STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

TESTIMONY PRESENTED BEFORE
THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

S.B. No. 294 AN ACT CONCERNING QUALIFYING CONTRIBUTIONS UNDER THE CITIZENS' ELECTION PROGRAM
S.B. No. 640 AN ACT CONCERNING SOCIAL MEDIA PLATFORMS AND CAMPAIGN FINANCE
S.B. No. 761 AN ACT PERMITTING THE USE OF CITIZENS' ELECTION PROGRAM GRANT FUNDS TO OFFSET A PARTICIPATING CANDIDATE'S CHILD CARE COSTS
S.B. No. 883 AN ACT CONCERNING THE RECOMMENDATIONS OF THE GOVERNOR'S COUNCIL ON WOMEN AND GIRLS

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

Co-Chairs Flexer and Fox, Vice Chairs Haskell and Thomas, Ranking Members Sampson and Mastrofrancesco, 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 four bills before the Committee today that address the Citizens' Election Program and campaign finance law and we thank the Committee for the opportunity to speak in support of three of them and to ask for clarification with respect to the fourth so that we can accurately assess and help you understand the impact it may have on the Citizens' Election Program and the treasurers and candidates that participate in the Program.

First, we'd like to take a quick moment to update the Committee on the Citizens' Election Program and its 2020 run. Once again, most of the elected legislature ran with only small dollar donations – the vast majority of which came from their constituents – and a clean elections grant. This cycle, 94% of the elected legislature has come to office with the Citizens' Election Program, up from 90% in 2018, and 83% of all candidates on the ballot

participated. We had the highest rate of participation ever in the 2020 primaries with all but one candidate in the 14 primaries receiving a grant.

The continually high participation rates in the Program are just part of the 2020 story. Following each cycle, we analyze issues that arose and implement new processes to increase efficiency and improve participants' experience. Seeking to improve our ability to release grants early in the cycle, we adjusted our Pre-Application Review Program and heavily recruited existing committees. A record 65 committees chose to participate, about 20% of the committees that ultimately applied for a grant. Thanks to the early efforts of these committees, in the first six weeks of this year's grant cycle we were able to award almost 30% more grants than were awarded in the same timeframe in 2018.

We also have responded to the legislature's desire for more transparency as to the qualification of contributions and why certain contributions may not have yet qualified. For the 2020 cycle, we provided treasurers with detailed, written instructions as to how to fix contributions needed in order to qualify for a grant. While we did not stop to write-up the reason for every contribution that did not qualify, we did offer that write-up if campaigns wanted it. A handful of treasurers took us up on that offer. In our candidate and treasurer surveys we also offered a complete review of all contributions that did not qualify and why. Of the 141 responses we have received so far, seven treasurers have asked to go over the contributions that were not qualified and we are scheduling those reviews.

When COVID hit, SEEC staff also developed all new online CEP training modules that allowed candidates and treasurers to learn about the CEP or refresh their knowledge while safely quarantining. We added additional training, supplemented by one-on-one outreach calls, about how to fix contributions before they are submitted and how to avoid certain common errors. The new approach made a significant difference. The training modules were well utilized, most receiving over 2,000 views, and many more contributions this cycle were submitted with fixes already made, allowing us to qualify committees much more quickly.

We look forward to another successful run in 2022, and we are hard at work continuing to streamline our processes and implement changes to improve the experience of Program participants. The first proposed bill we would like to address may seriously impede our ability to do that:

S.B. No. 294 AAC QUALIFYING CONTRIBUTIONS UNDER THE CITIZENS' ELECTION PROGRAM

We ask that the Committee carefully consider the negative effect this bill as currently drafted could have on Program participants, contributors, and the integrity of the Program.

As an initial matter, I also would like to take this opportunity to make the point that non-qualifying contributions that are not returned by campaigns do not go into SEEC's operating budget nor have they ever. They are deposited into the CEF. The money goes to pay grants to qualified candidates. That is the only use of the money.

This bill, as drafted, will make the work of treasurers much more difficult. It ***requires*** treasurers to return all non-qualifying contributions, with all of the record-keeping and paperwork that this entails. The treasurers will have to process checks, track each payment, follow up with contributors to ensure that they timely cash checks, and deal with the extra money left in the committee account when the returned contributions are not cashed (which is often the case). Failure to do so properly could lead to liability for both the treasurer and the candidate. A contributor's failure to deposit a returned contribution could render the participating campaign in violation of the expenditure limit if they are mistakenly spent. And, moreover, the return of the "wrong" contribution could mean that the campaign could become "unqualified" for an awarded grant. As the bill is currently drafted, all of this extra work and increased risk of personal liability is a mandatory obligation, not a choice.

Many treasurers have no problem submitting very clean applications. A few, however, struggle and it is already sufficiently challenging for those treasurers to fulfill the administrative and accounting requirements dictated by current campaign finance laws. It is the great irony of this bill that those treasurers who struggle most will have the greatest amount of non-qualifying contributions and therefore will have the largest workload

increase under these new mandatory requirements put on them.

The timeframe in which the return of contributions must be made – first, from the CEF to the committee and then, second, from the committee to the contributor – also raises some serious issues. The proposed bill seems to require the first leg, moving the non-qualifying contributions from the CEF back into the candidate committee's account, to occur before a grant may be approved. Currently, during the grant application period, SEEC staff works with committees to get them qualified for grants, focusing with treasurers on contributions that can be fixed, and assisting them in reaching thresholds as soon as possible. In recent years the time to apply for a full grant has been cut by 40% and this, combined with the 40% cuts that were made to SEEC staffing, means that all resources are needed and in full use during the grant period. Adding more burdensome requirements for SEEC staff during this extremely busy period will require a fiscal note for additional personnel. Absent more staffing, our ability to timely review grants will slow down considerably. And, even worse for treasurers, SEEC staff time now dedicated to assisting treasurers to qualify for grants will be diverted to processing returns of non-qualifying contributions.

The timing of the second step, the treasurer's return of contributions to contributors, is also an issue. The language in the proposed bill is unclear as to when this is supposed to happen:

- Will a treasurer have to do all of this work and re-certify that all non-qualifying monies are out of the account before being given a grant? This could significantly hold up grants and the requirement that monies be released within a short time of the Commission's vote will need to be adjusted.
- Or is the plan to commingle grant monies with known state contractor and lobbyist donations and possibly even straw donations with unknown sources? This would seem to undermine the goals of the Program.

The underlying policy behind the Program is an area that also needs to be considered with respect to which non-qualifying contributions are returned. The reason that some

contributions do not qualify can run the gamut from a simple mistake in not checking the proper box on a form or skipping a step in the rush to fill out a form to a much more serious violation such as a prohibited state contractor contribution or lobbyist contributions made during session. By way of further example, giving in the name of another is not legal. Currently, the Commission investigates and, when appropriate, enforces with respect to such issues discovered during the grant application process, resulting in $12,000 and $20,000 fines in some instances. The way that the Program currently operates allows the Commission to address fraudulent contributions with penalties where appropriate and, at the same time, to protect the privacy of contributors until an investigation can be completed. Allowing those contributions with the most egregious reasons for not qualifying to be returned before an investigation can be completed should be carefully considered.

Again, we would like to take a moment to clarify how the Program currently works and why. General Statutes § 9-706 (b) (4) requires that candidates applying for a grant certify that they have returned all non-qualifying contributions and submitted all excess contributions to the Citizens' Election Fund. This is the source of what are known as "buffer checks." The only intra-office, non-statutory process involved is that we allow treasurers who do not want to go through the hassle of returning contributions that they know will not qualify and that they have not fixed to include those with their excess contributions. We do this because we know how difficult it can be to process and track returns when contributors fail to cash checks and it does not harm the policy behind the Program. Many treasurers choose this route during grant application. Yes, it is an imperfect solution that we have adopted as a way to solve multiple issues, first and foremost getting grants out to candidates on time. This legislation offers no additional time or additional resources, but mandates a course of action that will make it more difficult for treasurers to submit grant applications. This is especially concerning in light of the grant reduction schedule adopted in 2017 which penalizes committees with reduced grants if they submit applications after a certain date. In 2020 almost 12% of the grant applications were submitted on a single day right before the deadline to receive a full grant. How many of these candidates would have received reduced grants if this new process had been in place?

And, again to clarify, all contributions that are not returned go to support CEP candidates. Each dollar raised by a candidate in the Program is matched by money from the Fund. A senate candidate in a party-dominant primary will receive as much as a 1 to 12 match from the Fund for the $16,000 threshold he or she must meet. A contribution to a CEP candidate is either part of the qualifying contributions directly kept and spent by a candidate or it is part of the Fund that matches such contributions.

If this Committee chooses to move forward with this bill, we urge you to: (1) allow treasurers and their candidates to choose whether they want this further burden added to an already long list of treasurer duties; (2) adjust the timing of the returns to after the election; and (3) protect the integrity of the Program and at the same time the privacy of contributors. We stand ready to work with this Committee if you choose to move forward with legislating the return of contributions and would like very much to assist in ensuring that it is done in a way that does not negatively impact treasurers or the Program.

S.B. No. 640 AN ACT CONCERNING SOCIAL MEDIA PLATFORMS AND CAMPAIGN FINANCE

This bill requires significantly more disclosure of online political advertising, which is a goal we strongly support. We stand ready to work with the legislature to make this bill an effective and leading-edge response to the wave of online ads that have become a bigger and bigger part of campaigns in recent years.

Increasing transparency for social media advertising in national races is also part of the election reforms moving through Congress. According to a study cited in support of the national proposals, $1,415,000,000 was spent in 2016, on online advertising for national races, more than quadruple the amount in 2012. Connecticut's social media advertising in General Assembly elections has had similar explosions, with $310,596 spent in 2016, more than quintuple the amount spent in 2012. For the 2020 cycle, reported direct spending on social media advertising for General Assembly races had ballooned to over approximately $1,673,213 – again quintupling from 2016 to 2020. The importance of transparency for

voters and candidates will only continue to increase, making it ever more important to ensure adequate disclosure in this area.

We would like to make recommendations and seek a few clarifications to ensure that the policy of increased disclosure can be effectuated seamlessly. We are happy to work with you on this.

S.B. No. 761 AN ACT PERMITTING THE USE OF CITIZENS' ELECTION PROGRAM GRANT FUNDS TO OFFSET A PARTICIPATING CANDIDATE'S CHILD CARE COSTS

S.B. No. 883 AN ACT CONCERNING THE RECOMMENDATIONS OF THE GOVERNOR'S COUNCIL ON WOMEN AND GIRLS

During the 2018 election cycle, a Declaratory Ruling was requested as to whether CEP grant funds could be spent for childcare services. In response the Commission found that the language of the current CEP statutes and regulations did not allow for it and asked the legislature for a law change to make this permissible and guidance as to certain policy decisions that need to be made. The Declaratory Ruling was appealed to the Superior Court.

In January 2021, the Court found that grant monies could be used for childcare in the same way that privately raised monies may be used -- as long as the following criteria are met: (1) such payments are a direct result of campaign activity and the expenses would not exist but for the candidate's campaign activity; (2) they are reasonable and customary for the services rendered; and (3) they are properly documented by the campaign.

The current bills provide a definition for childcare and guidelines as to the amount of grant monies that may be spent. They clarify that if candidates pay for childcare when they are campaigning and choose not to seek reimbursement that these amounts will not be treated as personal funds and deducted from their grant amount, and they require the SEEC to draft regulations to implement the bills' guidelines. We stand ready to continue to assist the Committee to craft a workable solution.

Thank you for the opportunity to present this testimony.

Michael J. Brandi

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State Elections Enforcement Commission