



**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
Citizens' Election Program**

**Testimony of Albert P. Lenge
Executive Director and General Counsel**

**Testimony of Beth A. Rotman
Director of the Citizens' Election Program**

**State of Connecticut General Assembly
Government Administration and Elections Committee
HB 5021 and HB 5022**

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Good Morning. Chairperson Slossberg, Chairman Spallone, Ranking Members Senator McLachlan and Representative Hetherington, and distinguished Committee members. I am Albert Lenge and I appreciate your efforts concerning the Citizens' Election program as you deal with the weighty decisions facing you this legislative session. While I know many of you from my years with the State Elections Enforcement Commission, I am excited to work with you in my new capacity as its executive director and general counsel.

I hope to develop as constructive and collegial a relationship with you that my predecessor Jeff Garfield enjoyed in his tenure at the Commission, as he collaborated with you to create a body of laws that, I believe, represent the most forward-thinking, innovative, and well-designed system of campaign finance and election laws of any state in the nation. Regularly, at gatherings of campaign finance professionals and advocates from across the nation, Connecticut serves as an example of a public financing program that can restore people's faith in their elected institutions, revitalize grassroots participation among voters, and connect elected officials with their constituents.

Recently, however, several court decisions have thrown the normally staid land of campaign finance into turmoil. In August of last year, the federal district court in Bridgeport released a decision finding several aspects of Connecticut's Citizens' Election Program unconstitutional. Adding to those questions, just last month, the U.S. Supreme Court's struck down a decades-old ban on election expenditures by corporations. Today I urge you to move quickly to preserve the Citizens' Election Program, by protecting the fund and making necessary

changes to the Program including the repeal of section 9-717. With me today, is Beth Rotman, Director of the State of Connecticut's Citizens' Election Program (Program), who will address ways to refine the Citizens' Election Program in light of Judge Underhill's decision.

It is always a pleasure to appear before you; however, I am particularly thankful to have the opportunity to testify at this time about the need to protect a landmark Program that has suffered a serious body blow from an adverse federal court opinion and injunction. Today, I am testifying on behalf of the Commission in support of HB 5021 and HB 5022. And, I want to emphasize that the Commission is impressed with the leadership of the co-chairs at this critical time for the Program.

As you know, the first run of the Program for the 2008 General Assembly elections saw an unprecedented level of participation with three-quarters of General Assembly candidates participating. By virtually eliminating special interest money from the State's campaigns in its inaugural run, our first run earned an important place in our country's political history. The Program's inaugural run was called the achievement of the impossible and the most important development in Connecticut politics in the last thirty years. However, in light of the ongoing recession and the Judge Underhill decision, securing the continued existence of the Program has been a challenge.

Our State's efforts to value citizen based democracy are all the more crucial in the country's post-Citizens' United landscape. In Citizens' United, the Supreme Court diminished the role of citizen participation in the democratic process by holding that corporations and human beings have the same First Amendment rights to engage in political spending. *The best way to respond to Citizens' United is to enhance and preserve the role of Connecticut citizens in our State's democracy by protecting the Citizens' Election Program.*

Indeed, countless campaign finance experts around the country are citing public financing of political campaigns as a first step toward restoring the primary role of citizens in our elections after the Citizens' United decision. We already have a system in Connecticut; and we need to

protect the Program for 2010 and beyond. There are different ways to do this effectively. We must move quickly, however, so the Program can continue to serve as an example of how a public financing program can restore people's faith in their elected institutions and revitalize grassroots participation in democracy.

We must also ensure that the Program is fully funded for 2010 and beyond. No one can possibly deny that we face difficult economic times in Connecticut. With shrinking revenues and increased demands for state assistance for those feeling the brunt of the recession, everyone feels pressure to find resources in the State budget. However, any further cuts to the Citizens' Election Fund would represent at best a short-term fix with significant long-term consequences.

To date, \$38.5 million has been swept from the Program to mitigate the State's budget deficit. Any further cuts risk the State's ability to fund campaigns for statewide and General Assembly candidates in 2010, as discussed in the Commission's December 2009 Report – "Projected Levels of Candidate Participation and Public Grant Distribution for the 2010 Citizens' Election Program & the Sufficiency of the Citizens' Election Fund."

The Citizens' Election Program freed more than three-quarters of the sitting legislators from having to accept special interest money to finance their election campaigns. The citizens of Connecticut through the Program represented the largest donor for 78 percent of the members of the General Assembly. In fact, the *only* "special interest" to which those members are beholden is the people of Connecticut. Fully funding the State's public financing program represents an investment in the future of Connecticut and a commitment to returning democracy to the people.

Federal District Court Opinion

In his August opinion, federal district court Judge Underhill looked at the Citizens' Election Program as a whole and found serious issues with aspects of the Program:

- He found that the **extra qualifying criteria for minor party candidates** – the 10-15-20% prior vote totals/petition signature requirements - **were too burdensome** – that they are so difficult to achieve that the vast majority of minor party candidates will never become eligible to receive even partial public grants;
- He found that the CEP operated to treat minor party candidates differently from what he termed “**hopeless**” **major party candidates** – those who had historically either done poorly in their districts or abandoned these districts. In the Court's view, giving such major party candidates full public funding without requiring them to make an extra showing of public support resulted in those candidates' enhanced political strength;
- He found the grant amounts were “**windfalls**” - well beyond what most candidates could raise privately; and
- He found that the trigger provisions for issuing supplemental funds based on **excess and independent expenditures** were unconstitutional.

In Judge Underhill's view, these aspects of the program operated together as a package to unconstitutionally burden the political opportunity of minor party candidates. Given the Court's focus on multiple parts of the program, a multi-faceted approach is needed to adequately address the opinion. It is the Commission's position that there is not just one way to deal with Judge Underhill's opinion and we will support those approaches that address the major issues raised by the Court. We have been presented with two different legislative proposals that – although they use different tactics – have both taken great strides in addressing the Court's major concerns. For this reason, I am testifying today in support of both bills.

Minor Party Qualifying Criteria

House Bill 5022 Lowers Minor Party Thresholds (3-4-5% for 1/3-2/3-full grants)

House Bill 5022 lowers the thresholds for minor party and petitioning candidate participation, responding to the Court's objections to the current 10%, 15% and 20% prior vote total and petition signature thresholds that minor party candidates must meet in order to qualify for public financing. One of the Court's primary objections to the CEP was that participation for minor party and petitioning candidates would be very limited as the 10%, 15% and 20% thresholds were "nearly impossible to achieve." The Court reasoned that this would ultimately mean that minor party candidates would face major party opponents who have been given an enhanced opportunity to engage in political speech – something akin to giving these major party opponents a microphone not given to the minor party candidates.

The proposal addresses these concerns head on by reducing the necessary prior vote total and petition signature thresholds needed for a minor party or petitioning candidate to get partial or full public grants. The Bill proposes 3%, 4% and 5% prior vote total and petition signature thresholds for 1/3, 2/3 and full grants respectively – this represents a strong response to Judge Underhill's opinion. Notably, House Bill 5022 creates a springing provision which leaves the current provisions in place unless the appellate court finds them unconstitutional.

The Governor's Bill – Eliminates the Extra Minor Party Qualifying Criteria

The Governor's Bill treats major party candidates and minor party candidates the same, imposing no additional thresholds (prior vote total/petitioning signatures) for minor party candidates in order to qualify for public funding. This certainly responds to the Court's concerns about the current requirements for minor party candidates. The Court suggested that Maine and Arizona's public campaign financing programs – both of which operate on a party neutral basis - represented lesser restrictive alternatives to the CEP. Accordingly, crafting a party neutral threshold is certainly one strong option to address the Court's concerns about grant qualification.

Lowering Grant Amounts

Both Bills take action to address the Court’s express concerns regarding the amount of public funding awarded under the CEP, particularly to candidates running for General Assembly. The Court found that the CEP provides participating major party candidates with grants at “windfall levels” that were “well beyond what most major party candidates would typically be able to raise” privately. In doing so, the Court focused on what candidates historically have raised and spent in General Assembly races.

Here, it is clear that the proposed Bills have been crafted to respond directly to the Court’s finding – House Bill 5022 lowers the grant amounts for the candidates for all offices save for Governor. The amounts chosen appear to be taken directly from what has been historically raised. Additionally, House Bill 5022 eliminates grants for unopposed candidates. The Governor’s Bill reduces the grant amounts across the board. Overall, the grant reductions should act to alleviate the Court’s concern about windfall grant levels. For ease of comparison, I have attached a chart listing current Program grant amounts, HB 5021 grants amounts, and HB 5022 grant amounts.

Trigger Provisions

Both proposals address the trigger provisions. The Governor’s bill eliminates the triggers for awarding supplemental grants paid to participating candidates in the event of a high spending opponent or independent expenditure unless the appellate court upholds the provisions. In contrast, House Bill 5022 creates springing provisions which leave the current provisions in place unless a court finds them unconstitutional. If a court finds the triggers unconstitutional, House Bill 5022 includes an alternative—the option to raise additional small dollar contributions in order to obtain matching funds grants (for statewide races and certain General Assembly races), an approach which is aimed at incentivizing participation in this voluntary Program.

The proposals respond to the Court's finding that these supplemental grant trigger provisions were unconstitutional because they cause minor party candidates and minor parties to limit speech for fear of triggering grants for their opponents.

In order for a voluntary public financing program to work well, it must be attractive enough to incentivize maximum participation. The approach in House Bill 5022 – in giving an alternative to the excess and independent expenditure supplemental grants – is a strong one.

In a landscape of millionaire candidates, there needs to be an alternative to trigger provisions in order to make sure that participating candidates will have the resources they need to compete effectively while still eschewing traditional private financing in favor of small dollar individual contributions.

I should note that making e-filing mandatory for those candidate committees who will apply for supplemental matching funds is important, both to aid in the administration and also to enhance disclosure and sunlight. Electronic filing is crucial to the Program's goal of providing the public with the utmost transparency, and accurate and prompt disclosure of campaign finances. Electronic filing is required in most major public financing jurisdictions, and is particularly important with a matching funds program.

As some of you may know, before joining the Commission, I was part of the team administering the New York City Campaign Finance Program. The New York City Program is a nationally recognized municipal public financing program which provides public matching funds to candidates. As this Committee considers incorporating "NYC style" matching fund provisions into the Program, I am pleased to offer my practical experience with the successful NYC matching funds program.

Repeal of Section 9-717

Both Proposals repeal the anti-severability provision in CGS § 9-717. It is the Commission's view that the swiftest, surest path to secure the future of the CEP is the repeal of CGS § 9-717, and this crucial step is safely accomplished with the proposed legislation. By its repeal, the Program can maintain continuity and provide the 2010 candidates and treasurers with consistent rules and confidence that they will not change, while preserving Connecticut's landmark public campaign financing program.

As you know, the current effect of § 9-717 is that it returns the state of the law to its pre-2007 language; i.e. it would suspend all the changes made by Public Act 05-5, if there is a court order enjoining the Program in effect for more than one week. As you also know there is such an injunction currently that has been stayed by the Court, but presumably that stay will be lifted the moment the Second Circuit decides the appeal. By repealing this provision, the legislature removes the most imminent threat to the Program's survival. The importance of this cannot be overstated from the point of view of the survival of the CEP.

Conclusion

These proposals and today's hearing definitely represent a strong start, but our work is not yet done. At all times, of course, as we consider revisions to the CEP, we must be mindful of the Program's goals while also ensuring the protection of the Public Fisc. The goals of the Program, together with a focus on guarding the Public Fisc, have been at the front of the Commission's concerns as we've created the administrative structure of the Program. I know this body shares this focus, and that together we will make this model legislation even stronger. I look forward to a continued spirit of cooperation and exchange in the legislative process. Additionally, the Commission would like to offer some proposed substitute language.

CEP Current Grant Amounts and Proposed Grant Reductions – HB 5021 & HB 5022

	Current Grant Amounts	HB 5021 (Gov. Bill)	HB 5022
Governor	Primary Grant \$1,250,000	Primary Grant \$1,000,000	Primary Grant \$1,250,000
Other Statewide Offices	Primary Grant \$375,000	Primary Grant \$200,000	Primary Grant \$250,000
State Senator	Primary Grant \$36,400 PDD* \$78,000	Primary Grant \$25,000 PDD* \$50,000	Primary Grant \$25,000 PDD* \$54,000
State Representative	Primary Grant \$10,400 PDD* \$26,000	Primary Grant \$7,500 PDD* \$15,000	Primary Grant \$7,000 PDD* \$18,000
Governor	General Election Grant \$3,000,000	General Election Grant \$2,500,000	General Election Grant \$3,000,000
Other Statewide Offices	General Election Grant \$750,000	General Election Grant \$400,000	General Election Grant \$500,000
State Senator	General Election Grant \$88,400	General Election Grant \$70,000	General Election Grant \$61,000
State Representative	General Election Grant \$26,000	General Election Grant \$20,000	General Election Grant \$18,000

PDD* - Abbreviated for Party Dominant District

