STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

TESTIMONY PRESENTED BEFORE
THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE
IN SUPPORT OF S.B. 914, S.B. 918, and H.B. 7210
IN OPPOSITION TO S.B. 270 and H.B. 5815

February 27, 2019

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

Co-Chairs Flexer and Fox, Vice Chairs Haskell and Winkler, Ranking Members Sampson and France, and distinguished Committee members. I am Michael J. Brandi, the Executive Director and General Counsel of the State Elections Enforcement Commission ("SEEC" or the "Commission"). There are five bills before the Committee today that are of crucial importance to the SEEC and the matters under its jurisdiction. Three of these we strongly support and two we oppose.

Let me start with the three bills that were originally proposed by SEEC. Not surprisingly, the Commission ***strongly supports these bills***:

S.B. No. 914 AAC Disclosure of Coordinated and Independent Political Spending

This bill, like many of our proposals this year, is modeled after the campaign finance reforms that are being co-sponsored by 227 U.S. representatives, including all five Connecticut representatives, on the federal level as H.R. 1, the For the People Act of 2019. Many of you may have seen the video supporting this federal legislation that recently went viral highlighting how deep-pocketed donors dominate our political system. The video received over 38 million hits. Its popularity demonstrates the same thing that poll after poll shows: nationwide, the American people want to see campaign reform.

The good news is that in Connecticut, thanks to the hard work of governors and the legislators on both sides of the aisle, we already have many of the reforms that they are just considering

across the nation. Connecticut already has a strong clean elections financing program – one of the most successful in the country. In fact, right now 85% of the sitting officials holding statewide and legislative offices have been elected under our clean election system, voluntarily foregoing the use of special interest or state contractor monies. Connecticut also has strong and effective disclosure laws, requiring disclosure of the source and amounts spent in Connecticut's elections and not only when the expenditures are made but when they are *obligated to be made*, or incurred. And, in the time-frame right before the elections, disclosure for independent expenditures comes within 24 hours.

Senate Bill 914 aims to further strengthen Connecticut's laws regulating independent expenditures by adopting provisions being proposed on the federal level under the subtitle "Stop Super PAC-Candidate Coordination." The title is an excellent description of what this bill does: it provides clear bright lines in common-sense situations where a candidate has a close relationship with the spender. It says a spouse cannot collect and spend unlimited amounts of money from corporations and special interest groups to support his wife who is running for office and call that spending "independent" of his wife. A non-profit recently established or controlled by the candidate cannot make an expenditure for that candidate and call it "independent" of the candidate that controlled or established it just a short while ago. By providing clear bright lines based on common-sense, these provisions save the need for lengthy, expensive, time-consuming investigations that can only be resolved long after an election.

S.B. No. 918 AAC Supplemental Grants for Certain Candidates under the Citizens' Election Program

In 2005, when the Program was first adopted, the grants were adequate to run a race in contested districts and also when candidates were faced with high-spending opponents or targeted by negative independent expenditures. In 2010, however, a U.S. Supreme Court decision resulted in the loss of over 30% of the funds available to a gubernatorial candidate and over 60% of the funds available to candidates for other statewide offices and the general assembly who participate in the program.[1]

[1] The decision in *McComish (Arizona Free Enterprise Club's Freedom Club PAC) v. Bennett*, 564 U.S. 721 (2011), forced the repeal of Connecticut's supplemental grant trigger provisions in

This loss of funds is problematic for the program, and as independent expenditures increase it will become a greater and greater problem until it is addressed. In order for a voluntary clean elections financing program to work, candidates must believe that they will be able to be competitive if they participate and agree to abide by the Program expenditure limits.

This bill would restore lost funds for gubernatorial candidates by making matching funds available in those races where we have historically seen high independent expenditures and high spending non-participating candidates. There needs to be an alternative for participating candidates to have access to adequate resources to compete effectively while still eschewing traditional private finance and special interest contributions in favor of small dollar individual contributions. This bill would restore availability of the needed funds for the top race and provide a road-map for deciding whether and to what extent such matching funds should be available to other participating offices as well. There are many areas in this proposal that will require additional discussion, such as how application deadlines and black-out periods would work for the matching funds applications and SEEC staff stands ready to assist with these details.

H.B. No. 7210 AAC Campaign Consultants and Coordination

This bill is also based upon one of the SEEC's proposals this year. It is not, however, based on the reforms that are part of federal bill HR1. Rather, this is a bill that arises out of Connecticut's successful clean elections program. This program relies on treasurers to protect the public fisc by pre-approving all expenditures, making sure that they are for permissible expenses, that the goods and services paid for are actually received and that they are for market value. This bill will make that important job possible and, when there is a breakdown

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Public Act 10-1. As a result, the total grant monies available to participating candidates have been reduced by two-thirds for General Assembly and one-third for the gubernatorial race. A second United States Supreme Court decisions also altered the Program in a way that is causing concern for candidates deciding whether to participate in the Program and how to structure their campaigns: *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), allowed businesses, unions and other entities to spend directly from their general treasuries to promote or oppose candidates. It also resulted in a line of cases allowing the creation of SuperPACs (known as independent expenditure political committees in Connecticut) which may receive unlimited contributions from corporations, unions, and other entities to spend on Connecticut elections.

in disclosure, it will place the liability where it belongs – which in recent cycles we have found is often with consultants hiding information rather than with the treasurers who are making every effort to get it but running into roadblocks.

We have proposed this legislation in the past, and with each cycle we have seen an ever increasing need for it. The lack of disclosure from consultants about what they are charging and how they spend the money—money often from the Citizens' Election Program, public money—is a problem that hasn't gone away. Campaign treasurers are frequently caught between a rock and a hard place when the consultants fail to provide the information that the treasurers need to comply with the law. This bill would make it possible to hold noncompliant consultants liable, would help the treasurers get the information that they need to do their jobs, would provide better accountability and better disclosure to the public, and would help ensure that public funds are being spent for legitimate campaign-related purposes. Finally, this bill increases transparency by providing tools to uncover common vendors which will help to ensure compliance with the independent expenditure laws. We strongly urge its passage during this legislative session.

On to the bills ***the SEEC opposes***:

S.B. No. 270 AAC Qualifying Contributions Under the Citizens' Election Program

This bill will slow down the grant application process and delay the delivery of grants to the committees who are trying to qualify for them. It requires SEEC staff to give out information at its busiest time, during grant application period, as to every contribution it has reviewed, whether it qualified and every reason why it did not. Please understand the volume of information this involves: This last cycle, we reviewed over 126,000 contributions. Moreover, when a contribution doesn't qualify, it has to be reviewed again, so 126,000 is the low end of contributions that would be subject to this new reporting requirement, all during the busiest part of the election cycle.

We already provide in writing a list on all non-qualified contributions that may be easily and quickly fixed by campaigns. The delays in processing grant applications that would be caused by changing the focus to those contributions that may not be easily fixed would impact not just

the campaigns who have many non-qualifying contributions, but will also drastically slow down every other applicant in line with or behind them.

The proposal will also harm contributors. We do not have time to fully investigate every contribution at the time of application. Yet, this proposal will require staff to create and publically release a report within just five business days of a General Assembly candidate's application submittal connecting the names of that candidate's contributors to an indication of wrongdoing, including fraud or forgery, before there can be an adequate investigation and other due process. If there really is a problem, releasing the report may significantly hinder our ability to investigate serious violations. If the investigation doesn't substantiate the suspected wrongdoing, the contributor will be right to be upset with that flawed, unfair process.

Most importantly, it is redundant. It simply legislates that we create reports during our busiest time which we currently review with treasurers or candidates who ask for the information after the election. Every participating campaign is invited to make an appointment to come in and review all of the contributions that were deemed not qualifying at the time of grant application. This year we made the offer a part of our candidate and treasurer surveys, only a handful have requested the meetings and we are setting them up now.

This bill, if it passed, would slow down all grant applications considerably, would certainly result in increased enforcement actions against contributors, and, in the end, it will not provide useful information to committees during the election cycle.

H.B. No. 5815 AAC Political Advertising

We oppose this bill as it is currently drafted. Our concern is that this proposal, requiring a disclaimer if a photograph or image of a candidate appearing in a campaign communication has been "altered in any way" is overly broad. Most digital images today are altered in some way prior to publication. For example, the image might be cropped, the colors might be softened or brightened, or someone's wrinkles may be lessened. Should every photo with such minimal alterations really result in a violation if there is no disclaimer declaring it to have been altered? At what level does it become a violation?

To narrow the disclaimer requirement, however, seems likely to result in language that would

ask the enforcing agency to make difficult judgments about the acceptability of the alterations, based perhaps on the effect or intent of such alterations – and perhaps that is why the provision was drafted so broadly.

We certainly understand the problems in this last election cycle, and in others across the country, that are at the source of legislation like this. We urge that careful thought is taken and, perhaps a study or working group is convened to determine how such problems are best addressed. Asking SEEC staff to become the "truth police" would likely result in expensive challenges that would drain the resources of both this agency and the Attorney General's office.

Thank you for the opportunity to present this testimony.

We would like to express appreciation to the Committee, the Office of Legislative Research and the Legislative Commissioners' Office for their time and effort spent on these bills. It is our sincere hope that the bills will continue to strengthen and improve one of the very best experiments in democracy in the nation. We look forward to working with you further and stand ready to assist in any way. I will begin by answering any questions you may have.

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