing] the role of private money in the State of Connecticut's political process." State Elections Enforcement Commission, Citizens' Election Program, available at http://www.ct.gov/seec/cwp/view.asp?a=2861&q=332462&seecNav=%7C (last visited July 12, 2007). All of these provisions, when taken together, cast doubt on the need to restrict the political activities of lobbyists so broadly.

K. Broad Effects of the CFRA's Prohibitions on Lobbyists and PACs

The CFRA's bans preclude lobbyists from making direct contributions to or raising money on behalf of state candidates, legislative leadership or caucus political committees or local or state party committees. Lobbyists cannot make contributions to their local representative or candidates that they consider to be personal friends. Gallo Am. Decl. ¶¶ 67-69 (Pl. Ex. 9).[23] Although lobbyists can contribute to certain PACs, there is no guarantee that the contribution will be made, in turn, to the lobbyist's candidate of choice. *Id.* ¶ 65. Moreover, a fifty-dollar contribution to a candidate is a more direct demonstration of support than contributing to an unaffiliated PAC or making an independent expenditure. *Id.* ¶¶ 65-66. In addition, lobbyists cannot ask friends or neighbors to make small contributions to their local representative. *Id.* ¶¶ 67-69. Nor can they attend fundraiser events, even if they do not purchase the ticket. Conn. Gen. Stat. § 9-601(26); SEEC Declaratory Ruling 2006-1 at 3-4 (Pl. Ex. 4).

Lobbyists are concerned by the reach of the solicitation restrictions. *See*, *e.g.*, Williams Dep. at 92 (Pl. Ex. 24); Schepker Dep. at 53 (Pl. Ex. 27). Lobbyists are worried that any speech about a political candidate that is any way connected to campaign contributions could be construed as a solicitation. Gallo Am. Decl. ¶ 75 (Pl. Ex. 9). These worries are compounded by the ease with which an individual can file a complaint with the SEEC and the devastating public

[23] Winthrop Smith, Jr., a former State Senator, testified that he would have supported a law that permitted lobbyists to give to the legislators in their districts. Smith Dep. at 36-37 (Pl. Ex. 28).

relations consequences of such a complaint, even if it is found to be baseless. Schepker Dep. at 123 (Pl. Ex. 27) (describing concern about filing of SEEC complaints); Williams Dep. at 92 (Pl. Ex. 24) (same); Gallo Am. Decl. ¶ 76 (Pl. Ex. 9) (same). As Garfield acknowledged, individuals motivated by political considerations have filed complaints in the past and that such a trend could continue under the CFRA. Garfield Dep. at 35-36 (Pl. Ex. 5); *see also* Philips Am. Decl. ¶¶ 21-22 (Pl. Ex. 7) (expressing concerns about filing of SEEC complaints).

The CFRA's ban also has profound effects on PACs in Connecticut. Most PACs, other than candidate- or party-affiliated PACs, are affiliated with businesses entities, labor organization, trade associations, or advocacy groups. Most of these PACs, in turn, were established with the assistance of a lobbyist or were previously controlled by the lobbyist because they participated in the PAC's decisions regarding campaign contributions. Gallo Am. Decl. ¶¶ 70-71 (Pl. Ex. 9). PACs established by client lobbyists include virtually all PACs other than those formed by candidates, elected officials, or parties. Garfield Lobbyist Memo at 2 (Pl. Ex. 10). Under the CFRA's broad definition of "control", the vast majority of these PACs were, at least in the past, controlled by lobbyists because of the lobbyists' substantial involvement in decisions about contributions. Gallo Am. Decl. ¶¶ 70-72 (Pl. Ex. 9) (understanding herself to "control" two PACs that she previously advised).

Lobbyists assist PACs in a variety of ways. Anderson Dep. at 10-11 (Pl. Ex. 25) (listing development of questionnaire, arranging interviews of candidates, recommending dollar amounts for particular contributions). Some help the PACs put together questionnaires to poll officeholders and other candidates on certain issues. Gallo Am. Decl. ¶¶ 41-45 (Pl. Ex. 9); Anderson Dep. at 10 (Pl. Ex. 25). Most provide assistance in analyzing the variety of factors important to making decisions about contributions. Schepker Dep. at 27-29 (Pl. Ex. 27) (listing

factors considered by PACs as legislator's overall perception of the client, legislator's position in leadership or on a committee, whether legislator introduced legislation in favor of client's interest, legislator's general stance on issues important to the client); Anderson Dep. at 12 (Pl. Ex. 25) (citing competitiveness of race: "if we feel someone is in a race where they have no need of a financial contributions, we don't want to waste the members' money"); Gallo Dep. at 176-77 (Pl. Ex. 23) (listing party affiliation, support of issues important to client, responses to questionnaire). The lobbyists' connections to the day-to-day events in the legislature and their awareness of the competitiveness of political races make their input of great importance to the PACs. Gallo Am. Decl. ¶¶ 41-45 (Pl. Ex. 9). The CFRA precludes such involvement in the future. *Id*. ¶¶ 72-73 (Pl. Ex. 9).

L. Spouses and Dependent Children of Lobbyists

Spouses and dependent children of lobbyists do not contribute or raise significant sums of money for candidates and none do so on behalf of the lobbyists in their families. None of the lobbyists testified that their spouses or dependent children made extensive contributions.[24] *See*, *e.g.*, Anderson Dep. at 44 (testifying that his wife had "never contributed a lot"). Philips, whose husband is a communicator lobbyist for the Connecticut Bar Association, has contributed no more than $400 annually between 2000 and 2006. *See* Plaintiff Joanne P. Philips's Response to Proposed Intervenor-Defendants' Interrogatories at 2-4 (contributions to legislators limited to representatives of her district), attached as **Exhibit 35**.

Campaign treasurer reports from the 2006 legislative races and the itemized disclosure forms filed by lobbyists in 2003 and 2005 support this testimony. Only two candidates for the

[24] Only those spouses who are themselves lobbyists have been involved in fundraising activities in any significant capacity. Pelto Dep. at 74 (Pl. Ex. 2) (spouses of lobbyists did not engage in fundraising unless they were, themselves, lobbyists).

Senate and four candidates for the House of Representatives (including reports from the eleven-most contested races by popular vote and the thirty-highest fundraisers) raised any money from the spouses and dependent children of lobbyists. Report on 2006 Campaign Receipts at 1-6 (Pl. Ex. 18). In 2005, only 24 lobbyists required to submit itemized disclosures reported family member transactions and those transactions totaled $17,492. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2005 at 73 (Pl. Ex. 20). Of those lobbyists required to submit itemized disclosures in 2003, only 30 reported any family member transactions.[25] Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2003 at 54 (Pl. Ex. 19). Once again, these reports include disclose of contributions to all candidates and political committees.

Prior to the enactment of the CFRA, Connecticut law prohibited making contributions in the name of another person. Conn. Gen. Stat. § 9-622(7). In addition, minor children – individuals under eighteen years of age – could not (and still cannot) make any contributions in excess of thirty dollars.[26] *Id.* § 9-611. No witness had any knowledge of any instance in which the spouse or dependent child made a contribution in the place of their lobbyist family member. Anderson Dep. at 45 (Pl. Ex. 25); DeFronzo Dep. at 26 (Pl. Ex. 6); Smith Dep. at 26 (Pl. Ex. 28); Williams Dep. at 88 (Pl. Ex. 24); Schepker Dep. at 100 (Pl. Ex. 27); Dyson Dep. at 116-17 (Pl. Ex. 3); Philips Dep. at 110 (Pl. Ex. 36), attached as **Exhibit 36**. Garfield testified that the SEEC has not performed any investigations regarding spouses or dependent children of lobbyists. Garfield Dep. at 56 (Pl. Ex. 5). Schepker and Williams both testified that they had never advised their spouses to make a contribution, and Philips testified that she made her own decisions about

[25] Family member transactions in 2005 averaged $180.34, with 16 out of 24 lobbyists who reported any family member transactions reporting less than $500. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2005 at 73 (Pl. Ex. 20).

[26] Section 2 of Public Act 07-1 amended section 9-611(e) to change the age restriction from sixteen to eighteen.

contributions and wrote them from her own checking account. Williams Dep. at 88 (Pl. Ex. 24); Schepker Dep. at 91-92 (Pl. Ex. 27); Philips Dep. at 111-112 (Pl. Ex. 36). In addition, former Speaker of the House Irving Stolberg expressed concerns about the restrictions imposed on the rights of spouses and dependent children. Stolberg Dep. at 24-25 (Pl. Ex. 30).

II. STATE CONTRACTORS, PROSPECTIVE STATE CONTRACTORS, AND THEIR PRINCIPALS

A. Restrictions Imposed by the CFRA on State Contractors

The CFRA also imposes significant restrictions on campaign contributions made and solicited by state contractors,[27] prospective state contractors,[28] and their principals. Conn. Gen. Stat. § 9-612(g)(2). The prohibition corresponds to the branch of government with which the state contractor or prospective state contractor does business, excepting the holders of valid pre-qualification certificates. *Id*. § 9-612(g)(2)(A), (B). If the state contractor has a contract with or

[27] A "state contractor" is "a person, business entity or nonprofit organization that enters into a state contract." Conn. Gen. Stat. § 9-612(g)(1)(D). Qualification as a state contractor lasts until December 31 of the year in which the contract terminates. *Id*. A "state contract" is defined as:

> an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contractors having a value of one hundred thousand dollars or more in a calendar year for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee.

Id. § 9-612(g)(1)(C).

[28] A "prospective state contractor" is defined as:

> a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100.

Conn. Gen. Stat. § 9-612(g)(1)(E).

the prospective state contractor submits a response to a state agency in the executive branch or a quasi-public agency, the state contractor, prospective state contractor, and their principals are prohibited from contributing to or soliciting contributions on behalf of:

(i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State, and State Treasurer,
(ii) political committees authorized to make contributions or expenditures to or for the benefit of such candidates, or
(iii) a party committee;

Conn. Gen. Stat. § 9-612(g)(2)(A). If the state contractor has a contract with or the prospective state contractor submits a response to the General Assembly, the state contractor, prospective state contractor, and their principals are prohibited from contributing to or soliciting contributions on behalf of:

(i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative,
(ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or
(iii) a party committee;

Id. § 9-612(g)(2)(B). Holders of a valid prequalification certificate issued by the Commissioner of Administrative Services and their principals are subject to *both* the legislative and executive branch contribution and solicitation bans. *Id*. § 9-612(g)(2)(A),(B). (Under state law, bidders for public works contracts are required to be pre-qualified.) As in the lobbyist ban, the terms "contribution", "solicit", "party committee", "exploratory committee", and "political committee" are defined pursuant to Connecticut General Statutes § 9-601.

The term "principal" is defined broadly by the CFRA. It includes:

(i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization,

(ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president,

(iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties,

(iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract,

(v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or

(vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

Id. § 9-612(g)(1)(F). During the 2007 legislative session, some of the terms included in the definition of principal were more narrowly defined. The term "dependent child" includes only those children more than eighteen years of age "residing in an individual's household who may legally be claimed as a dependent on [a] federal income tax return. . . ." *Id*. § 9-612(g)(1)(G). The phrase "managerial or discretionary responsibilities" means "having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract . . . ." *Id*. § 9-612(g)(1)(I).

Penalties for violation of these provisions are significant. If a state contractor or its principal makes or solicits a prohibited contribution, "the contracting state agency or quasi-public agency may . . . void the existing contract . . . and no state agency or quasi-public agency shall award the state contractor a state contract . . . for one year after the election for which such contribution is made or solicited." *Id*. § 9-612(g)(2)(C). Prospective state contractors cannot be

awarded a state contract until "one year after the election for which [a prohibited] contribution is made or solicited."[29] *Id.* § 9-612(g)(2)(D).

It has not been determined how many individuals or PACs are affected by Section 9-612(g). Public Act 07-1 eliminated the requirement that the SEEC publish a list of all principals on its website. *See February 2007 Act*, § 1. Garfield estimated that approximately 10,000 entities qualify as state contractors or prospective state contractors, including at least 400 entities that hold valid prequalification certificates with the Commissioner of Administrative Services.[30] Garfield Dep. at 125 (Pl. Ex. 5); *see also* State Elections Enforcement Commission, Lobbyist Contribution and Solicitation Ban (estimating over 10,000 vendors covered by the law), attached as **Exhibit 39**. In a memorandum to the Campaign Financial Reform Working Group on September 1, 2005, Garfield provided a partial list of vendors (broken down by the value of their contracts) based on information received from the office of the State Comptroller. Memorandum from Jeffrey B. Garfield on the Proposed Ban on Campaign Contributions from State Contractors

[29] No violation occurs if the prohibited contribution is returned to the principal within thirty days. Conn. Gen. Stat. § 9-612(g)(2)(C). In addition, the SEEC is authorized to waive enforcement of these penalties if it determines that "mitigating circumstances exist concerning such violation." *Id.*; *see also* State of Connecticut, State Elections Enforcement Commission, Memorandum from Jeffrey B. Garfield to Connecticut State Contractors and Prospective State Contractors with the Legislative Branch of State Government, Mar. 20, 2007 at 6, attached as **Exhibit 37**.

[30] The SEEC's website has published three lists of state contractors and prospective state contractors. *See* State Elections and Enforcement Commission, State Contractor Campaign Contribution and Solicitation Ban Lists, *available at* http://www.ct.gov/seec/cwp/view.asp?a=2650&q=330062 (last visited July 5, 2007). The first list (approximately 400 entities) contains entities holding valid prequalification certificates with the Commissioner of Administrative Services. *Id.* The second list (approximately 2,150 entities) contains state contractors and prospective state contractors covered by the executive branch ban. *Id.* The third list (approximately 40 entities) contains state contractors and prospective state contractors covered by the legislative branch ban. *Id.* It appears that these lists are incomplete, as Community Capital Fund, Robinson's organization, is not on the SEEC's website. Robinson, however, has received numerous communications relating to Communicator Capital Fund's status as a state contractor. Robinson Am. Decl. ¶¶ 26-27, attached as **Exhibit 38**.

(hereinafter, "Garfield Contractor Memo") at 2, attached as **Exhibit 40**. The number of vendors with contracts in excess of $50,000 was 3,574, though the list did not purport to be complete or list the number of prospective state contractors. *Id*. It is also uncertain how many individuals are covered by the prohibitions contained in section 9-612(g). Previous lists of principals posted by the SEEC on its website provide a rough basis to estimate the breadth of the contractor ban.[31] *See* State Elections Enforcement Commission, Principals of State Contractors Prohibited from Contributing to General Assembly Candidates, Jan. 29, 2007, attached as **Exhibit 41**. The General Assembly list included 213 principals from 31 entities. *Id*. On that list, the average number of principals per entity was seven. *Id*. Four different entities listed a dozen or more principals, including BKM Enterprises, Inc. which disclosed 45 individuals as principals. *Id*. There is no way to know whether even this information represents total disclosure, as many companies balked at providing information about spouses and dependent children. Based on this information, a conservative estimate of the number of individuals affected is 50,000. The SEEC has not posted any information regarding PACs subject to the bans.

B. Pre-existing Restrictions on Principals of State Contractors

Prior to the enactment of the CFRA, most principals of state contractors and prospective state contractors were not subject to any campaign contribution or solicitation prohibitions (outside generally applicable restrictions) under Connecticut law. A limited restriction was placed on principals of investment services firms who were prohibited from making contributions to and soliciting contributions on behalf of candidates for the office of State

[31] Public Act 07-1 amended section 9-612 to include the limiting definitions of "dependent child" and "managerial or discretionary responsibilities with respect to a state contract" following the submission of these disclosures. It is possible that, under these definitions, the entities who disclosed their principals would have considered fewer individuals to be principals. However, prior to the enactment of Public Act 07-1, the SEEC interpreted the term "managerial or discretionary responsibilities" in a manner consistent with its current statutory defintion.

Treasurer *only* "during the term of office of the State Treasurer who pays compensation, expenses or fees or issues a contract to such firm." Conn. Gen. Stat. § 9-333n(f)(2) (2005). This restriction remains in effect, though it applies only to contributions and the solicitation of contributions that are not otherwise prohibited pursuant to the state contractor bans. *Id.* § 9-612(f)(2).

In addition, under the prior law, campaign treasurers were required to designate "whether the contributor or any business associated with the contribution ha[d] a contract for more than $5,000 with the State" if the contributor made aggregate contributions of $1,000.01 or more to that specific candidate.[32] *See* Secretary of the State, Statement of Receipts and Expenditures – Form ED-45, at 4, attached as **Exhibit 42**; Conn. Gen. Stat. § 9-333j(c)(1)(H) (2005). This requirement remains in effect. *Id.* § 9-608(c)(1)(H). However, there was no comparable itemized disclosure requirement as existed for lobbyists. *See id.* § 9-610(g).

Extensive ethical rules also apply to principals of state contractors and prospective state contractors. The Code of Ethics prohibits all persons "doing business with or seeking to do business with [any] department or agency" from giving any gifts[33] to state employees, with limited exceptions. Conn. Gen. Stat. § 1-84(f). Any gift "of value" made to an individual in a department or agency from which the benefactor is seeking a contract must be reported within ten days of the gift.[34] *Id.* § 1-84(o). The report must be in writing and must include not only the

[32] Connecticut election law requires disclosure of any individual's principal occupation and the name of the individual's employer if her contributions to a particular candidate exceed $100 in the aggregate. Conn. Gen. Stat. § 9-608(c)(1)(G) (formerly § 9-333j(c)(1)(G)).

[33] "Gift" is defined as "anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return." Conn. Gen. Stat. § 1-79(e).

[34] This statute does not address political contributions otherwise reported. Conn. Gen. Stat. § 1-84(o).

value of that gift but the cumulative value of all gifts made to that individual during the calendar year. *Id*. The report must be submitted to the individual recipient of the gift as well as the agency head. *Id*. Further, any "necessary expenses" incurred by a state employee that have been reimbursed by the principal of a state contractor or prospective state contractor must be reported. Conn. Gen. Stat. § 1-84(k); *see also id*. §§ 1-101mm *et seq*. (describing code of conduct for submission of competitive bids).

Most state contractors and prospective state contractors – the entities themselves – were previously prohibited from making political contributions, with the limited exception of advertising book purchases, under Connecticut's general ban on contributions by "business entities." Conn. Gen. Stat. § 9-333o(a) (2005) (prohibiting contributions by business entities); *id*. § 9-333b(b) (2005) (excluding advertising book purchases of up to $250 from definition of contribution). These entities were allowed to establish political committees, which could, in turn, make limited contributions to candidates, but they could make unlimited contributions to party committees and other PACs established by business entities. *Id*. § 9-333o(d),(e) (2005). These activities are now all prohibited by the CFRA. *Id*. § 9-612(g)(1)(F).

Irrespective of state contractor or prospective state contractor status, the CFRA has further restricted the ability of PACs established by business entities to make contributions. A business entity is permitted to form only one PAC, contributions by that committee to party committees and any other committee are limited, and advertising book purchases are prohibited. *Id*. § 9-613(a)-(d); *id*. § 9-601a(b).

C. Contributions Made and Solicited by Principals of State Contractors

Connecticut has never performed an extensive analysis of the contributions made or raised by principals of state contractors and prospective state contractors.[35] Garfield Dep. at 126 (Pl. Ex. 5). It had not done so even despite the fact that state law requires contributions from individuals with state contracts (in excess of $5,000) and individuals affiliated with entities with state contracts to be tracked by individual candidates. *See* Conn. Gen. Stat. § 9-608(c)(1)(H). But even if the state had performed such a study, there is no basis to believe that it would show that political contributions influence the awarding of contracts under the system as it is currently constituted. Testimony from this case reveals that the competitive bid process – which represents the manner by which the vast majority of state contracts are awarded – cannot be influenced by political contributions. *See, e.g.*, Roraback Dep. at 42 (Pl. Ex. 31) (individual legislator unable to influence award of legislative contracts that are award by bid); Rapoport Dep. at 69-70 (Pl. Ex. 32) (no awareness of contributions influencing award of contract by office of Secretary of the State). In addition, recent reforms to the fast-track system implemented have eviscerated the potential for abuse. *See* Factual Statement, Section II.D.4, *infra*.

Data from the 2006 election reveals that principals of state contractors are not heavily involved in political fundraising. Candidates for State Senate reported only $5,590 in contributions (0.16% of total receipts) from individuals with or associated with entities with state

[35] Prior to the enactment of the CFRA, the only reports relating to the fundraising activities of principals of state contractors were created by Connecticut Common Cause. Garfield Dep. at 127-28 (Pl. Ex. 5). These reports contend that, during the administration of Governor John Rowland, pooled contributions from individuals associated with construction companies influenced the award of significant "no-bid" public works projects. *See, e.g.*, Connecticut Common Cause, There Are No Losers When Everyone's A Giver, Oct. 23, 2005, attached as **Exhibit 43**. These reports do not purport to provide a holistic analysis of contribution patterns by individuals associated with entities doing business with the State of Connecticut or those individuals covered by the prohibitions of section 9-612(g).

contracts (hereinafter "state contractor contributors"). Report on 2006 Campaign Receipts at 1-3 (Pl. Ex. 18). Only seven candidates for State Senate reported any such contributions. *Id*. In the eleven most competitive districts for State Representative, candidates reported a total of $1,400 in contributions from state contractor contributors, which accounted for 0.44% of their receipts. *Id*. at 4. Of the thirty highest-spending candidates for State Representative, only one reported a contribution from a state contractor contributor. *Id*. at 5-6.

The most "significant" contributions by state contractor contributors were made in the gubernatorial race, but even those totals are modest. Governor M. Jodi Rell received $56,450 (1.65% of total receipts) in contributions from state contract contributors, while her challenger, New Haven mayor John DeStefano, received $105,830 (3.26% of total receipts) from state contract contributors.[36] *Id*. at 7. Given the relatively modest threshold for qualification for this disclosure (state contract worth at least $5,000) and the number of entities covered by Section 9-612, neither of those numbers is significant. There are no records regarding contributions by spouses and dependent children. There are also no records of contributions solicited or raised by any of the covered individuals or entities. As explained above, Factual Statement, I.B, *supra*, state law requires solicitors to report the contributions they receive to campaign treasurers, but no similar disclosures must be made to the state. Garfield Dep. at 73-74 (Pl. Ex. 5).

In addition, like lobbyists, principals of state contractors make and solicit contributions for a variety of reasons. *See, e.g.*, Robinson Am. Decl. ¶¶ 3, 39 (Pl. Ex. 38) (contribution to support monthly web-letter from State Senator Bill Finch). These reasons do not necessarily

[36] Governor Rell received contributions from 92 different state contract contributors (average of $613.59 per contributor) while Mayor DeStefano received contributions from 200 different state contract contributors (average of $529.15 per contributor). Report on 2006 Campaign Receipts at 7 (Pl. Ex. 18). Both of these averages represent less than one tenth of contribution limit. *See* Conn. Gen. Stat. § 9-611(a)(1) (individuals may contribute as much as $7,000 to each gubernatorial candidate per election cycle).

include attempts to gain political favors or enrich their companies. Robinson Dep. at 74-75, attached as **Exhibit 44**.

D. Awarding of State Contracts

The CFRA applies to any "request by a state agency or quasi-public agency . . . through a competitive procurement process or another process authorized by law waiving competitive procurement." Conn. Gen. Stat. § 9-612(g)(1)(J). According to the SEEC, there are eight (8) quasi-public agencies, fourteen (14) legislative agencies, and seventy-two (72) executive agencies in Connecticut. State Elections Enforcement Commission, Branches of Connecticut Government, *available at* http://www.ct.gov/seec/cwp/view.asp?=2650&q=319914 (last visited July 5, 2007). These entities, by and large, rely on invitations to bid and requests for proposals in the competitive procurement process. *See* Conn. Gen. Stat. § 4a-57(a). As elaborated below, the competitive procurement process is strictly regulated by statute and regulation, standardized by the Department of Administrative Services ("DAS"), transparent, and objective. These characteristics sufficiently insulate the process from potential abuses. Moreover, the political scandals that created the impetus for the CFRA's restrictions involved illegal personal gifts and the awarding of no-bid contracts. Robinson Am. Decl. ¶ 43 (Pl. Ex. 38).

1. Competitive Bidding

All competitive bidding[37] contracts must be awarded to "the lowest responsible qualified bidder" – the lowest bidder of those possessing the "skill, ability and integrity" necessary for contract performance, based on objective criteria that consider past performance and financial responsibility. Conn. Gen. Stat. § 4a-59(a),(c). The entity awarding the contract also takes into

[37] "Competitive bidding" is defined as "the submission of prices by persons, firms or corporations competing for a contract to provide supplies, materials, equipment or contractual services, under a procedure in which the contracting authority does not negotiate prices." Conn. Gen. Stat. § 4a-50(4).

consideration: the quality of items to be supplied, the conformity with contract specifications, the suitability to the requirements of the government, and the delivery terms. *Id*. § 4a-59(c). There is also some discretion to consider also the "life-cycle costs and trade-in or resale value" of the items to be supplied, where these considerations appear to be in the best interest of the state. *Id.*

Contracts estimated to exceed $50,000 require public notice on the internet and in at least two publications, one of which must be a major daily newspaper.[38] *Id.* § 4a-57. The invitation to bid must describe the evaluation criteria and their relative importance. Conn. Agencies Regs. § 4a-52-18(a). A written evaluation of each bid must be created, and the evaluation must identify the vendor's costs and prices and recommend a vendor for award of the contract. Conn. Gen. Stat. § 4a-59(c). The evaluation must be based on the factors set forth in the invitation to bid. Conn. Agencies Regs. § 4a-52-18(b). Contracts estimated to cost $1 million or more cannot be awarded to anyone other than the lowest responsible qualified bidder unless there is written approval signed by the Commissioner of Administrative Services and by the State Comptroller. Conn. Gen. Stat. § 4a-59(c).

There are additional safeguards for the competitive bidding of public works contracts. To bid on a state contract for "the construction, reconstruction, alteration, remodeling, repair or demolition of any public building" valued at more than $500,000, a bidder must be prequalified by DAS.[39] *Id.* § 4b-91(c). Applications for prequalification are made to the Commissioner of

[38] The Department of Administrative Services operates a "Contracting Portal" on its website. *See* Department of Administrative Services, State Contracting Portal, *available at* http://www.das.state.ct.us/Purchase/Portal/Portal_Home.asp (last visited July 7, 2007). The invitation to bid must be published at least five calendar days before the deadline for bid submission. Conn. Gen. Stat. § 4a-57.

[39] Effective October 1, 2007, the prequalification requirement also applies to subcontractors whose subcontracts are valued at more than $500,000. Conn. Gen. Stat. § 4b-91(j).

Administrative Services.[40] *Id.* § 4a-100(b)(1). In deciding whether an entity merits prequalification, the Commissioner of Administrative Services must analyze:

> the record of the applicant's performance, including, but not limited to, written evaluations of the applicant's performance on public or private projects within the past five years, the applicant's past experience on projects of various size and type, the skill, ability and integrity of the applicant and any subcontractors used by the applicant, the experience and qualifications of supervisory personnel employed by the applicant, the maximum amount of work the applicant is capable of undertaking as demonstrated by the applicant's financial condition, bonding capacity, size of past projects and present and anticipated work commitments, and any other relevant criteria that the commissioner prescribes.

Id. § 4a-100(f). Those contractors deemed prequalified receive certification valid for one year.[41] *Id.* § 4a-100(g)(1). Prequalified contractors receive three ratings from DAS: (1) the prequalification classification, which establishes the type of work a contractor is qualified to perform; (2) the aggregate work capacity rating, which is the maximum amount of work a contractor can undertake at one time; and (3) single limit rating, which is the highest estimated cost of a single project that an applicant can undertake. *See* Department of Administrative Services, Prequalifying FAQs at 1, attached as **Exhibit 45**. Each bid submitted to the Department of Public Works must include a copy of the entity's prequalification certificate[42] and an update statement. *Id.* § 4b-91(d). The

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[40] The prequalification applicant must provide information regarding: (1) its form of organization; (2) its principals and key personnel; (3) its experience performing public and private construction projects and the names of any subcontractors used; (4) legal or administrative proceedings against or investigations of the entity or its principals or key personnel relating to construction contracts in the last five years; (5) financial, personal, or family relationships between the applicant and any project owners listed as construction contract experience; (6) whether the entity has been disqualified by Connecticut or other state or municipal law; and (7) the applicant's financial condition. Conn. Gen. Stat. § 4a-100(c)-(d).

[41] Prequalification certificates are subject to renewal upon the provision of an "update statement." Conn. Gen. Stat. § 4a-100(g)(3). Certificates are also subject to revocation or a reduction of classification where appropriate. *Id.* § 4a-100(j).

[42] An example of a prequalification certificate has been attached as **Exhibit 46**.

update statement must contain information about all projects completed or undertaken since the issuance or renewal of the certificate, the names and qualifications of those who will supervise the contract, and any changes in the bidder's financial position, corporate structure, or qualification status. *Id.* The Department of Transportation utilizes a similar prequalification methodology for the awarding of contracts relating to the state's highways and bridges. *See* State of Connecticut, Department of Transportation, Construction Contract Bidding and Award Manual, at 5 (explaining that "with few exceptions, only contractors prequalified by the Department [of Transportation] are eligible to receive awards of Department construction contracts"), attached as **Exhibit 47**.

2. Requests for Proposals

Contracts may also be awarded through competitive negotiation.[43] Conn. Gen. Stat. § 4a-57. In such circumstances, state agencies submit requests for proposals ("RFPs") and the contract is awarded to "the proposer whose proposal is deemed by the awarding authority to be the most advantageous to the state, in accordance with the criteria set forth in the request for proposals." *Id.* § 4a-59(c). Like an invitation to bid, the RFP specifies the requested goods or services and the method of evaluating the proposals. Conn. Agencies Regs. § 4a-52-18(b). The submitted proposals are scored by agency staff using the pre-established rubric, and the three highest-scoring proposals are referred to the agency head for selection and negotiation. Conn. Agencies Regs. § 4a-52-16(g); *see also* State of Connecticut, Office of Policy and Management,

[43] "Competitive negotiation" is defined as "a procedure for contracting . . . in which (A) proposals are solicited from qualified suppliers by a request for proposals, and (B) changes may be negotiated in proposals and prices after being submitted." Conn. Gen. Stat. § 4a-50.

Personal Service Agreement: Standards and Procedures at 26-27, 60 (hereinafter, the "OPM Manual"), attached as **Exhibit 48**.[44]

All state agencies are required to post their RFPs on the DAS website.[45] *See* State of Connecticut, Department of Administrative Services, Procurement Overview Video, *available at* http://www.das.state.ct.us/purchase/vid/dasprocurement_files/Default.htm (last visited June 29, 2007). While the evaluation factors vary based on the request, state regulations require certain minimum factors, including: the plan for performing the services; the ability to perform the requested services; the personnel, equipment, and facilities involved; and the record of past performance.[46] Conn. Agencies Regs. § 4a-52-16(a). These minimum criteria will vary depending upon the type of service that is requested, and the agency must determine the appropriate minimum for each project. OPM Manual at 43 (Pl. Ex. 48).

Once a proposal has been found to satisfy these minimum qualifications, the proposal is evaluated using the RFP scoring rubric. Conn. Agencies Regs. § 4a-52-16(a). The criteria are

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[44] Section 4-217(a) of the Connecticut General Statutes requires the Office of Policy and Management to establish financial policies for state agencies and standards for securing Personal Service Agreements. Conn. Gen. Stat. § 4-217(a). Personal Service Agreements have certain additional statutory requirements that are not addressed here. The OPM manual is offered to guide agencies through the steps of the RFP process for Personal Service Agreements and is utilized here to provide an illustration of the RFP process. The steps outlined in the OPM Manual are consistent with the testimony of former Secretary of the State Miles Rapoport, who described the awarding of a state contract for the creation of an electronic voter database. *See* Rapoport Dep. at 64-67 (Pl. Ex. 32).

[45] Like invitations to bid, RFPs for contracts in excess of $50,000 must be advertised in two or more publications, including at least one major daily newspaper in the state. Conn. Gen. Stat. § 4a-57(a).

[46] The intent of this requirement is not to establish a high bar that eliminates many proposals but rather to ensure that the contractor could properly deliver the service. OPM Manual at 41 (Pl. Ex. 48). For example, minimum education or training requirements could be "having certain credentials (diplomas, certificates, licenses) that show the Proposer has fulfilled certain requirements and may practice or work in a particular field." *Id*.

required to be "objective," "comprehensive," "clear," "fair," "appropriate," and "measurable." OPM Manual at 45-48 (Pl. Ex. 48); *see also* Robinson Am. Decl ¶¶ 33-36 (Pl. Ex. 38) (describing evaluation of Community Capital Fund's proposals as objective). Categories for the criteria could include: qualifications, key personnel, staffing plan, financial condition, cost, and references. OPM Manual at 45 (Pl. Ex. 48). As another example, in Community Capital Fund's application for a grant for the Arcade Mall project, the criteria for the proposal included: "(1) a description of the need for the grant; (2) capacity of CCF to meet that need; (3) a fair housing action plan; (4) a description of the project's feasibility; (5) an analysis of community impact; and (6) architectural information." Robinson Am. Decl. ¶ 34 (Pl. Ex. 38); *see also* Rapoport Dep. at 66 (Pl. Ex. 32) (committee evaluated the proposals based on cost, quality of equipment used, and level of training). Reviewers score the proposal according to the rubric, and points are assigned for each specific criterion. OPM Manual at 53 (Pl. Ex. 48). Each criterion is assigned varying weight, as reflected in the total points available relative to other criteria. *Id*. at 46.

The three top scoring proposals are submitted to the issuing agency head.[47] Conn. Agencies Regs. § 4a-52-16(g); OPM Manual at 57 (Pl. Ex. 48). The decision regarding which top-scoring proposal to select for negotiation is discretionary.[48] OPM Manual at 57 (Pl. Ex. 48); *see also* State of Connecticut, Department of Correction, State of Connecticut, Motivation Enhancement Program Development, Request for Proposal at 4 (final selection is at discretion of

[47] If the RFP process generates fewer than three acceptable proposals, the selection process is considered to be "sole source." OPM Manual at 57 (Pl. Ex. 48). In the circumstances of a personal services contract, the particular agency would then apply to OPM for approval before selecting a contractor since it would then be a non-competitive process. *Id.*; *see also* Conn. Agencies Regs. § 4a-52-15 (Commissioner of Administrative Services required to make determination as to whether procurement "shall be made at sole source").

[48] The contractor "best qualified to provide the required supplies, materials, equipment or contractual services" is to be selected. Conn. Agencies Regs. § 4a-52-16(g).

Commissioner of Department of Correction), attached as **Exhibit 49**; Rapoport Dep. at 67 (Pl. Ex. 32) (Secretary of the State made "ultimate decision in awarding the contract"). The agency enters into contract negotiations with the selected entity[49] to reach an agreement on the scope, cost, and services that will be provided. Conn. Agencies Regs. § 4a-52-16(i). The Attorney General's office must approve the contract for legal sufficiency "as to form," and a copy of the contract must be filed with the State Comptroller. Conn. Gen. Stat. § 4a-59(e).

3. Limited Exceptions to Competitive Bidding and Negotiations

There are limited exceptions to the competitive bidding and competitive negotiation requirements. The Commissioner of Administrative Services has general discretion to waive the competitive process for "minor nonrecurring and emergency purchases" of $10,000 or less. *Id*. § 4a-57(b). For public works contracts, competitive bidding is not required for projects with an estimated cost below a certain threshold or projects necessitated by emergency conditions. Conn. Gen. Stat. § 4b-52(a)(1), (c). A separate fast-track process[50] is available for certain other projects. *Id*. § 4b-91(g).

The fast-track process was significantly reformed during the 2003 and 2004 legislative sessions. Under the current process, the Public Works Commissioner has discretion to select and interview at least three contractors who have previously obtained DAS prequalification. *Id*. (listing limited categories). The Public Works Commissioner must then submit the contractors to

[49] If the contract is worth more than $1,000,000 and the agency head wishes to award it to someone other than the individual or entity with the highest scoring proposal, the State Comptroller and the Commissioner of Administrative Services must also approve the award decision in writing. Conn. Gen. Stat. § 4a-59(c).

[50] In the early 1990s, the General Assembly first permitted the fast-tracking of public works contracts, and since that time, eight projects have been statutorily designated as fast-track projects. OLR Research Report, Fast-Track Construction Projects – Procedure, Reasons, Status, and Cost (Mar. 20, 2003), attached as **Exhibit 50**.

a construction services award panels process.[51] *Id.* The Public Works Commissioner designates one panel to screen proposals and select bidders for interview and designates a separate panel to conduct the interviews and recommend contractors to the Public Works Commissioner in order of qualification. *Id.* § 4b-100a(c). Each panel prepares a memorandum documenting the application of evaluation criteria, the bidders' rankings, and a certification by each panel member that the selection did not result from collusion, receipt or promise of a gift, compensation, fraud or other inappropriate influence. *Id.* § 4b-100a(e). The Public Works Commissioner then selects a contractor from the list of recommended bidders. Where the Public Works Commissioner does not select the bidder ranked by the panel as most qualified, the Public Works Commissioner must explain her or his decision in writing and include a certification that the selection was not based on inappropriate influence. *Id.* § 4b-100a(f). Prior to finalizing a contract with the successful bidder, the Public Works Commissioner must submit it for review by the State Properties Review Board.[52] *Id.* § 4b-91(g). Many of these safeguards were added by the General Assembly in Public Act Nos. 03-215 and 04-141.

4. Protections from Undue Influence

The competitive procurement process is replete with other safeguards to preclude undue influence. For example, in the competitive bid process, public officials are barred from

[51] Construction services award panels each consist of six members: three employees of the Department of Public Works, appointed by the Public Works Commissioner; two individuals appointed by the department head of the state agency seeking the contract; and one neutral party appointed by the Public Works Commissioner. Conn. Gen. Stat. § 4b-100a(a).

[52] Among the duties of the State Properties Review Board is the review of acquisitions, sales, leases and subleases of real property by the state. Conn. Gen. Stat. § 4b-3(f). This independent body consists of six members: three of whom are appointed jointly by the Speaker of the House and president pro tempore of the Senate and three of whom are appointed jointly by the House minority leader and the Senate minority leader. *Id.* § 4b-3(a),(e).

communicating with any bidder before the award of the contract, where the communication "results in the bidder receiving information about the contract that is not available to other bidders."[53] Conn. Gen. Stat. § 4b-91(b). Yet, in the RFP process, agency members may contact proposing parties to discuss, clarify, or elaborate on a submitted proposal provided they follow the guidelines in the regulations. Conn. Agencies Regs. § 4a-52-17; *see also* Robinson Am. Decl. ¶ 36 (Pl. Ex. 38) (describing discussions with agency about scoring criteria). Further, site visits may also be conducted. OPM Manual at 52 (Pl. Ex. 48). To balance the more open communication of the RFP process, the OPM Manual requires state employees who review proposals to sign an "ethics and confidentiality agreement" which includes a statement that no conflicts of interest exist. *Id*. at 36.

Competitive bids must remain sealed or secured until publicly opened at the time stated in the notice. Conn. Gen. Stat. § 4a-57(a). Bidders must declare in writing that the bid is "fair and without collusion or fraud." Conn. Agencies Regs. § 4a-52-5(m). While RFPs must also remain sealed until the due date, they may only be viewed only by authorized parties. Conn. Agencies Regs. § 4a-52-16(c). Additionally, Connecticut law prohibits all gifts to state employees, with limited exceptions, Conn. Gen. Stat. § 1-79(e), and any gift "of value" made to an individual in an agency from which the benefactor is seeking a contract must be reported within ten days of the gift. *Id*. § 1-84(o).

[53]Any person who obtains information from a state employee or public official "that is not available to the general public concerning any construction, reconstruction, alteration, remodeling, repair or demolition project on a public building prior to the date that an advertisement for bids on the project is published" is disqualified. Conn. Gen. Stat. § 4b-91(f).

III. THE EFFECTS OF THE CFRA ON PLAINTIFFS

Plaintiffs Gallo and Philips have challenged the various provisions in section 9-610 relating to the contribution and solicitation bans for lobbyists and their family members. Gallo, a communicator lobbyist, works on behalf of not-for-profit organizations and lobbies on issues relating to civil rights, education, health, and poverty. Gallo Am. Decl. ¶¶ 2, 6 (Pl. Ex. 9). She has been lobbying in the General Assembly for more than 30 years, and is well respected by other lobbyists and legislators alike. *Id*. ¶ 3; Vann Dep. at 73-74, 98 (Pl. Ex. 29). Because of the CFRA, Gallo can no longer make contributions to any state-level candidates of her choice or make any efforts to raise money on their behalf. Gallo Am. Decl. ¶¶ 63-69 (Pl. Ex. 9). In the past, Gallo has made contributions to and raised money on behalf of candidates with whom she has developed a close working relationship on contentious issues. *Id*. ¶¶ 48, 55-58. Gallo considers herself to have a "workplace friendship with many legislators." *Id*. ¶ 35. Because of the CFRA, Gallo can no longer advise her clients and their PACs about their decisions regarding contributions. *Id*. ¶¶ 70-72 (Pl. Ex. 9). These restrictions inhibit Gallo's ability to effectively represent her clients. *Id*. ¶ 71. The broad reach of the CFRA has also caused Gallo to become hesitant about engaging in "a good deal of political speech out of fear that my advocacy on behalf of a candidate will be construed as a solicitation of contributions." *Id*. ¶ 75.

Philips, a reading and language arts consultant at Highcrest Elementary School, is the spouse of a communicator lobbyist. Philips Am. Decl. ¶¶ 2, 7 (Pl. Ex. 7). Her husband, Donald Philips, is a lobbyist for the Connecticut Bar Association. *Id*. ¶ 7. In the past, she has been politically active and has served as a campaign manager for State Representative Linda Orange as well as a member of the Colchester Democratic Town Committee. *Id*. ¶¶ 3-4. Philips has chosen these particular activities in order to "ensure that people who share a similar vision about

my community . . . are elected to state and local office." *Id.* ¶ 6. Because of the CFRA, Philips cannot maintain her position as campaign manager for State Representative Orange or remain as an active participant in the Colchester Democratic Town Committee. *Id.* ¶¶ 18-21. Her positions as a campaign manager and as a member of the town committee are intertwined with fundraising efforts. *Id.* Philips is also barred from making contributions to or soliciting contributions on behalf of any state-level candidate, including her own State Senator. *Id.* ¶¶ 14-17. The CFRA's prohibitions prevent Philips from obtaining information about candidates (because she cannot attend fundraising events) and they have limited her speech about candidates. *Id.* ¶¶ 19, 22. Philips is concerned that "any conversation that could arguably pertain to an individual's decision to contribute to a covered candidate could be construed as a solicitation." *Id.* ¶ 22.

Plaintiff Robinson has challenged the provisions of section 9-612 relating to the contribution and solicitation bans for state contractors, prospective state contractors, and principals of state contractors and prospective state contractors. She is a principal of a state contractor by virtue of her position as the Executive Director of Community Capital Fund. Robinson Am. Decl. ¶ 25 (Pl. Ex. 38). Community Capital Fund is a not-for-profit organization that provides loans to spur community development and the creation of affordable housing. *Id.* ¶¶ 5-8. Over the past three years, Community Capital Fund has received three grants from the Department of Economic and Community Development, an executive agency, to finance the development of affordable housing. *Id.* ¶¶ 20-23. Robinson's salary is set by the board of directors of Community Capital Fund and is not affected by revenues. *Id.* ¶14. In the past, Robinson has made and solicited contributions on behalf of State Senator Bill Finch, and she has made contributions to organizations that maintain PACs. *Id.* ¶¶ 3-4. By virtue of the CFRA,

Robinson cannot contribute to or raise money on behalf of candidates for statewide office and any PACs authorized to make contributions to such candidates. *Id*. ¶¶ 29-31 (Pl. Ex. 38).

STANDARD OF REVIEW

Summary judgment must be granted "if 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); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-324 (1986). As the Supreme Court has explained, Federal Rule of Civil Procedure 56(c) requires "the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine issues that properly can be resolved by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the [opposing] party, there is no 'genuine issue for trial.' " *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986). Facts needs not be viewed in the light most favorable to the opposing party unless "there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 127 S. Ct. 1769, 1776 (2007). A factual dispute is "material" if it "might affect the outcome of the suit under the governing law," and is "genuine" if the evidence is such that "a reasonably jury could return a verdict for the [opposing] party." *Anderson*, 477 U.S. at 248. The Court need not consider any "factual disputes that are irrelevant or unnecessary . . . ." *Id.*

ARGUMENT

I. THE BANS ON CAMPAIGN CONTRIBUTIONS BY COMMUNICATOR LOBBYISTS AND THEIR IMMEDIATE FAMILY MEMBERS AND PRINCIPALS OF STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS.

It is settled that, "[i]n reviewing campaign finance regulations, the level of scrutiny is based on the importance of the 'political activity at issue' to effective speech or political association." *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 161 (2003) (citations omitted). Limitations on contributions to candidates or political committees unquestionably infringe the protected freedoms of expression and association, *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 232 (2003) (citing *Buckley v. Valeo*, 424 U.S. 1, 20-22 (1976)), but they have been treated as "marginal" restrictions on speech and association because they "involve little direct restraint on the contributor's speech" and, unlike an outright ban, "permit the symbolic expression of support evidenced by a contribution." *Randall v. Sorrell*, 126 S. Ct. 2479, 2491 (2006) (quoting *Buckley*, 424 U.S. at 21). As a result, instead of requiring contribution limits to be narrowly tailored to serve a compelling governmental interest, a contribution limit "passes muster" if it satisfies the lesser demand of being "closely drawn" to match a "sufficiently important interest." *Id.* (citing *Buckley*, 424 U.S. at 25); *see also Beaumont*, 539 U.S. at 161-62 (quoting *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-388 (2000)) (same).

The contribution bans imposed by the CFRA are more than "marginal" restraints because they prohibit *any* symbolic expression of support for the candidates of choice of the covered individuals. As explained below, the CFRA's restrictions fail on both prongs of the analysis.

A. Defendants Cannot Demonstrate A Sufficiently Important Interest Advanced By The Bans On Contributions By Communicator Lobbyists And Their Immediate Family Members Or That Those Restrictions Are Closely Drawn.

1. The ban of contributions by communicator lobbyists and their immediate family members is not supported by a sufficiently important interest.

Ever since *Buckley* was decided, it has been understood that contribution limits can be justified by the government's interest in preventing actual or perceived corruption. 424 U.S. at 25-26. The sufficiency of that interest has been subject to "relatively complaisant review" in cases involving generally-applicable individual contribution limits. *Beaumont,* 539 U.S. at 169; *see also Shrink,* 528 U.S. at 390–91("quantum of empirical evidence to satisfy heightened judicial scrutiny of that legislative judgment" is minimal because fear that candidates will become too compliant with wishes of individuals or groups that make large contributions is neither novel nor implausible).

Section 9-610(h) is quite distinct from generally applicable contribution limits, however. It creates a ban on direct contributions made by communicator lobbyists to state-level candidates, legislative leadership and legislative caucus committees, and party committees. Conn. Gen. Stat. § 9-610(h). In contrast to the deference it has shown to legislative judgments that limit how much an individual can contribute, the Supreme Court has been less willing to accept the government's asserted interest when restricting an entire class of contributors. *McConnell,* 540 U.S. at 232 (striking down ban on contributions by minor children). In *Beaumont*, the Court emphasized the difference between a ban and a limitation in weighing the sufficiency of the government's interest. 539 U.S. at 162. Similarly, in *Landell v. Sorrell,* the Second Circuit refused to accept the government's interest to support the categorical exclusion of certain out-of-

state contributors.[54] 382 F.3d 91, 147 (2d Cir. 2004), *rev'd on other grounds sub nom., Randall v. Sorrell*, 124 S. Ct. 2479 (2006). Unlike reasonable contribution limits, the CFRA's prophylactic approach to regulation interferes with the ability of an entire class of contributors to support a favored candidate by making a contribution. That approach defies *Buckley* by restricting the "contributor's freedom of association" in a way that a limitation on the amount an individual can contribute does not. 424 U.S. at 21, 24. The contribution ban cannot pass muster under even the less rigorous scrutiny applied in contribution cases.

The communicator lobbyist ban contains anti-circumvention provisions that categorically proscribe contributions by lobbyists' immediate family members as well. Conn. Gen. Stat. § 9-610(h). The Supreme Court has demonstrated concerns for such provisions. In *McConnell*, the Court rejected the argument that a federal ban on contributions by dependent children could be justified by the government's interest in preventing the circumvention of individual contribution limits. 540 U.S. at 232 ("[a]bsent a more convincing case of the claimed evil, [the government's] interest is simply too attenuated …to withstand heightened scrutiny"). More recently, during this past term, the Supreme Court rejected the government's asserted anti-circumvention interest in upholding an as-applied challenge to § 203 of the Bipartisan Campaign Reform Act, a provision that prohibits use of corporate funds to finance "electioneering communications." *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.* ("*WRTL*"), 551 U.S. ____, 2007 WL 1804336, at *18 - *22 (June 25, 2007).

All of the aforementioned decisions, whether they analyzed categorical exclusion or anti-circumvention, have also heavily relied on the existence of other restrictions (that further the

[54] Although the government's justification for regulating the activities of lobbyists has been recognized in the past, *see, e.g., U.S. v. Harriss*, 347 U.S. 612 (1954), the justification for the sweeping restrictions imposed here warrants heightened judicial scrutiny. *Shrink* 528 U.S. at 391.

same interest) to deny the government's asserted interest. *See, e.g.*, *McConnell*, 530 U.S. at 232 (highlighting prohibition on contributions made in name of another and existing limits for contributions by minors); *Landell*, 382 F.3d at 147-148 (emphasizing significance of Vermont's generally applicable contribution limits). The CFRA was passed by the General Assembly even though communicator lobbyists and members of their immediate families were already subject to significant restrictions and disclosure requirements. *See* Factual Statement, I.B, *supra* (describing, *inter alia*, in-session ban and itemized disclosures).

The lobbyist contribution ban cannot pass muster even under the less rigorous scrutiny applied to generally-applicable contribution restrictions. The evidence does not support the contention that lobbyists, individually or as a group, contribute significant amounts of money to state candidates, political committees, or party committees. In addition, the influence of lobbyists in the legislative process is not explained by these modest contributions. There is also no evidence to support the contention that previous contribution restrictions on lobbyists were inadequate or that the anti-circumvention family member restrictions are needed. Moreover, under the more piercing analysis of *McConnell* and *WRTL*, any interest asserted to support section 9-610(h) is clearly inadequate.

i. *Communicator lobbyists make only modest contributions, and these contributions do not cause undue influence.*

Lobbyists contribute modest amounts to political campaigns in Connecticut. First, lobbyists account for a small percentage of contributions made in the state. In 2006, contributions from lobbyists accounted for 1.04% of receipts for state candidates and political committees. State at a Glance, Connecticut 2006, Contribution Totals by Economic Interest (Pl. Ex. 15). Two years earlier, contributions from lobbyists represented 1.97% of those totals. State at a Glance, Connecticut 2004, Contribution Totals by Economic Interest (Pl. Ex. 16).

Contributions to individual candidates are similarly unremarkable. During the 2002 statewide elections, lobbyist contributions account for less than three percent of the receipts of all statewide candidates, excepting State Comptroller Nancy Wyman who raised *only 3.04%* of her receipts from lobbyists. Report on Contributions by Communicator Lobbyists at 4 (Pl. Ex. 17). The amount of money contributed by lobbyists to candidates for the House and Senate in 2004 is comparable. Only seven candidates for state representative raised more than $2,000 from lobbyists, only two of whom raised more than $2,500. *Id*. at 8-17. On the Senate side, only eight candidates raised more than $3,000 from lobbyists, only one of whom raised more than $5,000 (out of total receipts of $230,000 for that particular candidate). *Id*. at 5-7. This pattern continued in 2006. *See* Report on 2006 Campaign Receipts (Pl. Ex. 18) at 1-6. Evidence regarding contributions by individual lobbyists is equally unsubstantial. In both 2003 and 2005, roughly 100 lobbyists (out of 584 in 2003 and out of 721 in 2005) were required to file itemized disclosures with the office of the Secretary of the State because their contributions, in combination with those of their immediate family members, exceeded $1,000 for the reporting year. Report on the Itemized Disclosure and Exemption Form for Lobbyists in 2003 at 54 (Pl. Ex. 19); Report on the Itemized Disclosure and Exemption Form for Lobbyists in 2005 at 73 (Pl. Ex. 20); *see also* Conn. Gen. Stat. § 9-610(g) (describing itemized disclosure requirement). Even this subset of "contributing" lobbyists averaged only $2,477.95 in contributions for the year reported in 2005, which is less than one-fifth of the individual limit. Report on the Itemized Disclosure and Exemption Form for Lobbyists in 2005 at 73 (Pl. Ex. 20). This evidence, in sum, hardly raises concerns of the *quid pro quo* that is typically relied upon to justify generally-applicable contribution limits. *See Buckley*, 424 U.S. at 26-27. Even if the Court considers

contributions by PACs "controlled" by lobbyists, the evidence remains unconvincing.[55] *See* Report on Contributions by Lobbyists and Lobbyist-Controlled PACs at 3 (Pl. Ex. 21) (contributions by lobbyists and lobbyist-controlled PACs amounted to 3% of all receipts for statewide candidates in 2002).

The record also demonstrates that lobbyists do not make these modest contributions to influence legislative outcomes and that legislative votes are not affected by contributions from lobbyists. Lobbyists, like other individuals, make contributions to express support for the political views of their candidate of choice, Williams Dep. at 27 (Pl. Ex. 24); Gallo Am. Decl. ¶¶ 48-49 (Pl. Ex. 9), and legislators recognize this fact. Dyson Dep. at 29 (Pl. Ex. 3). These contributions, however, do not affect legislative outcomes any more so than contributions by other groups of individuals. *E.g.*, DeFronzo Dep. at 31, 50 (Pl. Ex. 6); Smith Dep. at 17 (Pl. Ex. 28); Leahy Dep. at 40 (Pl. Ex. 22) ("naïve" for lobbyist to believe that contributions could equate to "yes votes"). Moreover, despite extensive regulation and disclosure, there is no evidence of inappropriate use of campaign contributions by lobbyists. Roraback Dep. at 18-19 (Pl. Ex. 31); Stolberg Dep. at 18 (Pl. Ex. 30); C. Sauer Dep. at 22-23 (Pl. Ex. 33); DeFronzo Dep. at 16-17 (Pl. Ex. 6); Dyson Dep. at 120-121 (Pl. Ex. 3).

The most that defendants can establish is that lobbyists have significant access to legislators. During the legislative session, it is unquestionably true that many communicator lobbyists regularly interact with legislators. *See* DeFronzo Dep. at 31 (Pl. Ex. 6); Gallo Am. Decl. ¶¶ 11, 38 (Pl. Ex. 9). What defendants cannot establish is that lobbyists exert undue

[55] Contributions by PACs are not an accurate indicator of the influence of lobbyists. While a lobbyist may have helped to establish the PAC or, as part of the service she renders for a client, may assist the PAC in its decisions regarding contributions, the contribution is made by the PAC and in furtherance of the interests it represents. *See*, *e.g.*, Gallo Am. Decl. ¶¶ 41-45 (Pl. Ex. 9). They are not, however, another form of contributions by the lobbyists themselves.

influence on legislators – by way of their "access" – due to large campaign contributions. Instead, lobbyists influence the legislative process in ways that are both desirable and unavoidable in representative politics. Dyson Dep. at 63 (Pl. Ex. 3) ("Lobbyists are employed to have a presence, to promote those things that their people want to hire them to do."). Their services are retained precisely because they possess the skills to influence the legislative process. *See, e.g.*, Gallo Am. Decl. ¶¶ 27-37 (Pl. Ex. 9) (describing various components of effective lobbying). There is nothing inherently suspect about this role.

Legislators, on their own accord, choose to rely heavily on the assistance of lobbyists throughout the legislative session. Roraback Dep. at 29 (Pl. Ex. 31) (lobbyists provide useful information); Stolberg Dep. at 19-20 (Pl. Ex. 30) (lobbyists used to create consensus); *see also* Gallo Am. Decl. ¶¶ 21-27 (Pl. Ex. 9) (describing various ways in which lobbyists are utilized). In particular, lobbyists inform the debate by providing valuable information about the benefits, costs, and impact of proposed legislation. C. Sauer Dep. at 18-19 (Pl. Ex. 33); DeFronzo Dep. at 32 (Pl. Ex. 6). Legislators do not have extensive staffs that can study or track each legislative proposal; instead, they have limited staff that handles, primarily, constituent work. Gallo Am. Decl. ¶¶ 21-23 (Pl. Ex. 9). Lobbyists also facilitate the legislative process by drafting legislation, circulating fact sheets, keeping vote counts, forging coalitions, and giving or arranging testimony. Leahy Dep. at 35-36 (Pl. Ex. 22) (lobbyists perform the important function of helping understaffed legislators). Finally, lobbyists serve as the representative for constituencies – whether an industry, a labor group, or an advocacy organization. Because it is not possible for legislators to meet with or respond to every constituent, Roraback Dep. at 33 (Pl. Ex. 31) ("none of us in my experience has ever had adequate time to hear everyone that would like to talk to us"), lobbyists increase the ability of legislators to be responsive to their constituencies. *See*,

e.g., Vann Dep. at 22 (Pl. Ex. 29) (lobbyists make legislators aware of the "opinions and views of the minority voices . . . throughout the state").

In the absence of evidence of undue influence, there is not a sufficient justification for treating contributions by lobbyists as suspect. Lobbyists may have "access" to elected officials that gives them an opportunity to be influential, but defendants cannot establish that lobbyists' influence in the legislative process is tied to their *contributions*. Moreover, the pre-existing restrictions on lobbyists were sufficient. Connecticut's modest campaign contribution limits – $250 to candidates for State Representative, for example – are presumptively established at levels that do not have the potential to corrupt the legislative process or create the appearance of corruption.[56] Conn. Gen. Stat. § 9-611(a). And, in fact, these general limits were increased as part of the CFRA. Connecticut previously prohibited in-session contributions by lobbyists and required disclosure of contributions made by lobbyists and their immediate family members. *See* Conn. Gen. Stat. § 9-333*l*(e) (2005) (restriction on in-session contributions); § 9-333*l*(g) (2005) (lobbyist disclosure requirement). In light of the relatively paltry contributions made by lobbyists, it is clear that these pre-existing measures were adequate to ensure that lobbyists could not improperly influence legislative outcomes through their contributions. The record seriously calls into question any claim by defendants that the government has a significantly important interest in completely banning contributions by lobbyists.

ii. *Immediate family members of lobbyists do not pose a threat of circumvention.*

The government's purported interest in subjecting immediate family members and PACs to the lobbyist ban is the threat of circumvention – *i.e.*, spouses and dependent children will

[56] As explained above, pg. 9, n. 12, *supra*, the average contribution totals for lobbyists who were required to make itemized disclosure in both 2003 and 2005 were far below the $15,000 aggregate limitation for contributions by Connecticut residents.

make contributions in lieu of the lobbyists. In order for concerns of circumvention to uphold such extensive restrictions, the threat must be real and evident. *See, e.g.*, *McConnell*, 530 U.S. at 232. Defendants cannot meet their burden.

Spouses and dependent children of lobbyists contribute insignificant sums of money, and there is no evidence that they make these minimal contributions on behalf of the lobbyists in their families. For example, in 2006, only two candidates for the Senate reported any contributions from the immediate family members of lobbyists. Report on 2006 Campaign Receipts at 1-3 (Pl. Ex. 18). These contributions totaled $2,250. *Id*. Of those lobbyists required to submit itemized disclosures in 2003, only 30 reported any family member transactions, which includes contributions to candidates, party committees, and PACs. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2003 at 57 (Pl. Ex. 19). The average for family member transactions that year was $425.29. *Id*. In 2005, only 24 reported family member transactions and those disclosures averaged $180.34. Report on Itemized Disclosure and Exemption Forms for Lobbyists in 2003 at 73 (Pl. Ex. 19).

There is no evidence of any instance in which the spouse or a dependent child of a lobbyist made a contribution on behalf of a lobbyist. *See*, *e.g.*, DeFronzo Dep. at 26 (Pl. Ex. 6); Smith Dep. at 26 (Pl. Ex. 28); Philips Am. Decl. ¶¶ 26-27 (Pl. Ex. 7). Additionally, other laws sufficiently further the government's interest in curtailing circumvention. Anyone under eighteen years of age is prohibited from making contributions in excess of $30 per candidate per election, Conn. Gen. Stat. § 9-611(e), and all persons are prohibited from making contributions on behalf of others. *Id*. § 9-622(7).

iii. *PACs established or controlled by lobbyists do not pose a threat of circumvention.*

The CFRA also prohibits contributions by PACs established or controlled by communicator lobbyists. Conn. Gen. Stat. § 9-610(h). The government cannot assert an interest in broadly restricting the right of PACs to participate in the process. Yet that is what the CFRA seeks to accomplish. In upholding restrictions on the use of corporate and union treasury funds to finance campaigns, the Supreme Court has recognized the important role of PACs. *See Beaumont*, 539 U.S. 146. This law was adopted with the understanding that most PACs not connected to candidates, parties, or elected officials are lobbyist PACs, either established or controlled by communicator lobbyists. Garfield Lobbyist Memo at 2 (Pl. Ex. 10) (describing that most other PACs are those established by client lobbyists). Thus, this provision is unjustified because it "inhibit[s] collective political activity." *Randall*, 126 S. Ct. at 2498 (invalidating restriction on contributions by political parties). The CFRA's restriction on PACs alters the manner in which most PACs operate. *See* Gallo Am. Decl. ¶¶ 70-73 (Pl. Ex. 9) (unable to provide assistance or counseling to PACs affiliated with clients under CFRA). As a result, section 9-610(h) places an undue burden on the association rights of PACs without cause.

There is no evidence that PACs "controlled" by lobbyists have made contributions *in lieu* of lobbyists. Instead, the evidence demonstrates that lobbyists, as a part of the services they render for their clients, advise their clients' PACs about making contributions that further the *client's* interests. *See, e.g.*, Gallo Am. Decl. ¶ 41 (Pl. Ex. 9); Anderson Dep. at 10 (Pl. Ex. 25). Additionally, no interest is furthered by a restriction on PACs that have only an historical connection to a communicator lobbyist. Yet a PAC established by a communicator lobbyist is permanently subject to the prohibition, even if the lobbyist is no longer associated with the PAC. *See* SEEC Declaratory Ruling 2006-2 at 3-4 (Pl. Ex. 8). Finally, the contribution data collected

by OLR does not support the contention that lobbyist-controlled PACs are unduly influencing the political process by means of large contributions. For example, contributions by lobbyist-controlled PACs comprised 1.93% of all contributions to statewide candidates in 2002. Report on Contributions by Lobbyists and Lobbyist-Controlled PACs at 4 (Pl. Ex. 21).

2. The ban on contributions by lobbyists and their family members is not closely drawn to further the government's purported interests.

Contribution limits pass muster if they are "closely drawn" to prevent actual or perceived corruption. *Shrink*, 528 U.S. at 387-388. Under this standard, the government must establish that the limits are *sufficiently tailored*. *Randall*, 126 S. Ct. at 2492. The fact that a restriction is a ban (rather than a limit) is an important consideration in determining whether the restriction is properly drawn to advance the government's interests. *Beaumont*, 539 US at 162. Such a restriction defies the teachings of *Buckley* by prohibiting the symbolic expression of support that even significant contribution limits permit. The Supreme Court has never upheld a complete contribution ban based solely on the source or identity of the contributor. *Id.* (restriction limited to the use of corporate treasury funds); *see also McConnell*, 540 U.S. at 232 (striking down ban on contributions by minor children). In addition, section 9-610(h) represents a sharp departure from other cases involving limits on contributions by lobbyists. Given the breadth of the ban imposed by the CFRA, the statute is clearly distinguishable from cases upholding closely drawn restrictions on lobbyists. *See Inst. of Governmental Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183 (E.D. Cal. 2001) ("*Governmental Advocates*") (narrow definition of lobbyist, restriction limited to branches of government lobbied); *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999) ("*NCRL*") (in-session restriction); *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999) (permitting contributions within lobbyist's legislative district); *Kimbell v. Hooper*, 665 A.2d 44 (Vt. 1995) (in-session restriction).

Section 9-610(h), instead, more closely mirrors the broadest legislative effort to restrict the contribution and fundraising activities of lobbyists, a law found to be unconstitutional because it was not "closely drawn . . . ." *Fair Political Practices Comm'n v. Superior Court*, 599 P.2d 46 (Cal. 1979) ("*FPPC*"). In that case, the Supreme Court of California explained that "[w]hile either apparent or actual political corruption might warrant some restriction of lobbyist associational freedom, it does not warrant total prohibition of all contributions by all lobbyists to all candidates." *Id.* at 53. It reasoned as follows:

> The claimed state interest is to rid the political system of both apparent and actual corruption and improper influence. Under *Buckley* such a purpose justifies closely drawn restrictions. However, it does not appear that total prohibition of contributions by any lobbyist is a closely drawn restriction.
>
> First, the prohibition applies to contributions to any and all candidates even though the lobbyist may never have occasion to lobby the candidate. Secondly, the definition of lobbyist is extremely broad, to include persons who appear regularly before administrative agencies seeking to influence administrative determinations in favor of their clients. Thirdly, the statute does not discriminate between small and large but prohibits all contributions. Thus, it is not narrowly directed to the aspects of political association where potential corruption might be identified.

Id. at 52-53. The CFRA contains all of these flaws as well as other factors that defeat defendants' efforts to establish that section 9-610(h) is closely drawn. While either apparent or actual political corruption may warrant some restriction of the associational freedom of communicator lobbyists (such as the prior in-session ban), these interests do not warrant a total prohibition of all contributions by all communicator lobbyists and members of their immediate families to all state-level candidates.

First, unlike restrictions adopted in other states, the CFRA extends the ban on contributions to the time when the legislature is not in session. *See, e.g.*, *NCRL*, 168 F.3d 705 (upholding prohibition on contributions made by lobbyists during legislative session); *Kimbell*, 665 A.2d 44 (Vt. 1995) (same). Connecticut has a part-time legislature that does not engage in

significant business when it is out of session. Gallo Am. Decl. ¶ 12 (Pl. Ex 9). When the session ends, legislators return to their other jobs and lobbyists have only minimal interaction with the legislators. *Id*. The in-session ban previously in effect had the advantage of "focus[ing] on a narrow period during which legislators could be, or could appear to be, pressured, coerced, or tempted into voting on the basis of cash contributions rather than on consideration of the public weal." *Kimbell*, 665 A.2d at 51.

Second, the CFRA imposes a complete ban on contributions to all legislative leadership and caucus committees and party committees. Conn. Gen. Stat. § 9-610(h). These additional restrictions represent radical departures from the approach adopted by other states and are not justified by the record. The record establishes that lobbyists do not make significant contributions. The California statute at issue in *FPPC* only restricted contributions to candidates, candidate committees, and elected officials. 599 P.2d at 51. This limitation was an important consideration when, after the statute was amended, it was later upheld. *See Governmental Advocates*, 164 F. Supp. 2d 1183. There, the district court held that the ban was narrowly tailored because, in part, it allowed contributions to political parties and committees. *Id. at* 1192-93. Other cases are in accord. The statutes upheld did not include limits on contributions to political parties. *See, e.g., NCRL*, 168 F.3d at 715 (prohibiting contributions to members of and candidates for the legislature); *Alaska Civil Liberties Union*, 978 P.2d at 617 (prohibiting contributions to out-of-district "legislative candidates").

There are no special dangers of corruption associated with contributions to political parties that would justify extending any restriction to cover them. *See Randall*, 126 S. Ct. at 2496-2498 (invalidating limits on party contributions); *Colo. Republican Fed. Campaign Comm. v. Fed. Election Comm'n*, 518 U.S. 604, 622-623 (1996) (rejecting argument that independent

expenditures by political parties should be treated as contributions to the candidate because of identity of interests). Political parties cannot force an elected official to vote in a certain way. As a result, contributions to party committees rather than individual candidates, if anything, remove the danger of *quid pro quo* corruption.[57] *See Colo. Republican Fed. Campaign Comm.*, 518 U.S. at 617-618. In addition, state and town party committees make contributions to all levels of candidates, not just state candidates. Conn. Gen. Stat. § 9-617; Philips Am. Decl. ¶ 3 (Pl. Ex. 7).

Third, the lobbyist ban is not focused on large contributions, but prohibits all contributions. Connecticut's modest campaign contribution limits are established at levels that permit contributions that do not have the potential to corrupt the legislative process or create the appearance of corruption. Under the pre-existing statutory scheme, lobbyists were bound by the same limits that applied to all other contributors. Connecticut law limits contributions to candidates for state representative, for example, to $250 per election, Conn. Gen. Stat. § 9-611(a), a level which the Supreme Court in *Randall* observed "was less likely to prove a corruptive force than the far larger contributions at issue in the other campaign finance cases we have considered . . . ." 126 S. Ct. at 2499.

Fourth, the expansive definition of communicator lobbyist causes the CFRA to abridge the rights of many people who are not primarily engaged in lobbying activities or who do not lobby elected officials. Individuals who receive or spend as little as $2,000 for lobbying

[57] Section 9-610(h) represents a complete prohibition on any direct contributions to the candidates and party committee that lobbyists could previously contribute to when the General Assembly was not in session. Their only option is to contribute to PACs that are not affiliated with candidates, officeholders, or parties. This option, however, provides no assurance that the contribution will be used to support the candidate or party of the lobbyist's choice. *See* Gallo Am. Decl. ¶ 65 (Pl. Ex. 9). Under Connecticut law, contributions to PACs cannot be earmarked, *id*., and any attempt by the lobbyist to influence the expenditure decision is separately prohibited by the lobbyist ban. Conn. Gen. Stat. § 9-610(h) (prohibiting contributions by PACs controlled by lobbyists).

activities must register, and there are currently 622 registered communicator lobbyists in Connecticut. Conn. Gen. Stat. § 1-91(l); Office of State Ethics: Lobbyist Registration Portal, List of Active Communicator Lobbyists for 2007-08, *available at* https://www.ctose.net/forms/search/registeredList.asp (last visited July 4, 2007). However, only about 50 communicator lobbyists are regularly involved in legislative activities. Gallo Am. Decl. ¶ 11 (Pl. Ex. 9). The CFRA's prohibitions also do not draw a distinction between lobbyists who appear regularly before governmental agencies and the legislature, even though registration with the Office of State Ethics requires lobbyists to designate where they lobby. Conn. Gen. Stat. § 1-95; Gallo Am. Decl. ¶¶ 77-83 (Pl. Ex. 9). In *FPPC*, the California Supreme Court explicitly relied on a similarly broad definition of "lobbyist" to strike down the California prohibition on lobbyist contributions. 599 P.2d at 52-53.

Flaws in the breadth of the definition of lobbyists and the tailoring of restrictions to the governmental area in which the lobbyist actually appear were similarly addressed in a challenge to the amended version of the California statute at issue in *FPPC*. *See Governmental Advocates*, 164 F. Supp. 2d 1183. The amended restriction limited the prohibition to lobbyists who lobbied before the official's or candidate's agency, such as the legislature or the Attorney General's office. *Id.* at 1187. In addition, administrative regulations adopted since the *FPPC* decision had significantly narrowed the definition of lobbyist. *Id.* at 1190. In upholding the statute, the district court emphasized the significance of the limiting construction given to the definition of lobbyists covered by the law.

> [U]nder the current Regulation, a lobbyist is someone who, during a calendar month, spends one-third of the time for which he or she is compensated in "direct communication" with qualifying officials. For a full-time employee, that is over 55 hours per month, while, under the former version, as little as 5 hours in direct communication would have been sufficient to qualify as a lobbyist.

Id. The district court also emphasized the fact that the restriction only prohibited lobbyists from contributing to a state candidate if the lobbyist was "*registered* to lobby the governmental agency for which the candidate [was] seeking election . . . ." *Id.* at 1187 (emphasis added). There are no similar limiting provisions in this case.[58]

Fifth, any claim that Connecticut's proposed lobbyist ban on contributions is "closely drawn" is belied by the fact that the ban extends to the spouses and dependent children of such a broad group of lobbyists. In *McConnell*, the Court struck down section 318 of the Bipartisan Campaign Reform Act of 2002, which prohibited minor children from making contributions to candidates and contributions or donations to political parties. 540 U.S. at 232. In so doing, the Court rejected the government's justification that § 318 protected against "corruption by conduit; that is, donations by parents through their minor children to circumvent the contribution limits applicable to the parents." *Id.* The Court's conclusion was based on two grounds: (1) the government had provided insufficient evidence of "this form of evasion"; and (2) the provision was deemed over-inclusive. *Id.* With respect to the second ground, the Court explained that states had utilized far less burdensome regulations, such as counting the donations of minors toward a family cap or restricting the ban to children seven years or younger. *Id.* The Court also noted that existing federal laws prohibited individuals from making contributions on behalf of others, rendering this prohibition likely superfluous. *Id.*; *see also Tenn. Op. Atty. Gen. No. 06-021*, 2006 WL 370946, at *4 (Tenn. A.G., Jan. 30, 2006) (concluding that extension of

[58] The CFRA also fails to account for the fact that many lobbyists represent clients who have no vested economic interest in legislative outcomes. Gallo, for example, only works for not-for-profit organizations. Gallo Am. Decl. ¶ 6 (Pl. Ex. 9). Vann lobbied solely on behalf of the ACLU of Connecticut, and Williams lobbies for the Connecticut Library Association. Vann Dep. at 11 (Pl. Ex. 29); Williams Dep. at 15-16 (Pl. Ex. 24). Such individuals have no association with the type of "pay-to-play" practices that supposedly cast suspicion on lobbyists representing commercial interests. As a result, lobbyists for such organizations cannot threaten to corrupt the legislative process by virtue of their contributions.

contribution limitations to immediate family members of proposed ethics commission would be unconstitutional based on tailoring flaws).

Therefore, even if the government has a valid interest in preventing circumvention, it suffers from the same defects at issue in *McConnell*. The record is devoid of any evidence of "corruption by conduit" that could justify an infringement on the family members' First Amendment rights. In fact, the record suggests that the spouses and immediate family members of lobbyists make only minimal contributions. *See generally* Report on 2006 Campaign Receipts (Pl. Ex. 18). Second, Connecticut law has required lobbyists to report contributions made by immediate family members when a certain threshold is met. Conn. Gen. Stat. § 9-610(g). Third, contributions made on behalf of another are prohibited, and individuals under the age of eighteen cannot make contributions in excess of $30 to any candidate. *Id*. §§ 9-611(e), 9-622(7). It is completely speculative to believe that these provisions are inadequate to further the government's interest in preventing circumvention. With respect to dependent children, the limits are so low that it is fanciful to believe that a lobbyist could curry favor based on a $30 contribution from her teenage child. *See, e.g.*, Gallo Am. Decl. ¶ 52 (Pl. Ex. 9) ($250 contribution from lobbyist does not influence votes of legislator).

Sixth, section 9-610(h) extends to PACs established or controlled by a lobbyist, even though the lobbyist's primary role is to advise the PAC about legislative action, voting records, and competitiveness of elections. Based on the SEEC's Declaratory Ruling 2006-1, lobbyists can "control" PACs in a variety of ways. *See, e.g.*, Anderson Dep. at 10-11 (Pl. Ex. 25) (listing development of questionnaire, arranging interviews of candidates, recommending dollar amounts for particular contributions); Gallo Am. Decl. ¶¶ 41-46 (Pl. Ex. 9). The lobbyists' connections to the day-to-day events in the legislature and their awareness of the competitiveness of political

races make their input of great importance to the PACs. Gallo Am. Decl. ¶¶ 41-46 (Pl. Ex. 9). The CFRA precludes such extensive collaboration to the detriment of the legitimate interests of the PACs.

Finally, the record establishes that the CFRA is not closely drawn to *further* the government's purported interests. The CFRA's bans on contributions made by lobbyists do nothing to affect legislators' reliance on contributions from special interest groups and how those contributions affect the access of lobbyists representing those interests. Williams Dep. at 91 (Pl. Ex. 24); Pelto Dep. at 111 (Pl. Ex. 2). As the record establishes, lobbyists are not major contributors to political campaigns. Instead, special interest provide significant support for many candidates, and the CFRA's lobbyist ban does not preclude those interests for continuing to fund candidates. *See* DeFronzo Dep. at 47-49 (Pl. Ex. 6); Roraback Dep. at 34 (Pl. Ex. 31).

B. Defendants Cannot Demonstrate A Sufficiently Important Interest Advanced By The Bans On Contributions By State Contractors, Prospective State Contractors, And Principals of State Contractors And Prospective State Contractors Or That The Restrictions Are Closely Drawn.

Under the CFRA, state contractors, prospective state contractors, and principals of state contractors and prospective state contractors are likewise completely prohibited from contributing to certain state candidates (depending on the branch of government that grants the state contract), political committees authorized to contribute to those candidates, and party committees. Conn. Gen. Stat. § 9-612(g)(2) (referred to as the "state contractor ban"). The restrictions extend to principals who have little or no direct financial interest in the contracting entities and to the spouses and dependent children of principal employees. *Id.* § 9-612(g)(1)(F). The standard governing these restrictions is the same as the standard that governs review of the prohibition on contributions by lobbyists. Defendants must show that the restrictions on campaign contributions are supported by a sufficiently important interest and are closely drawn.

See McConnell, 540 U.S. at 136. They cannot meet this burden, and these restrictions (like those applicable to lobbyists) cannot survive the exacting scrutiny required by the Supreme Court.

1. Defendants cannot demonstrate a sufficiently important interest that justifies the state contractor ban.

The government has an interest in regulating the campaign finance activities of individuals doing business with the state in order to prevent abuses in the award of state contracts. But, in the absence of a real threat posed by contributions to elected officials, there is no justification for imposing significant restrictions on the First Amendment activities of such as broad swath of individuals. Section 9-612(g) arbitrarily covers contracts that are awarded on a competitive and objective basis and restricts the activities of thousands of individuals who do not stand in a position to unduly influence (or benefit from) the award of a state contract. As set forth above, Argument, Section I.A.1, *supra*, the Supreme Court has been less willing to accept at face value the justification for such a prophylactic approach. *See McConnell*, 540 U.S. at 232. The government does not have a "sufficiently important interest" to support a law that defines and regulates "contractors" and "principals" so broadly.

There is no evidence that any of the groups restricted by section 9-612(g) make such extensive contributions to state-level candidates that their financial involvement in the political process creates a threat of *quid pro quo* corruption. Connecticut has not engaged in a comprehensive study on the contributions made by principals of state contractors and prospective state contractors. Garfield Dep. at 126 (Pl. Ex. 5). In addition, data from the 2006 election reveals that candidates for the Senate reported only $5,590 in contributions (0.16% of total receipts) from state contractor contributors. Report on 2006 Campaign Receipts at 1-3 (Pl. Ex. 18). The most significant contributions by state contractor contributors were made in the

gubernatorial race, but even those were modest. *Id*. at 7 (Governor Rell received 1.65% and May DeStefano received 3.26% of total receipts from state contractor contributors).

The government's interest in regulating contractors – even if there were evidence of significant contributions – does not extend to contracts that are awarded competitively and objectively.[59] *See, e.g., Blount v. S.E.C.*, 61 F.3d 938, 948 n.5 (D.C. Cir. 1995). With some limited exceptions, state contracts are awarded on a competitive basis to the lowest qualified responsible bidder or to the proposer whose proposal is the most advantageous to the state. Conn. Gen. Stat. §§ 4a-57, 4a-59(c). The contracting process is, by and large, centralized in and standardized by DAS, and is transparent. *Id*. The selection is largely objective, and its outcome is based on the merits of the services provided by the bidder or proposer. *See, e.g.*, Robinson Am. Decl. ¶¶ 33-36 (Pl. Ex. 38); OPM Manual at 47-48 (Pl. Ex. 48). Based on these considerations, even one of the defendants' witnesses had to admit that it is a remote possibility to influence the award of a competitively bid state contract through a campaign contribution. Roraback Dep. at 40-41 (Pl. Ex. 31); *see also* DeFronzo Dep. at 70-71 (Pl. Ex. 6) (explaining no knowledge of improperly awarded contract by legislature). The record fails to establish a connection between the influence of elected officials and the award of most contracts.

Reforms that pre-date the CFRA sufficiently further the government's interest in protecting the award of state contracts from undue influence. In both 2003 and 2004, the General Assembly reformed the procedure for obtaining public works contracts and eliminated opportunities for unethical conduct. *See* Pub. Act No. 03-215; Pub. Act No. 04-141. The amended statutes include provisions preventing collusion between certain government

[59] Indeed, other state systems considered by the Campaign Finance Reform Working Group specifically exclude competitively bid contracts from their restrictions. *See* Garfield Contractor Memo at 10-11 (Pl. Ex. 40).

employees and contract bidders prior to the award of a state contract. *See* Conn. Gen. Stat. § 4b-91(b). These reforms also infuse the contract procurement process with external checks and oversight by mandating a rigorous prequalification procedure for all public construction contracts. *Id.* § 4b-91(c). Additional external checks apply to fast-track contracts, for which the ultimate decision on an award is made by the newly established construction services award panel. *Id*. § 4b-91(g), (i). The contracts negotiated by the Public Works Commissioner must be externally reviewed prior to their finalization. *Id.*; *see also id*. § 4b-100a. In sum, these amendments regulate communication between government employees and prospective contractors, enhance procedural rigor, and impose external oversight in various forms. These elements combine in the current statute to preclude a repeat of the unethical dealings that occurred during former Governor Rowland's tenure.[60] *See* There Are No Losers When Everyone's A Giver (Pl. Ex. 43) (focusing on supposed corruption in award of fast-track construction projects); Fast Track Construction Projects (Pl. Ex. 50) (describing projects that had been awarded through fast-track process).

Finally, defendants cannot establish a sufficient enough interest to justify a restriction as broad as section 9-612(g). Thousands of individuals are affected by these restrictions. Garfield Dep. at 125 (Pl. Ex. 5) (approximately 10,000 entities covered by restriction); Principals of State Contractors Prohibited from Contributing to General Assembly Candidates (Pl. Ex. 41) (213 principals listed from 31 entities). Consider, for example, a national bank with a loan agreement

[60] Defendants will undoubtedly rely on anecdotal evidence describing the use of illegal bribes to steer the awarding of construction contracts during the tenure of Governor Rowland. Such evidence does not depict a pattern of campaign contributions used to influence the award of contracts. Instead, it depicts evidence of under-the-table-payoffs, which the contribution ban will not prevent. In fact, allowing state contractors and their principals to make contributions has the benefit of transparency. Moreover, the government's interest in preventing illegal payoffs cannot provide the justification for restricting legal campaign contributions.

with Connecticut. In addition to its officers, the bank could reasonably have a dozen directors, several executive officials and senior vice-presidents, and numerous management-level employees responsible for negotiating the terms of the state contract. All of these individuals (plus their spouses and children) are covered by section 9-612(g). *See*, *e.g.*, State Elections Enforcement Commission, Principals of State Contractors Prohibited from Contributing to Statewide Office Candidates, Jan. 29, 2007 (TD Banknorth disclosed 94 individuals as principals), attached as **Exhibit 51**. As another example, there could be dozens of partners at a law firm that does work on behalf of a state agency or department. Depending on the terms of the partnership agreement, each partner may be brought within the statute's coverage. *See*, *e.g.*, *id*. (law firm of Day, Berry and Howard disclosed 205 principals). Under any conception of the First Amendment, the government's interest in preventing abuses relating to the award of contract must be limited to only those individuals who can realistically influence their award. The CFRA has cast the net so wide that defendants cannot possibly meet their burden.

2. The state contractor ban is not closely drawn to further the government's purported interests.

Even assuming that the state can establish a sufficiently important interest to support these restrictions, section 9-612(g) cannot survive the closely drawn analysis. Once again, the difference between a restriction and a complete ban is an important consideration in this analysis. *Beaumont*, 539 U.S. at 162. Section 9-612(g) imposes a complete ban and is more sweeping than any ban in effect elsewhere or previously challenged. The ban is not closely drawn for several reasons. At the most fundamental level, the CFRA's restrictions on state contractors, prospective state contractors, and their principals is flawed because it is far too over-inclusive. The contribution ban impacts thousands of individuals as a prophylactic against the remote possibility that a member of that class may seek to influence the award of a state contract

through an otherwise lawful campaign contribution. The Supreme Court's decision in *McConnell* forecloses this type of prophylactic approach to a class of contributors.

The restrictions are not limited to contracting entities and the use of their treasury funds; instead, they apply equally to employees and family members of those employees. Conn. Gen. Stat. § 9-612(g)(1)(F). This particular aspect of the statute distinguishes it from federal regulation of contractors. Under federal law, government contractors – the individuals or entities themselves – are prohibited from making contributions, but employees, directors, and officers of these entities are permitted to contribute from their personal funds. 2 U.S.C. § 441c; 11 C.F.R. § 115.6. Under Connecticut law, most state contractors and prospective state contractors (those that are business entities), are already prohibited from contributing directly to candidates and political committees. *See* Conn. Gen. Stat. § 9-613. This restriction is the primary weapon against the use of corporate money to unduly influence governmental action. *See*, *e.g.*, *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 660 (1990) (upholding statute that prohibited corporations from using corporate treasury funds for independent expenditures in support of state candidates).

Another key distinction between the federal system and the CFRA is the effect on affiliated PACs. Under the federal system, government contractors are free to establish political committees that, in turn, contribute to candidates and parties. *See* 11 C.F.R. § 115.3. Section 9-612(g) prohibits both direct contributions by state contractors, prospective state contractors, and their principals as well as any of those three groups from establishing or controlling a political committee. *Id*. § 9-612(g)(1)(F) (definition of principal includes "a political committee established or controlled by . . . the business entity or nonprofit organization that is the state contractor or prospective state contractor"). Overall, the CFRA deprives a large group of

individuals of the right to engage in core First Amendment activities even though they are not the contracting parties and even though many of them do not have financial stakes in the awarding of a contract or grant. *See, e.g.*, Robinson Am. Decl. ¶¶ 14, 38 (Pl. Ex. 38). It further denies the entities and the individuals the ability to participate in the political process by establishing or playing an influential role in a PAC. Neither *Austin* nor *Beaumont* contemplated such a sweeping restriction.[61]

The CFRA is also needlessly broader than other restrictions in Connecticut that attempt to disconnect campaign contributions from the award of business by the state. Principals of investment services firms are prohibited from contributing to candidates for the office of State Treasurer "during the term of office of the State Treasurer who pays compensation, expenses or fees or issues a contract to the particular investment services firm." Conn. Gen. Stat. § 9-612(f)(2). The investment services principals are not otherwise prohibited from making contributions to candidates for other offices, PACs, or even party committees. *Id.* This provision offers an example of a more closely drawn restriction. There is a sensible nexus between contributions to candidates for the office of State Treasurer (an elected official) and the awarding of business by that office. The possibility of *quid pro quo* is clear and direct. *See, e.g.*, *Blount*, 61 F.3d 938 (upholding restriction on contributions by municipal finance professionals to officials who might influence award of underwriting contracts).

The CFRA's ban relating to state contracts, however, lacks this clear and direct connection. For example, section 9-612(g)(2)(A) applies to state contracts with executive agencies, even though none of the agency heads are elected officials. The restrictions also apply

[61] Moreover, like the ban that applies to lobbyists, section 9-612(g) cannot be justified by the need to prevent large, influential contributions. The generally-applicable limits on contributions are exceedingly modest and sufficient in that regard. *See* Conn. Gen. Stat. § 9-611(a).

to candidates for all statewide offices, even though none of these officials, other than the Governor, have the authority to appoint agency officials. Unlike the award of business by the office of the State Treasurer, most state contractors are selected by individuals completely insulated from the political process. *See, e.g.*, Robinson Am. Decl. ¶¶ 33-37 (Pl. Ex. 38) (describing award of state grants to a not-for-profit entity). In addition, the record does not demonstrate that one constitutional officer (the Attorney General, for example) can influence the award of a contract by another (the Secretary of the State, as another example).[62] *See* Rapoport Dep. at 64-67 (Pl. Ex. 32) (award of contract ultimately decided by Secretary of the State).

The restriction relating to the securities industry upheld in *Blount* similarly contained a number of provisions that limited the reach of that contribution ban in a way that section 9-612(g) does not. 61 F.3d at 948. First, the regulation was restricted to brokers and dealers (not principals). *Id*. at 947. Second, the restriction did not extend to contracts awarded on a competitive basis. *Id.* at 947, n.5. Third, it allowed the brokers and dealer to contribute $250 to candidates for whom they were eligible to vote. *Id* at 948. Finally, the regulation prohibited only contributions to candidates, and it did not include PACs or party committees. *Id.* at 939-40. The CFRA has none of these, or any comparable, limiting features.[63] The restriction in *Blount* also extended to family members, but only to the extent that the contributions were made at the

[62] State law contemplates a role for certain constitutional officers in the award of state contracts outside of their offices, but this role is ministerial. *See* Conn. Gen. Stat. § 4a-59(e).

[63] In some respects, section 9-612(g) is even broader in its prohibitions than section 9-610(h), the lobbyist ban. First, holders of prequalification certificates are prohibited, like lobbyists, from making contributions to all state-level candidates. Second, section 9-612(g) prohibits contributions to candidates, party committees, and *any* political committee "authorized to make contributions or expenditures for the benefit of" the proscribed candidates. *Id*. § 9-612(g)(2)(A), (B). This prohibition includes PACs established by advocacy groups. There is no basis to speculate that *any* PAC will serve as conduits for the covered individual. Because the law prohibits "earmarking" of contributions, PACs, in fact, cannot serve such a function.

direction of the broker or dealer. Thus, the scheme was specifically targeted at efforts to circumvent the restriction on the *principal* class of regulated individuals.

Other courts have upheld contribution restrictions in highly-regulated industries like liquor distribution and gaming. *See Soto v. State*, 565 A.2d 1088 (N.J. Super. Ct. App. Div. 1989) (upholding prohibition on contributions by "key employees" of casinos); *Schiller Park Colonial Inn v. Berez*, 349 N.E.2d 61 (Ill. 1976) (upholding prohibition on contributions by liquor licensees). The restrictions here, however, are not limited to particular industries or even to individuals associated with for-profit entities.[64] The state contractor ban extends to individuals associated with not-for-profit organizations like Community Capital Fund. Robinson Am. Decl. ¶¶ 6, 24 (Pl. Ex. 38). Although the exact number of not-for-profits that qualify as state contractor under section 9-612(g) is not known, it is assuredly so that many of these organizations provide essential community-based services and receive funding based on a demonstration of community need. *Id*. ¶¶ 7-8 (Community Capital Fund's mission is to revitalize Bridgeport); *see also* State Elections Enforcement Commission, State Contractors Prohibited from Contributing to Statewide Office Candidates, *available at* http://www.ct.gov/seec/lib/seec/forms/Exec_Contractor_asof_12-31-06.pdf (list) (last visited July 12, 2007) (list includes American Cancer Society, Boys and Girls Club of Southeast Connecticut, and Catholic Charities, Inc.). Moreover, the interest of these not-for-profit organizations are not the type of "special" interests usually associated with the type of "pay-to-play" practices that purportedly justify the CFRA. There is, quite simply, a fundamental difference between a for-profit entity seeking a state highway contract and a not-for-profit

[64] Defendants' evidence will assuredly focus on abuses in the awarding of public works projects during the term of Governor Rowland. As explained above, the General Assembly responded to these concerns by fortifying safeguards in the fast-track process.

organization seeking funds for charitable or community purposes. The justification for regulating the former does not provide the justification for regulating the latter, and section 9-612(g) fails to make this distinction.[65]

Finally, the CFRA needlessly extends its prohibitions to spouses and dependent children. This provision is one of the most offensive portions of the statutory scheme. The inclusion of spouses and dependents is presumably based on the unsupported premise that these spouses and dependent children are conduits for otherwise impermissible campaign contributions. However, under Connecticut law, contributions made on behalf another are already prohibited. Conn. Gen. Stat. § 9-622(7). That law prohibits principals of state contractors and prospective state contractors, like anyone else, from circumventing other contribution limits. It is completely speculative to believe that this provision is inadequate to further the government's interest. *See McConnell*, 540 U.S. at 711.

II. THE BANS ON THE SOLICITATION OF CONTRIBUTIONS BY LOBBYISTS AND THEIR IMMEDIATE FAMILY MEMBERS, STATE CONTRACTORS, PROSPECTIVE STATE CONTRACTORS, AND THE PRINCIPALS OF STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS.

The CFRA's bans on the solicitation of contributions extend to the same individuals (and entities) that are covered by the contribution bans – lobbyists and their immediate family members, state contractors, prospective state contractors, and principals of state contractors and prospective state contractors (which include spouses and dependent children) – and cover the identical spectrum of contribution recipients. *See* Conn. Gen. Stat. §§ 9-610(i), 9-612(g)(2)(A),(B). The solicitation restrictions represent a direct restrain on speech, because they preclude the affected individuals from *communicating* with others about which candidates,

[65] Section 9-612(g) distinguishes not-for-profits with respect to the definition of principals.

political committees, and party committees are worth supporting. In contrast to a limitation on the amount of money an individual can contribute to a candidate, which, as the Supreme Court explained in *Buckley*, "involves little direct restraint on his political communication" and does "not in any way infringe the contributors' freedom to discuss candidates and issues," 424 U.S. at 21, the solicitation bans represent a direct restraint on speech that will "reduce the quantity and diversity of political speech. . . ." *Id*. at 19; *see also* Gallo Am. Decl. ¶¶ 67-69, 75-76 (Pl. Ex. 9) (describing scope of restriction); Philips Am. Decl. ¶¶ 18-22 (Pl. Ex. 7) (same).

Unlike other solicitation restrictions (such as those that prohibit the solicitation of unlawful contributions), these measures do far more than regulate contributions on the demand side. The solicitation provisions in section 9-610(i) and section 9-612(g)(2)(A),(B) burden "speech in a way that a direct restriction on contribution itself would not." *McConnell*, 540 U.S. at 138-39. The government cannot treat requests for contributions as the "functional equivalent" of making a contribution. As the Supreme Court explained this past term, "when it comes to defining what speech qualifies as the functional equivalent of [contributions] . . . we give the benefit of the doubt to speech." *WRTL*, 2007 WL 1804336 at *20 (declining to treat political speech as functional equivalent of expression properly subject to regulation). Here, as in *WRTL*, the greater burden on basic freedoms caused by the solicitation bans "cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations." *Id*. at *18 (quoting *Buckley*, 424 U.S. at 44).

Restrictions adopted to complement contribution limits are evaluated under the same level of constitutional of scrutiny as the contribution limits, *unless* they "burden speech in a way that a direct restriction on the contribution itself would not . . . ." *McConnell*, 540 U.S. at 138-39. These provisions clearly burden speech in a way that direct restrictions on the contributions

themselves do not. For example, as a result of the CFRA, Gallo cannot suggest that her neighbors make contributions to their State Representative and Philips cannot serve as campaign manager for her State Representative. Gallo Am. Decl. ¶ 69 (Pl. Ex. 9); Philips Am. Decl. ¶ 17 (Pl. Ex. 7). The solicitation restrictions are not limited to directing otherwise unlawful contributions and they are not limited to the aggregation of contributions. Instead, they prohibit all communications and associations (*i.e.*, attendance at fundraising events) where financial support of proscribed candidates, political committees, and party committees are involved. As a result, the CFRA's solicitation bans represent more than a "marginal impact" on political speech and association, and they impermissibly fail to give "due regard to the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech . . . ." *McConnell*, 540 U.S. at 139-140 (quoting *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980) (applying strict scrutiny to solicitation restrictions involving door-to-door canvassers)); *see also Riley v. Nat'l Federation of the Blind*, 487 U.S. 781 (1988) (treating solicitation restriction that required fundraisers to disclose information as content-based regulation subject to strict scrutiny because it "necessarily alter[ed] the content of the speech"). The CFRA treats the solicitation of contributions and contributions as functionally the same, even though they are not. The benefit of the doubt must be given to speech, not censorship. *WRTL*, 2007 WL 1804336 at *20.

The Supreme Court's analysis in *McConnell* demonstrates that strict scrutiny is the applicable standard of review. In that case, the Supreme Court upheld the restriction on the use of soft-money contributions by political parties and candidates for purposes of federal election activities and a related provision prohibiting national party committees, federal candidates, and federal officeholders from soliciting soft money for any purpose. 540 U.S. at 135-140. For

purposes of determining the applicable level of scrutiny to apply to the solicitation restriction, the Court held that it was irrelevant that Congress chose to regulate contributions on the demand, rather than the supply side. *Id*. at 139. The Court explained that "[t]he 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 contribution itself would not." *Id*. at 138–39. Because the restricted class remained free to solicit hard money contributions, the Court held that the solicitation restriction had only a marginal restriction on political speech and were therefore subject to the level of scrutiny applied to restrictions on contributions. *Id*. at 140. The restriction did not "chill" solicitation of contributions but, instead, forced "parties, candidates, and officeholders to solicit from a wider array of potential donors." *Id.*; *see also Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197 (1982) (upholding federal law prohibiting political committees from soliciting funds from individuals other than "members" of organization).

The Supreme Court also emphasized the numerous ways that national parties and federal candidates could continue to raise soft money contributions for political purposes. For instance, Federal Elections Commission regulations permitted officers of national parties to solicit soft money in their individual capacities. *McConnell*, 540 U.S. at 157. Candidates could also participate in certain fundraising activities involving soft money, including attending or speaking at an event where soft money was raised. *Id*. at 182-83. In other words, candidates could attend all of the same events and say all of the same things to all of the same people, but could not solicit soft money to circumvent the hard caps.[66]

[66] The Court concluded that the solicitation of soft money had "enabled parties and candidates to circumvent [hard money] limitations . . . ." *McConnell*, 540 U.S. at 125. Specifically, the record demonstrated that candidates typically approached donors who had contributed the legal

In this case, there is no such "due regard" for the intertwining of fundraising and advocacy, and the solicitation restrictions are not mere complements of the contribution restrictions. As a result, the solicitation provisions in sections 9-610(i) and 9-612(g)(2) trigger the strict scrutiny review that applies to limitations on core First Amendment rights of political expression. *WRTL*, 2007 WL 1804336 at *17; *Buckley*, 424 U.S. at 44-45. Under strict scrutiny, "the government must prove that the restriction furthers a compelling interest and that it is narrowly tailored to achieve that interest. . . ." *WRTL*, 2007 WL 1804336 at *17 (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978)); *see also Republican Party of Minn. v. White*, 536 U.S. 765, 774-75 (2002) (applying strict scrutiny to strike down Minnesota law prohibiting judicial candidates from announcing views on disputed legal issues); *Bellotti*, 435 U.S. at 786 (striking down speaker-based restriction directed at speech "intimately related to the process of governing"). Defendants cannot meet their significant burden on either prong.[67]

A. Defendants Cannot Establish A Compelling Interest To Support The CFRA's Solicitation Bans.

Evidence in the record suggests that the CFRA's solicitation restrictions were implemented to curtail undue influence caused by aggregating (or "bundling") contributions and to prevent circumvention of the contribution prohibitions. As the Supreme Court's jurisprudence

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maximum to the campaign committee and requested that the donor "make an additional contribution to a joint program supporting federal, state, and local candidates . . . ." *Id.* In this case, the CFRA's solicitation restrictions do not serve as a means to prevent circumvention otherwise permissible contribution limits. Instead, they represent a wholly distinction restriction on the speech of the covered groups.

[67] Lower courts that have considered solicitation restrictions pertaining to otherwise lawful campaign contributions have applied strict scrutiny. *See Republican Party of Minn. v. White*, 416 F.3d 738 (8th Cir. 2005) (*en banc*); *Minnesota Citizens Concerned for Life v. Kelly*, 427 F.3d 1106 (8th Cir. 2005); *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002). In each of these cases the restrictions were invalidated. *Blount*, 61 F.3d at 948, is the only decision to uphold a solicitation restriction in any way comparable to the CFRA. As explained below, the decision in *Blount* is easily distinguished.

instructs, neither of these interests is compelling enough to justify such broad restraints on core First Amendment expression. *See* WRTL, 2007 WL 1804336 at *20 (government cannot provide compelling interest to support direct restraint on speech). *Buckley* established that reasonable contribution limits and disclosure requirements that apply generally are the "primary weapons" against actual or apparent corruption. 424 U.S. at 58-59. There is no basis in the record to conclude that the government's interest in combating actual or perceived corruption was not adequately served by the modest contribution limits and substantial disclosure requirements in effect prior to the enactment of the CFRA.

While the government undeniably has an interest in maximizing the effectiveness of reasonable limits, that interest cannot justify massive and direct restraints on protected speech. *Id*. at 44; *WRTL*, 2007 WL 1804336 at *20. Assuming *arguendo* that the CFRA's contribution bans are constitutionally permissible, the government's interest in restricting core political speech is limited to actual attempts to circumvent the bans by directing or steering contributions. *See*, *e.g.*, *Blount*, 61 F.3d at 938. The solicitation provisions of the CFRA, however, go much further than that. For example, mere attendance at a fundraising event (even if one has not purchased a ticket) is considered a solicitation of contributions. SEEC Declaratory Ruling 2006-1 at 4 (Pl. Ex. 4). The government has no interest, much less a compelling one, in prohibiting communications and associations that concern which candidates, political committees, and party committees are worth supporting. *WRTL*, 2007 WL 1804336 at *20. Moreover, a contribution made by another at the suggestion or encouragement of a lobbyist or state contractor – much less her spouse – is not a substitute or proxy for a contribution given by a restricted class member. It is an independent act that reflects an independent judgment. *See Blount*, 61 F.3d at 948 (restriction on solicitation of contributions limited to efforts to "direct" contributions as a means

of circumventing the primary ban on contributions; spouses remained free to contribute at their own volition, even if requested); *see also Zelman v. Simmons-Harris*, 536 U.S. 639, 654 (2002) (upholding school voucher program against Establishment Clause challenge because state aid reached religious schools as a result of "independent decisions of private individuals"). Concerns of *quid pro quo* corruption that may be present with respect to individuals who do business with the state are absent when the contribution comes from someone else. (The candidate does not have any reason to know that the contribution was made at the suggestion of a lobbyist or contractor.) Thus, circumvention cannot provide the justification for these bans.[68] *See WRTL*, 2007 WL 1804336 at *19.

The government might have an interest in prohibiting "bundled" contributions as a hedge against *quid pro quo* corruption, but the CFRA takes aim at all solicitation of political contribution regardless of whether the lobbyist or contractor actually collects the money and delivers it directly to the candidate or whether he or she is actually successful in raising any money. In this regard, the CFRA impermissibly extends its restrictions to pure expression rather than proscribing particular conduct. *See, e.g.*, Conn. Gen. Stat. § 9-602(b) (restricting individuals who can collect contributions on behalf of candidates to campaign treasurer and solicitors); Garfield Dep. at 72-74 (Pl. Ex. 5) (describing role of solicitor restrictions). The CFRA also prohibits any communication with a solicitation aspect without any "regard to the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech . . . ." *McConnell*, 540 U.S. at 139–140.[69] This type of prophylaxis-upon-prophylaxis

[68] The solicitation ban is easily distinguishable from other laws that prohibit individuals from soliciting contributions that are otherwise prohibited. *See, e.g.*, 2 U.S.C. § 441c (prohibiting individuals from soliciting contribution from government contractors); *NCRL*, 168 F.3d at 714 (upholding restriction prohibiting solicitation of in-session contributions from lobbyists by members of the legislature or legislative candidates).

"approach to regulating expression is not consistent with strict scrutiny . . . ." *WRTL*, 2007 WL 1804336 at *18. "The desire for a bright-line rule . . . hardly constitutes the compelling state interest necessary to justify any infringement on First Amendment freedom." *Id*.

B. The CFRA's Solicitation Bans Are Not Narrowly Tailored To Further The Government's Purported Interest.

A narrowly tailored regulation is one that actually advances the government's interest (is necessary), does not sweep too broadly (is not over-inclusive), and could be replaced by no other regulations that could advance the interest as well with less infringement of speech. *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 226-229 (1989); *Buckley*, 424 U.S. at 45-47. As the Second Circuit has explained, the inquiry requires a determination of the "'fit' between means and ends." *Landell*, 382 F.3d at 125. In this case, the bans on solicitation do not remotely meet this exacting standard.

As explained previously, there is no basis to conclude that the government's interest in preventing actual or perceived corruption is not adequately served by Connecticut's already modest contribution limits and rigorous disclosure requirements. *See Buckley*, 424 U.S. at 58-59. These campaign finance rules are supplemented, moreover, by other statutory provisions that extensively regulate the activities lobbyists and state contractors. *See, e.g.*, Conn. Gen. §§ 1-91 *et seq*. (code of ethics for lobbyists); 1-101mm *et seq*. (ethical considerations concerning bidding and state contracts). The state procurement process also contains numerous safeguards to prevent abuses. *See id*. §§ 4a-59; 4b-91. The government's attempt to maximize the effectiveness of the general campaign finance laws and the general ethical guidelines by restricting speech directly is "not consistent with strict scrutiny." *WRTL*, 2007 WL 1804336 at *20.

For all of the reasons discussed in Argument, Section I, *supra*, in the closely drawn analyses, the solicitation bans (like their contribution counterparts) lack narrow tailoring. With regard to state contractors, the statute applies to thousands of individuals – including family members – without substantiated findings that these individuals, as a group, are systematically raising large amounts of campaign funds for the purpose of improperly influence the award of state contracts.

In fact, the record demonstrates that the vast majority of contracts are unsusceptible to political influence. *Compare Blount*, *supra.* Senator Roraback testified that, at least in the General Assembly, contracts that are awarded on bid cannot be influenced on the whim of a particular legislator. Section 9-612(g)(2) pertains to all contracts, regardless of how they are awarded. With respect to individuals covered by the executive branch ban, the connection is even more attenuated as the vast majority of contracts are with agencies and none of the officials in those agencies are elected. Moreover, the ban extends to all constitutional offices, even though agency heads are appointed by the Governor. *Compare* Conn. Gen. Stat. § 612(f)(2) (restriction pertaining to those doing business with office of the State Treasurer).

The solicitation provision pertaining to lobbyists suffers from similar flaws. There are no figures or legislative findings regarding the amount of money lobbyists have raised. Indeed, the amount of money raised by lobbyist is not a testable proposition unless the lobbyist actually collects and distributes the contributions to the candidates directly. Connecticut could have chosen to require disclosure of this information or even prohibited the practice of bundling as a hedge against corruption. The lobbyist solicitation ban is not limited to practices involving the aggregation of contributions or direct efforts to evade the contribution limits, but extends to a request from a neighbor or friend to support a candidate.

The solicitation restrictions also suffer from at least three additional problems. First, they prohibit the raising of money from individuals who are otherwise permitted to contribute. Any danger of corruption is largely alleviated when the contribution is made by someone who is not perceived as a threat of corruption. The fact that a contribution is made, based on a private and independent choice, at the urging of an individual otherwise restricted by the CFRA is of no consequence. Neither the lobbyists nor the contractor restriction makes any attempt to limit its reach to "bundled" contributions or contribution made as a proxy for the restricted lobbyist or contractor. *See Blount*, 61 F.3d at 948 (restriction on solicitation of contributions limited to efforts to "direct" contributions as a means of circumventing the primary ban on contributions). In that case, family members and others remained free to contribute so long as they were not directed to make contribution by the regulated group. *Id.*

Second, the CFRA's definition of "solicit" is so broad that it implicates any form of advocacy when a contribution is involved. In particular, it is so broad that it has chilled discussion of candidates and significantly limited participation in local politics. *See* Gallo Am. Decl. ¶¶ 75-76 (Pl. Ex. 9); Philips Am. Decl. ¶¶ 18-22 (Pl. Ex. 7). The CFRA's chilling effect on protected political speech provides, in and of itself, sufficient grounds to strike it down on First Amendment grounds. Finally, the solicitation ban needlessly prohibits solicitation of contributions to party and political committees. Because political committees and parties cannot force elected officials to vote in a certain way, soliciting contributions on behalf of political parties and committees, rather than individual candidates, if anything, alleviates the danger of *quid pro quo* corruption.

CONCLUSION

For all of the reasons stated above, plaintiffs respectfully submit to this Court that Connecticut General Statutes §§ 9-610(h)-(k), 9-612(g) violate the First and Fourteenth Amendments of the United States Constitution. Plaintiffs are, therefore, entitled to summary judgment on Count IV of the Amended Complaint.

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Respectfully submitted,

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CERTIFICATION

I hereby certify that on this 13th day of July, 2007, a copy of the foregoing *Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment* was filed electronically. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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