Excerpts of opinions by the Second Circuit U.S. Court of Appeals in Green Party et al v. Garfield et al

The Claims Plaintiffs have organized their claims into five counts. In Count One, plaintiffs claim that the CEP's qualification criteria and distribution formulae . . . . violate the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by invidiously "discriminat[ing]" against minor parties and their candidates. . . . In Counts Two and Three, plaintiffs assert First Amendment challenges to the CEP's excess expenditure provision. . . . and the CEP's independent expenditure provision. . . . In Count Four, plaintiffs challenge the CFRA's bans on contributions (and the solicitation of contributions) by state contractors, lobbyists, and their families. . . . In Count Five, plaintiffs challenge disclosure requirements imposed by the CFRA on state contractors. . . .

This opinion addresses Counts One, Two, and Three. Our second, separately filed opinion addresses Count Four. Plaintiffs have not pursued Count Five in these appeals; thus we do not address it. . . .

COUNT ONE:

The District Court granted judgment for plaintiffs on Count One. The Court determined that the CEP imposed "a severe, discriminatory burden on the political opportunity of minor party candidates," and it held that "despite presenting compelling government interests, the state ha[d] failed to demonstrate how the CEP [was] narrowly tailored to advance those government interests."

. . . . In our view, the District Court erred in its judgment for plaintiffs on Count One. We conclude that the Connecticut General Assembly enacted the CEP "in furtherance of sufficiently important governmental interests," and we hold that the CEP's qualification criteria and distribution formulae do not, on this record, "unfairly or unnecessarily burden[ ] the political opportunity of any party or candidate." . . . . We therefore reverse the District Court on Count One and grant judgment for defendants.

COUNTS TWO & THREE: Whether the CEP's Trigger Provisions Violate the First Amendment

In Counts Two and Three, plaintiffs challenge the CEP's so-called "trigger provisions." . . . . The trigger provisions provide additional public funding to candidates when certain conditions are triggered. The trigger provisions include the "excess expenditure provision" (Count Two) and the "independent expenditure provision" (Count Three).

The District Court struck down the trigger provisions, concluding that they imposed a "substantial burden on the exercise of First Amendment rights" and that "the state ha[d] failed to advance a compelling state interest that would otherwise justify that burden." . . . . We agree with those conclusions and affirm the District Court's judgment in favor of plaintiffs on Counts Two and Three. . . .

REMAND: We remand the cause to the District Court to determine, in the first instance, whether the trigger provisions are severable from the remainder of the CEP and the CFRA. To that end, the District Court should develop the record to determine the effect of Conn. Gen. Stat. § 9-717, given our judgment for defendants on Count One and our judgment for plaintiffs on Counts Two and Three. The District Court should also conduct any other proceedings, consistent with this opinion, that may be appropriate or necessary.

. . . . The District Court permanently enjoined defendants from enforcing the CEP, but with the consent of all parties, the District Court stayed that injunction pending this appeal.. . .

We now vacate the permanent injunction entered by the District Court and instruct the Court to reconsider the scope of the injunctive relief necessary in this action in light of our holdings in this opinion and the District Court's resolution of the severability issue on remand. . . .

The September 2, 2009 judgment of the District Court on Counts One, Two, and Three of this action is **AFFIRMED** in part (with respect to Counts Two and Three), **REVERSED** in part (with respect to Count One), and the cause is **REMANDED** to the District Court for further proceedings in accordance with the instructions set forth above.

Recognizing that an election has been scheduled for November 2, 2010, and given the importance of this case to ongoing campaigns for state office, we request that the District Court act expeditiously in considering the issues presented for decision on remand.

[From the companion opinion]:

We . . . . hold that the CFRA comports with the First Amendment insofar as it bans contributions by state contractors, "prospective" state contractors, the "principals" of contractors and prospective state contractors, and the spouses and dependent children of those individuals.

. . . . We also reverse part of the District Court's decision, as we hold that the CFRA violates the First Amendment insofar as it bans contributions by lobbyists and their families and insofar as it prohibits contractors, lobbyists, and their families from soliciting contributions on behalf of candidates.

. . . . We hold, as a result, that in light of Connecticut's recent experience with corruption scandals involving state contractors, the CFRA's imposition of an outright ban on contributions by contractors, prospective contractors, and their principals. . . . is closely drawn to the state's interest in combating the appearance of corruption.

. . . . We are not, of course, called upon here to determine the constitutionality of other, hypothetical laws. Our conclusion is only that less restrictive alternatives exist, and thus the state has not met its burden of showing that the CFRA's solicitation ban is narrowly tailored. We hold, therefore, that on this record, the CFRA's bans on the solicitation of contributions. . . . violate the First Amendment.

In summary, we hold as follows:

(1) The CFRA's bans on contributions by state contractors, lobbyists, and associated individuals. . . . are "marginal speech restrictions" that withstand scrutiny under the First Amendment if they are "closely drawn to match a sufficiently important [government] interest." . . . .

(2) The CFRA's ban on *contractor* contributions. . . . is consistent with the First Amendment. The ban furthers "sufficiently important" government interests. . . . in that it addresses both the "actuality" and the "appearance" of corruption involving state contractors. . . . It is also "closely drawn" to achieve those interests. . . . With respect to the ban on contractor contributions, therefore, we affirm the District Court's grant of summary judgment to defendants.

(3) The CFRA's ban on *lobbyist* contributions. . . . violates the First Amendment. Although an outright ban on *contractor* contributions can be justified as a means to address the appearance of corruption caused by Connecticut's recent corruption scandals, those scandals did not involve lobbyists and thus do not provide sufficient justification for an outright ban on lobbyist contributions. Rather, even assuming, without deciding, that the state's anticorruption interest is "sufficiently important" in this context, an outright *ban* on lobbyist contributions—as opposed to a mere *limit* on lobbyist contributions—is not closely drawn to achieve the state's interest. . . . With respect to the ban on lobbyist contributions, therefore, we reverse the District Court's grant

of summary judgment to defendants and instruct the Court to grant summary judgment to plaintiffs. . . .

The CFRA's ban on the solicitation of contributions. . . . is a law that "burden[s] political speech" and is, as a result, subject to strict scrutiny. . . . The law will be upheld only if the "[state] . . . prove[s] that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." . . . . Under the strict scrutiny standard. . . . we reverse the District Court's grant of summary judgment to defendants and instruct the Court to grant summary judgment to plaintiffs.