

**Testimony of
Karen Hobert Flynn
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Common Cause
Before the Government Administration and Elections Committee
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My name is Karen Hobert Flynn and I am the Vice President of State Operations for the national organization of Common Cause and former Chair of Common Cause in Connecticut, and one of the advocates who worked to urge the General Assembly and the Governor to pass the Citizens Election Program in 2005, as well as important fixes to that law in 2006 and 2007.

Common Cause in Connecticut is a nonpartisan, nonprofit citizen lobby that works to improve the way Connecticut's government operates. Common Cause has more than 400,000 members around the country and 36 state chapters. We have approximately 7200 members and activists in Connecticut.

We are grateful to the members of the Government Administration and Elections Committee (GAE) for holding this critical hearing on two strong bills to amend the Citizen's Election Program.

This very successful program is facing tremendous challenges with \$39 million in cuts from the program over the last fifteen months during Connecticut's difficult fiscal crisis, as well as the legal challenges we face during an election year.

Common Cause believes that this hearing is an important step in moving to protect and preserve this law regardless of how the Second Circuit court rules.

URGENT ACTION NEEDED

Common Cause believes that there is a real need for urgent action and we believe we need to fix the law now, rather than wait for the Second Circuit ruling, given that we have candidates running for statewide office who need to know this program will be there for them. In fact, we are starting to see candidates jump ship because they don't believe that the General Assembly will pass a fix to guarantee the CEP's viability. This delay has without any doubt harmed the Citizens' Election program.

To add to the sense of urgency, many of you are likely aware that Governor Rell has issued a writ for the special election to fill the vacancy in the office of State Representative in the 120th Assembly District. This has an impact on the potential to trigger the reversion clause under General Statutes Section 9-717. The trigger date is no longer April 15. Rather, the operative date for Section 9-717 is the 45th day before the March 2 special election, or January 16.

While we do currently have a stay of Judge Underhill's decision in the *Green Party of Connecticut v. Jeffrey Garfield* case, when the Second Circuit Court of Appeals issues its decision at any time, the reversion clause will be triggered, which means the General Assembly only has 7 days to enact a fix.

For those of us who went down to New York to hear oral argument in the Green party case before the Second Circuit, the judges seemed acutely aware of the need to expedite a decision, since the 2010 elections are well underway. That could mean that we could be faced with a decision in the next two months, and the General Assembly only has seven days to amend the law to prevent us from reverting to the pre-2005 law. Common Cause believes urgent action is necessary, including the prompt repeal of Section 9-717 and action to pass some version of one of the two bills before us.

CITIZENS UNITED

At the same time we are dealing with the challenges around our Citizens' Election program, the Supreme Court of the United States handed down a decision that underlines the critical need for public financing as one of the few avenues left to those who hope to curb the undue influence of special interests on elections. The Supreme Court's decision will unfortunately enhance the ability of the deepest-pocketed special interests to influence elections at the state and federal level. The decision in *Citizens United v. the Federal Election Commission*, which overturned the ban on independent expenditures by corporations and labor unions, paves the way for corporations and unions to use treasury funds in federal elections. Although Citizens United does not yet directly impact the 24 states (including Connecticut) that also have direct bans on unlimited corporate expenditures in campaigns, we can expect to see lawsuits challenging the constitutionality of those bans cropping up in the coming weeks and months.

The *Citizens United* ruling along with other recent Supreme Court rulings indicates that this court is chipping away at campaign finance regulations that limit the flow of money into politics. Whether we like it or not, the Supreme Court is sending a clear message—find another way.

We have found that way in Connecticut -public financing like the Citizens' Election Program allows candidates to voluntarily opt out of the escalating fundraising race and run vigorous campaigns relying on small contributions and limited public funding. Although public financing won't match dollar for dollar every penny spent on independent expenditures, it will give candidates enough resources to be competitive and get their message out. It is the only viable option moving forward to free politicians from special interest money and the endless campaign money chase.

COMMON CAUSE SUPPORTS THE GOVERNOR'S BILL

Common Cause is here to testify our support for the Governor's bill and Raised Bill 5022.

Governor Rell's bill is a very good start to dealing with the questions raised by the Underhill ruling. The proposal repeals 9-717; it reduces the size of grants; and it eliminates the additional requirements for minor party and petitioning candidates which allows them to qualify like all other candidates.

The one area in this bill that we believe needs work is around the trigger provision piece of the bill. In the Governor's proposal, supplemental grants are eliminated for candidates who are victims of negative independent expenditures or who face nonparticipating candidates who exceed the spending limit. These provisions are eliminated until a court of competent jurisdiction finds them constitutional – which is the reverse of how we would recommend dealing with this provision. In addition, no alternative is suggested for candidates who face independent expenditures or millionaire candidates who want to spend their millions on an election. Given the Citizens United decision which could unleash unprecedented negative independent expenditures in elections, and the very real fact that we have several millionaires who plan to ignore the Citizens' Election program, we believe it is critical to develop an alternative to triggers if the 2nd Circuit should strike them down. RB 5022 provides a useful model of providing a match for additional small donor funds.

COMMON CAUSE SUPPORTS RB 5022

Common Cause also supports Raised Bill 5022, which sets up a very helpful framework that may help break the logjam around potential changes in the Citizens' Election Program. RB 5022 leaves the current provisions in place unless the Second Circuit finds them unconstitutional. That allows us to pass this bill as soon as possible and we don't need to wait for the Second Circuit to rule and then only have 7 days to act before the law reverts back to pre-2005.

GRANT REDUCTIONS

Common Cause supports the grant reductions in RB 5022 and we agree that we shouldn't reduce the grant size for the Governor's race, since that grant amount is far less than the average amount spent by candidates over the years.

MINOR PARTY PROVISIONS

Common Cause supports shifting the minor party provisions to 5%/4%/3% qualifying threshold based on past electoral performance or petition signatures collected instead of the 20%/15%/10% thresholds in the current law. Judge Underhill even suggested these thresholds himself in his decision saying that the state had not make the case why these levels wouldn't have sufficed to protect the public fisc. We think this is a step in the right direction, but we would still urge you to make those thresholds also apply to a lesser major party candidate in a party-dominant district.

TRIGGER PROVISIONS

Common Cause also supports the back-up mechanism for matching small donor funds if the Second Circuit finds the trigger provisions unconstitutional. If the Second Circuit upholds Underhill's opinion, then the bill sets up an option for statewide and some General Assembly races to raise small dollar contributions and match them with CEP funds to replace the trigger provisions for matching funds for candidates who face wealthy nonparticipating opponents or negative independent expenditures.

This concept closely mirrors the provision in the Fair Elections Now Act, a public financing bill for congressional races has been introduced by Congressman John Larson and has 134 cosponsors and provides a grant to candidates running for the House, after they raise a total of \$50,000 from 1500 people in their districts in amounts of \$100 or less. Qualified House candidates receive \$900,000 in Fair Elections funding split 40% for the primary and 60% for the general. Candidates could also continue to raise small donations of \$100 or less from in-state contributors and those contributions would be matched by four dollars from the Fair Elections Fund for every dollar raised. The total Fair Elections Funds available is strictly limited to three times the initial allocation for the primary, and again for the general, available only to candidates who raise a significant amount of small donations from their home state. If a participating candidate is facing a well-financed or self-financed opponent, or is the target of an independent expenditure, they will be able to respond by utilizing this matching fund provision.

While we believe this is a constitutionally permissible option to replace the trigger provisions for matching funds for candidates who face wealthy nonparticipating opponents or negative independent expenditures, we support a larger ratio match, like a four to one match, to make it easier for candidates to raise these additional resources they need – particularly at the statewide

level where we know of three candidates who do not plan to participate in the Citizens' Election program. We understand the constraints we face, given that \$39 million has been siphoned from the CEP but candidates need resources if we want to encourage participation.

The committee should also consider letting candidates raise an additional \$100 from their qualifying contributors and allowing the second \$100 to be used towards the match for small contributors. This is allowed in the Fair Elections Now Act, and can help candidates raise additional resources.

REPEAL OF 9-717

RB 5022, like the Governor's bill repeals 9-717. Common Cause believes the repeal of Section 9-717, also known as the "reversion clause," is necessary if we are to provide greater electoral certainty for candidates planning to run under the Citizens' Election Program for 2010 statewide and legislative elections. Repeal of the reversion clause would allow the general severability clause found in Section 1-3 to apply to the Program should the State lose on appeal. This would allow the Citizens' Election Program to operate for 2010, thereby avoiding the dramatic consequence of the immediate loss of all of the election law progress we have enjoyed in CT since 2005.

In conclusion, I would like to thank the Chairs of this committee, Rep. Jaime Spallone and Senator Gayle Slossberg for their work on RB 5022, and thank you to Governor Rell for her leadership on this critical good government reform. We believe that the Citizens' Election Program is an incredibly significant achievement, and one we must protect and preserve. Thank you.

