Is the new campaign finance reform law unconstitutional?

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N.Y.C. enacted Local Law 34 (LL34) in 2007 that established a more stringent campaign finance law. LL34 extended the prohibition of corporate contributions to political candidates to limited liability companies (LLCs), limited liability partnerships (LLPs) and partnerships. In addition, LL34 drastically lowered the limits at which those "having business dealings with the city" may contribute. For example, the maximum contribution to a candidate for a citywide officeâ€"mayor, comptroller, public advocateâ€"is $4,950. For those "having business dealings with the city" the maximum contribution is $400. LL34 exempts municipal unions from the definition of "having business dealings with the city." Contributions from Political Action Committees (PACs) are still permitted.

In meetings with legislators, the Real Estate Board of New York (REBNY) argued that it was unreasonable and inequitable to exempt municipal unions that negotiate wage agreements and those that advocate laws requiring the payment of higher wages and benefits to local private sector workers with local elected officials. In effect, LL34 curtailed the private sector's ability to make campaign contributions while allowing labor unions an unfettered ability to support candidates that they would later lobby for legislation beneficial to their interest.

After passage of this law, REBNY supported a lawsuit (Ognibene et. al. v. Parkes) that challenged the constitutionality of LL34. The lawsuit raised five claims of action summarized below:

* In banning corporate contributions, the U.S. Supreme Court had reasoned that the state created advantages that allowed corporations to build capital and to be successful in the economic marketplace. These advantages that the state granted to corporations should not be parlayed into success in the political arena.

* The Supreme Court has allowed limits on campaign contributions for only one reason, namely to prohibit large contributions that could give rise to corruption or the possibility of corruption. N.Y.C.'s campaign contribution limits are not unusually large and not large enough to lead to corruption. Establishing a level nearly ten times lower for those "having business dealings with the city" lacks a compelling state interest to justify the lower level.

* The remaining claims in the lawsuit point out the difficulty that non-incumbent candidates would have raising funds for an effective campaign, ask the court to revisit the prohibition of campaign contributions by corporations and maintain that the city was required by the Voting Rights Act to receive clearance before making changes in their election system.

REBNY supported this lawsuit because we strongly believe that the business community should have the same rights to affect the political process as those given to organized labor or any other interest group.

Recently, judge Laura Taylor Swain, U.S. District Court, Southern District granted a motion by the city for a summary judgment against the plaintiffs in this case. However, that decision has been appealed to the Second Circuit of the U.S. Court of Appeals. The case against LL34 will be argued

on October 18.

We were encouraged by the recent Supreme Court decision in Citizens United v. Federal Election Commission that corporations have the same rights as individuals to engage in independent free speech, effectively eliminating the restriction on corporate campaign contributions. We hope that the logic of that case will be applied to the pending appeal.

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