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Pursuant to Sixth Circuit Rule 206

File Name: 12a0245p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ARTHUR LAVIN; JASON CHAO; MICHAEL W.
DEVEREAUX; PATRICIA J. KELLNER; JEROME
LIEBMAN, ERIC R. SCHREIBER; CONSTANCE
D. MAGOULIAS; PETER A. DEGOLIA; NATHAN
A. BEACHY,

Plaintiffs-Appellants,

v.

JON HUSTED, in his Official Capacity as Ohio
Secretary of State,

Defendant-Appellee,

RICHARD MICHAEL DEWINE; J.B. HADDEN;
MIKE DEWINE FOR OHIO,

Intervenors,

THE OHIO STATE MEDICAL ASSOCIATION;
OHIO OSTEOPATHIC ASSOCIATION; THE
ACADEMY OF MEDICINE OF CLEVELAND &
NORTHERN OHIO,

Amici Curiae.

No. 11-3908

1:10cv1986

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 1:10-cv-1986—Donald C. Nugent, District Judge.

Argued: July 25, 2012

Decided and Filed: August 3, 2012

Before: DAUGHTREY, KETHLEDGE, and DONALD, Circuit Judges.

COUNSEL

ARGUED: Subodh Chandra, THE CHANDRA LAW FIRM, LLC, Cleveland, Ohio, for Appellants. Richard N. Coglianesse, OFFICE OF THE OHIO ATTORNEY GENERAL, Columbus, Ohio, for Appellee. **ON BRIEF:** Subodh Chandra, Donald P. Screen, Sandhya Gupta, THE CHANDRA LAW FIRM, LLC, Cleveland, Ohio, for Appellants.

Raymond V. Vasvari, Jr.,
BERKMAN, GORDON, MURRAY
& DEVAN, Cleveland, Ohio,

for the State to demonstrate how its ban on contributions from contractors would help bring such scandals to an end. *See id.*

We have nothing of that sort here. When pressed to explain how § 3599.45 furthers the State's interest in preventing corruption, the Secretary says that prosecutors have considerable discretion about whom to prosecute, that Medicaid fraud is a problem in Ohio (as it is elsewhere), and that, if prosecutors are permitted to accept contributions from Medicaid providers, they might choose not to prosecute contributor-providers that commit fraud. But the Secretary concedes that he has no evidence that prosecutors in Ohio, or any other state for that matter, have abused their discretion in this fashion. Indeed the Secretary concedes that he has no evidence at all in support of his theory that § 3599.45 prevents actual or perceived corruption among prosecutors in Ohio. Meanwhile, the plaintiffs have evidence showing the contrary, in the form of affidavits from three former Ohio Attorneys General, each of whom says that "decision making in the Attorney General's office regarding Medicaid fraud would not have been influenced by my campaign committee's receipt of campaign contributions from individual Medicaid providers or those with ownership interests in them." (Petro Declaration at ¶ 5; Fisher Declaration at ¶ 5; ^{Pg} Mann Declaration at ¶ 7.) The Secretary's claim that § 3599.45 prevents corruption, therefore, is dubious at best. ✓

What is even more clear, however, is that the contribution ban is not closely drawn. To be closely drawn, a law restricting campaign contributions must "avoid unnecessary abridgement of associational freedoms." *Buckley*, 424 U.S. at 25. Here, as discussed above, the theory behind § 3599.45 is that the Attorney General and county prosecutors might choose not to prosecute campaign contributors who commit Medicaid fraud. But even if we were to accept this theory at face value, the ban is vastly more restrictive than necessary to achieve its stated goal. According to the State's own statistics, there were over 93,000 Medicaid providers in Ohio in July 2009. That same year, Ohio investigated 316 reports of Medicaid fraud, prosecuted 97 people for Medicaid fraud, convicted 68, and completed 21 civil settlements. Which is to say that, in a one year period, only .003% of Ohio's Medicaid providers—or 316 of them—were