

RICHARD BLUMENTHAL
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

June 30, 2009

Ms. Carol Carson
Executive Director
Office of State Ethics
18-20 Trinity St., Suite 205
Hartford, CT 06106-1660

Dear Director Carson:

The Bridgeport Roman Catholic Diocesan Corporation ("the Church") has filed a federal lawsuit against officials of the Office of State Ethics ("OSE") seeking court orders preventing the OSE from seeking to enforce against the Church certain state laws governing lobbyists. Since the lawsuit is effectively against the State – the OSE individual defendants are sued in their official capacity – I am responsible for the defense and must evaluate the significant legal issues and offer my guidance and conclusions concerning those issues.

Serious constitutional and other legal concerns raised by this lawsuit compel me to conclude that Connecticut's lobbying registration laws cannot and should not be enforced in this factual situation against the Church. The legislature as soon as possible must clarify or revise those laws to ensure that they continue to serve their important purposes – avoidance of corruption or the appearance of corruption arising from paid lobbying – while also preserving and encouraging legally protected political expression.

I emphasize at the outset that I strongly support vigorous regulation of lobbyists to achieve integrity and public trust in government. Although lobbyists like all citizens have a First Amendment right to petition their government, the State has the right to impose reasonable registration and other requirements on lobbyists. I encourage the OSE to continue its vigilance in preventing and punishing violations of the lobbying laws and other ethics laws within its jurisdiction.

Serious constitutional questions exist as to whether certain actions by the Church should be considered lobbying or whether, even if so, application of a registration requirement to the Church was warranted or reasonable under these circumstances. My opinions and conclusions here are restricted to these particular facts. Other circumstances involving other parties or facts may well involve different considerations warranting different conclusions.

By way of background, the lawsuit arises out of an OSE ethics evaluation into the Church's efforts to oppose Raised Bill 1098, a bill proposed in the recently completed legislative session that would have reorganized the internal governance structure of the Church. The Church, along with many others, concluded that Raised Bill 1098 threatened an unwarranted, unwise and unconstitutional governmental intrusion into the Church's internal affairs. The Church had very little time – approximately four days – to communicate with its members about Raised Bill 1098 before a scheduled public hearing on the bill. During those four days, clergy

read prepared messages about the bill to congregants from the pulpit, and similar messages were posted on the Church's website, which is viewed largely by Church members. In addition, the Church organized a rally at the state Capitol attended by several thousand individuals seeking to convey their opposition to the bill to state legislators. Raised Bill 1098 had been withdrawn by the time the rally occurred, but it proceeded as an expression of protest against what the Church perceived as an unconstitutional and unacceptable intrusion on its internal affairs.¹

Approximately six weeks after the rally, the Church received an evaluation letter from the OSE. An ethics evaluation signals the beginning of investigative activity that may lead to a formal enforcement action potentially culminating in monetary fines and other remedies if violations of state ethics laws are found. *See* Conn. Gen. Stat. § 1-82(a)(1). The evaluation sought to determine whether the Church's conduct described above constituted lobbying such that the Church was required to register as a lobbyist pursuant to Conn. Gen. Stat. §§ 1-94 and 1-95 (collectively "the lobbyist registration laws"). "Lobbying" is broadly defined in the lobbyist registration laws as "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-public agency, for the purpose of influencing any legislative or administrative action[.]" Conn. Gen. Stat. § 1-91(k). A "lobbyist" subject to registration requirements is defined as any person or entity 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." Conn. Gen. Stat. § 1-91(l).

Anyone meeting the statutory definition of lobbyist and engaging in lobbying is subject to extensive regulatory oversight by the OSE. Among other restrictions and requirements, they must register with the OSE (*see* Conn. Gen. Stat. §1-94), file extensive periodic reports detailing lobbying activities and expenditures/receipts relating to lobbying, (*see* Conn. Gen. Stat. § 1-95), and submit to random audits by the OSE (*see* Conn. Gen. Stat. § 1-96a). Failure to register when required, or to comply with other requirements of the lobbying registration laws, may result in civil and/or criminal penalties. *See* Conn. Gen. Stat. §§ 1-99; 1-100.

The Church alleges that any effort to apply the lobbyist registration law under these specific circumstances would impose extensive and unwarranted burdens, chill its protected political speech and interfere with its religious liberties in violation of the United States and Connecticut constitutions.

¹ According to the lawsuit, the ethics evaluation also concerned the Church's statements on its website concerning Raised Bill 899, a bill implementing the Connecticut Supreme Court's ruling requiring the State to provide for same sex marriage. The Church opposed the bill as originally drafted because it failed to guarantee religious organizations the right to continue to operate programs in a manner consistent with their faiths. The final version of Raised Bill 899 included such provisions.

Constitutional questions raised by the OSE's evaluation here are profoundly significant and far-reaching. The Church's free expression activities – communicating with its members on legislative issues of paramount importance and holding a rally at the seat of the legislature to protest government action – are clearly and unquestionably protected by the First Amendment. Indeed, the communications undertaken by the Church are core expressive activity at the very heart of the First Amendment's protections. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The constitutional concerns raised in the lawsuit have special significance and complexity because of the specific factual context in which they arise – a religious organization's efforts to protest perceived government entanglement and intrusion in its affairs. "Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 425 (2d Cir. 2002)(internal citation omitted), *cert. denied*, 537 U.S. 1187 (2003). Accordingly, our courts have approached regulatory matters with a heightened sensitivity when they involve religious affairs. *See, e.g., Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 305 (1963)(Goldberg, J., concurring)("delineation of the constitutionally permissible relationship between religion and government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint."); *Daughters of Saint Paul v. Zoning Bd. of Trumbull*, 17 Conn. App. 53, 60 (1988)("Although the question of whether a building constitutes a church or other place of worship is factual, this sensitive determination must be informed by a recognition of the protection afforded the free exercise of religion by the constitutions of Connecticut and of the United States.")².

The legal and practical questions confronted by the OSE in enforcing the lobbyist registration laws, and the Church in complying with those laws, are significantly complicated by the broad statutory definitions of "lobbyist" and "lobbying." While the legislature created certain exclusions to these definitions, none specifically addresses the particular circumstance here. *See* Conn. Gen. Stat. § 1-91. There are no court rulings offering meaningful guidance on the proper scope or application of the relevant statutory terms. The OSE has authority to issue declaratory rulings and advisory opinions concerning the applicability of the lobbying registration laws and, indeed, to identify by regulation certain communications that do not constitute lobbying. *See* Conn. Gen. Stat. §§ 1-81; 1-91(k); 4-176. Here, there are no opinions, rulings or regulations that would have fairly alerted the Church that its conduct under these specific factual circumstances required it to either register with the OSE or face enforcement

² To be clear, I do not understand the Church to be asserting – and I do not conclude – that religious organizations may not constitutionally be subject to registration or other regulation of lobbying activities under any circumstances.

action. Nor is there any evidence that the legislature intended the lobbyist registration laws to apply in these specific circumstances.

Uncertainty flowing from the broad definition of the operative statutory terms, as well as lack of interpretive guidance clarifying the proper scope and application to the Church's conduct in opposing Raised Bills 899 and 1098, raises additional constitutional concerns. Perhaps most significant is the intolerable risk of chilling constitutionally protected political expression by the Church and its members. "Where first amendment rights are at stake, vague laws may cause citizens to avoid constitutionally protected conduct for fear of incurring criminal prosecution." *Ramos v. Town of Vernon*, 254 Conn. 799, 842 (2000). The Church has alleged in its lawsuit, and in an affidavit of Bishop William Lori, that the OSE's investigation and potential enforcement will continue to deter, discourage and chill its future participation in political dialogue.

Further, under the overbreadth doctrine, a statute that encompasses within its regulatory sweep both protected and unprotected speech may be declared invalid under the First Amendment "until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression." *United States v. Foxworth*, 2009 U.S. App. Lexis 12191 (2d Cir. 2009)(internal citations omitted).

Very simply, while no court has yet determined that lobbyist registration laws applied to the Church under these specific circumstances would be unconstitutional, such enforcement raises a series of serious constitutional concerns. As a general matter, courts have an obligation to construe and apply statutes wherever possible to avoid constitutional problems and to preserve protected First Amendment expression. *See, e.g., State v. Indrisano*, 228 Conn. 795, 805 (1994).

In my view, under the circumstances presented here, the lobbying registration laws are susceptible to a construction that would exclude enforcement against the Church's conduct in disseminating statements about Raised Bills 899 and 1098 to church members from the pulpit and through its website. As noted, the lobbyist registration laws are applicable only to those who receive or expend more than two thousand dollars on lobbying. *See* Conn. Gen. Stat. § 1-94. "Expenditure" is defined to exclude "any expenditure made by any . . . organization . . . for the purpose of publishing a newsletter *or other release to its members*["] Conn. Gen. Stat. § 1-91(f)(emphasis added). There is no sure sign that the legislature would have intended statements like the Church's to fall outside of the safe harbor of this exclusion. The legislature should consider clarifying the scope of this exemption. Without clarification, the lobbying registration law could be applied in factual circumstances as presented here in a manner violating fundamental First Amendment rights of free speech and freedom of religion.

There is no denying the profound and serious constitutional concerns in enforcing the lobbyist registration laws against the Church under these circumstances. The OSE should abandon its investigation or enforcement as to Church activity regarding Raised Bills 899 and

1098 or similar future conduct – and halt such future investigative or enforcement efforts – unless and until the legislature clarifies or revises the statute to address such constitutional concerns. I look forward to advising and working with the legislature in any such efforts.

Legislative guidance on the proper scope of the lobbyist registration laws would greatly benefit the public and the regulated community. It would also clearly help the dedicated public servants in the OSE responsible for enforcing those laws. They must do so now, as shown here, without adequate statutory guidance. I commend them for their valuable and difficult work motivated by the laudatory purposes of the law.

Please do not hesitate to contact me if you have any questions or concerns about this or any other matter.

Very truly yours,


RICHARD BLUMENTHAL