



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

**TESTIMONY PRESENTED BEFORE THE
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE**

March 19, 2012

***Statement of Michael J. Brandi, Executive Director and General Counsel
State Elections Enforcement Commission***

Good afternoon, Senator Slossberg, Representative Morin and distinguished members of the Committee. Thank you for the opportunity to speak to the Committee today to present testimony concerning House Bill No. 5528 and its impact on Connecticut's campaign finance laws. With me today are members of the agency's legal staff, who will assist me in answering any questions you may have.

I have been the Executive Director & General Counsel of the Commission for only a few weeks, but, as I am sure you are aware, it has been a busy few weeks. From my first day on the job, I have been here at the Capitol talking with you about budgets, staffing, and the Citizens' Election Program. Today, however, I'm going to speak with you about substantive campaign finance law, specifically the statutory changes proposed in Raised Bill 5528. For the record, I would like to point out that we received a copy of this proposed legislation Wednesday afternoon and quickly prepared comments for submission by Friday. My comments reflect our attempts to analyze this 117 page bill quickly and respond to some of its most significant measures.

As with most legislation, this bill contains some good ideas. While I would like to focus only on its good points, such as the strengthening of the reporting and attribution requirements for independent expenditures, I would be remiss if I did not address what I perceive to be some very troubling portions of the proposal. Some of these, if enacted, have the potential to create some very bad law and do some real harm to Connecticut's campaign finance laws, its reporting and disclosure regime, and, significantly, the Citizens' Election Program.

As you know, Connecticut's General Assembly has created the finest public financing program in the country. In fact, an independent national study released today named Connecticut the best state in the country in terms of the effectiveness and integrity of its political financing system. We'll have a link to that study on our website later today and also provide copies of the study to any interested member.

I know you all appreciate the merits of the Program. In fact, more than two-thirds of the members of this General Assembly, as well as all sitting statewide executive-branch officers, ran for office

using funds provided by the Citizens' Election Program. The Connecticut legislature has given the people of Connecticut something rare in the post-*Citizens United* world: the possibility of elections free of special interest big money.

That's why I am perplexed that this legislature would introduce a bill that conflicts with Connecticut's reforms in at least four major ways.

First, it creates the appearance that candidates participating in the Citizens' Election Program are fiscally irresponsible. As drafted, this legislation would allow qualified candidates to give away millions of dollars in surplus money to those who worked on their campaigns instead of returning that money to the Program. Under its current formulation, all surplus money remaining in qualified candidate committees' accounts after election day, except limited payments to treasurers, must be returned to the Citizens' Election Fund, the permanent, non-lapsing account that pays for the Program. In fact, failing to return the surplus is a crime. In Section 10, the bill would allow candidates to take any surplus funds – the money that remains in a candidate committee's account after all the campaign expenses are paid – and pay individuals involved with the campaign up to \$1,000 each for services rendered, presumably a bonus for work well done. As drafted, this proposal smacks of old-school patronage and implies that once the election is over, candidates are handing out gifts of public money to supporters, paying them for their support.

Surely this cannot be what the drafters of this legislation had in mind.

This change is absolutely unnecessary, because under current Program rules campaigns can pay their staff members for their work. To do so, they must simply plan for the expenditures and document the work with a service agreement. A well-organized campaign could spend down to the last dime and return no surplus to the Citizens' Election Fund. That is perfectly legal. But to allow committees to take surplus money that should be returned to the Citizens' Election Fund and hand out those surplus funds as bonuses to campaign supporters would ultimately undermine the public's faith in the Program.

We are not talking about a trivial sum of money, either. In the past two elections, participating candidates have returned more than 2 million dollars to the Fund. Diverting this money away from the public coffers is fiscally irresponsible and gives voters the wrong impression about participating candidates.

A second problem with the bill arises in Sections 25 and 26. Those sections reintroduce to the Program "trigger provisions" to match high spending opponents in a way, which, although novel, raises serious constitutional questions. Similar provisions were eliminated from the Program in 2010, after a federal court deemed them unconstitutional.

As written, if a nonparticipating opponent raises or spends funds that exceed the Program's spending limit by a single dollar then a candidate participating in the Program can engage in what amounts to unlimited fundraising. This fundraising will not be, and I am quoting here from lines 3226 to 3228 of the draft, "subject to limitations otherwise applicable under chapters 155 and 157 of the general statutes." As I read this provision, it would allow a publicly funded candidate to collect virtually unlimited individual and PAC contributions as well as accept contributions directly from special interest groups, business entities and labor unions in unlimited amounts. Again, I cannot believe that this outcome was intended by the drafters of this legislation.

Beyond creating obvious issues of fairness, opening this floodgate will significantly undermine a program that, since its inception, has been the gold standard for public financing programs in the country. Placing the significant questions about the constitutionality of these proposals aside, this measure is a bad idea. As one of my colleagues aptly remarked when we were preparing this testimony, this bill represents the earthquake. The flood of special interest money that will flow into Connecticut in its wake will be the tsunami that will ultimately undermine the Program and irreparably alter Connecticut's campaign finance landscape.

Third, Sections 13 and 14 significantly increase individual contribution limits, raising permissible contributions in all races from all sources across the board – some by as much as 200%. By increasing the individual contribution limits, this bill creates a framework that makes it increasingly likely that a non-participating statewide candidate would reach the levels that would allow the unrestricted fundraising allowed under Section 26.

But the across-the-board increases to the contribution limits laid out in this legislation show no basis in careful study. They are not pegged to inflation or any other increase in costs but were apparently chosen at random: a 42% percent increase for individuals contributing to candidates for Governor; 100% increase for other Constitutional offices; 50% for mayors; 50% for senators; 100% for representatives. The grant amounts provided in the Program were derived after careful study of past elections to determine how large the grants would need to be to ensure that participating candidates could run viable, competitive campaigns. The Program's designers built into the statute a mechanism for adjusting these amounts every cycle by using the Consumer Price Index—keying the increase to the real world cost of goods. We recently did this for this election and calculated that the grant amounts would be 7.4% higher than the grants given in 2008.

By increasing the contribution limits to all offices, nonparticipating campaigns will have more money to spend, elections will get more expensive, and eventually public grants will need to be raised just to keep pace with privately financed candidates in this arms race of campaign funds. Instead of allowing the Citizens' Election Program to operate as a voluntary cap on campaign spending, increasing the role of private money in elections will serve the opposite end by increasing the cost of elections.

Fourth, I want to speak about the mandatory penalties that Section 30 imposes on candidates who coordinate expenditures with outside groups. In short, if a qualified candidate committee is found to have benefited from a coordinated expenditure, this section requires that the candidate committee return all of its grant money. This legislation strips the Commission of any discretion to respond to the particular facts of an individual case. Instead the provision imposes a draconian penalty, which includes disgorgement of all grant funds and exposes an elected official to a potential recall election.

In addition, although the Commission welcomes increased disclosure of campaign expenditures, we oppose the lobbyist filing requirements in Section 28 because their placement in the Ethics Code rather than the campaign finance provisions creates jurisdictional issues. They are also largely duplicative of already existing filing requirements.

These are just some of the most significant concerns we have with this bill. As I promised, however, there are some good parts of this bill, and I want to touch upon those now.

This bill builds on Connecticut's earlier efforts to counteract the chaos created by the Supreme Court's 2010 decision in *Citizens United v. FEC*. With that ruling, the Supreme Court wiped away well-established precedent banning unlimited spending from corporate treasuries that easily could total billions of dollars. To your credit, you responded. The General Assembly quickly passed one of the strongest independent expenditure disclosure laws in the country. The resulting law requires prompt reporting by individuals, entities, and committees who make independent expenditures. It also broadens attribution requirements by insisting that those entities that make independent expenditures identify any message they create and demands that the head of the corporation publicly and prominently "stand by" the ad. Finally, the law establishes a rebuttable presumption for those making specified expenditures to show that the expenditures were indeed independent of any candidate or committee.

In House Bill 5528 before the Committee today, this important work of the Connecticut legislature is continued – strengthening disclosure and giving the public the vital information needed to evaluate communications and participate fully in the market-place of ideas. While we agree with the intent, we suggest taking a different route to our common destination. With additional review and research, there is no doubt that we can improve on the changes that were made in 2010 with Public Act 10-187. We believe that the 2010 changes to the law that created statutory provisions governing independent expenditures by entities create an enforceable, vigorous reporting regime and additional changes would help enhance their efficacy. Some of the changes included in House Bill 5528 are excellent ideas that will take our already strong independent expenditure laws and improve them, but we believe they still need additional refinement. My staff and I stand ready as always to assist the Committee with devising and drafting any

amendments to our independent expenditure laws to make certain they remain the most effective regulation of independent expenditures in the nation.

In conclusion, House Bill 5528 includes good ideas but has room for improvement. While this forum affords inadequate time to address each section in detail, I hope I have touched upon some of the most important aspects of the bill. Thank you for your time and consideration of the Commission's views. I remain committed to working with you and would be happy to answer any questions you may have.