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Thank you for inviting me to speak here today. My name is Nick Nyhart. I'm from Durham, Connecticut, and I'm the President and CEO of Public Campaign, a non-partisan organization, based in Washington, D.C., that seeks to enhance the role of small donors and empower everyday Americans by enacting comprehensive small-donor-driven campaign finance systems in cities and states around the country as well as for federal office. As you probably know, Connecticut, Arizona, Maine, and other localities around the country have such systems. Under these systems, also called "Clean", "Fair", and "Voter-Owned" Elections, candidates raise a set number of small donations and then receive money from a public fund. These programs have enabled hundreds of candidates, often without connections to big money sources, to run for and win elected office by appealing only to ordinary voters within their districts and without creating the potential for perceived or actual conflicts of interest that can occur when large amounts of campaign funds come from a relatively small group of donors, who often have a direct financial stake in policy outcomes.

Unfortunately, several U.S. Supreme Court decisions in recent years have directly or indirectly impacted these laws, including Connecticut's program. In *Davis v. FEC*,¹ the Supreme Court found that the 1st Amendment rights of self-funding candidates were being infringed by a trigger provision of the Bipartisan Campaign Reform Act (BCRA), also known as "McCain-Feingold". The Millionaires' Amendment, as this provision was commonly called, increased contribution limits for the opponents of self-funding candidates, when those wealthy candidates hit certain threshold amounts in the personal money they gave their own campaigns. In Connecticut, we saw this amendment in play when Ned Lamont's self funding triggered increased

¹ *Davis v. Federal Election Commission*, 554 U.S. 724 (2008)

contribution limits for Senator Joe Lieberman in their 2006 U.S. Senate race. The Court ruled that a candidate's free speech rights, defined by campaign spending might be chilled if such spending created a benefit for their opponents, such as relaxed contribution limits. The Davis ruling, which struck down the Millionaires' Amendment brought in to focus the trigger provisions of system's like Connecticut's Citizens Election Program. Under these systems, publicly financed candidates can receive matching funds, up to a fixed limit, when attacked by independent expenditures or they face substantial spending by their opponents' campaigns.

Following Davis, in the 2010 *Arizona Free Enterprise Club's Freedom PAC v. Bennett* decision, the Supreme Court struck down Arizona's triggered matching funds provision of its Clean Elections law. The Court stated that the free speech rights of non-publicly funded candidates were being violated when their opponents received additional funds as a result of increased outside spending. While lower courts had previously ruled that candidates had a right to free speech, but not unanswered speech, the Supreme Court broke new ground in Davis and Arizona Free Enterprise. However, in writing the Arizona decision, Chief Justice Roberts very clearly affirmed the constitutionality of Clean Elections systems saying, "We do not today call into question the wisdom of public financing as a means of funding political candidacy...governments may engage in public financing of election campaigns and...doing so can further significant government interests, such as the state interest in preventing corruption."²

Because of these court decisions, we must look at alternatives to the trigger funds to ensure that candidates in high spending races have sufficient funds to compete effectively. Without such provisions, participation in the Citizen's Election Program will decrease, especially in the most competitive races, increasing dependence on deep-pocket donors, while reducing reliance on a lawmaker's own constituents. Several policy options might be explored:

² *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011)

- **The Fair Elections system:** under the proposed federal Fair Elections Now Act, championed by Connecticut Congressman John Larson, participating candidates, after qualifying and receiving their initial allocation, can continue to raise small donations of \$100 or less, receiving a 5-to-1 match on small contributions. Because this fundraising is not conditioned on an opponents' spending or the presence of independent expenditures, it does not conflict with the Davis or Arizona decisions. This kind of multiple match is a cornerstone of the New York City campaign finance system and has been discussed as an alternative in Arizona. It allows great flexibility for adjusting campaign expenditures for the needs of each race. By relying on small donors, it has increased the engagement of citizens from every corner of New York City.
- **A "requalification" system:** under this proposal, considered in Maine this past year, candidates would be able to qualify for additional funding by repeating their qualifying procedure and then receive additional funds. The Maine proposal would have allowed candidates to do this twice within specified time periods. Because it essentially repeated the qualifying provisions of the Maine Clean Elections law, it had the advantage of being entirely familiar to the candidates and the administrators of the system.
- **Increased initial allocations:** the Connecticut program could simply adjust amounts upwards as was done in the state's 2010 gubernatorial race. This may work better for the general election and for statewide races than it would for legislative races. Unilaterally raising legislative allocations across the board would be a blanket solution that funds every race as if it were an expensive, hotly contested one.
- **Allowing additional assistance from party and caucus committees:** this would expand the role of the parties and caucuses, allowing them to fill in as needed when their candidates require additional funds. There is a potential problem with this approach, if it leads to greater reliance on large contributions from interests that lobby the legislature. One way to stay within the spirit of the program would be to allow the party and caucus committees public matching funds for small contributions and then allow the increased assistance to candidates to come only from those small contributions and the matching funds during the general election. Over the long run this would encourage the parties to expand their base of small contributors, provide great flexibility in funding races according to need, and allow for timely expenditure of funds.

- **Finally, re-introducing private fundraising and relaxing contribution limits:** if an opponent hit certain spending thresholds or if a threshold amount of independent expenditures were made, candidates participating in the system would be allowed to begin raising private funds, perhaps without limit, in order to keep their campaigns competitive in an particularly expensive campaign environment. While this approach might encourage candidates to run under the system, it certainly betrays the spirit of the law. Such a solution could take us back to the days of "Corrupticut" or worse, with gubernatorial candidates forced to rely on millionaire and billionaire special interest contributors, much as we are seeing in this year's presidential race. While some might want to debate this extensively, the argument would likely be a waste of time as the Supreme Court's Davis and Arizona Free Enterprise decisions would seem to make such policy clearly untenable from a Constitutional perspective.

And there is, of course, always the alternative of doing nothing. That approach has made the Presidential public financing system a complete relic, unused and irrelevant after decades of failure to keep it adjusted to a changing political environment. In today's money-drenched political environment the danger in not acting is real and with the Supreme Court's Citizens United decision in 2010, it has accelerated.

One can see this most clearly in our neighbor to the north, the state of Maine, where its Clean Elections system has been in place for six full election cycles. Maine State Rep. Diane Russell described Clean Elections in this way: "I grew up quite poor in Western Maine. The only reason I have the chance to serve the people of this great state is because of public financing. The great thing about public financing is that I am entirely beholden to the best interests of my people". But in 2010, \$400,000 in out-of-state money, designed by national political operatives and spent on vicious attack ads, swept into the state in the closing days of the election, targeted into five state senate districts. Their senate districts are just 40% the size of ours, so it is the equivalent of \$200,000 being spent in a Connecticut state senate race from the outside, at the end of the campaign. All five senators lost, and control of the chamber switched parties by a narrow margin. The money that made this possible came from one national PAC, with the US Chamber of Commerce, big tobacco

companies, the Koch brothers, and Karl Rove's Crossroads groups among its top funders. In this case, outside money facilitated a blue to red shift in power, but the rules that allow this operate without regard to party and it could certainly happen the other way around.

I urge Connecticut's legislature to find a solution in advance, before deep-pocket interests from outside play such a large role in Connecticut's elections. As Super PACs and ultra-wealthy donors attempt to drown out the voices of everyday Americans, I encourage you to continue fighting to ensure that elections truly are in President Lincoln's words "of, by, and for the people." And I would hope that the solution you find would stay within the spirit of the Citizen Elections Program allowing Connecticut elected officials to run for office, in James Madison's words from the federalist papers more than two centuries ago, "dependent upon the People alone"³. I appreciate the opportunity to be here today, and I welcome any questions you may have.

³ Federalist 52