STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

TESTIMONY PRESENTED BEFORE
THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE
IN SUPPORT OF H.B. 7323, H.B. 7329, S.B. No. 1042, S.B. 1043, S.B. 1044, S.B. 1045
And Opposing S.B. No. 641

March 13, 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 six (6) bills before the Committee today that are of crucial importance to the SEEC and the matters under its jurisdiction, and we support these. There is also a bill that we oppose as drafted.

All of the bills we support, in one way or another, seek to strengthen our campaign finance system. Connecticut is already a national leader on this front, but we can't stand still. It's important to our democracy and to the public. The bottom line: In a September WSJ/NBC poll, 77% of surveyed registered voters said "reducing the influence of special interests and corruption" is either the most important or a very important issue facing the country.

Executive Summary:

SEEC supports the following bills:

H.B. No. 7329 (RAISED) 'AN ACT CONCERNING DARK MONEY AND DISCLOSURE OF FOREIGN POLITICAL SPENDING AND OF POLITICAL ADVERTISING ON SOCIAL MEDIA

S.B. No. 1043 (RAISED) 'AN ACT CONCERNING THE STATE ELECTIONS ENFORCEMENT COMMISSION AND REGULATION OF DARK MONEY'

- Based on proposed Federal Honest Ads Act legislation (re-introduced in 2019 as H.R. 1).
- Prohibits foreign entity funding of independent expenditures in Connecticut.
- Requires online platforms to disclose who are buying political ads.

S.B. No. 1044 (RAISED) 'AN ACT RESTORING THE CITIZENS' ELECTION PROGRAM'

- Restores key aspects of the Citizens' Election Program to ensure the comprehensive campaign finance reform that was envisioned when the Program was first adopted in 2005.
- Re-establishes organization expenditure limits erased by Public Act 13-180.

S.B. No. 1045 (RAISED) 'AN ACT CONCERNING ONLINE POLITICAL CONTRIBUTIONS AND FILING OF CAMPAIGN FINANCE STATEMENTS'

- Authorizes SEEC to develop or partner in developing online portals for campaigns to collect online contributions.
- Ensures secure, verifiable contributions for CEP candidates without prior *ad hoc* review by SEEC, easier for campaigns, more streamlined for all concerned, time and money savings overall.

S.B. No. 1042 (RAISED) 'AN ACT CONCERNING THE AUTOMATIC DISMISSAL OF STATE ELECTIONS ENFORCEMENT COMMISSION COMPLAINTS'

- Last year, a law passed limiting the time SEEC could investigate complaints. This amends that law so that the one year limit ends with a reason to believe finding rather than a decision. It also carves an exception for coordination, independent expenditure, and dark money/foreign money cases.

H.B. No. 7323 (RAISED) 'AN ACT CONCERNING AN EXEMPTION FOR CERTAIN EXPENDITURES CLEARLY IDENTIFYING GOVERNOR OR PRESIDENT OF THE UNITED STATES'

- Allows CT campaign ads for any office to identify presidential and gubernatorial candidates without creating the requirement for reimbursement or joint campaigning. Such ads would not be considered contributions or expenditures on behalf of such candidates.

SEEC opposes the following bill:

S.B. 641 'AN ACT CONCERNING REVIEW OF ELECTION LAWS'

- A panel reviewing elections laws should include the Executive Director of SEEC, or his designee. This bill omits SEEC representation on panel.

Detailed Remarks:

We support the following bills:

H.B. No. 7329 (RAISED) 'AN ACT CONCERNING DARK MONEY AND DISCLOSURE OF FOREIGN POLITICAL SPENDING AND OF POLITICAL ADVERTISING ON SOCIAL MEDIA

S.B. No. 1043 (RAISED) 'AN ACT CONCERNING THE STATE ELECTIONS ENFORCEMENT COMMISSION AND REGULATION OF DARK MONEY'

These largely identical bills address two distinct topics that have become front and center in recent political campaigns, and which need to be addressed to keep Connecticut's elections safe from outside interference. The difference between the two bills is that S.B. 1043 adds a provision to regulate consultants. I shall address my comments about that provision separately. First, I'll address the components that they have in common.

The bills are based on proposed Federal Honest Ads Act legislation (re-introduced in 2019 as H.R. 1), and are intended to prohibit foreign business's funding of independent expenditures in Connecticut. They also require online platforms to disclose who are buying political ads on social media. A portion of these proposals are resubmissions of 2017 & 2018 proposals, with revisions based upon comments received during the last session, and additions based on new model legislation and current events.

Both bills prohibit foreign entities from funding independent expenditures in Connecticut either by making them directly or by making any type of contribution to an independent expenditure committee. No law—state or federal—currently prevents foreign businesses from making independent expenditures or giving to independent expenditure political committees. Because this bill makes explicit that the creation of independent expenditure committees is allowed in Connecticut—indeed it is the law of the land already after the *Citizens United* and *SpeechNow* cases—it is important to set limits on such committees where there aren't any at the federal level. One such limit is on foreign businesses. They have no right to influence our elections: this bill prevents it.

Next, the bills require online platforms to disclose who is buying political ads and keep a record of those ads. In Connecticut, unlike many places, we already have and enforce laws that require attribution on digital ads—we treat them like any other written communication. But online ads are increasingly common and the disclosure laws are inadequate to allow for the post-election review and inspection of those ads, which is necessary when (public) campaign funds are spent to purchase these ads and especially when inadequate documentation is provided by vendors to substantiate the purchases, or dark money is used to purchase the ads. Changing technology and social medium platforms, and other advertising networks can now target electronic ads at groups and individuals, they can be displayed for a moment, and then disappear without a trace or any easily available record. Our agency is tasked with investigating and enforcing violations surrounding these ads—we need the tools to do it.

So these bills do several things to make disclosure for these ads better and more meaningful. First, we've adopted a provision, in a modified form, scaled appropriately, from the Honest Ads Act (HR1) that would require the online platforms that sell ads to retain those ads for public inspection and provide information about the use and targeting of these ads. Second, because it's true that these ads can be little more than keywords or links, so that the full attribution, which may include the top five contributors to the maker of the ad, cannot fit on the ad—we've inserted a provision that allows that information, for example, to be provided at the linked page. That would be considered compliant.

The bills do several other things as well. Importantly, they hold executive officers liable for failures to disclose independent expenditures, not just their subordinates. Liability for failures to report currently extends only to treasurers, not to the officers who direct them and authorize the independent expenditures. This would discourage "cost of doing business" violations and fines that have no bearing on the person (or business) responsible for the violation.

The current law also does not require disclosure of certain persons who give to other persons who then make independent expenditures, allowing circumvention of disclosure. Again, because these bills make explicit that the creation of independent expenditure committees is allowed in

Connecticut, it is important to create the best possible structure for disclosure of where those committees get their money. The bills make second level-disclosure a requirement for big contributors to committees who get large sums from other, previously undisclosed, people or groups. Our law, in practice, only requires this for non-committee independent expenditure makers—leaving a fairly large gap in our law, which these bills will close.

The bills restrict the flow of non-complaint campaign funds from entering Connecticut elections from federal sources. There is currently no limit on how much a Connecticut party committee can accept in non-compliant funds from its national account. These bills set a reasonable limit. They also create a carve-out for electronic data, like voter lists, to be given to the state party from the national party without limit.

These bills specify better disclosure in our forms, making it more clear, informative and meaningful. They provide our agency with more tools to enforce against end-runs around contribution restrictions and reduce the lengthy attribution requirements of party candidate listings.

Finally, as mentioned, the bills also implement federal court rulings regarding the creation of independent expenditure committees and increase disclosure of independent expenditures. They do this across the board, for businesses, unions and two or more individuals. These committees cannot make contributions, except to other independent expenditure committees: they can only make expenditures that are wholly, totally, and completely independent of other committees or candidates.

With the passage of either of these bills, the state's campaign finance system would be more robust, disclosure would be significantly better, and enforcement of our campaign finance laws would be more effective.

As mentioned, S.B. 1043 adds to the provisions outlined above another provision that stems from one of our proposals, a proposal to regulate consultants and achieve better secondary payee disclosure.

With the CEP, small-dollar contributions and clean election grants are fully disclosed, but the money that is spent is sometimes hidden through subvendors and consultants. The CEP 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 fair market value. This bill will make that important job possible and, when there is a breakdown 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 language is also in House Bill 7210, on which we submitted testimony dated February 27, 2019. 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, and would help the treasurers get the information that they need to do their jobs. It 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.

S.B. No. 1044 (RAISED) 'AN ACT RESTORING THE CITIZENS' ELECTION PROGRAM'

This bill restores key aspects of the Citizens' Election Program to ensure the comprehensive campaign finance reform that was envisioned when the Program was first adopted in 2005. The bill contains many provisions that we have proposed in the past and is generally intended to improve the CEP and fix some issues that have arisen since its implementation more than a decade ago. Though not all of these provisions have the urgent appeal of our earlier proposals, this bill is meant as a starting point for discussions on how to restore and improve the CEP and to address the

argument that it has been compromised by outside events and legislative damage over the years. Significantly, the bill does the following:

- Reestablishes organization expenditure limits erased by Public Act 13-180 while addressing the loss of 60% of the grant monies available to General Assembly candidates at the inception of the Program.
- Offers an alternative for eliminating unopposed grants by still allowing candidates who are currently unopposed additional fundraising opportunities in the absence of a grant, and to still qualify for a grant if they have a late entering opponent. The Commission continues to believe it is important for candidates who are unopposed to raise and spend funds while still participating in the clean elections program and that the law as it exists is appropriate. Cancelling such grants will save relatively small amounts. However, in light of the many pending proposals over the past several legislative sessions to cancel grants for unopposed candidates, we offer an alternative solution to those proposals that will not put unopposed candidates at risk.
- Restores the ability of the leadership to choose experienced Commissioners, by removing term limits put into place during the 2011 consolidation of the watchdog agencies (that was thankfully later undone).

S.B. No. 1045 (RAISED) 'AN ACT CONCERNING ONLINE POLITICAL CONTRIBUTIONS AND FILING OF CAMPAIGN FINANCE STATEMENTS'

This bill comports with one of the Governor's core stated goals, to digitize government operations and services. Additionally, preliminary results from our 2018 survey for candidates and treasurers whose committees participated in the CEP indicate an overwhelming desire from candidates and treasurers to have a more standardized online interface for collecting online contributions and which could interface with eCRIS, SEEC's electronic filing system. So this bill authorizes SEEC to develop or partner in developing online portals for campaigns to collect online contributions. The end goal would be an electronic method of ensuring secure, verifiable contributions for CEP candidates without prior *ad hoc* review by SEEC, to make it easier for campaigns, and more streamlined for all concerned, saving time and money.

Currently, because there is no mandated standard format for CEP committees raising qualifying contributions via online credit card interfaces, our staff must vet every single committee's interface (often multiple times, as it takes some treasurers multiple attempts to create a compliant interface), as well as backup documentation. This can be arduous and time-consuming not just for staff, but for committees, who sometimes fail to have their interface and backup documentation reviewed for compliance, and who then have to go back and contact every single contributor to obtain the required information or certifications. In addition, the treasurers have to data enter information provided by the contributors into eCRIS. This bill would eliminate much of this, because vendors would work with information technology and compliance staff to create online contribution platforms that could enable treasurers to export data directly into the eCRIS platform. In addition, because this system would result in uniform backup documentation for CEP committees receiving online contributions, the audit review of CEP grant applications would be more streamlined and efficient, and would cut back on continuances of grant applications.

In our regular post-election (electronic) survey of candidates and treasurers, our eCRIS system always garners the most enthusiastic praise. This year we added a question about whether it would be helpful for us to assist campaigns in creating a uniform, online contribution interface for campaigns to use. The response was overwhelmingly positive – 95% of the treasurers want our help. For those who haven't been involved in this process, minor mistakes on the part of the treasurer setting up the site can be painful for all involved with the committee, as well as quite time-consuming, as the agency ensures the qualifying contribution thresholds have been met and tries to prevents fraud. Despite their challenges, it is clear: Online portals are inevitable and an ever-increasing manner of raising contributions. Credit card contributions are the present and the future. We have introduced legislation this session to allow us to assist treasurers with this process, making it easier for both treasurers and contributors alike.

S.B. No. 1042 (RAISED) 'AN ACT CONCERNING THE AUTOMATIC DISMISSAL OF STATE ELECTIONS ENFORCEMENT COMMISSION COMPLAINTS'

Late in 2017, a law passed limiting the time SEEC could investigate complaints. This bill seeks a critical and reasonable adjustment of that law, which required that, for complaints filed on or after

January 1, 2018, the agency to bring a matter to a conclusion within one year after finding that probable cause exists to support a potential violation of Connecticut's election laws. This amends that law so that the one year limit ends with a reason to believe finding rather than a decision. It also carves an exception for coordination, independent expenditure, dark money/foreign money cases, which often entail more comprehensive and complicated investigations that cannot be completed in a year.

One troubling problem with the current one-year limitation is that some cases may not initially appear to be terribly serious, and only after months of investigation do more serious issues arise. One example of such an alleged violation that at first appeared to be small, but turned out, upon adequate investigation, to be a very serious violation is the Stamford matter involving allegations of possible absentee ballot tampering. SEEC investigated a complaint from the city's two registrars of voters, filed in November 2015. We investigated the case until April 2017 when the Commission voted to refer the case to prosecutors for criminal investigation.

Ending the one-year limit with a finding of reason to believe and the consequent beginning of the contested hearing process under the UAPA would not mean that complaints linger indefinitely, as the UAPA procedures and deadlines would be triggered once it is determined that a hearing is needed. This would help ensure that our citizen Commissioners have the full time allowed under the UAPA to hold a hearing, draft a proposed final decision, and make modification to such decision if the full Commission deems necessary. The SEEC Commissioners take their roles very seriously, and the current one-year provision has already caused substantially truncated timeframes for the hearing process.

H.B. No. 7323 (RAISED) 'AN ACT CONCERNING AN EXEMPTION FOR CERTAIN EXPENDITURES CLEARLY IDENTIFYING GOVERNOR OR PRESIDENT OF THE UNITED STATES'

Our proposed bill would allow candidate committees to spend money on communications that identify presidential and gubernatorial candidates right before the election without creating the requirement for reimbursement or joint campaigning. Such communications would not be considered contributions or expenditures on behalf of candidates for Governor or President. As

explained in my written testimony opposing S.B. 269 submitted for the February 15, 2019 hearing, our proposed bill *An Act Concerning an Exemption for Head of the Party Clearly Identified* responds to requests for compliance advice and complaints received by SEEC on this topic. Candidates on all sides of the aisle seem to regularly seek to use the name and actions of the head of the party, on a national or state level, as a stand-in for the views of a political party and the candidates running under the banner of that party. This is so whether the head of the party happens to be a candidate or not during that election cycle.

We do have concern as about the way that House Bill 7323 is currently drafted. In order to effectuate the intent of the proposal as outlined above and avoid creating large disclosure loopholes for independent spenders, we respectfully suggest that the language at lines 168 – 174 and lines 260 – 266 should read as follows:

> (24) A communication described in subdivision (2) of subsection (a) of section 9-601b that refers to a clearly identified candidate for Governor or President of the United States, which communication is paid for by ~~or on behalf of~~ a candidate for nomination or election to any other office OR ANY COMMITTEE OF SUCH CANDIDATE, provided such communication shall only not be a contribution to any candidate for Governor or President of the United States; or

We also have concerns regarding the effect of the suggested changes to existing law at lines 244 – 245 and 254. The purpose of these changes appear to have been technical in nature but we believe they need further revision so as not to make unintended substantive changes to the law. We recommend that lines 238 – 259 read as follows:

> (10) (A) A communication containing an endorsement on behalf of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, from a candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, [shall not be an expenditure attributable to the endorsing candidate, if] provided (i) the candidate making the endorsement is unopposed at the time of the communication; and (ii) the communication is paid for by the candidate or the committee of the candidate being endorsed.
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> (B) Notwithstanding the provisions of subparagraph (A) of this subdivision, a

communication described in said subparagraph shall be an expenditure on behalf of the candidate or committee paying for the communication;

(11) (A) A communication that is sent by mail to addresses in the district for which a candidate being endorsed by another candidate pursuant to the provisions of this subdivision is seeking nomination or election to the office of state senator or state representative, containing an endorsement on behalf of such candidate for such nomination or election, from a candidate for the office of state senator or state representative, [shall not be an expenditure attributable to the endorsing candidate, if] provided (i) the candidate making the endorsement is not seeking election to the office of state senator or state representative for a district that contains any geographical area shared by the district for the office to which the endorsed candidate is seeking nomination or election; and (ii) the communication is paid for by the candidate or the committee of the candidate being endorsed.

(B) Notwithstanding the provisions of subparagraph (A) of this subdivision, a communication described in said subparagraph shall be an expenditure on behalf of the candidate or committee paying for the communication;

We also oppose the following bill as currently drafted:

S.B. 641 'AN ACT CONCERNING REVIEW OF ELECTION LAWS'

This bill will set up a commission to consider, among other things, the regulation of political campaigns. Members of the commission are to be House and Senate leadership and the Secretary of the State or her designee – all potential participants in the Citizens' Election Program. To the extent that the purview of this commission will address the consideration of legislative changes to the clean elections program or other campaign finance laws under the jurisdiction of the State Elections Enforcement Commission, we urge that the Executive Director of that agency, or his designee, be included on the panel just as is the Secretary of the State.

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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