

DOCKET NO. CV-10-5034960 : SUPERIOR COURT
THOMAS C. FOLEY, ET AL : JUDICIAL DISTRICT OF
V. : HARTFORD at HARTFORD
STATE ELECTIONS ENFORCEMENT
COMMISSION, ET AL : JULY 13, 2010

RULING ON APPLICATION FOR TEMPORARY INJUNCTION

The plaintiffs, Thomas C. Foley and Foley for Governor, Inc., have made an application for a temporary injunction enjoining the approval of the Fedele 2010 campaign committee by the State Elections Enforcement Commission ("SEEC") to participate in the Citizens' Election Program ("CEP"), the disbursal of funds to Fedele 2010 from the Citizens' Election Fund ("CEF") and the Fedele 2010 Campaign committee from spending any funds already disbursed to it.

The Application for a Temporary Injunction was filed with a Verified Complaint for Permanent Injunction and Declaratory Judgment dated July 9, 2010. That Complaint alleges, in part, that the plaintiffs seeks a declaratory judgment that:

- a. Connecticut General Statutes § 9-704(a)(1)(A), which governs contributions for the CEP, does not permit a candidate for Governor to avoid the \$100 individual maximum qualifying contribution limit by creating a joint campaign committee with a candidate for Lieutenant Governor and then relying on individual contributions previously made by the same donor to the campaign committees for the candidates for Governor and Lieutenant Governor that together exceed \$100;

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b. Connecticut General Statutes § 9-709, which governs joint campaigning under the CEP by candidates for Governor and Lieutenant Governor, does not permit an endorsed candidate for Lieutenant Governor to form a joint campaign committee with a non-endorsed candidate for Governor, and

c. Connecticut General Statutes § 9-713, which governs supplemental matching grants under the CEP, does not permit the payment of additional monies to opposing participating candidates as a result of any contributions, loans or other funds received by, or expenditures made, or obligated to be made, by a nonparticipating candidate prior to the day following the close of a convention held pursuant to Connecticut General Statutes § 9-382 for the purpose of endorsing a candidate for Governor.

At a hearing which occurred before the undersigned on July 12, 2010, the parties put an oral stipulation of facts on the record and thereafter filed a written Stipulation of Facts which stipulates to the following facts:

1. On July 1, 2010, the campaign committees of Michael C. Fedele and Mark D. Boughton, Fedele 2010 and Boughton for CT 2010, purportedly formed a joint campaign committee under C.G.S. § 9-709 and filed a Form 18 with the SEEC to that effect.
2. Prior to July 1, 2010, Fedele 2010 had collected \$228,232 in qualifying contributions for the Citizens' Election Program ("CEP").
3. On July 8, 2010, the SEEC approved the application of the joint Fedele-Boughton 2010 committee to participate in the CEP.
4. On July 8, 2010, the SEEC also approved the application of the joint Fedele-Boughton committee to receive a supplemental matching grant under C.G.S. § 9-713.
5. On July 8, 2010, the SEEC approved an initial grant voucher for the Fedele 2010 campaign committee for \$1.25 million and a supplemental matching grant voucher for \$937,500.
6. The amount of the supplemental matching grant was based on the Plaintiff's April 1, 2010 financial statement.
7. On July 9, 2010, the Comptroller authorized payment of these two grants to the Fedele 2010 campaign committee.
8. On July 12, 2010, the Treasurer will sign a payment order directing a wire transfer for those two grants into the account of the Fedele 2010 campaign committee.

9. These grants will be available for the Fedele 2010 campaign committee to spend on July 13, 2010.
10. Without the dual contributions made by the same contributor to both the Fedele and Boughton campaigns in excess of \$100 per contributor, the Fedele campaign would not have equaled or exceeded the \$250,000 threshold for qualifying contributions as of the date of his approval by the SEEC.

The elements necessary to support a temporary injunction are: (1) the plaintiffs have no adequate legal remedy; (2) the plaintiffs will suffer irreparable injury absent an injunction; (3) the plaintiffs are likely to prevail on the merits; and (4) the balance of the equities favor a temporary injunction. *Waterbury Teachers Assn. v. Freedom of Info. Comm.*, 230 Conn. 441, 446, 645 A.2d 978 (1994).

The court will first address the third element necessary for injunctive relief: likelihood of success on the merits. The plaintiffs claim that Connecticut General Statutes § 9-709 prohibits a party endorsed candidate for Lieutenant Governor from forming a joint campaign committee with a candidate for Governor who has not received an endorsement from the party. That statute provides, in pertinent part:

a) For purposes of this section, expenditures made to aid or promote the success of both a candidate for nomination or election to the office of Governor and a candidate for nomination or election to the office of Lieutenant Governor jointly, shall be considered expenditures made to aid or promote the success of a candidate for nomination or election to the office of Governor. The party-endorsed candidate for nomination or election to the office of Lieutenant Governor and the party-endorsed candidate for nomination or election to the office of Governor shall be deemed to be aiding or promoting the success of both candidates jointly upon the earliest of the following: (1) The primary, whether held for the office of Governor, the office of Lieutenant Governor, or both; (2) if no primary is held for the office of Governor or Lieutenant Governor, the fourteenth day following the close of the convention; or (3) a declaration by the party-endorsed candidates that they will campaign jointly. Any other candidate for nomination or election to the office of Lieutenant Governor shall be deemed to be aiding or promoting the success of such candidacy for the office of

Lieutenant Governor and the success of a candidate for nomination or election to the office of Governor jointly upon a declaration by the candidates that they shall campaign jointly.

"The principles that govern statutory construction are well established. When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . ' (Internal quotation marks omitted.) *Mickey v. Mickey*, 292 Conn. 597, 61:3-14, 974 A.2d 641 (2009)." *State v. Rodriguez-Roman*, 297 Conn. 66, 74-75 (2010).

The language of § 9-709(a) addresses the time by which two party-endorsed candidates for the offices of Governor and Lieutenant Governor, will be deemed to be campaigning jointly and the time and manner in which "any other candidate[s]" who wish to campaign jointly will be deemed to have done so.

The court does not read the language "any other candidate" in the statute to mean "any other non-endorsed candidate." Other than deeming a party-endorsed candidate for Governor and a party-endorse candidate for Lieutenant Governor to be campaigning jointly under certain circumstances, the statute does not distinguish at all between party-endorsed candidates and those who are not endorsed by the party. The SEEC interpreted the statute in this manner in Advisory Opinion 2010-

04, June 3, 2010. “ ‘Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . Although the interpretation of statutes is ultimately a question of law. . . it is well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement.’ *Groton Police Dept. v. Freedom of Information Commission*, 104 Conn. App. 150, 156, 931 A.2d 989 (2007).”
Okeke v. Commissioner of Public Health, 122 Conn. App. 373, 378 (2010).

The plaintiffs also claim that Connecticut General Statutes § 704(a) prohibits a candidate for the office of Governor who forms a joint campaign committee with a candidate for the office of Lieutenant Governor from counting individual qualifying contributions from the Lieutenant Governor’s individual campaign committee towards his own qualifying contribution requirement when the amount of those contributions, when combined with contributions that the same donor had already made to the Governor’s campaign committee or subsequently made to the joint campaign committee, exceeds one hundred dollars.

Connecticut General Statutes § 704(a) provides in pertinent part:

Qualifying contributions.

(a) The amount of qualifying contributions that the candidate committee of a candidate shall be required to receive in order to be eligible for grants from the Citizens’ Election Fund shall be:

(1) In the case of a candidate for nomination or election to the office of Governor, contributions from individuals in the aggregate amount of two hundred fifty thousand dollars, of which two hundred twenty-five thousand dollars or more is contributed by individuals residing in the state. The provisions of this subdivision shall be subject to the following: (A) The candidate committee shall return the portion of any contribution or contributions from any individual, including said candidate, that exceeds one hundred dollars, and such excess portion shall not be considered in

calculating such amounts, and (B) *all contributions received by* (i) an exploratory committee established by said candidate, or (ii) an exploratory committee or *candidate committee of a candidate for the office of Lieutenant Governor* who is deemed to be jointly campaigning with a candidate for nomination or election to the office of Governor under subsection (a) of section 9-709, which meet the criteria for qualifying contributions to candidate committees under this section *shall be considered in calculating such amounts;*(Emphasis added)

The plaintiffs have cited the first section of the above statute which, provides that candidates for the office of Governor must receive at least \$250,000 in qualifying contributions. However, they fail to cite the very next section of the statute, which provides that all contributions received by a candidate for the office of Lieutenant Governor who is jointly campaigning with the candidate for the office of Governor shall be considered in calculating "such amounts." Therefore, contrary to the plaintiff's argument that defendant Fidele 2010 has violated the statute by considering contributions to the campaign of Mark Boughton, candidate for the office of Lieutenant Governor, the statute specifically allows such combination of contributions.

Section 9-704(a)(1)(B) does not mention whether the contributions from the Lieutenant Governor's campaign committee were made by an individual who already had contributed to the Governor's campaign committee, but instead provides that "all" such contributions shall count towards the Governor's qualifying contribution requirement. The legislature was aware of the fact that many donors make contributions to both candidates for Governor and Lieutenant Governor. It could have excluded such contributions from the pooling requirements of §9-704(a)(1)(B), but it did not.

This interpretation of the language of the statute is consistent with the overall statutory scheme, and particularly with the concept of "joint campaigning" reflected in the CEP. Candidates for the offices of Governor and Lieutenant Governor who opt to campaign jointly are allowed to pool

their qualifying contributions, making it easier to become eligible for funding. The CEP statutes also impose certain detriments to candidates who campaign jointly by limiting both the amount of the grant that the joint campaign committee may receive from the Fund, see Connecticut General Statutes § § 9-704(a)(1)(B)(ii) and 9-709, as well as the amount of permissible expenditures that the joint committee may make during any given phase of the campaign. See Connecticut General Statutes § § 9-702(CEP) and 9-709(requiring Lieutenant Governor to dissolve candidate committee upon formation of joint campaign committee and providing that any expenditures thereafter made to support both candidates jointly shall count towards Governor's expenditure limit.)

The plaintiff also claims that Connecticut General Statutes § 9-713 prohibits the SEEC from including a non-participating candidate's expenditure of funds before the convention when calculating whether and to what extent a participating candidate is entitled to a supplemental grant during a primary campaign. Connecticut General Statutes § 9-713(a) provides in pertinent part:

(a) If the State Elections Enforcement Commission determines that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate who is opposed by one or more participating candidates in a primary campaign or a general election campaign, which in the aggregate exceed one hundred per cent of the applicable expenditure limit for the applicable primary or general election campaign period, as defined in subdivision (1) of subsection (b) of section 9-712, the commission shall process a voucher not later than two business days after the commission's determination and the State Comptroller shall draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission.

On the face of § 9-713(a), there are three elements that must be satisfied for a supplemental grant to issue: 1) the SEEC must determine that "contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate";

2) that the non-participating candidate must be “opposed by one or more participating candidates in a primary campaign or a general election campaign”; and 3) the aggregate of those contributions and expenditures must “exceed one hundred per cent of the applicable expenditure limit for the applicable primary or general election campaign period.” While the second and third elements are specifically tied in the statute to the term “primary campaign,” there is no corresponding requirement under the first prong that the non-participating candidate received or expended the funds “during a primary campaign” or “during a general election campaign.” Therefore, the plaintiffs have not correctly read the statute. It does not limit the SEEC’s consideration to funds received or expended by the plaintiffs only during the primary campaign.

Any other interpretation of the § 9-713(a) would lead to absurd and unworkable results that the legislature could not have intended. Under the plaintiffs’ construction of the statute a declared but non-participating candidate could theoretically spend an unlimited amount of money against a likely primary opponent before the party’s convention without being concerned about triggering supplemental grants for that opponent once the primary campaign has actually started. This would defeat the purpose of § 9-713 and create a loophole in the statutory scheme that the legislature could not have intended. Courts should not construe a statute in a manner that will thwart its intended purpose or lead to absurd results. *Kelly v. New Haven*, 275 Conn. 580, 616, 881 A.2d 978 (2005).

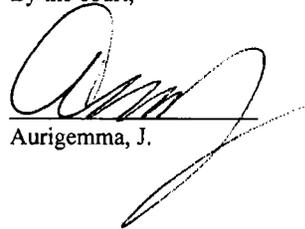
In enforcing expenditure limits by a declared candidate participating in the CEP, the SEEC clearly includes amounts expended or obligations incurred even before the convention, and does not include only amounts expended or obligations incurred after the convention. See Connecticut General Statutes § § 9-702(CEP), 9-704. Therefore, calculating a non-participating candidate’s expense or obligations only from the period after the convention would result in an application of

the statutes that is not harmonious. If possible the component parts of a statute should be construed harmoniously in order to render an overall reasonable interpretation. *Board of Education v. State Board of Education*, 278 Conn. 326, 333, 878 A.2d 170 (2006).

Based on the foregoing, the court finds that the plaintiffs have not satisfied the third element necessary for the granting of a temporary injunction: they are not likely to prevail on the merits. The plaintiffs would be irreparably harmed if the defendants used public funds to campaign against them if the defendants were not legally entitled to those funds. However, as set forth above, the court finds that the defendants are legally entitled to the CEP funds. A balancing of the equities also favors the defendants. Since the Fedele and Boughton campaigns have elected to participate in CEP, they cannot raise any private funds now. Granting the injunction would, therefore, cause great harm to those defendants.

For the foregoing reasons, the Application for Temporary Injunction is denied.

By the court,



Aurigemma, J.