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Judge holds that Conn.'s campaign financing is unconstitutional

But supporters see options in 14 months until next election

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A federal judge ruled Thursday that Connecticut's public financing scheme for candidates seeking state offices is unconstitutional because it discriminates against minor parties.

The judge, Stefan R. Underhill, who sits in U.S. District Court in Bridgeport, issued a permanent injunction blocking further implementation of the public financing scheme.

But an official of Common Cause of Connecticut, which supports public financing, said it expects Attorney General Richard Blumenthal to seek a stay of the ruling from the 2nd U.S. Circuit Court of Appeals in New York.

Even if the stay is denied, some supporters of public financing expressed optimism that the legislature will have time to amend the law to deal with the Underhill's objections in time for the next state election, which is more than 14 months away.

The plaintiffs in the lawsuit included the Green Party of Connecticut and the Libertarian Party of Connecticut.

The judge said one of the problems with the public financing scheme, known as the Citizens Election Program, is that it provides "public financing to participating candidates at windfall levels, well beyond historic expenditure levels in most races, thus creating merely illusory expenditure 'limits' for participating candidates."

Thus, the program acts "as an impermissible subsidy for major-party candidates, rather than a permissible substitute for ... traditional sources of funding," the judge wrote in his 138-page decision.

Underhill also found that the public financing scheme disregards the extreme weakness of candidates of at least one major party in many legislative districts. In the past three election cycles, the judge wrote, "in nearly half the legislative districts, one of the major parties has either abandoned the district or its candidate has won less than 20 percent of the vote, in other words, losing in landslide fashion."

Yet the public financing scheme allows weak major-party candidates to qualify for public financing "without first requiring those candidates to demonstrate the same significant modicum of public support that minor-party candidates must establish

before becoming similarly eligible for full funding," Underhill wrote.

Moreover, the judge wrote, the system's qualifying criteria for minor-party candidates "are so difficult to achieve that the vast majority of minor-party candidates will never become eligible to receive public funding at even reduced levels."

Finally, he said, the public financing scheme's distribution formulas discourage minor-party candidates from participating by releasing significant additional funding to a participating major-party opponent once the minor-party candidate reaches a minimal level of fundraising.

Still, the judge said, good motives underlay the enactment of public financing in 2005, "namely, to combat actual and perceived corruption arising out of large contributions from private sources and to encourage candidates to spend more time engaged with voters and each other on pertinent issues, rather than spending time fundraising."

Karen Hobert Flynn, vice president of operations for Common Cause, a national clean elections advocacy group that lobbied hard for Connecticut's public financing system, said today she was disappointed with Underhill's decision.

"I believe the judge was extremely selective in the use of his facts, ignored precedents, and demonstrated little judicial restraint," she said.

Flynn said Common Cause already has begun talks with Blumenthal's office and expects the attorney general will file a motion to stay Underhill's injunction while Connecticut seeks an expedited appeal in the 2nd U.S. Circuit Court of Appeals.

Rep. James F. Spallone, D-Essex, co-chairman of the legislature's Government Administration and Elections Committee, said he also supports an appeal, but is optimistic that regardless of that outcome, public financing still will be in place for the 2010 election.

"Fortunately we're well over a year away from a state election," he said, adding this would give the General Assembly time to repair the public financing system if an appeal should fail.

"I'm confident we can make the necessary changes if we need to," Spallone said.

Republicans, who hold small minorities in both the state House and the Senate, tried during the regular 2009 General Assembly session to suspend public financing, arguing the state can't afford such a system during a recession. But both the House and the Senate voted overwhelmingly to keep public financing in place.

Senate President Pro Tem Donald E. Williams Jr., D-Brooklyn, said early today that he also hadn't fully analyzed the decision, but supports all efforts to preserve public financing.

"Obviously I'm disappointed," he said.