

**Testimony of
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Government Administration and Elections Committee
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Introduction

My name is Karen Hobert Flynn and I am the President of Common Cause and former Chair and Executive Director of Common Cause in Connecticut. I work in DC, but I am proud to live in Middletown, Connecticut. I worked with Governor Rell, House Speaker Jim Amman, Senate President Don Williams, Majority Leader Chris Donovan and many lawmakers in this building, and a coalition of more than 50 organizations to pass the Citizens' Election Program in the wake of one of the biggest pay-to-play scandals in our state's history. Common Cause has 1.1 million activists and donors, and more than 12,000 activists and donors in Connecticut.

Common Cause is a nonpartisan, nonprofit citizen lobby that works to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Common Cause has worked for nearly five decades in Connecticut and worked with the General Assembly and many governors to pass strong freedom of information laws, election reforms that opens our electoral system to broader participation, campaign finance and disclosure reforms, and common-sense ethics reforms.

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 with any comprehensive reform measure. Common Cause supported fixes in 2006, 2007, 2008, 2009, 2010 and 2011. The strong disclosure and coordination bill passed in May of 2010, in the wake of *Citizens United* decision was weakened by the measure passed in 2013. And I have included comments on those weaknesses later in my testimony.

Today, I wanted to address changes made to the Citizens Election Program during the June special session in 2017. While we are grateful that the Legislature did not eliminate this incredibly important good government program, we have significant concerns with the changes made to this program – changes made without due process, including hearings and public input. Public Act 17-2 included measures that significantly weakened the Citizens Election Program by altering the qualifying contribution threshold and grant amounts – including reducing amounts based on when a candidate applies. In addition, the Legislature has moved to make it harder to ensure the integrity of the program by making it difficult for a small staff at State Elections Enforcement (SEEC) to handle complaints.

The Challenges of Changes to CEP under Public Act 17-2

Common Cause has many concerns about these changes, not to mention that they were made as part of a budget package and these changes were not vetted in this committee, nor was there any process to evaluate the impact or allow the public and stakeholders to weigh in on these changes – some of which could be easily viewed as incumbent protection measures to make it hard for challengers and new candidates to compete against an incumbent, and harder for the State Elections Enforcement Commission (SEEC) to investigate any malfeasance, given the shortened timeline on investigations. Hearing from the nonpartisan and independent staff at Elections Enforcement would have been helpful to understand the full impact of these changes. This is the kind of anti-transparent activity we are seeing out of Republicans in Congress and the White House. I did not expect to see this kind of end run at the Citizens Election Program by leaders in the General Assembly.

Plan Weakens Enforcement

The Citizens' Election Program has been in place for five election cycles and the program is viewed as a model for other states and municipalities across the country. The Citizens' Election Program has strong participation – from Republicans, Democrats, and third-party candidates and program has enjoyed robust enforcement to ensure that the public fisc is protected. In no small part, that is due to the nonpartisan staff and the board at the State Elections Enforcement Commission. What is most remarkable about this performance is that SEEC has been the target of draconian budget cuts since 2011. Staff was reduced by 40% in 2011, with a cut of 19 positions. Not only did SEEC lose five management positions, two supervisors (and three of those were attorneys). They also lost an IT programmer, an IT hardware specialist, four accounts examiners, a fiscal accounts officer, an elections officer, two paralegals and two support staff. Cuts were not limited to personnel. Funds for operations were also cut, including funds for the grants application process and data input for the e-Cris system.

Six adjustments made in 2015 cut another 7% from the SEEC's budget for the biennium. And I am sure there were further cuts in the budget that passed in June of 2017 – I don't have that information, but I am sure the staff at SEEC can provide it. It is difficult to run the program when key



positions remain unfilled and the department barely has enough to keep the business operations running.

When you couple those cuts with a time limit on investigations, what you get is a real challenge in enforcing the law. First, to be clear, SEEC resolves 70% of its caseload within one year. But the more complex cases can take longer and require staff who can collect evidence, interview multiple people, deal with entities that may not be very cooperative, review many documents, and then analyze findings and make recommendations to the Commission for action.

Not surprisingly, Connecticut sees more complaints, and more complicated ones in a year when statewide elections are held. The time it takes to close a case increases as a result. Frankly, this change in the law invites bad behavior and creates an incentive for those being investigated to request delays, extensions and draw out the time of an investigation so that they can avoid any penalties. It also incentivizes SEEC to refuse to grant any extensions that targets of investigations may request.

According to SEEC, since 2008, 26 cases alleging willful and intentional violation of campaign finance laws would have been dismissed under the provision passed last June. SEEC has seven cases involving independent expenditures that have been open for more than a year that involve complicated legal issues in a new area of law. Resolving those cases would help candidates and those who want to run independent expenditures. Not resolving those cases can send a signal to large out of state independent expenditure groups that it's open season to attack Connecticut candidates without having to disclose a thing about who they are. I can't imagine that is what lawmakers here want. In closing, if people who violate our laws can escape without penalty, the system will be undermined. This is an incredibly bad idea.

At the very least, we urge the committee and the General Assembly to rescind this provision, or give the SEEC the four positions that they have requested to comply with this mandate. Of course, I understand the irony of asking for two legal investigators, one staff attorney and one paralegal specialist to help them comply with a provision that was put in place as part of a "money-saving budget."

Changes to Qualifying Contribution Amounts

I was interested to see that the provisions in Public Act 17-2 increased qualifying contributions from individuals to candidates for House and Senate increased from \$100 to \$250. But those amounts are not for statewide candidate.

It would have been useful to get some data on what impact this provision change will have on the program. One possibility is that this change benefits incumbents more than challengers – because challengers tend to have trouble raising larger contributions. If that is true, it certainly would not be a great optic for the public, particularly when we talk about adjustments to grant amounts based on when you submit your application. On the other hand, this could mean it is easier to qualify for the CEP and we could end up with more candidates running under the program, which would cost more money to the program, even though the goal of these provisions in Public Act 17-2 was to save money.



Grant Reduction Provision Harms Challengers and Benefits Incumbents

We are concerned about the plan to give smaller grants to candidates who apply later in the election season. Candidates who submit applications between October 9th and October 12th receive only 40% of the grant; candidates who submit their application between 9/25 and 10/5 receive 55% of the grant.

Looking at the 2016 election and when candidates received their grants, more than 118 candidates would receive smaller grants – and most of those candidates are challengers or new candidates running in open seats. We should ask the 41 candidates in 2016 who didn't get their grants until after October 12th if they were able to utilize their full grants, or was their resources wasted.

It is hard to see this provision as anything other than an incumbent protection measure. Perhaps there was a theory that if you qualify late, you couldn't spend the money, but some candidates can map that out and figure out how to utilize the grant in concrete ways that help them win. We should ask candidates like If they cannot spend the money, then it is returned to the CEP fund. I do not see any justifiable reason to hamstring new candidates like this. It builds inequity into what has been a landmark and strong fairness and democratic reform.

Other Areas for Improvement

Disclosure

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 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.

The 2013 disclosure provisions weakened Connecticut's disclosure and coordination regulations and we witnessed abuses in the 2014 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 – if 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.

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

Connecticut needs to look at how to strengthen the Citizens' Election Program to help candidates who are victims of independent expenditures. This is something that we have not dealt with,



yet other jurisdictions, like Maine, Los Angeles and many others are working to strengthen their programs. There are many options to do so.

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 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 consider the 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 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 if 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 citizens passed a measure on the ballot in November 2015 that provides 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. 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 – 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 consider the 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.¹ 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.

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

¹ Arizona is considering adopting this approach.

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 deal with the detrimental changes made in Public Act 17-2 and to strengthen our disclosure and coordination measures that were weakened in 2013, as well as finding 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.