

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

March 3, 2014

Statement of Michael J. Brandi, Executive Director & General Counsel

Senate Bills No. 227 & 228; House Bill No. 5277

Good morning, Chairperson Musto and Chairperson Jutila, Ranking Members Senator McLachlan and Representative Hwang, and distinguished Committee members. I am Michael Brandi, Executive Director & General Counsel of the State Elections Enforcement Commission. I am honored to speak before this Committee this morning and I look forward to working with you during this legislative session. Thank you for this opportunity to testify in support of Senate Bills No. 227 and 228 containing two of the Commission's legislative initiatives this session. We are also providing testimony opposing House Bill No. 5277.

Senate Bill No. 228: An Act Establishing a Pilot Program for Municipal Campaign Finance Filings

Senate Bill 228 is a resubmittal from last year's legislative agenda. It creates a pilot program whereby the State Elections Enforcement Commission ("Elections Enforcement") will perform filing repository duties for the offices of up to 20 municipal town clerks. This pilot program will help the Commission assess the efficacy of moving all municipal filing repository duties to the Commission. Such a move will undoubtedly increase transparency of municipal campaign finance filings by making them available online and will reduce the financial burden at the municipal level of receiving and maintaining such filings.

Presently, town clerks are the filing repository for all municipal campaign finance filings, including those for municipal candidates and referenda. This creates a heavy burden on town clerks. Furthermore, such filings cannot be made electronically thus decreasing public disclosure. Through this program the Commission will work cooperatively with town clerks to free up municipal resources.

Under the program, treasurers for candidates in participating towns will be able to choose to file their statements electronically for the first time. It is important to note that treasurers will still be able to make paper filings in person at the town clerk's office or through the mail if they so chose – this will not change. The deadlines and filing procedures will all remain the same and filings will continue to be timely so long as they are postmarked by the deadline.

After last year's legislative session, Commission staff conducted a survey of town clerks regarding their interest in the pilot program. There is significant support for the pilot program. 125 of the 169 town clerks responded to the survey and, of that group, 92% are in support of the Commission taking over as the central repository of all filings. The common refrain of these town clerks was this initiative will increase public access and create consistency with the way

questions about filings are answered. In addition, the move will free up space, resources and staff time at the town clerk level.

The proposal mandates a study of the pilot program's efficiencies to determine whether the Commission should assume these filing duties for all municipalities in the future. We believe this report will demonstrate that the program increases efficiencies and creates cost savings throughout the State. It will also dramatically increase public disclosure of local campaign filings as they will now be available online, and it will increase consistency in compliance and support for local candidates. The Commission hopes that the legislature will support its efforts to effect cost savings across the state.

Senate Bill 227: An Act Concerning State Elections Enforcement Commission Committee Review

The Commission's second proposal stems from our experience with post election reviews. It is essential to permit the Commission to achieve one of its core missions – safeguarding the public fisc. Over the course of the last three election cycles involving the Citizens' Election Program, the Commission has uncovered mistakes and, in a few cases, misappropriation of public grant dollars. Committees have failed to distribute surplus funds back to the Citizens Election Fund and close their bank accounts at the end of the campaign. Campaign treasurers have commingled campaign and personal funds, borrowing public dollars from the campaign account to pay for non-campaign related expenditures. The Commission has referred a few matters of embezzlement of campaign funds to the Chief State's Attorney for criminal prosecution.

Presently, the only way for the Commission to discover this type of activity is during the post election reviews when it receives the committee's back-up documentation, including bank statements. Under current law, the Commission reviews 50% of General Assembly committees in CEP races. For committees that have not been selected for a post election review, absent a complaint, there is simply no way for the Commission to discover if something major has gone wrong.

Senate Bill 227 seeks to remedy this gap with respect to committees that are not chosen for review. It would permit the Commission to conduct a cursory look at a committee's bank statements upon its filing of a termination statement with SEEC to verify return of large surpluses and allow staff to review a single type of document for any possible major red flags indicating severe problems.

House Bill No. 5277: An Act Concerning a Knowing and Wilful Violation of Chapter 155.

The State Elections Enforcement Commission submits the following testimony opposing House Bill 5277. While the Commission generally supports the concept presented with House Bill 5277 – raising the monetary penalties for knowing and willful violations of the campaign finance law – it strongly opposes removing the potential criminal sentence associated with such violations. As an initial matter, it is important to note that the language in question involves knowing and willful violations only. These criminal sanctions are inapplicable to mere negligence or mistakes.

The strength of the campaign finance laws as a deterrent requires that this criminal sanction is maintained. The law as it currently exists provides perhaps the only possible deterrent from knowing and intentional violations for people spending through corporations and others wealthy enough to regard amounts like \$25,000 or \$50,000 as the painless cost of doing business. If House Bill 5277 passes, then much of the deterrent factor will be removed from the law. Now that the *Citizens United* decision has paved the way for massive corporate and out-of-state spending in Connecticut elections, it is crucial that the law provide for timely disclosure of such spending. It follows that the penalties for knowingly and intentionally failing to provide disclosure must be high enough to incentivize independent spenders to follow the law and provide prompt and accurate disclosure. House Bill 5277 removes the felony provision that allows the Chief State's Attorney to act on certain violations of campaign finance law.

Although \$25,000 or \$50,000 may appear to be a large penalty, for very large independent spenders knowingly and intentionally spending millions of dollars in violation of disclosure laws, this amount will be easily absorbed as a cost of doing business. Thus, if this bill passes, the law will no longer contain a sufficient deterrent to future violations.

Moreover, this revision is inconsistent with the existing language created in Section 8 of Public Act 13-180. This language provides that persons that knowingly and willfully choose not to file campaign finance disclosure forms with respect to certain independent expenditures shall also be fined not more than fifty thousand dollars and *may be referred to the office of the Chief State's Attorney*. House Bill 5277, if passed, ensures that the Office of the Chief State's Attorney will not sufficient tools to prosecute these violations.

In addition to maintaining criminal sanctions for knowing and willful violations, the Commission is also supportive of raising civil penalty provisions specific to the independent expenditure disclosure laws. This might be done by making the monetary penalties for violating these provisions proportional to the aggregate amount of money spent by the independent spender, rather than capping them at \$50,000. Using such an approach, if a corporation spends two million dollars in support of a candidate for governor, then the penalty would amount to some significant percentage of the expenditure amount. This will ensure that the corporate spender will take the disclosure provision seriously rather than choose to violate the law and absorb the current potential fine of \$50,000 as a cost of doing business. This type of sliding scale monetary penalty coupled with a potential criminal sentence for knowing and willful violations would be a true deterrent. It will also make certain that the penalty imposed is proportional to the severity of the violation. We would welcome the opportunity to work with this esteemed committee to draft language which would achieve these goals.

Thank you for the opportunity to present the Commissions views on these proposals.