



**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Confidential Memorandum

TO: Commissioners

FROM: Jeffrey B. Garfield, Executive Director and General Counsel

DATE: October 7, 2009

SUBJECT: Citizens' Election Program — Public Campaign Financing Update
Commission Recommendation to the General Assembly

I. *Green Party Litigation*

On August 27, 2008 the District Court issued an order ("the Order") permanently enjoining Defendants Jeffrey Garfield and Attorney General Richard Blumenthal from operating or enforcing the Citizen's Election Program (CEP), and the judgment was entered on September 2, 2009. On September 2, 2009, this Court entered a stay of the Order pending a ruling by the Court of Appeals on the Defendants' motion to expedite the appeal.

On September 21, 2009, the Court of Appeals granted the Defendants' motion to expedite this appeal and ordered that both appeals, 09-0599-cv and 09-3760-cv, be heard in tandem and prepared for oral argument the week of January 4, 2010.

On September 25, 2009, in light of the expedited briefing and argument schedule ordered by the Court of Appeals, the Defendants and Plaintiffs, Green Party of Connecticut, S. Michael DeRosa and Libertarian Party of Connecticut, (collectively "Plaintiffs") filed a consent motion for a full stay pending the decision of the Court of Appeals.

Although the appeal is pending and we continue to believe that the CEP is constitutional under existing law, as the Attorney General's office represented to the Commission at the last meeting, "*what* the Appellate Court ultimately says may not be as important for the Program as *when* the court says it." Because we are only at the beginning of an appeal process that is likely to go all the way to the United States Supreme Court before reaching resolution and because the District Court decision has been issued at a time when exploratory and candidate committees are already beginning their 2010 runs, we need more rapid resolution to create the necessary electoral stability. This is especially true in light of the expedited schedule that makes an Appellate decision, with all of its unpredictability and the consequent lifting of the stay, a likelihood around the time of the conventions. Such a decision could trigger the "time bomb" reversion provision in General Statutes § 9-717. In the event of a continuing court injunction, such as that issued by the District Court on August 27, 2009, section 9-717 as currently drafted will cause the law to revert at a certain date to the law existing before Public Act 05-5 was passed until December 31, 2010, and then the law switches back to the reform passed in December 1, 2005 until April of 2011. If the funds in the program are still enjoined by April 15th of 2011, the law reverts permanently.

II. *Recommendation to the General Assembly*

Commission staff is working to address the impact of Green Party litigation and will continue to meet with the Governor's office and legislative leadership. Below is the proposed recommendation for adoption by the Commission.

III. *Commission Recommendation to the General Assembly*

The following recommendations are being presented to address Judge Underhill's decision:

1. Address statewide proxy arguments and equal protection issues by establishing uniform qualifying criteria for all candidates competing for Statewide and General Assembly candidates.
2. Address independent expenditure and supplemental grant ruling repealing Connecticut General Statutes § 9-717, and replacing with proposed severability language. (See, attached.)
3. Address windfall grant argument by adjusting grant size for competitive versus non competitive districts.
4. Lower grant size for unopposed candidates.
5. Defer CPI Adjustment for 2010.

IV. *Supporting Data*

Using prior vote totals as was done by Judge Underhill and expert witnesses in the litigation, Commission staff collected data to capture the average and median expenditures for unopposed candidates, non-competitive candidates and competitive candidates for 2000 through 2008 election cycles.

The recommendation provides definitions for competitiveness that encompass (1) districts with an open seat; and (2) districts where voter registration demonstrates that no one party is dominant ("Non Party Dominant" Districts).

A. Establish and redefine grant amounts for the General Election Cycle:

General Election	Definition	Methodology to redefine grant amounts
Unopposed	No opponent or Opponent not subject to itemized disclosure requirements.	1:1 Match for Qualifying Threshold
Non Competitive Districts	Party Dominant Districts	Average Expenditures for winning candidates in 2006 and 2004
Competitive Districts	Non Party Dominant Districts and Open Seats	Average Expenditures for winning candidates in 2006 and 2004

B. 2010 – Proposed General Election Grant Amounts

Senate Candidates	Qualifying Threshold	Proposed Grant Amount
Unopposed	300 residents of municipalities included, in whole or in part, in the district and \$15,000 aggregate	\$15,000
Non Competitive Districts (Party Dominant District)	300 residents of municipalities included, in whole or in part, in the district and \$15,000 aggregate	\$55,000
Competitive Districts (Non Party Dominant/Open Seats)	300 residents of municipalities included, in whole or in part, in the district and \$15,000 aggregate	\$105,000
Senate Primary Candidates	Qualifying Threshold	Grant Amount
Primary Non Competitive Districts (Non Party Dominant)	300 residents of municipalities included, in whole or in part, in the district and \$15,000 aggregate	\$35,000
Primary Competitive Districts (Party Dominant/Open Seats)	300 residents of municipalities included, in whole or in part, in the district and \$15,000 aggregate	\$75,000

House Candidates	Qualifying Threshold	Proposed Grant Amount
Unopposed	150 residents of municipalities included, in whole or in part, in the district and \$5,000 aggregate	\$5,000
Non Competitive Districts (Party Dominant District)	150 residents of municipalities included, in whole or in part, in the district and \$5,000 aggregate	\$15,000
Competitive Districts (Non Party Dominant/Open Seats)	150 residents of municipalities included, in whole or in part, in the district and \$5,000 aggregate	\$30,000
House Primary Candidates	Qualifying Threshold	Proposed Grant Amount
Primary Non Competitive Districts (Non Party Dominant)	150 residents of municipalities included, in whole or in part, in the district and \$5,000 aggregate	\$10,000
Primary Competitive Districts (Party Dominant/Open Seats)	150 residents of municipalities included, in whole or in part, in the district and \$5,000 aggregate	\$25,000

C. 2010 Fiscal Assumptions

2010 General Assembly Cost Assumptions

Number of Races	Number of Grant Recipients	Cost
Candidates in House Primaries		
Party Dominant	10	\$250,000.00
Non - Party Dominant	18	\$180,000.00
Total:		\$430,000.00
Candidates in Senate Primaries		
Party Dominant	2	\$150,000.00
Non - Party Dominant	5	\$175,000.00
Total:		\$325,000.00
Candidates in House General Election		
Unopposed	16	\$80,000.00
Competitive (96)	107	\$3,210,000.00
Non-Competitive (55)	61	\$915,000.00
Total:		\$4,205,000.00
Candidates in Senate General Election		
Unopposed	5	\$75,000.00
Competitive (27)	35	\$3,675,000.00
Non-Competitive (9)	11	\$605,000.00
Total:		\$4,355,000.00
2010 Elections Assumption Total:		\$9,315,000.00

Methodology:

The 2010 Assumptions is based on how many grant recipients there were in 2008 and applies those numbers to the new grant amounts. Unopposed numbers stay the same and the remaining grants after unopposed are netted out are distributed by percentage of party dominant districts vs. non dominant ones. Staff is requesting data from the SOTS to provide refinement to the cost assumptions, based on party dominant district figures for 2010.

V. Conclusion

We believe these legislative recommendations address the conclusions reached by Judge Underhill, while protecting the State's position in the appeal allowing us to navigate through the challenges before us. It also provides a careful solution to the problems created by the recent court decision and the reversion clause in General Statutes § 9-717.

These recommendations if enacted will bring stability to the electoral process by ensuring that the Citizens' Election Program will be available to candidates in 2010, and simultaneously decreases the overall cost of the program by considering reduced grants based upon previous spending statistics. Equally significant, the proposal does not materially change the rules that treasurers of participating candidates must comply with under the Program.

Proposed Revision to Connecticut General Statutes § 9-717

Purpose: To address independent expenditure and supplemental grant provisions by repealing Connecticut General Statutes § 9-717, and replacing with proposed severability language.

Severability Language:

Section 1. (NEW) (Effective upon passage).

If, on or after April fifteenth of any year in which a state election is scheduled to occur, or on or after the forty-fifth day prior to any special election scheduled relative to any vacancy in the General Assembly, a court of competent jurisdiction issues an injunction which prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under chapter 157 for a period of one hundred sixty-eight hours or more, based upon a ruling that: (A) the criteria for grant eligibility for candidates defined in subdivisions (4) and (5) of section 9-700 are contrary to the Constitution of the United States or the State of Connecticut, then such candidates shall be deemed, for purposes of section 9-705, to be of the definition provided in subdivision (8) of section 9-700 until December 31 of such year; (B) the supplemental grant distribution provisions set forth in sections 9-713 and 9-714 are contrary to the Constitution of the United States or the State of Connecticut, then sections 9-712, 9-713 and 9-714 shall be inoperative and shall have no effect with respect to any race occurring after the injunction until December 31 of such year ; (C) any phrase, clause, sentence or provision of chapter 157 is contrary to the Constitution of the United States or the State of Connecticut, then the validity of those portions of chapter 157 that have not been found contrary to the Constitution of the United States or the State of Connecticut shall not be affected thereby.

Sec. 2 (Effective upon passage) Section 9-717 of the general statutes is repealed.