WRITTEN TESTIMONY PRESENTED BEFORE THE
Government Administration and Elections Committee

In Support of certain provisions of H.B. No. 5511and
In Opposition to certain provisions of H.B. No. 5511

(An Act Concerning Disclosure of Coordinated and Independent Spending in Campaign Finance)

March 7, 2016

Statement of Michael J. Brandi, Executive Director & General Counsel
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Chairman Cassano and Chairman Jutila, Vice Chairs Gerratana and Alexander, Ranking Members Senator McLachlan and Representative Smith, and distinguished Committee members. I am Michael Brandi, the Executive Director & General Counsel of the State Elections Enforcement Commission.

I am here to speak in favor of the Commission's proposal which is reflected in House Bill 5511, as well as to raise some serious concerns about the bill, as drafted. Overall, the proposed bill increases meaningful disclosure with respect to independent expenditures made in Connecticut elections. It addresses the distinction between coordinated and independent spending, which enhances the SEEC's ability to enforce the law and thereby saves state resources. It addresses some of the changes made in Public Act 13-180 that weakened the independent spending disclosure statutes. The bill also contains language reflecting the adjustments to campaign finance statutes made necessary by court rulings in the U.S. Supreme Court and the Second Circuit, as reflected in SEEC Declaratory Ruling 2013-02 and Advisory Opinion 2014-03. A majority of this proposal is a resubmission of SEEC's 2015 proposal, with revisions based upon comments received during the last session.

Before going into any detail about this campaign finance reform bill, I'd just like to point out what a great campaign finance system that we have here in Connecticut. In the midst of a heated presidential election, it seems that the single issue everybody can agree upon, from both sides of the

aisle, is that the campaign financing system in our country is broken. There was a recent New York Times/CBS News poll that showed that Americans of both parties fundamentally reject the flood of money in elections made possible by the Supreme Court's *Citizens United* ruling and other court decisions and that the public now favors a sweeping overhaul of how political campaigns are financed. The findings in the poll reveal deep support among both Republicans and Democrats for ways to restrict the influence of special interest money, including limiting the amount of money that can be spent by SuperPACs and forcing more public disclosure on groups that are now permitted to spend in elections without disclosing the names of their donors.

Here in Connecticut, we are already doing just that. So we should be proud of what we have here in this state, knowing that the rest of the country is aspiring to make the same progress we have made.

Not that we can rest. Money finds its way in, and there are always people seeking to influence elections and legislative outcomes by deploying large sums of money, and so we know that it requires constant vigilance and that we must keep our laws up to date and responsive to current circumstances. That is what this bill, as it was proposed, tried to do.

Specifically, the bill:

- Increases disclosure of independent spenders by drilling down though the "dark money" to see where the money really comes from. It eliminates loopholes found in previous legislation.
- It makes a meaningful attempt to shut down the shell game of surrogate groups acting like independent SuperPACs;
- It adopts the "coordinated spender" language being proposed at the national level as a means to clarify the line between coordinated and independent expenditures, making it easier for campaigns to comply by delineating which groups making expenditures can be considered truly "independent" and which cannot;
- It prevents groups for whom the candidate fundraises from making independent expenditures to benefit the candidate from the funds the candidate raised, unless those funds are completely segregated;

- It prevents groups formed by family members of the candidate from making independent expenditures to benefit the candidate;
- It improves meaningful disclosure by requiring more and better information from independent spenders;
- It increases penalties for non-reporting independent spenders;
- Rolls back the changes in Public Act 13-180 that weakened the Commission's ability to enforce the line between independent and coordinated expenditures;
- Codifies a system for creating independent expenditure political committees that was outlined in the Commission's Declaratory Ruling 2013-02, which addressed the Second Circuit's *Walsh* decision, regarding the allowance of unlimited contributions to independent expenditure only political committees;
- Codifies the guidance issued by the Commission in Advisory Opinion 2014-03 addressing the U.S. Supreme Court's *McCutcheon* decision, regarding aggregate limits for individual contributors;
- Creates a clear, safe harbor for debate related communications; and
- It also addresses a concern raised by candidates in the last election that reimbursements to party committees for headquarters and communications were not allowed by CEP candidates. This bill will allow that to happen.

Much of the proposal is derived from ones that are being proposed in other jurisdictions. It incorporates the model legislation prepared by Democracy 21 and builds on federal legislation dealing with these issues including H.R. 425, the Stop Super PAC-Candidate Coordination Act. These federal proposals aim to prohibit coordination between outside spenders and candidates, and outside spenders and parties, and to restrict individual candidate Super PACs. It represents the most forward thinking response to *Citizens United* currently being proposed. We can do this in Connecticut and ensure that Connecticut's disclosure laws remain among some of the most effective and meaningful in the nation. As we noted in testimony on Senate Joint Resolution No. 33, the petition to Congress to convene a constitutional convention to address *Citizens United*, the Commission's campaign finance proposal offers a more immediate solution, within the ability of this legislature to adopt this session.

There are several changes to the bill that we believe can be implemented in ways that would improve the bill, and that should be addressed to prevent unintended problems.

In Section 2 of the bill, language has changed in the definition of the new term "independent expenditure political committee." The idea is that these new committees can only make independent expenditures and not make contributions because they themselves can accept unlimited contributions. However, the logic that would restrict them from making contributions to other traditional committees, who have their own contribution limits, does not apply to contributions to other independent expenditure committees, which have no such limits. So the definition in our proposal was drafted to allow these types of contributions only. However, the language has now been amended in this bill to substitute the word "transfers" for "contributions" which may make sense linguistically, and perhaps even logically, but it has an unintended consequence, which may not be good. Specifically, it would allow these new independent expenditure committees to then "transfer" money to groups, who would then not be required to form political committees, as are most groups who receive "contributions." The term "contribution," as I am sure you know, is a term of art that is laced throughout our campaign finance statutes, and has significant legal importance. The end result—which was probably unintentional—is an easy way to route money down an avenue with substantially less disclosure. The substitution of "transfer" for "contribution" is also made in Sections 16, 17, 18, 19, and 20. We ask that this be corrected as the HB 5511 moves forward. A failure to do so could result in far less disclosure and result in an unintended weakening of the campaign finance system.

In Section 6, there is another issue. The purpose of the independent expenditure reporting provisions are to provide meaningful disclosure of persons who make or obligate to make independent expenditures. The concern is that spenders may mask their identity, and evade transparency and enforcement, if they are allowed to provide difficult to trace post office boxes instead of an adequate street address. The proposed change currently in H.B 5511 at lines 400-401 would allow an independent spender to merely disclose a post office box for the address. This can be fixed with the following language: "the mailing <u>street</u> address of such person." This would help achieve the purpose of this bill, to provide meaningful disclosure about independent spenders, which will help voters make informed decisions as they evaluate the meaning of a message.

Section 12 is based on our Commission's proposal, which addresses many questions and concerns raised to the Commission's staff about CEP committees who receive grant funds not being permitted to reimburse party committees or legislative leadership or caucus committees for shared headquarter space and certain communications that promote such candidates, where the committees and candidates had a prior agreement that the expenditure would be shared. As proposed, the language clarified the interaction between the statute and CEP regulations. The language proposed, however, has been changed slightly from our proposal. Although the adjustments seem small, we fear that they have large consequences. As currently written, the plain language suggests that candidates that are not specifically mentioned, such as candidates for municipal office or Judge of Probate, may no longer be able to reimburse for such previously-agreed upon shared expenditures. This probably wasn't the intent of the Committee. This can be fixed by using the language originally proposed: "A candidate committee, <u>including a participating or non-participating committee</u>, may" partake in such reimbursement. .

Having addressed these issues, I can still say that with this bill, the public will have more disclosure with respect to spending in elections and dark money will have a harder time finding its way into state elections. Also, enforcement will be less costly with respect to independent expenditures and compliance with the Citizens' Election Program.

However, there are two portions of this bill that we oppose. Specifically, important language in our proposal was changed in this bill, and additional language was added that serves to weaken the overall campaign finance system and has other disturbing ramifications. Changes made by this Committee in two sections in particular are serious cause for concern.

In Section 9, the language added by the committee in lines 666 – 668, appears to be an effort to substantially narrow the lawful purpose of a party committee and potentially raises serious Constitutional questions. The "lawful purpose" provision currently in effect for party committees includes "the promoting of … candidates of the party." The proposed language limits this to "the success of candidates of the party for nomination and election to public office or position subject to the requirements of this chapter." That seems to mean that a party committee can either decide to

NOT support federal candidates, like candidates for President, OR be forced to form a federal committee with a federal account in order to do so.

This is particularly troubling because this change to the definition of party committee, which redefines what a party can do particularly with respect to federal activity, is happening in the middle of litigation *about what and how a party can spend in federal and state elections*. Why was this language added? Why at this time?

The language in question was adopted over twenty years ago in Public Act 95-276 and has been working well since then. The language concerning party committees was only changed once – in Public Act 13-180 – to add party building activities. At that time, just a few years ago, this Committee opened the lawful purpose provisions of Connecticut political committees and broadened them. It opened the lawful purpose provision of Connecticut party committees and broadened it. That would have been a time to make technical or any other types of adjustments. Yet, none were made.

Now, when a decision is expected any day from the Court, this Committee is proposing language which appears to be intended to drastically narrow the lawful purpose of a Connecticut party committee.

We would welcome any explanation for why this change is being proposed at this time.

In conjunction with this, in Section 5 of the bill, language has been removed so that now the bill would seem to endorse the creation by party and political committees of surrogate groups that would somehow be considered independent of themselves, if that's even possible. And there doesn't seem to be any good reason for it that we can ascertain.

This change seems to ignore the very definition of independent expenditure, which includes independence from party and political committees, not just candidates and candidate committees. If permitted, and followed through with, this changed language makes it so that party and political committees can more easily evade contribution limits. Committees could, arguably, set up

associated groups that could accept unlimited sums of money, yet coordinate with the committees. This is most troubling with respect to party committees which are basically assumed to be coordinating with candidates of their own party, and have been granted by the legislature in Connecticut generous avenues by which to do so, via organization expenditures. Since the organization expenditure limits have been removed already for state parties in P.A. 13-180, this would create a free-for-all whereby parties could have a two-headed beast, one that could raise unlimited funds and spend on quote-unquote "independent expenditures," and the other that can coordinate with candidates and spend on unlimited organization expenditures. The language originally proposed by the Commission was intended to provide clear, bright lines to prevent long, drawn out, costly litigation in the future.

Combined, these changes in Sections 5 and 9 would harm the campaign finance system in this state by creating an avenue and a self-created need for parallel campaign finance systems, nominally regulated by federal law, that are substantially weaker than Connecticut's painstakingly created, highly-effective system. Ultimately, these changes lay a path for the circumvention of campaign finance rules. Which, if there is a positive take away from this, means that they are currently working.

Legislation eroding what this legislature has so carefully built as a legal bulwark between its citizens and the flood of corruption scandals at every level of government is – puzzling, at best. At a time when the purpose and permissible expenditures of party committees is before the Court and a decision is due any day, it is -- surprising -- that this Committee is proposing language on these topics that weaken the established, effective law.

Again, if there is a reasonable explanation for these changes, it would be welcome.

Otherwise, we urge this committee to remove these proposed changes. It should not insert into a disclosure bill provisions that may be used to justify circumvention of the disclosure it seeks to provide the citizens of Connecticut.

We look forward to continuing to work with this Committee and the legislature on this important bill. Thank you for this opportunity to present this testimony.