

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

**THOMAS C. FOLEY and FOLEY FOR
GOVERNOR, INC.,**

Plaintiffs,

v.

**STATE ELECTIONS ENFORCEMENT
COMMISSION; ALBERT P. LENGE, in his
official capacity as Executive Director and
General Counsel of the State Elections
Enforcement Commission; NANCY
WYMAN, in her official capacity as State
Comptroller; DENISE L. NAPPIER, in her
official capacity as State Treasurer; FEDELE
2010 JOINT GUBERNATORIAL
CAMPAIGN COMMITTEE; FEDELE 2010;
BOUGHTON FOR CT 2010; and JOHN
DOE CORP.,**

Defendants.

**CIVIL ACTION NO.
3:10-cv-01091(SRU)**

July 14, 2010

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFF'S *EX PARTE* MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Plaintiffs, Thomas C. Foley and Foley for Governor, Inc., hereby respectfully submit the following supplemental brief in support of their application for an immediate temporary restraining order and permanent injunction in order to apprise the Court of certain recent developments that significantly impact this matter and *call for immediate injunctive*

relief. In particular, Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 have recently applied to the State Elections Enforcement Commission (“SEEC”) for additional supplement matching funds in the amount of \$312,500.00, pursuant to § 9-713 of the Connecticut General Statutes, a provision of the Citizens’ Election Program (“CEP”) which was struck down as unconstitutional by this Court and the United States Second Circuit Court of Appeals. This afternoon (July 14, 2010) at 4:00 p.m., there is a hearing before the SEEC on that application for additional supplement matching funds and *the SEEC has indicated that they “could act on [the] application as early as today.”* See Opposition to Plaintiff’s Motion Under The Court’s Supervisory Powers For A Temporary Injunction, pp. 1-2, attached hereto as **Exhibit A**. That means these Defendants could receive additional supplemental matching funds within forty-eight (48) hours. See C.G.S. § 9-713.

The standard for either a temporary restraining order or a preliminary injunction is well-settled and requires a plaintiff to demonstrate irreparable harm, and either a likelihood of success on the merits or sufficiently serious questions going to the merits such as to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff’s favor. See *Leibowitz v. Smith Barney*, 863 F. Supp. 171, 173 (S.D.N.Y. 1994) (citing *inter alia Local 1814, Int’l Longshoremen’s Assn. AFL-CIO v. New York Shipping Assn., Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992)); Fed. R. Civ. P. 65(b).

First, irreparable harm could not be clearer under these circumstances. The Second Circuit defines “irreparable harm” as “certain and imminent harm for which a monetary award does not adequately compensate,” a standard which requires that the harm “must be actual and imminent, not remote and speculative.” *Wisdom Import Sales Company, L.L.C. v. Labatt Brewing Company Ltd.*, 339 F.3d 101, 113 (2d Cir. 2003). The Plaintiffs are being irreparably harmed as we speak because, upon information and belief, Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton are spending supplemental matching funds that they previously received from the SEEC on political advertising to opposing the Plaintiffs’ candidacy for Governor. ***Indeed, upon information and belief, these Defendants have already spent hundreds of thousands of dollars on television advertising with funds that were only disbursed yesterday and by this morning their attorneys represented that “[t]he money’s gone.”*** See The CT Mirror Web-Article, p. 2, attached hereto as **Exhibit B**. The harm to Plaintiffs is “actual and imminent” and on-going.

The Plaintiff will be further irreparably harmed if additional supplemental funds are approved by the SEEC, disbursed to Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton and likely spent by these Defendants in a very short period of time. There is no way to reasonably determine the amount of money that could adequately compensate the Plaintiffs for their injuries resulting

from the political advertising bought and paid for by these Defendants with supplemental matching funds.

Second, there is no doubt that there is at least “sufficiently serious questions going to the merits such as to make them a fair ground for litigation” in light of the decision of the United States Second Circuit Court of Appeals affirming the trial court’s ruling that declared unconstitutional the exact provision of the CEP, Conn. Gen. Stat. § 9-713, pursuant to which these additional supplemental matching funds could be approved by the SEEC, disbursed to Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton and spent by these Defendants.

Third, the hardships balance in the Plaintiffs’ favor. Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 have already received supplemental matching funds and have begun to use those funds to oppose the Plaintiffs’ candidacy for Governor, thereby impacting the Plaintiffs’ First Amendment rights to free speech, association and to run for elective office. As a result, the Plaintiffs will be forced to expend additional sums in response to the political advertising bought and paid for with supplemental matching funds received by those Defendants.

On the other hand, Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 will not suffer hardship if enjoined from spending the supplemental matching funds. The Defendants have

received \$1.25 million under the CEP as initial grant funds. The Plaintiffs are not seeking to enjoin the spending of those funds in this lawsuit. Rather, the injunction is aimed exclusively at the \$937,500.00 that the Defendants have already received and the \$312,500.00 for which they recently applied. Thus, if enjoined from spending the supplemental funds, the Defendants will still have available to spend on political advertising the \$1.25 million initial grant amount. The SEEC will not suffer any hardship if enjoined from disbursing additional supplemental matching funds. In fact, public interest weighs in favor of this injunction because the disbursement of additional taxpayer dollars pursuant to a provision of the CEP, § 9-713, which has been found unconstitutional by this Court and the Second Circuit Court of Appeals, is harmful to the public.

Accordingly, the Plaintiffs seek an *immediate* temporary restraining order and permanent injunction barring: (1) the approval by the SEEC of the applications of Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 for any additional supplemental matching funds pursuant to § 9-713; (2) the disbursement of additional supplemental matching funds pursuant to § 9-713 to Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010; (3) Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 from spending any supplemental matching funds pursuant to § 9-713 that have already disbursed to them; and (4) Defendant John Doe Corp., who are certain unknown political vendors and

broadcast media outlets, from accepting payment of supplemental matching funds from Defendant Fedele 2010 Joint Gubernatorial Campaign Committee, Defendant Fedele 2010 and Defendant Boughton for CT 2010 and running any television ads, radio ads, mailings or any other political ads paid for by these committees.

Respectfully submitted,

THE PLAINTIFFS,
THOMAS C. FOLEY, and FOLEY FOR
GOVERNOR, INC.

By and through its attorneys,

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CERTIFICATION

I hereby certify that on July 14, 2010, a copy of the foregoing Supplemental Memorandum was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

The Supplemental Memorandum was also mailed, faxed and emailed to the following counsel on July 14, 2010:

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