

[courant.com/news/politics/hc-campaign_finances0829.artaug29,0,3702527.story](http://www.courant.com/news/politics/hc-campaign_finances0829.artaug29,0,3702527.story)

Courant.com

CAMPAIGN FINANCE REFORM

Federal Judge Throws Out Connecticut's Landmark Campaign Finance Law

By EDMUND H. MAHONY

The Hartford Courant

August 29, 2009

Connecticut election officials reacted with sharp criticism and promised an all-out legal fight Friday after a federal judge threw out the state's landmark campaign finance law, saying it puts minor party office seekers at an unconstitutional disadvantage when they challenge traditionally better-financed major party candidates.

U.S. District Judge Stefan R. Underhill said the state's cutting-edge campaign finance reforms, known as the 2005 Citizens' Election Program, were built on good intentions and inspired by "a regrettable legacy of corruption that has pervaded all levels of elected office in recent decades."

But he said the reform law, the product of months of legislative effort, "imposes an unconstitutional, discriminatory burden" on minor party candidates. That burden is created, he said, because the reforms enhance the ability of Republicans and Democrats to raise money without imposing spending limits on major party candidates who take advantage of public financing.

Specifically, Underhill said:

- The reforms provide funding to participating candidates at levels "well beyond" historic spending levels. Those funding levels amount to "an impermissible subsidy" for major party candidates rather than a substitute for traditional sources of funding.
- The new public financing scheme "artificially enhances" the political strength of many major party legislative candidates by ignoring actual support for those candidates in their districts. By doing so, it permits any major party candidate to qualify for full public financing without the demonstration of support that minor party candidates must show before becoming eligible for full financing.
- The qualifying criteria for minor party candidates are so difficult to achieve that most will never become eligible for even reduced levels of public financing.
- The procedures enacted for distribution of public financing could tend to discourage minor party candidates from even trying to participate. That is because the law triggers release of additional money to major party candidates when their minor party challengers achieve even minimal fundraising

milestones.

The Green Party of Connecticut, lead plaintiff in the suit upon which Underhill's decision is based, praised the opinion.

"It is a very important victory," said David McGuire, a Connecticut ACLU lawyer who represented the Green Party. "It is a victory for free speech and a victory for all political candidates. It really does level the playing field now."

The response from state political figures of all major party stripes, however, was strong, if respectful, condemnation.

"My office will appeal and seek an immediate stay of this decision, which misapplies constitutional doctrine to strike down our state's campaign finance reform system," said Attorney General Richard Blumenthal. "This decision is only one ruling by one lower-court judge, but it could create significant legal obstacles to campaign finance reform efforts here and around the country. It deserves and needs review by an appellate court."

Blumenthal said he will appear in Bridgeport before Underhill next week to seek an immediate stay of the order, a measure that would indefinitely postpone the order from taking effect. If Underhill denies a stay, Blumenthal said, he will apply to the U.S. 2nd Circuit Court of Appeals. In any event, Blumenthal, a Democrat, said he will ask the appellate court to reverse Underhill's decision.

Gov. M. Jodi Rell, another supporter of the campaign reforms, was equally critical. When the legislature adjourned without passing reforms in the spring of 2005, she pushed the leadership to create a blue ribbon panel to craft a bill. Later that year, she convened a special legislative session, which enacted the law in December.

"Connecticut's Campaign Finance Reform Act is a model in the nation," said Rell, a Republican. "I will do everything possible to keep this program intact and will support an immediate appeal of the decision. I cannot, and will not, let Connecticut return to the days of unfettered special interests controlling our electoral process. If necessary, we can amend the law to address the concerns of minor parties."

Secretary of the State Susan Bysiewicz, the state's chief elections regulator and a Democrat, said Underhill's ruling, if left in force, could create "chaos" in the 2010 election cycle for legislative and statewide officeholders.

Candidates already budgeting for campaigns could have their efforts upended if faced with a loss of public financing, she said. Candidates considering runs may demur if forced to forgo public financing.

Bysiewicz said the new laws "worked extremely well" when they took effect for the first time during the 2008 election cycle. She said 83 percent of candidates for state Senate and 74 percent of those running for the state House took advantage of the public financing. She said money was provided to a total of 236 candidates: 135 Democrats, 96 Republicans, 3 independents and 2 Working Families party candidates.

"Judge Underhill's decision is very unfortunate and it comes at a very inopportune time in our election process," she said. "I think it is important that we keep this law in place. If there are imperfections, if there are flaws, I think we should fix them. We should not throw out the entire law."

Jeffrey B. Garfield, executive director and general counsel for the State Elections Enforcement Commission, who worked with legislators in crafting the law before retiring a month ago, was equally critical.

"Judge Underhill will not have the final say on how Connecticut shall serve its citizens," Garfield said. "In 2008 we saw a glimpse of the promise that public campaign financing holds. Three-quarters of the legislators sitting in office came to office using the citizen election program."

The small but vocal Green Party said Underhill's major party detractors were missing the point. Regardless of how many office-seekers took advantage of public financing last year, minor parties — less organized, operating without staffs that can circulate petitions, and the infrequent beneficiaries of large contributions — were put at a disadvantage, party officials said.

"It may have been well-intentioned," McGuire said. "It probably was well-intentioned. But the truth is it made the playing field less level. It created substantial obstacles for the third party candidates. And Judge Underhill said himself it is virtually impossible for a candidate who is not a Republican or a Democrat to get around."

The minor parties charged in their suit that the reforms arbitrarily provided major party candidates with incentives and resources to run well-heeled campaigns, while making it more difficult for minor party candidates to obtain the same resources.

At one point in his decision, Underhill said steps should be taken to preserve the ability of minor party candidates to serve as checks on their major party opponents and their representatives in government.

"We're very pleased the court ruled that real campaign finance reform requires a level playing field," said Michael DeRosa, co-chairman of the state Green Party.

Blumenthal said he is confident Underhill's decision will be reversed.

"We believe that this ruling substantially conflicts with Supreme Court precedent and principle because the minor party candidates, very simply, have failed to demonstrate that they bear an unconstitutional burden as a result of this law," he said. "In fact, they are no worse off than without campaign finance assistance."

Blumenthal disagreed with political figures such as Rell and Bysiewicz who expressed hope that flaws in the law identified by Underhill could be remedied while preserving the larger package of reforms. He said the various components of the law interlock to such a degree that changing one aspect could cause the entire package to collapse.

"This truly craters the whole framework of reform," Blumenthal said.

Copyright © 2009, The Hartford Courant