



**Testimony of  
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**Introduction**

My name is Karen Hobert Flynn and I am the Senior Vice President for Strategy and Programs for the national organization of Common Cause and former Chair and Executive Director of Common Cause in Connecticut.

Common Cause in Connecticut is a nonpartisan, nonprofit citizen lobby that works to improve the way Connecticut's government operates. Common Cause has worked for four decades in Connecticut and worked with the General Assembly and many governors to pass strong freedom of information laws, election reforms that opens up our electoral system to broader participation, campaign finance and disclosure reforms, and common sense ethics reforms. We have more than 400,000 members around the country and 35 state chapters. We have approximately 7200 members and activists in Connecticut.

Common Cause is proud of its role working with a broad coalition of 50 groups to encourage the General Assembly and Governor to pass a strong Citizens' Election program in 2005, and it has been a strong program with robust participation since its inception in 2008.

The CEP has needed reform and tweaking since we passed it in 2005 – that is to be expected. Common Cause supported the very strong disclosure bill drafted by this committee and passed into law in May of 2010, in the wake of *Citizens United* decision.

The challenge was that this legislation was crafted and passed very quickly, before the 2010 elections witnessed a huge explosion of secret money being spent at the state and federal level. In addition, the implications of the *Speech Now* decision were not yet known, because that decision said that the existing \$5000 per year limit on the amount an individual could contribute to a third party group to make independent expenditures is unconstitutional.

Connecticut's law currently requires timely disclosure of electioneering communications and independent expenditures by any entity, and requires a disclaimer featuring the CEO and listing of the top five donors. But we have learned that there is still much unknown to the public about the vast amounts of money spent by secret donors and front groups and even our current law has some weaknesses and lacks the teeth to force compliance with outside spenders who file late or don't disclose the information they should.

### **2013 Measure Harmed the CEP and our Disclosure and Coordination Rules**

The General Assembly's effort to strengthen disclosure in 2013 actually weakened our program in significant ways and we must address the loopholes that drove a truck through our clean election system. The 2013 bill weakened our coordination rules and made it easy for outside so called independent special interests to coordinate with candidates. Our disclosure provisions were weakened and exempted 501 (c) (4)'s in many key areas – the very kinds of groups that operate in secrecy. Connecticut's candidates for governor spent close to \$13 million in public funds in this past election. Outside "independent" special interests spent an estimated \$17 million on the same race. We believe that candidates coordinated with outside spenders, including the DGA, RGA and Super PACs in ways that undermine our contribution limits and the public financing program. In addition, the 2013 bill allowed the state parties to spend unlimited organizational expenditures on behalf of General Assembly candidates, and it also raised the amount that individuals could contribute to parties. Special interest money can now find its way to publicly financed candidates. We also saw an abuse of our current contribution limits and ban on state contractor giving by use of the state party's federal accounts for candidate mailers.

Common Cause strongly urges this Committee to strengthen its disclosure and coordination rules, close the loopholes that allow large special interest money back into our elections, and create alternative resources for candidates who run under the CEP so that they are not vulnerable to outside spending attacks.

## Disclosure and Coordination Provisions of SB 1126

The 2013 disclosure provisions weakened Connecticut's disclosure and coordination regulations and we witnessed abuses in the 2013 elections, including dark money spent in independent expenditures from an Ohio group; coordination with Super PACs and other entities that circumvent our contribution limits; and use of the federal account of state parties to evade our state contractor ban.

When the Supreme Court ruled in *Citizens United*, the slim majority on the court struck down the ban on corporations and unions spending treasury money to make independent expenditures. These groups are now allowed to spend unlimited sums of money on political ads, phone banks, mailers, and other tools – as long as the activity is done independently of candidates. The *Citizens United* decision did not strike down contribution limits. It is still illegal for corporations to give money directly to candidates at the federal level or in most states. The court allowed independent expenditures because they were not spent in coordination with a campaign and therefore, they “do not give rise to corruption or the appearance of corruption.”

But we have witnessed candidates raising money for Super PACs and other so-called independent entities, and that means these expenditures were not independent from the candidates. These coordination rules are easily exploited in ways that do an end-run around contribution limits and otherwise vitiate the independence assumed by the Supreme Court in *Citizens United*. That is why Connecticut must strengthen our coordination rules and adopt new regulations that will curb the creation of candidate-specific Super PACs that operate as little more than phantom arms of candidates' principal campaign committees, except for the ability to raise unlimited money from any source.

### Coordination Provisions

SB 1126 takes some important steps forward to prohibit coordination between outside spenders and candidates, and outside spenders and parties, and to restrict individual candidate Super PACs. SB 1126 does this in two complementary ways. First, SB 1126 strengthens our definition of coordination that is based on the concepts used by the Supreme Court in a number of cases where the Court has discussed independent spending. In these court cases, the Supreme Court has said that independent spending must be done “totally independently,” *Buckley v. Valeo*, 424 U.S. 1, 47 (1976); “not pursuant to any general or particular understanding,” *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 614 (1996) (“*Colorado I*”); “without any candidate's approval (or wink or nod),” *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 442 (2001) (“*Colorado II*”); and must be “truly independent,” *id.* at 465.

Second, the bill creates a new category of “coordinated spender” to cover spending by individual candidate Super PACs, which function as an arm of a candidate’s campaign. The definition of what constitutes a “coordinated spender” is based on factors that establish a close relationship between the outside spender and the candidate. Once a group meets the definition of being a “coordinated spender” for a candidate, then all future expenditures for “covered communications” regarding the candidate are treated as coordinated expenditures with that candidate. As such, they are also contributions to the candidate under the law and are subject to Connecticut’s candidate contribution limits and prohibitions.

SB 1126 prevents groups formed by family members of candidates from making independent expenditures to benefit the candidate and prevents groups that raised money with the help of a candidate from using those funds to benefit the candidate. The bill strengthens the SEEC’s ability to ensure that expenditures are truly independent and clarifies what is coordinated activity.

One area of concern is that changes to the definition clarifying when someone is a candidate means that people can coordinate with outside spenders and delay announcing when they are candidates – which completely weakens the coordination language in the bill. We urge the Committee to keep the original definition of “candidate.” As Michael Brandi points out, “[i]t is difficult to understand why a definition should be removed that simply makes it clear that an incumbent cannot form a Super PAC in January that spends millions to benefit her in October. The removal of the language denies the clarifying language needed to assist candidates, incumbents, and future candidates to understand that they cannot coordinate right up until the time that they form a candidate committee, which the current law has been misinterpreted to mean.”

Here are a few additional areas that need to be strengthened:

1. In Sec. 4 of the bill, sec. 9-601c(a)(2) defines a coordinated expenditure to include republication of a candidate’s materials. (More technically, it exempts republication from the definition of “independent expenditure.”) But this applies only where republication is done “in whole or in substantial part.” (emphasis added). By applying the rule only where the republication includes a “substantial part” of the candidate’s materials, this language opens the door to the use of B-roll snippets that a candidate prepares and makes available to outside spenders (by, e.g., posting the B-roll on the web), where the outside spender then uses the materials in broadcast ads. But if the use of the B-roll is important to the ad but does not consist of a “substantial part” of what the candidate prepared, such republication would not be prohibited

under this language. This problem should be addressed by deleting the work “substantial.”

2. Sec. 9-601c(b) is the new definition of “coordinated spender” and there are several ways this definition can be strengthened and clarified.

- ❖ In Subsec. (b)(1), the limitation to “the current election cycle” allows a candidate or his agents to set up a Super PAC at the end of a prior cycle and then that Super PAC can operate “independently” of the candidate in the current cycle. This permits substantial evasion. The bill would be improved by extending this provision to the 4-year period prior to making an expenditure). In principle, if a candidate actually organizes or establishes an entity, that entity should not be treated as coordinated with that candidate for a period that is longer than just the current election cycle, such as for four years after its formation.
- ❖ Subsec. (b)(2) Addresses fundraising by a candidate for an outside spender. Subsec (A) should be modified to include a candidate appearing at a fundraising event for the entity. As drafted, it is not clear that it would apply to a candidate who speaks at a fundraising event for his Super PAC, but does not explicitly solicit funds. But it certainly should cover such appearances.
- ❖ Subsec. (B) Substantially weakens this standard by allowing a Super PAC to segregate funds, so that a candidate could engage in fundraising for a Super PAC as long as those funds are segregated and not used for expenditures to benefit that candidate. But money is fungible. For example, if Candidate A raises \$1 million dollars for a Super PAC, and Candidate B raises \$1 million for the same Super PAC. The Super PAC “segregates” the funds, and spends the money raised by A on ads for B, and vice versa. Obviously, this will lead to easy gaming of the prohibition. We recommend that this sub section be deleted, and that a Super PAC (or other entity) be prohibited from engaging in independent spending for any candidate who has raised money for it.
- ❖ In subsec. (3), the applicable period should again be extended to 4 years prior to the expenditure, and not limited to the current election cycle. As drafted, this would allow a Super PAC to be directed and managed by the person who was the candidate’s campaign manager in the prior election cycle. This is precisely what the “coordinated spender” provision should

prohibit.

- ❖ The bill does not contain one standard that can be a place where coordination occurs. The bill should have a provision that says that any entity is a “coordinated spender” if it retains a vendor who, during the prior two years, has provided professional services to the candidate. We recommend that this provision be added to the “coordinated spender” provisions of the bill. While there is a “common vendor” provision in the existing law, *see* sec. 9-601c(e)(8), the scope of the “coordinated spender” provision is more inclusive than the general definition of coordination, and the “common vendor” standard should be used there.

### Disclosure

SB 1126 also digs deeper to increase disclosure of dark money to help uncover where the money comes from and it helps uncover the shell game that some groups play to avoid transparency. We are also pleased to see increased disclosure by c 4 groups that have more than 50 donors.

### **Other Areas of Concern**

Common Cause believes there are several other problems with this bill that need to be fixed. Those include:

- ❖ We oppose the provision in Section 26 that repeals the prohibition on publicly financed candidates from giving funds to party committees. If a candidate doesn't need all the resources they are allocated, then they should give it back to the fund. Many candidates already do this. But candidates should not be able to steer money to party committees or other candidates. This defies the intent of the law and it should not be allowed.
- ❖ Sections 19 to 21 appears to make it harder for minor party candidates to qualify – which could open us up to another legal challenge by groups determined to kill the program.
- ❖ This bill changes how audits are conducted and it needs to be tweaked. It telegraphs to candidates that they won't be audited two cycles in a row, so they get a free pass on doing things the way they should. We support a provision that ensures that campaigns that have escaped audits for two cycles have an increased chance of being audited in the third cycle. In addition, SEEC staff need time to conduct and complete audits, and as drafted, they do not have the time they need.

- ❖ We oppose allowing lobbyists to solicit ad book contributions from their clients for party committees.

### **Ideas to Provide Resources to Participating Candidates in a Post *Arizona Free Enterprise v. Bennett* Ruling**

SB 1126 does not address a significant piece of the 2013 bill that we opposed in 2013, and we oppose now. We oppose the increase in the amount of money that the state party can raise from individuals (from \$5,000 to \$10,000) and lifting the organizational expenditure cap for state party expenditures on behalf of statewide and General Assembly candidates. These are two of the poisonous provisions that dramatically weakened our disclosure laws and our public financing program by allowing large donors and special interest money that is funneled through the party back into our elections.

We believe that we must cap organizational expenditures and reduce the amount of money that party committees can raise. We understand that this was an attempt to deal with the fear of outside spending and the loss of trigger funds available to candidates who participate in the Citizens' Election Program for statewide and legislative races. We urge the General Assembly to explore other options to replace trigger provisions. Many other jurisdictions are looking at these issues.

#### **Arizona Free Enterprise Club's Freedom Club PAC v. Bennett Decision\***

In June 2011, in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, the United States Supreme Court invalidated the trigger funds provisions in Arizona's public financing program. Like Connecticut's Citizen Election Program, Arizona's trigger funds provision provided additional public funds to publicly financed candidates who were outspent by high spending opponents and/or independent groups.

The Court, having ruled in *Buckley v. Valeo* in 1976 that money spent in campaigns is essentially equivalent to speech, concluded that the trigger funds provision was an impermissible burden on the speech of privately financed candidates and independent groups. Specifically, the Court opined that privately financed candidates and independent expenditure groups would stop spending money (speaking) over the threshold amounts that trigger the granting of additional funds to publicly financed candidates.

While there is no evidence to suggest they were correct, the Court's decision in *Arizona Free Enterprise Club* has meant that jurisdictions that provide trigger funds to publicly financed candidates who are victims of independent expenditure campaigns or

face high spending, non-participating candidates can no longer receive grants triggered by that outside spending.

### The Value of Trigger funds\*

Trigger funds provisions served a number of important purposes. It is important to keep those goals in mind when determining which alternative to trigger funds best suits a jurisdiction's needs.

First, trigger funds allowed publicly financed candidates to remain competitive when outspent by privately financed opponents and independent expenditure groups. Trigger funds provided privately financed candidates with enough money to respond to communications advocating for their defeat and/or for the election of their opponents.

Second, trigger funds provisions preserved limited public resources by only providing additional funds to candidates when they need those funds to respond to spending by opponents and outside groups.

Third, the availability of trigger funds makes it more appealing for candidates to opt into public campaign financing programs. Those programs, in turn, serve a number of compelling governmental interests. For instance, public financing programs reduce corruption or its appearance by lessening the need for candidates to rely on private contributions. These programs also free candidates from the burdens of private fundraising, and allow them to interact with all of their potential constituents, not just those who can and will give campaigns contributions. In addition, public campaign financing programs allow qualified candidates — who may not be independently wealthy, or have a pre-existing network of financial support — to competitively run for office. Further, these programs strengthen the public's confidence in their democracy by demonstrating that its elected representatives are not indebted to private campaign contributors.

### Policy Alternatives to Trigger Funds\*

- ❖ **Increase the Lump Sum Grant or the Ratio of the Match of Public Funds**  
Jurisdictions with grant-based programs like Connecticut's can opt to give participating candidates a larger lump sum grant, thereby ensuring that participating candidates have enough money to competitively run for office without being able to resort to trigger funds. The amount of the grant could include the amount of the old grant plus all or some of the trigger funds previously available. For example, in 2012 the General Assembly provided a larger grant for gubernatorial candidates in the general election, increasing the

grant from \$3 million to \$6 million. The original legislation would have provided a \$3 million grant in the general election, as well as up to \$3 million if a candidate faced a high spending, nonparticipating opponent, as well as up to \$3 million if the candidate faced independent expenditures spent against them. That would mean a general election grant of \$9 million. Jurisdictions could also take into account the past history of campaign spending, voter registration, and whether spending is significantly different for open seat races, as opposed to races that include an incumbent candidate.

In jurisdictions that have partial public financing programs, one option would be to increase the ratio of the match. For instance, instead of receiving \$100 for every \$100 of private money raised (a 1-to-1 match), candidates could receive \$200, \$300, \$400 or \$500 or \$600 for every \$100 of private money raised (a 2-to-1, 3-to-1, 4-to-1, 5-to-1, or 6-to-1 match). This would increase the ability of candidates to run competitive races when faced with high spending opponents and/or independent groups. The City of Los Angeles recently implemented this approach, raising the matching ratio from 1-to-1 to 4-to-1. This year they may move the match to 6 to 1.

❖ **Create an Additional Qualification Threshold**

Another option for jurisdictions is to provide candidates with an initial grant, and then ask candidates to go through a second qualification process in order to receive an additional grant of funds. The second qualification threshold could be the same or lower than the first. Jurisdictions considering this approach should determine whether or not candidates could go to the same set of donors in both rounds of qualification.

In jurisdictions with full public campaign financing programs, this option essentially replaces trigger funds with an additional grant of public funds that is predicated on a candidate's ability to qualify for those funds, not on spending by independent groups or that candidate's privately financed opponent.

This approach would focus on the importance of small donors. However, it would create an added burden on both program administrators and candidates seeking a second, additional grant of public funds. Maine has a measure on the ballot in November 2015 that includes an optional system of supplemental funding to replace the matching funds that were struck down by the courts. Clean Election candidates will be able to remain competitive in high-spending races by collecting additional \$5 qualifying contributions, thus qualifying for supplemental funds. Supplemental funds will be available in state house, state senate, and gubernatorial races.

❖ **Allow Qualified Candidates to Obtain Supplemental Funds from Political Parties**

Under both full and partial public campaign financing programs, jurisdictions could allow qualified candidates to obtain additional funds from political party committees up to certain limits. In order to ensure that this kind of measure doesn't open the door to large special interest contributions, contribution limits to parties should be lower. Connecticut allowed parties to raise money in larger contributions, but put a cap on organizational expenditures. Parties could be allowed to spend unlimited amounts on candidates if the contributions to the party come in amounts from individuals of \$100 or less. This provides another source of funds for candidates who would have been able to obtain trigger funds before the Court's ruling.

❖ **Implement a Small Donor Hybrid of Full and Partial Public Financing**

Another option for Connecticut is to implement a small donor model that provides candidates with an initial lump sum grant and then gives them the ability to raise private contributions that are matched with public dollars. The first step of this approach is identical to a full public campaign financing program. First, candidates would collect small qualifying contributions – between \$5 and \$100, depending on the office sought – in order to reach a threshold amount. Candidates would then receive an allocation of public funds.

The second step of this approach would be akin to a system of partial public campaign financing. Candidates could raise additional private contributions (at levels lower than the contribution limits applicable to privately financed candidates), which would be matched by public funds at a ratio that enables participating candidates to run competitive campaigns.

For jurisdictions with full public financing, the small donor option essentially replaces a candidate's ability to obtain trigger funds with the opportunity to earn matching funds based on his or her own fundraising. For jurisdictions with partial public financing, this approach basically adds an initial lump sum grant to the pre-existing program.

The small donor model is one of the leading policy proposals in our current post-*Arizona Free Enterprise* world. However, this option does require candidates seeking supplemental funds to devote time and resources to fundraising throughout a campaign.

The total amount of public funds available could be the same as the prior amounts available including trigger funds. Jurisdictions could also take into account the past history of campaign spending, voter registration, past use of trigger funds, and whether spending is significantly different for open seat races, as opposed to races that include an incumbent candidate.

Jurisdictions could experiment with different variations on this theme. For instance, depending on the level of competition in the primary and general elections, jurisdictions could implement a matching funds program in the primary election, and full public campaign financing in the general election.

Small donor programs are under discussion in Arizona, Los Angeles, New Mexico, and Hawaii. The public match ratio can range from 3-to-1 to 100-to-1.

❖ **Provide a Political Tax Credit or Rebate**

Either as a stand-alone program, or as a portion of a larger public financing system, jurisdictions can provide tax credits or rebates for political contributions. This reform is designed to bolster the role of small donors. Jurisdictions interested in implementing this approach should consider how to structure the program in a way that incentivizes new small donors, and doesn't just benefit individuals who would make political donations regardless of the tax benefits.

❖ **Adopt Partial Public Campaign Financing**

Jurisdictions with full public financing programs could also consider switching to partial public financing systems. The utility of this option will depend on the size of permissible contributions and the ratio of the match of public funds for private money. Instead of providing trigger funds based on spending by privately financed candidates and independent groups, this approach bases matching funds on a publicly-financed candidate's fundraising prowess.

❖ **Allow Additional Private Fundraising**

Under any of the models described above, jurisdictions can allow qualified candidates to continue raising private funds after the total amount of public funds has been disbursed.<sup>1</sup> While this option increases the potential for actual or apparent corruption arising from private contributions, this concern can be mitigated by enforcing low contribution limits of \$150 or less.

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<sup>1</sup> Arizona is considering adopting this approach.

Without a doubt, the *Citizens United* ruling and the *Arizona Free Enterprise* ruling have created challenges for Connecticut's public financing program. But it is important to remember that in the *Arizona Free Enterprise* ruling, the Court reaffirmed in its decision that public financing is constitutional. The Court made clear that "governments may engage in public financing of election campaigns and . . . doing so can further significant governmental interests, such as the state interest in preventing corruption."

The General Assembly and the Governors of Connecticut have worked together to amend, strengthen and hone the Citizen's Election program to function in an ever-evolving political and legal landscape. We can, and should continue to do so to ensure that this program lives up to its promise of creating an alternative to the pay-to-play corrupt system that earned us the unfortunate moniker "Corrupticut" in 2004.

Common Cause looks forward to working with members of the GAE committee and other leaders in the General Assembly to strengthen our disclosure and coordination measures that were weakened in 2013, as well as find a much more suitable way to allow candidates resources they need in a world with increased outside spending.

\*Source: Common Cause report "Overview of Post-*Arizona Free Enterprise* Policy Alternatives," November 2011.