Comments of Connecticut State Representative Ben McGorty Regarding the Connecticut Democratic State Central Committee Request For Advisory Opinion

I thank you for the opportunity to comment regarding a recent submission to the Federal Elections Commission. I greatly appreciate the opportunity to offer comments on the request for a declaratory ruling by the Democratic State Central Committee (DSCC) that would severely undermine Connecticut's landmark and Ill settled clean election laws. The attempt to use federal account funds for an activity that is clearly related to state election candidates circumvents a ban on state contractor contributions that has been upheld as an acceptable and closely drawn response to a history of corruption in the state.

By way of background, our state has a storied history of campaign finance abuse. Troubling accounts of misuse of campaign dollars caused many of our citizens to become disenfranchised and, to be completely frank, disappointed and disgusted with their elected officials. It was this distrust that drove State Legislators to develop some of the strongest campaign finance reform laws in the country. I now find myself on the eve of another election cycle, and am faced with yet another example of corruption and misuse of campaign dollars. It is for these reasons that I find it imperative to voice my strong opposition to the request of the Connecticut Democratic State Central Committee's request to use federal campaign dollars for state elections.

Ban on Contractor Contributions

After several Ill-documented scandals involving improper contributions and gifts from state contractors, the Connecticut General Assembly responded by passing a comprehensive Campaign Finance Reform Act (CFRA) that included, among many other clean election provisions, a total ban on state contractors and prospective contractors contributing to the campaigns of elected state officials. "Beginning with *Buckley v. Valeo*, the Supreme Court has repeatedly held that laws limiting campaign contributions can be justified by the government's interest in addressing both the "actuality" and the "appearance" of corruption." *Green Party v. Garfield*, 616 F.3d 189, 200 (2nd Dist, 2010).

"The CFRA's ban on contractor contributions, by contrast, unequivocally addresses the perception of corruption brought about by Connecticut's recent scandals. By totally shutting off the flow of money from contractors to state officials, it eliminates any notion that contractors can

influence state officials by donating to their campaigns. Thus, although the CFRA's ban on contractor contributions is a drastic measure, it is an appropriate response to a specific series of incidents that have created a strong appearance of corruption with respect to all contractor contributions." Garfield at 205.

In upholding the ban on contractor contributions to state elected officials, the Garfield court explained that "there is no serious argument here that the challenged contribution ban will harm the electoral process by stifling candidates' ability to raise sufficient campaign funds" Garfield at 201. With the generous grants provided to gubernatorial candidates under a public financing system set forth in the Citizens Election Program (CEP), a key component of the overall CFRA, there is indeed more than sufficient funds available for campaigns.

In the past years, since Dan Malloy was elected governor, the DSCC has aggressively solicited contributions from state contractors who are otherwise prohibited from contributing to state candidates to donate to their federal account. In 2013, in a straight party line vote, the legislative democrats passed a law to double the contribution limits for individuals giving to a state party from $5000 to $10,000. Since passage of the increased limits, numerous state contractors have given the maximum amount, with the DSCC denying allegations of a pay-to play scheme based upon the defense that federal account funds could not be used for state elected officials.

Among the numerous state contractors who have taken advantage of this increased contribution limit to the federal account are Winstanley Enterprises, developer of Downtown Crossing in New Haven whose principals have contributed $50,000. Huam Ahmad of HAKS gave $45,000 and received a contract in excess of $8 million for electrical work. Ed Snider of Global Spectrum contributed $10,000 to the state account six months after his company received the contract to manage the XL Center and Rentschler Field. That illegal contribution was returned to Snider, who later legally donated the $10,000 to the federal account. Mark Summers of Bridgeport Landings gave $10,000 one day before receiving $31 million in state funding for the anchor tenant for the project. If these donations, among the myriad other contributions from state contractors to the federal account of the DSCC do not illustrate a pay-to-play corruption scandal, they certainly create the perception of such corruption. Preventing such a situation was the rationale behind the ban on contractor contributions in the first place.

With this one, boldfaced request for an advisory opinion, the DSCC seeks to blatantly violate the letter and spirit of the CFRA by allowing not only state contractor money to flow to the campaigns of state elected officials, but to now allow twice as much of that money to be given annually than previously allowed. With the scandals of the past not too far in the rear view mirror, this blatant money grab certainly gives the appearance, if not the reality, of corruption.

State Sovereignty over State Election Laws

As a second concern, the sovereignty of Connecticut in election laws pertaining to state candidates is paramount in instances when elections of those candidates fall outside federal oversight. As illustrated by passage of the CFRA, Connecticut used the scandals of the past to enact some of the strictest election laws in the country, designed in part to keep contractor money and the potential for corruption out of the election process. Connecticut's laws regarding this are much more restrictive than the federal laws, with the rationale for such enactment already Ill decided by federal courts. To allow an interpretation of federal law, in addressing a candidate for state election, to circumvent a closely drawn law to a significant state interest in combatting the appearance of corruption undermines the ability of Connecticut to run elections free and clear of dirty, insider money gained from pay-to-play schemes.

In addition, Connecticut, through its election enforcement officials, has relied upon the federal government prohibition against use of federal account money from use in state elections. Recently, the SEEC ruled in a case involving the mass solicitation of donations to the federal account of the DSCC by the chief executive of Northeast Utilities, a state contractor that the action was "both offensive and disturbing and violates the spirit and intent of the Connecticut State Contractor ban." But SEEC took no action against the contributions, stating "(f)ederal law does not create a loophole in Connecticut campaign finance laws that would allow federal committees to make expenditures that are also contributions regarding Connecticut candidates."

If the SEEC could not rely on federal election law and the FEC to enforce that contractor ban, they might have decided that matter very differently. Without the backstop of federal recognition and respect for Connecticut's election laws, that "offensive and disturbing" conduct, the acceptance and use of prohibited contributions from contractors to state candidates will eviscerate the clean election laws of Connecticut and undermine an historic campaign finance reform.

To that end, the Connecticut Legislature adjourned in May without so much as touching the concept of contractor contributions. Such a drastic change to the way campaigns are funded in Connecticut should continue to be left up to those in the State by which the rules are directly applied. Fully aware of the impending state-wide and local elections in November of this year, the state's democratic party could have, and should have, sought the proper legislative channels to pursue an endeavor such as this. This is not a slight change to our State's campaign finance law- it literally changes the way I run campaigns in Connecticut. To simply draft up a memorandum of clarification to the Federal Elections Commission is yet another example of why the citizens of our state continue to be disenfranchised and distrust the officials elected to represent them.

Agreement to Comply With State Election Laws

Under the CEP, Governor Malloy raised $250,000 in small "qualifying" contributions of $100 or less in order to receive a state funded grant of $6,500,400 for use by his campaign. As a requirement of his voluntary participation in the program, Malloy signed an affidavit agreeing to comply "with the requirements of the Program, including all applicable statutes, regulations and declaratory rulings." Among those statues and rulings are those that prohibit the acceptance of contributions from state contractors. Now, by the DSCC seeking on his behalf to undercut the laws, the rulings, and the State Elections Enforcement Commission itself, he has failed to comply with the voluntary terms of the CEP in direct violation of his sworn affidavit. A key component of the CEP is the voluntary nature of the program itself. It does not require all politicians, especially those who disagree with its goals, to participate in the "clean election" program. But for those that do elect to receive the taxpayer funds, they must embrace the law, including its limitations on the use of certain prohibited funding sources. Malloy, through the DSCC, attempts to keep the windfall of public funding while attempting to exploit a loophole to allow prohibited contractor contributions from funding his campaign.

It should be noted that the DSCC can coordinate its campaign activities with the candidate. In the present example, the DSCC can coordinate with Governor Malloy, therefore, if the DSCC's request is granted, it would allow Malloy direct access to control and use these funds in contradiction of Connecticut's clean election laws. There is simply no way to grant this request without cancelling out years of Ill-thought out, deliberate, and agreed upon campaign finance laws in Connecticut.

Conclusion

In summary, I strongly oppose the attempt by the DSCC to improperly circumvent Connecticut's campaign finance laws and the ambitious clean election program that arose from the corruption scandals of contractor contributions to elections. To approve the use of federal account funds for a state election, in a race that the FEC has no other jurisdiction over, would greatly undermine elections in Connecticut as Ill as the public's trust in their elected officials.