UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREEN PARTY OF CONNECTICUT, ET AL., Plaintiffs,	:	NO. 3:06-CV-1030 (SRU)
v.	:	
JEFFREY GARFIELD, ET AL., Defendants.	:	
AUDREY BLONDIN, ET AL., Intervenor-Defendants.	:	July 11, 2008

DEFENDANTS' AND INTERVENOR-DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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Defendants Jeffrey Garfield, Executive Director of the Connecticut State Elections Enforcement Commission ("SEEC"), and Richard Blumenthal, Attorney General of the State of Connecticut, and Intervenors-Defendants Audrey Blondin, Tom Sevigny, Connecticut Common Cause ("CCC"), and Connecticut Citizen Action Group ("CCAG") (collectively, "Defendants"), respectfully submit this Memorandum of Law in support of their motion for partial summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, seeking dismissal of Count One of Plaintiffs' Amended Complaint, which challenges the constitutionality of the provisions of Connecticut's Campaign Finance Reform Act establishing the Citizens' Election Program ("CEP"), a system of public financing of state elections.

PRELIMINARY STATEMENT

The CEP represents a groundbreaking historical achievement, offering Connecticut a comprehensive means to move beyond its recent legacy of political scandal and corruption. It serves to free elected officials from preoccupation with incessant fundraising, remove the taint of obligations implicitly owed by officeholders to contributors, and opens opportunities for candidates lacking personal or privately raised funding to seek election to state office.

Plaintiffs allege that the CEP unfairly discriminates against minor parties and burdens their exercise of First Amendment rights, and this Court – necessarily accepting the allegations of the Complaint as true – held that the Complaint states a cognizable claim. After completion of extensive discovery, however, it is apparent that there is no evidence to support Plaintiffs' key allegations and no merit to their constitutional challenge.

Plaintiffs allege that the CEP imposes more burdensome eligibility requirements on minor-party and petitioning candidates (collectively, "nonmajor-party candidates") than on major-party candidates, and that it is allegedly impossible for nonmajor-party candidates to qualify for the CEP's benefits. The record contains no factual support for this claim; on the

contrary, many nonmajor-party candidates have already attained eligibility for CEP grants, and it is well within the ability of others to do so. To the extent that the CEP imposes different eligibility requirements on nonmajor-party candidates, they are justified by an evenhanded state policy that requires all candidates to demonstrate significant public support before they qualify for public funding. The CEP's qualification and eligibility requirements are readily achievable for viable and committed candidates with a reasonable chance at election. Indeed, rather than unfairly burdening the political opportunity of nonmajor parties, the CEP offers them unprecedented potential benefits, including public funding to spread their message that far exceeds their proven fundraising capacities. Viewing the State's election law scheme as a whole, as the Court is required to do, and applying the correct standard of review – not strict scrutiny – under which the CEP is presumptively valid if it imposes reasonable restrictions that serve important state interests, there is plainly no basis for Plaintiffs' constitutional claims.

The State is entitled to take reasonable steps to protect the public fisc, to make sure that CEP funds are not wasted on candidacies that have no chance of success and to avoid abuse of the CEP through strategic use of splinter candidates. The Legislature was thus entitled to impose reasonable requirements to ensure that candidates make a significant showing of popular support before they are entitled to public funds. Under the CEP, a candidate can make this showing in any of three ways. First, on a statewide level, a candidate can demonstrate such public support by being nominated by a party that in the last gubernatorial election achieved 20% of the gubernatorial vote or had 20% of party-enrolled voters. Second, a candidate can demonstrate popular support at the district level by being the nominee of a party that achieved at least 10% of the vote in the previous election for the relevant office. Third, a candidate whose party did not previously earn sufficient support at the statewide or district level nevertheless can demonstrate

popular support by submitting petition signatures equivalent to at least 10% of the vote in the previous election for the office sought.

Plaintiffs challenge both the district-level prior vote thresholds and the petitioning requirements as unreasonable, indeed, impossible for any nonmajor-party candidate to satisfy, but there is no evidence to support these claims and substantial evidence that they are wrong. Both the district-level prior vote thresholds and the signature requirements are in fact reasonable indicators of a serious candidacy. In that respect, they provide appropriate alternatives to similar indicators that are provided by the nomination of candidates by a party that has previously demonstrated substantial support at the statewide level. Although it is a different kind of threshold, major-party candidates have had to satisfy equally appropriate, and in some respects more rigorous requirements. First, of course, their party has demonstrated the ability to generate significant voter support on a statewide level. Then, to become a major-party nominee, prospective officeholders are subject to statutorily required nomination procedures as well as to the screening mechanisms of the major parties, who are concerned to ensure candidates running under their banners are credible ones.

Moreover, with rare exceptions, major-party challengers consistently achieve vote percentages in excess of the CEP eligibility thresholds, even in one party-dominant districts. Given the major parties' established levels of electoral viability and public support, even in one party-dominant districts, requiring major-party candidates to satisfy similar district-level prior-vote or petitioning thresholds as nonmajor-party candidates would have been a pointless gesture, imposing unnecessary requirements on the candidates and an unnecessary administrative burden on state officials, and it is not constitutionally required.

Rather than being enacted to exclude nonmajor-party candidates from the CEP, the district-level prior vote and signature-gathering routes were enacted to provide alternative paths to CEP eligibility for candidates otherwise unable to demonstrate significant statewide popular support. In evaluating these thresholds, the Legislature specifically considered electoral data demonstrating that a substantial percentage of nonmajor-party candidates *would* be eligible for CEP funds based on prior vote totals, and was careful to set the prior vote and petitioning thresholds at attainable levels. Indeed, the evidence shows that nonmajor-party candidates are already eligible for CEP funding in 14 legislative districts based on their party having satisfied the prior vote requirements. Moreover, the signature requirements can be easily accomplished by any campaign with a modest amount of commitment, support, and organizing ability. Other nonmajor-party candidates have already achieved eligibility for 2008 CEP funding through the petitioning route, and more are expected to qualify before the deadline. Both the Green Party and the Libertarian Party have been able to gather comparable numbers of petition signatures in the past, and there is no reason to believe that they could not do so again.

There is likewise no evidence to support Plaintiffs' claims that the CEP as a whole imposes any unreasonable burdens on nonmajor parties. On the contrary, the CEP promises to be a boon to nonmajor parties, potentially providing them with campaign funding far beyond their proven fundraising capacities. The Working Families Party has embraced the CEP for this reason and has developed an organizing strategy around meeting the statute's requirements. Notwithstanding the allegations of the Complaint, even one Green Party activist views the CEP as "a fantastic opportunity, . . . an unbelievable chance to build and grow third parties." Deposition of Kenneth Krayeske, dated May 23, 2008 ("Krayeske Dep."), Exhibit 5 (attached as Exhibit 7 to the Declaration of Monica Youn, dated July 10, 2008 ("Youn Decl.")).

In its opinion on Defendants' motion to dismiss, the Court expressed concern about Plaintiffs' allegations that the CEP will erode the electoral gains of nonmajor-party candidates in so-called "one-party dominant districts,"[1] because the CEP will "compel" the major parties to run candidates in districts that they would otherwise not have contested, crowding out the opportunity allegedly available in such districts for the nonmajor party to spread its message. While the Court was required at that time to accept Plaintiffs' allegations as true, the record now demonstrates that they are without factual support. There is no evidence that the availability of public funding will cause the major parties to contest more races than they otherwise would. Certainly the facts of this year's elections provide no support for Plaintiffs' claim; the number of new races that the major parties have decided to contest this year is roughly equivalent to the number of previously contested races that the major parties have now decided are not worth contesting. This is not surprising, since the availability of funding is only one factor, and not a particularly important factor, in the determinations of major party leaders as to whether to contest a race. Other factors, such as the unwillingness of major party leaders to invest party resources in time and personnel on a race that they know their candidate cannot win, are far more important.

Nor can Plaintiffs show that any of their constitutionally-protected interests would be impaired, even if the CEP did lead a major party to enter a race that it might otherwise not have contested. Plaintiffs' claims of unequal treatment are based on Plaintiffs' unsupported

[1] The Court has defined a "one-party-dominant" district as "a district in which either the voters registered to a particular major party materially exceed the number of voters registered to the other major party, or a district in which one party's candidate virtually always wins the general election." *Green Party of Connecticut v. Garfield*, 537 F. Supp. 2d 359, 376 n.22 (D. Conn. 2008). The CEP provides a statutory definition of "party dominant district." *See* Conn. Gen. Stat. §§ 9-705(e)(1) and (f)(1) (defining "party dominant district" as one in which the percentage of the electors who are on the active voter registry list and enrolled in one major party exceeds the percentage of the electors in the district who are on the active voter registry list and enrolled in the other major party by at least 20%).

assumption that, in such one party-dominant districts, new major-party challengers and nonmajor-party candidates are similarly situated in terms of potential competiveness. But the undisputed testimony establishes that the party infrastructure and latent popular support for the non-dominant major parties are deeply rooted, even in districts dominated by the other major party, and far exceed the support for nonmajor-party candidates. Not surprisingly, election results show that new major-party challengers far outperform nonmajor-party candidates, even in one-party dominant districts. Neither Plaintiffs nor any other nonmajor-party candidate has seriously contested any race in one-party dominant districts or had any realistic expectation of winning any such race. There is likewise no basis for Plaintiffs' allegation that their vote totals in one-party dominant districts demonstrate any real support for their party or its positions; as even Plaintiffs concede, much of their vote total in such districts is simply a protest vote against the major-party incumbent. Plaintiffs have no constitutionally-protected right to constrain voter choice by seeking to preserve their position as the only nonincumbent alternative on the ballot.

These points are discussed in greater detail below. After full discovery, Plaintiffs are unable to satisfy their heavy burden of demonstrating that the CEP in fact will impermissibly violate their rights under the First Amendment or the Equal Protection Clause. Accordingly, for the reasons stated below, Defendants' motion for partial summary judgment should be granted.

THE STATUTE AND THE ISSUES PRESENTED

Chapter 157 of the Connecticut General Statutes establishes the CEP, a voluntary public campaign financing system for qualifying candidates for statewide offices and for the General Assembly offices of state senator and state representative. Any candidate, regardless of party or of past electoral performance, may qualify for funding under the CEP. To do so, any candidate must first demonstrate support for his or her candidacy by meeting one of several eligibility criteria. Also to qualify, candidates must demonstrate their capacity and commitment to attract

private funds, by collecting certain amounts in qualifying contributions. In exchange for receiving public funding, all participating candidates agree among other promises to abide by certain expenditure limits. *See* Conn. Gen. Stat. § 9-702(c) (2008).

A. Eligibility Criteria

Candidates may become eligible for CEP funding in the general election in any of three ways. First, they may become the nominee of a major party, defined as a party at the time of the previous gubernatorial election whose gubernatorial candidate received at least 20% of the vote or as a party with at least 20% of party-enrolled voters on the active registry lists in the state. *See* Conn. Gen. Stat. §§ 9-702(a), 9-372(5). Second, they may become the candidate of a party that has achieved minor-party[2] status for the relevant office and whose candidate in the previous election for that office garnered at least 10% of the total vote. *Id.* § 9-705(c)(1), (g)(1). Or, third, they may submit nominating petition signatures in a number equal to at least 10% of the total votes cast in the last election for the relevant office. *Id.* § 9-705(c)(2), (g)(2); *see also* Declaration of Jeffrey Garfield, dated July 10, 2008 ("Garfield Decl. II") Ex. 14, 15.[3]

B. Qualifying Contributions Requirement

To receive CEP funding, any candidate must gather qualifying contributions of no more than $100 each in certain total amounts varying by the level of office sought. *See* Conn. Gen. Stat. § 9-704(a)-(e). A candidate for governor must gather $250,000 in qualifying contributions,

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[2] "'Minor party' means a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election." Conn. Gen. Stat. § 9-372(6).

[3] Connecticut's State Elections Enforcement Commission ("SEEC"), which administers the CEP, has issued and adopted four declaratory rulings, with a fifth proposed declaratory ruling currently in the public comment period. Garfield Decl. II ¶¶ 8-9. These rulings and opinions are appended as Exhibits 10-14 to Garfield Decl. II.

We note that Plaintiffs' allegations in Paragraph 23 of their Amended Complaint -- stating that (1) a minor party candidate whose predecessor received less than 10% in the prior election is barred from participating in CEP; and (2) that candidates nominated by a major or minor party are prohibited from appearing on a ballot by nominating petition -- are erroneous, as the SEEC has now clarified. *See* Garfield Decl. II ¶ 9 & Ex. 14 & 15.

$225,000 of which must come from residents of the state, *id.* § 9-704(a)(1); a candidate for attorney general, secretary of the state, treasurer, or comptroller must gather $75,000 in qualifying contributions, $67,500 of which must come from state residents, *id.* § 9-704(a)(2); a candidate for state senate must gather $15,000 in qualifying contributions, including contributions from 300 residents of a municipality located at least in part in the district the candidate seeks to represent, *id.* § 9-704(a)(3); a candidate for state representative must gather $5,000 in qualifying contributions, including 150 from local residents, *id.* § 9-704(a)(4). Candidates may begin collecting qualifying contributions at any time, although their use is restricted to certain campaign-related purposes. *See id.* §§ 9-702(c), 9-704(a)-(e); Garfield Decl. II ¶ 8, Ex.12.

C. Grant Distributions

All candidates who meet relevant eligibility and qualifying-contributions criteria and qualify for the ballot may receive a grant for the general election. The full general-election grant amounts in the next upcoming elections will be: for governor, $3 million; for the other statewide offices of attorney general, state comptroller, secretary of the state, and state treasurer, $750,000; for state senator, $85,000; and for state representative, $25,000. *See* Conn. Gen. Stat. §§ 9-705(a)(2), (b)(2), (e)(2), (f)(2).

General-election funding is distributed depending on the level of competition in a given election. Qualifying major-party candidates are eligible to receive full grants, subject to numerous possible reductions. *See* Conn. Gen. Stat. §§ 9-705(a)(2), (b)(2), (e)(2), (f)(2); *see also id.* § 9-705(j) (reasons to reduce grants). If a qualified major-party candidate is unopposed in the general election, then only 30% of the applicable grant amount is provided. *Id.* § 9-705(j)(3). A qualified major-party candidate facing only nonmajor-party opposition may only

receive a 60% grant, if the nonmajor-party opponent has not raised more than the qualifying contributions threshold for a given office. *Id.* § 9-705(j)(4).

Candidates who have not earned the nomination of a major party may become eligible to receive full general-election grants either by showing that they are the nominee of a minor party whose candidate in the previous election for the relevant office received at least 20% of the total vote, or by submitting a number of petition signatures equal to at least 20% of the prior vote for the relevant office. *See* Conn. Gen. Stat. § 9-705 (c)(1)(B), (c)(2)(B), (g)(1)(B), (g)(2)(B). At showings equal to at least 15% of either of these same measures, nonmajor-party candidates may become eligible for a two-thirds grant; or at showings equal to at least 10%, for a one-third grant. *See id.* § 9-705 (c)(1)(A), (c)(2)(A), (g)(1)(A), (g)(2)(A). Qualifying nonmajor-party candidates who receive less than a full general-election grant are permitted to raise private funds up to the amount of the full grant for the relevant office. *Id.* § 9-702(c). Such candidates may also become eligible to receive post-election funding to cover deficits, if they receive a percentage of the vote that would have entitled them to a higher percentage grant. *Id.* § 9-705(c)(3), (g)(3).

D. Primary Election Funding

Only major parties are required to hold primary elections, under certain mandatory procedures; and candidates may participate in a state-mandated primary only upon making particular showings of support as required under Connecticut law. Conn. Gen, Stat. §§ 9-400, 9-415. Major-party candidates must be nominated by primary for state or district office unless no other candidate receives 15% of the vote of delegates voting for the party's endorsement, and no other candidate for the office has filed sufficient petitions to force a primary. *Id.* §§ 9-415, 9-416. Major-party candidates participating in a primary election may become eligible for CEP funding for the primary, *see id.* §§ 9-702(a), 9-705(a)(1), (b)(1), (e)(1), (f)(1), 9-415. Unspent primary funding is deducted from the amount of any general-election grant. *Id.* § 9-705(j)(2).

Nonmajor parties are not required to select their candidates through primary elections, and historically they have not done so. (Youn Decl. Ex. 11 (Rotman Dep.) at 55:5-22.; Conn. Gen. Stat. §§ 9-702(a), 9-451, 9-452. There is no provision in Connecticut law that prohibits nonmajor parties from selecting their candidates through primary elections. *See* Garfield Decl. II ¶ 13. While the issue has never been formally considered by the SEEC, nothing in the CEP explicitly prevents an otherwise eligible nonmajor-party candidate from receiving a CEP grant for a primary election in the event that his or her party amended its rules to nominate its candidate via a primary. *Id.*

E. Matching Funds

All CEP-qualified candidates regardless of party status are eligible to receive additional moneys in the event that nonparticipating opponents and/or hostile independent entities make expenditures exceeding the CEP expenditure limit for a given office. *See* Conn. Gen. Stat. §§ 9-713, 9-714. Provision of each of these categories of additional funds is capped at 100% of the full grant for the given office, for a maximum of 200% in all excess expenditure-triggered funding for any CEP funding recipient; and recipients may spend these additional moneys only on a dollar-for-dollar matching basis with respect to the excess opposition spending. *See id.* Nonmajor-party candidates who qualified for only partial general-election funding may nevertheless receive these triggered additional moneys in amounts equal to those provided candidates who qualified for full general-election funding. Garfield Decl. II. ¶ 13.

Candidates who are unable or unwilling to qualify for CEP funding are free to raise an unlimited amount in private contributions. Such candidates face no expenditure limits and are subject to reasonable contribution limits. Conn. Gen. Stat. §§ 9-611 to 9-613, §§ 9-615 to 9-617, § 9-619.

PROCEDURAL HISTORY

Plaintiffs filed their Complaint on July 6, 2006, and filed an Amended Complaint on September 29, 2006. Count One of the Amended Complaint alleged that the CEP's qualifying criteria for public financing and distribution formulae discriminate against minor-party and petitioning-party candidates and their supporters in violation of the First Amendment and Equal Protection Clause. Count Two of the Amended Complaint alleged that the CEP's matching fund provision violates the First Amendment rights of non-participating candidates and their supporters.[4] Count Three of the Amended Complaint alleged that the independent expenditure provision contained in the Act violates the First Amendment rights of non-candidates and non-participating candidates. Plaintiffs purported to challenge all three provisions both facially and as applied.

On February 15, 2007, Defendants moved to dismiss Counts One, Two, and Three for failure to state a claim and, in the alternative, sought judgment on the pleadings. Defendants also moved to dismiss Counts One, Two, and Three for lack of standing. In *Green Party of Conn.*, 537 F. Supp. 2d at 392, this Court granted Defendants' motion to dismiss Counts Two and Three.

However, the Court allowed Count One to survive the motion to dismiss. In so doing, for the purposes of resolving the motion to dismiss, this Court assumed as true Plaintiffs' allegation that the CEP burdens the exercise of a fundamental right in a discriminatory manner and applied strict scrutiny to its review of the CEP. *Id.* at 367-68, 379. Under this standard, the Court held that Plaintiffs had sufficiently pled a burden on their political opportunity because Plaintiffs alleged that "[b]y conferring a communications benefit and compelling highly competitive two-party races in one party-dominant districts," the CEP thereby "'disadvantage[s] nonmajor parties

[4] Counts Four and Five of the Amended Complaint were the subject of Defendants' and Intervenor-Defendants' Motion for Partial Summary Judgment, Docket No. 122, filed June 13, 2007, and will not be discussed in the present motion.

by operating to reduce their strength below that attained without any public financing.'" *Id.* at 377 (quoting *Buckley v. Valeo*, 424 U.S. 1, 99 (1976)). The Court further accepted as true Plaintiffs allegations that "participating candidates have no meaningful spending limits." *Id.*

In its tailoring analysis, applying strict scrutiny, the Court held that the CEP qualifying and distribution formulae were not narrowly tailored to the state's interest in protecting the public fisc because other state funding laws are party-neutral and do not impose comparable qualifying criteria to CEP. *Id.* at 390. Accordingly, the Court held that Plaintiffs had pled a viable equal protection claim on Count One, and permitted this claim to proceed to discovery. *Id.*

STATEMENT OF FACTS

A. Legislative History of the CEP [5]

The Citizens' Election Program ("CEP") was enacted in December 2005 as part of a comprehensive campaign finance reform package to address sweeping public concerns about political corruption in Connecticut. *See* An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices ("Act"), 2005 Conn. Acts 05-5 (Spec. Sess.) (codified at Conn. Gen. Stat. chs. 155-157). Passage of the reforms followed a period of widely publicized corruption scandals – most prominently culminating in the imprisonment of then-Governor John Rowland – that fueled the common perception that moneyed special interests were buying influence from the state's elected officials. *See, e.g., Sec. Indus. & Fin. Mkts. Ass'n. v. Garfield,* 469 F. Supp. 2d 25, 28-29 (D. Conn. 2007).[6]

[5] A more detailed account of the full legislative history of the CEP is set forth in the Declaration of Jeffrey Garfield, dated 7/11/07, Docket 122, filed concurrently with the Defendant and Intervenor Defendants Motion for Summary Judgment in the lobbyist phase of the case (hereinafter designated as "Garfield Decl. I".)

[6] Defendants respectfully refer the Court to the Memorandum of Law in Support of Defendants' and Intervenor-Defendants' Motion for Partial Summary Judgment, filed July 13, 2007 (Docket No. 122), at 12-44, for a further

As the legislative history demonstrates, the CEP resulted from a process of reasoned legislative deliberation and compromise to address the public's corruption concerns by offering would-be officials a realistic alternative to seeking private campaign donations, while at the same time protecting the public coffers from being tapped by candidacies lacking electoral viability. *See, e.g.*, Garfield Decl. I Ex. 28, at 25 (statement of Sen. LaBrea) ("[W]e want to owe the public, not owe any particular individual or owe any particular interest group . . . . [T]here's no question that participating candidates will owe their allegiance to the public, and to the public good.").

In their initial bills, the Governor's office and legislature proposed different approaches to campaign finance reform, particularly diverging with respect to public financing. *See* Garfield Decl. I ¶ 4, Ex. 3, 4, & 5. The Government Administration and Elections Committee ("GAE Committee") held five public hearings on the various proposals in January and February of 2005. *Id.* ¶¶ 5-6. On June 2, 2005, with the June 8th close of the legislative session fast approaching, Governor Rell proposed a compromise set of reforms that would include public financing. *See Id.* ¶ 8, Ex. 13. Although both the House and Senate developed and passed their own versions of the compromise bill, with no time left in the regular legislative session, no bill was sent to the Governor to sign. *See id.* ¶¶ 9-11.

Following the close of the legislative session the Governor requested that the Legislature create a bipartisan Campaign Finance Working Group ("Working Group"). The Working Group – consisting of six representatives and six state senators – met twelve times, including one public hearing, and all of its meetings were open to the public and televised. Garfield Decl. I ¶ 12.[7]

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description of public perceptions about political corruption and for extensive discussion of reforms not related to this portion of the case.

[7] The Working Group met on the following dates in 2005: July 12 and 21; Aug. 4, 11, 18, and 30; September 1, 6, 8, 13, 15, and 23. Transcripts of the hearings on July 21, 2005 and August 4, 2005 are attached as Exhibits 18 and

Throughout the tenure of the Working Group, its members expressed the importance of campaign finance reform and public funding as means of fighting corruption and the illegitimate influence of money on policy-making. *See, e.g.*, Garfield Decl. II Ex. 2, at 10 (statement of Sen. LeBeau) (opining that there is always a sense of obligation when a legislator takes a contribution, so that it was better to owe a little to many people than to owe a lot to a few).

The Working Group wanted to ensure that candidates receiving public money could demonstrate a wide base of support, both in general and within their districts. *See generally* Garfield Decl. II Ex. 2, at 8-37. In its August 4, 2005, meeting, the Working Group heard testimony from the administrators of the Maine and Arizona clean election programs and others relating to qualifying contributions and keeping public funding from frivolous candidates. *See generally* Garfield Decl. I Ex. 19, at 26-28, 88-89.

In discussing the appropriate proportion of qualifying contributions that needed to come from a legislator's district, Sen. Robert Heagney and Sen. Andrew McDonald both raised the concern that single issue groups would be able to use the system to fund candidates who had a disproportionately low amount of support in a given district. Garfield Decl. II Ex. 2, at 18-19. Legislators expressed the view that it would be "inappropriate to have a candidate who had not one bit of support in the district . . . [but was] supported by some organization." *Id.* at 19; *see also id.* at 15, 19, 20-21, 37.

The Working Group also discussed the appropriate grant amounts for candidates for legislative and statewide office. Garfield Decl. II Ex. 2, at 70-98. The Working Group keyed the grant amounts in the CEP to the average amounts spent in competitive races for that office, as

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19, respectively, to Garfield Decl. I. The majority of the meetings were not officially transcribed, but DVDs containing video recordings of a number of those meeting are available and attached as Garfield Decl. I Exs. 20 through 24. In addition, for the Court's convenience, Defendants have attached informal transcripts of meetings held on August 4, August 11 and September 13, 2005 to the Declaration of Jeffrey Garfield, dated July 10, 2008 ("Garfield Decl. II") as Exhibits 1 through 3.

reported to the Working Group in reports from the Office of Legislative Research ("OLR"). *See, e.g, id.* at 85-89; Garfield Decl. II Ex. 3 at 40.

For example, the primary and general election grants for gubernatorial races were derived from expenditure levels in the most recent elections with the exception of the over $6 million raised by Governor Rowland for his most recent gubernatorial campaign, which was viewed as "inordinate." Garfield Decl. II Ex. 2, at 76; *see also* Garfield Decl. II Ex. 19. Similarly the Working Group proposed grant amounts for state legislative races based on the average amount spent in previous *competitive* elections, rather than including uncontested races in the average, in order to ensure that recipients of public funding would be able to compete with privately funded candidates. Garfield Decl. II Ex. 2, at 86-87.

The Working Group discussed creating a specific funding formula and grant amounts for one party-dominant districts, both as a measure to limit costs and to reflect the realities of elections in these districts. Garfield Decl. II Ex. 2, at 85-92. The Working Group decided that when a candidate was unopposed in the general election – which is more likely in a district where one party dominates – that candidate would receive a reduced general election grant. *Id.* at 90-92. As measures to limit the overall cost of the program, the Working Group also discussed lower grant levels for candidates who were facing either no opponent or a minor party opponent who failed to raise a given amount of money. *See id.* at 91-92.

The Working Group submitted a report to Governor Rell on September 23, 2005, which included recommendations as to the number of qualifying contributions that must come from a within a particular constituency; proposed rules for one party-dominant districts; and proposed grant levels for all races. Garfield Decl. I Ex. 26, at 7-8. The Working Group report did not discuss the treatment of minor party candidates.

Governor Rell convened a Special General Assembly Session for Campaign Finance Reform on October 11, 2005. Garfield Decl. I Ex. 27. On November 28th, after a month of caucusing, House and Senate Democratic leaders reached agreement on a campaign finance bill that could garner enough votes for passage. Among other provisions, this version required candidates whose parties did not have statewide support sufficient to qualify them as major parties under the existing statutory thresholds – *i.e.*, minor party and petitioning candidates – to demonstrate public support in the district either on the basis of prior vote percentages or by reaching petitioning thresholds. *See* Garfield Decl. I Ex. 29, at 10 (statement of Rep. Caruso)).

The bill lowered the grant amount for both primary and general state senate elections from those proposed in the Working Group Report: reducing the grants from the originally proposed $50,000 to $35,000 for primaries and from the originally proposed $150,000 to $85,000 for the general. *See* 2005 Conn. Acts 05-5 § 6 (Spec. Sess.). The bill also modified the grant amounts for state representative races, slightly increasing available funding for primaries from $8,000 to $10,000. *See id.*

The bill, Senate Bill 2103, was presented and debated at a special legislative session on November 30, 2005 by both houses of the General Assembly. Garfield Decl. I ¶ 16. During the debate, the bill's sponsors again underlined the anti-corruption purposes of the bill, explicitly acknowledging that the bill's intent was to "take out sources of financing which have been considered corrosive" and to "[eliminate] the influence of money overall, and [shift] back to a greater reliance on grassroots." Garfield Decl. I Ex. 28, at 54 (statement of Sen. DeFronzo). Other supporters of the bill stressed the importance of public funding as a means of repairing the public trust in the integrity of state lawmakers. *See, e.g.*, Garfield Decl. I Ex. 28, at 42 (statement of Sen. Handley).

The legislation passed the Senate on November 30, 2005 and passed the House in the early morning hours on December 1, 2005.[8] Governor Rell signed the bill into law on December 7, 2005, and most of its sections became effective on December 31, 2006. *See* 2005 Conn. Acts 05-5 (Spec. Sess.). The new law created the Citizens' Election Program which provided public campaign financing for qualifying candidates in legislative and statewide races.

On March 9, 2006, at the request of the legislature, the Connecticut Office of Legislative Research ("OLR") released a report entitled, *Past Performance of Petitioning and Minor Party Candidates in Connecticut*. Garfield Decl. II Ex. 18. Of the 15 minor party or petitioning candidates who had run for statewide office over the past three cycles, 13 received less than 3% of the vote, one received 11% of the vote, and one (Eunice Strong Groark, representing A Connecticut Party)[9] received 19% of the vote. *Id.* at 1-2. The report further found that a total of 168 minor party or petitioning candidates ran for state legislative office in the last three election cycles. *Id.* at 2. Of those, 12 candidates received between 10% and 15% of the vote, 6 received between 15% and 20% of the vote, and 4 received over 20%. *Id.* Accordingly, 22 nonmajor-party candidates would have been eligible for some level of CEP funding had the system been in place at the time.

On March 13, 2006, the Government Administration and Elections ("GAE") Committee held an extensive hearing on the issue of whether and how to amend the 2005 Act in order to address legislative leadership PAC expenditures, to assess the treatment of minor party and

[8] The Senate approved the bill by a vote of 27-8, and the House approved it by a vote of 82-65. Garfield Decl. I ¶ 17.

[9] Under Connecticut law, Groark should not be considered a minor-party candidate, but instead a major-party candidate, since A Connecticut Party had received over 20% of the vote in the previous gubernatorial election. *See* Conn. Gen. Stat. § 9-372(5).

petitioning candidates, as well as to address other technical issues regarding the 2005 Act, including severability. *See* Garfield Decl. II Ex. 4.

At the hearing, the GAE Committee heard extensive substantive testimony from Suzanne Novak of the Brennan Center, Arn Pearson of Common Cause and Jeffrey Garfield, director of the State Election Enforcement Commission on the provisions relating to minor party and petitioning candidates in the CEP, among other issues. *See* Garfield Decl. II Ex. 4, at 3-51, 116-45.

In the discussion of minor parties, legislators expressed concerns about the possibility of single-issue groups and factions manipulating the public financing system. *See, e.g.*, Garfield Decl. II Ex. 4, at 121) (statement of Sen. DeFronzo); *id.* at 123 (statement of Rep. McCluskey). Sen. DeFronzo expressed his support for strong third parties, stating that "a third party is a party . . . that can appeal to the public, can register voters." However, he was concerned that setting qualification parameters too low could result in narrow special interests manipulating public financing to advance their own unrelated goals:

> We [could] have a system that's just . . . tak[ing] the special interest[s] out of the Legislature and . . . allow[ing] them to run candidates in elections using public funding to do it. And I think that becomes almost a bigger, a greater abuse of the system than what we had previously. I'm just very fearful that you will have, you know, various interest groups leveraging candidates in swing districts all over this state.

Id. at 121 (statement of Sen. DeFronzo). Rep. Caruso stated his similar concern that candidates who had no real intention of trying to attain public office might seek campaign funding merely to publicize a single issue:

> I think there's been a concern to have single-issue candidates, you know, especially some of the controversial issues that we've had to take on. And I think there's a concern by some that a single-issue candidate just gets on the ballot, be able to grab money to run a campaign.

Id. at 130 (statement of Rep. Caruso).

In this discussion, legislators also expressed concern that major parties might deploy minor party or independent candidates as spoilers. Based on his personal experience in New York State, Rep. McCluskey related his fear that major parties might run a "straw man" third-party candidate in close elections to help defeat the major party opponent:

> [I]n other states it has been the case that [a major party] used third parties as a way to destabilize one of the other major parties. And that's something that we in the General Assembly have to be cognizant of as well.

Id. at 123 (statement of Rep. McCluskey). Rep. O'Brien indicated that he shared this concern that "fictional" minor parties or independent candidacies might be fielded to serve the ends of a major party. He stated:

> I think that there are some legitimate concerns that people have raised that, and it's really, to be blunt, not so much a minor party, a genuine minor party that's the concern, but people who are active in the opposing major party using the system to create a fictional minor party running against the opposing major party candidate to strip off votes with full public financing

Id. at 128 (statement of Rep. O'Brien). Legislators also reiterated their previous concerns regarding filtering out frivolous candidates, but expressed their resolve that the eligibility and qualification thresholds be set at attainable levels. *See, e.g.*, *id.* at 130 (statement of Rep. Caruso).

On the GAE Committee's recommendation, the General Assembly passed SB 66 in May 2006, which ultimately became Public Act 06-137. These 2006 amendments included a direct response to some of the concerns raised about the minor party provisions. *See* Garfield Decl. II Ex. 4, at 8 (testimony of S. Novak). First, the amendments included a provision allowing participating minor party candidates to continue to raise private funds up to the full grant amount. Conn. Gen. Stat. § 9-702(c). Second, the amendments provided a post-election supplemental grant for eligible minor party and petitioning candidates who received a greater percentage of the popular vote in the general election than the candidate's initial campaign grant.

2006 Conn. Acts 06-137, § 19(c)(3) and (g)(3) (codified at Conn. Gen. Stat. § 9-705(c)(3) and (g)(3)). Both of these amendments were likely to enhance the ability of minor party and petitioning candidates to compete once they qualified for funds.

Additionally, the 2006 Amendments eliminated a perceived loophole under which PACs controlled by House and Senate leaders could make unlimited campaign expenditures on behalf of legislative candidates participating in CEP funding. The newly amended law prohibited the legislative leadership PACs from making organizational expenditures on behalf of primary campaigns, and limited organizational expenditures on behalf of general campaigns to $10,000 for state senate races and $3,500 for state representative races. *Id.* § 16.

Furthermore, the 2006 Amendments included a series of provisions which were intended to enhance the ability of minor parties to take advantage of the public financing program created by the 2005 Act, and to compete against the major parties more effectively. First, the 2006 Amendments allowed minor party candidates to raise private funds to supplement their public grants in order to make up the difference between the partial grant and a full grant. 2006 Conn. Acts 06-137, § 20 (codified at Conn. Gen. Stat. § 9-702(c)). Therefore, as a result of the 2006 Amendments, in the general election, each participating candidate, whether major party, minor party, or petitioning, is subject to the same spending limit.

Moreover, the 2006 Amendments enhanced potential CEP funding for eligible minor party and petitioning candidates by authorizing a post-election "supplemental grant" to any candidate with partial CEP funding who incurred a spending deficit and who received a greater percentage of the popular vote in the general election than the percentage used to calculate the candidate's initial campaign grant. 2006 Conn. Acts 06-137, § 19(c)(3) and (g)(3) (codified at Conn. Gen. Stat. § 9-705(c)(3) and (g)(3)).

B. Connecticut's Nonmajor Parties and Candidates Have Demonstrated Only Negligible Political Strength

The CEP was designed and enacted against a historical backdrop of limited nonmajor-party and candidate political strength. Undisputed evidence demonstrates that the strength of Connecticut's nonmajor parties before the CEP went into effect was negligible, and that this negligible strength is explained by factors unrelated to public funding. There is no evidence to suggest that nonmajor parties' already negligible strength is reduced because of the CEP. To the contrary, it appears that the CEP will result in a transformation for nonmajor-party candidates who will, for the first time, have access to public funds enabling them to field viable, competitive campaigns for state elected office.

1. Electoral Record of Nonmajor Parties

Official election results show that, since before implementation of the CEP, the strength of Connecticut's nonmajor parties in the electoral realm has been almost nonexistent. Since at least 1998 no nonmajor-party candidate has mustered a share of votes sufficient to win a statewide or state legislative race or even come close. *See* Declaration of Bethany Foster, dated July 9, 2008 ("Foster Decl.") ¶ 5, 8-9. In terms of statewide office, no nonmajor-party candidate for statewide office since 1998 has achieved more than 2.5% of the vote. *See id.* ¶ 8. Nonmajor-party gubernatorial candidates have averaged 0.6% of the vote, and nonmajor-party candidates for other statewide offices have averaged 1.3%. *See id.* With the single exception of Lowell Weicker's successful gubernatorial candidacy for A Connecticut Party in 1990, nonmajor parties in Connecticut have not since the 1850s attracted sufficient popular support to win more than 20% of the gubernatorial vote. (Deposition of Richard Winger, dated February 29, 2008 ("Winger Dep.") (attached as Exhibit 24 to the Youn Decl.), at 78:1-20.) In contrast, the major parties' gubernatorial candidates from 1998 have averaged 49.5% of the vote, and their

candidates for the other statewide offices have averaged 48.4%. *See* Foster Decl. ¶ 8. The lowest percentage of the vote received by any Democratic candidate for statewide office since 1998 has been 35%, and by a Republican 24%. *See id.*

Nonmajor parties' vote-getting strength has been similarly weak in terms of state legislative races. The average vote percentage achieved by their legislative candidates beginning with the 1998 election has been 5.4%. *See* Foster Decl. ¶ 9. Of the 52 total nonmajor-senate party candidates since 1998, none received more than 15% of the vote, and only four of these candidates received more than 10% of the vote. *See id.* Of the 179 total nonmajor-party house candidates since 1998, only six candidates received more than 20% of the vote, and only 32 candidates received more than 10%. *See id.*

By contrast, the vote percentages garnered by just the *losing* major-party legislative candidates from 1998 through 2006 averaged 34.6% – Democratic losing candidates averaged 38.9% of the vote, and Republican losing candidates averaged 32.7%. *See* Foster Decl. ¶ 11. Every major-party state senate candidate since 1998 has received at least 10% of the vote; in only five districts has a major-party candidate during this period received less than 20%. *See id.* ¶ 10. Every major-party state representative candidate since 1998 has received at least 10% of the vote except in four districts and at least 20% of the vote except in 19 districts. *See id.*

Finally, nonmajor parties' strength in terms of their success in enrolling voters has been negligible. The 37 nonmajor parties listed in the latest official voter enrollment records together have only 7,758 enrolled voters, or 0.7% of total affiliated voters. *See* Foster Decl. ¶ 16. By contrast, the Democratic Party has 707,431 total enrolled voters, or 62% of all affiliated voters, and the Republican Party has 427,138 voters, or 37% of all affiliated voters. *See id.*

2. Electoral Record of Nonmajor-Party Candidates Against One Major-Party Opponent, Compared to Against Two Major-Party Opponents

Official election results do not serve to demonstrate that the strength of nonmajor-party candidates has been any greater when they have faced only a single major-party competitor than when they have faced two major-party competitors. Vote percentages in these two scenarios are not directly comparable for a simple mathematical reason: the greater the number of candidates in a race, the lower the vote percentage necessary to win the race. For instance, the minimum vote percentage necessary to win in a two-candidate race is just over 50%, while the minimum vote percentage necessary to win in a three-candidate race is just over 33.3%. The highest vote percentage a nonmajor-party candidate has won since 1998 facing one major-party opponent was 33% (17 percentage points away from the minimum vote necessary), while the highest vote percentage against two major-party opponents was 26.1% (only 7 percentage points away from the minimum necessary. *See* Foster Decl. ¶ 13. It is worth noting that since 1998 nonmajor-parties have fielded legislative candidates in more races with two major-party competitors than with just one: 112 featuring two major-parties and 93 featuring one major-party. *Id.* ¶ 12.

It is further important to note that, based on publicly available lists of candidates maintained by the state, major parties under the CEP are choosing not to compete in a significant number of districts where they did before implementation of the CEP. While these statements of candidacy show that several more legislative races will be contested by both major parties this year than in 2006 – two more for state senator and six more for state representative – they also show that 28 races previously contested by both major parties will in 2008 feature only one. *See* Foster Decl. ¶ 14. With this limited net increase, only one more one party-dominant legislative district will be contested this year than in 2006. *Id.* ¶ 15. Of the races to be newly contested by both major parties this year, only one – the 1st State Senate District – featured a candidate of any

of Plaintiffs' parties in 2006. *Id.* ¶ 14. There appears to be no causal relationship between the CEP and major party competition – *i.e.*, major parties are not choosing to compete merely because of the potential availability of CEP funding.

Election results show that the vote percentages of nonmajor-party candidates have consistently been much lower than – not the same as – that of candidates of the non-dominant major party in a given race. Losing nonmajor-party legislative candidates averaged 5.4% of the vote from 1998, while the average vote percentage garnered by major-party legislative candidates losing to the opposing major party was 34.6%. *See* Foster Decl. ¶ 9, 11. Moreover, in every statewide and legislative race since 1998 featuring two major-party candidates and at least one nonmajor-party candidate, the losing major-party candidate has always garnered a greater share of the vote than any nonmajor-party candidate. *See id.* ¶ 12. This disparity between the major-party loser's showing and a nonmajor-party loser's showing has been true even when both were newcomers to a particular race, vying for a seat previously uncontested by one major party. *See id.*

Moreover, the record demonstrates that major party candidates across the board can consistently expect to receive over 20% of the vote, even in one party-dominant districts. For example in the 2004 state representative elections, of 180 major-party state representative candidates facing major-party opposition, 172 of them – or 96% – received more than 20% of the vote, while 179 of them – or 99% – received more than 10% of the vote. *See* Foster Decl. ¶ 10. In stark contrast, only one of the 67 nonmajor-party state representative candidates in 2004 received more than 20% of the vote, while only seven of them – or 10% – received more than 10%. *See id.* ¶ 11.

3. Campaign Finance Record of Nonmajor Parties

Publicly available campaign finance data similarly demonstrate negligible strength on the part of nonmajor-party candidates prior to implementation of the CEP system. In statewide races, major-party candidates' expenditures have been at least several hundredfold greater than those of nonmajor-party candidates. In the most recent two elections for statewide offices, for instance, none of the nonmajor-party candidates spent more than $1,000, except one 2006 gubernatorial candidate who reported raising $27,933. *See* Foster Decl. ¶ 22. By contrast, in the 2002 elections, the major-party gubernatorial candidates raised an average of $4,487,495 while major-party candidates for the other statewide offices raised an average of $425,912; in 2006, the Democratic gubernatorial candidate raised $4,163,548, and the Republican gubernatorial candidate raised $4,052,687, while the other major-party statewide candidates spent an average of almost $300,000. *See id.*

Similarly, major-party expenditures in legislative races have dwarfed nonmajor-party candidate expenditures, even if one assumes that nonmajor-party candidates who filed an exemption from campaign finance disclosures spent up to the legal disclosure limit of $1,000. In 2004, nonmajor-party candidates for state senate were outspent by major-party opponents 238-to-one. *See* Foster Decl. ¶ 23. The following table describes in greater detail the funding disparities in the 2004 state senate elections:

2004 Average Campaign Expenditures by State Senate Candidates

	No. of Candidates	Amount Raised
Average of all major-party candidates	61	$72,355
Average of major-party candidates not facing a primary	57	$74,050
Average of major-party candidates facing major party opponent	45	$81,253
Average of all major-party candidates facing only nonmajor-party opponent(s)	7	$39,284
Average of all unopposed major-party candidates	5	$57,892
Average of all major-party nominees with primary and general	2	$58,646
Average of all disclosing nonmajor-party candidates	3	$1,090
Average of all nonmajor-party candidates (using assumptions described in Foster Decl. ¶ 21)	24	$303

In the 2004 state representative races, nonmajor-party candidates were on average outspent by major-party candidates by a ratio of 20-to-one. *See* Foster Decl. ¶ 24. The following table describes in greater detail the funding disparities in the 2004 state representatives elections example:

2004 Average Campaign Expenditures by State Representative Candidates

	No. of Candidates	Amount Raised
Average of all major-party candidates	251	$18,779
Average of major-party candidates not facing a primary	231	$18,282
Average of major-party candidates facing major-party opponent	173	$19,117
Average of all major-party candidates facing only nonmajor-party opponent(s)	25	$17,492
Average of all unopposed major-party candidates	33	$14,503
Average of all major-party nominees with primary and general	10	$36,621
Average of all disclosing nonmajor-party candidates	10	$5,297
Average of all nonmajor-party candidates (using assumptions described in Foster Decl. ¶ 21)	67	$925

Record evidence demonstrates that nonmajor parties have not supplemented their individual candidates' resources with any party-level showing of fundraising strength. For instance, Green Party officials admitted that they had projected the need to raise $450,000 to field a viable statewide slate of candidates in 2006, but that the total raised for the gubernatorial

campaign amounted to approximately $27,000 . Deposition of Clifford Thornton, dated February 20, 2008 ("Thornton Dep.") (attached as Exhibit 18 to the Youn Decl.), at 43:15-44:10, 49:13-16; *see also* Youn Decl. Ex. 5 (Krayeske Dep.) at 86:6-22, 104:8-24, 173:20-174:10 (testifying that in order to have a realistic chance of winning a gubernatorial race in Connecticut, a campaign would have to raise in excess of $1 million). The Libertarian Party reported a total of $4,670 in receipts in 2006, an amount partly raised via a now defunct dues-sharing program with the national Libertarian Party. Deposition of Andrew Thorvald Rule, dated February 22, 2008 ("Rule Dep.") (attached as Exhibit 12 to the Youn Decl.), at 105:21-109:22; Youn Decl. Ex. 16 (Rule Dep. Ex. 5).

4. Factors Explaining the "Strength" of Nonmajor Parties Prior to Implementation of the CEP

Record testimony demonstrates that the negligible strength of Connecticut's nonmajor parties prior to implementation of the CEP is due to factors unrelated to public funding. Defendants' expert, Donald Green, a Yale University political scientist, explains that the two major parties' preeminence in both Connecticut and national elections is determined by the very structure of U.S. elections: under the "first-past-the-post" plurality rule of victory, under which the candidate who receives the largest number of votes wins while any other candidates receive nothing, individuals are incentivized to align with the leading party or its next closest competitor – in other words, with either of the two most dominant parties. Declaration of Donald P. Green, Ph.D., dated June 26, 2008 ("D. Green Decl.") ¶¶ 4-5.

Moreover, undisputed testimony establishes that the explanations for nonmajor parties neglible political strength include a lack of popular appeal, disorganization, and lack of strategy in fielding campaigns. There is no evidence that any of these factors will be exacerbated as a result of the CEP.

a. Dearth of Supporters

Besides the relatively negligible voter enrollment numbers described above, plaintiff parties have very few active members. Leaders of these parties have testified that the dearth of supporters is explained, essentially, by the parties' lack of popular appeal.

The Green Party was founded in 1996 with a total of eight members and reached its height of membership in 2002, with 100 to 150 people actively involved in party operations and over 2,000 registered Greens, according to party co-founder and former state legislative candidate Tom Sevigny. *See* Affidavit of Thomas Sevigny, dated June 30, 2008 ("Sevigny Aff.") ¶¶ 10-11, 23. Since then, its enrolled voters total has declined to 713 in 2006. Deposition of Michael DeRosa, dated February 1, 2008 ("DeRosa Dep.") (attached as Exhibit 1 to the Youn Decl.), at 59:15-60:12, 64:6-10; *see also* Youn Decl. Ex. 2 (DeRosa Dep. Ex. 9). The Libertarian Party has also experienced a decline in membership over recent years, with its members as of early 2008 numbering at most 50 people. Youn Decl. Ex. 12 (Rule Dep.) at 90:10-92:6. The Libertarian has failed to retain even its party leaders over time. Youn Decl. Ex. 12 (Rule Dep.) at 24:24-26:6; *see also id.* at 80:20-81:4.

Leaders of both parties attributed their dearth of supporters to the parties' lack of popular appeal and similar reasons of preference. Green Party gubernatorial campaign manager Kenneth Krayeske, for instance, testified that the party espouses a "very progressive standpoint that isn't politically palatable" to many Connecticut voters. Youn Decl. Ex. 5 (Krayeske Dep.) at 88:2-4. The Green Party has also struggled to achieve basic name recognition with the public. Sevigny Aff. ¶ 21. The Libertarian Party has experienced difficulty expanding party enrollment, because voters who are supportive of its principles nevertheless enroll in parties more likely to win elections and therefore to effect real change. Youn Decl. Ex. 12 (Rule Dep.) at 88:3-89:3, 93:23-95:17. Moreover, as Libertarian Party officer Andrew Rule testified, his party's problem

recruiting and retaining members is due to the highly individualistic principles of those who would tend to support Libertarian views, some of whom are ideologically opposed to membership in an organization. Youn Decl. Ex. 12 (Rule Dep.) at 80:3-81:11, 89:21-90:5.

The two existing major parties, by contrast, have not only enrolled voters in the large numbers described above, but have attracted much larger bases of latent support as measured by numbers of "party identifiers" – a political science term, which Defendants' expert Donald Green explains is used to describe voters who have an enduring attachment to a party – than have Connecticut's nonmajor parties. D. Green. Decl. ¶¶ 28, 30. Voters have identified in much higher numbers with the existing major parties than with nonmajor parties over time. *Id.*

b. Disorganization

Besides demonstrating the lack of significant numbers of supporters, the record evidence demonstrates that plaintiff parties lack organizational infrastructure and cohesiveness. These parties' leaders have testified that this disorganization impedes political growth.

The Green Party did not form a statewide leadership until 1998, and it does not maintain any standing committees or other party offices. Sevigny Aff. ¶¶ 12, 14-15. It does not have a formal budget, any paid staff, or a headquarters; and it has had only a handful of part-time volunteer staff. *See* Deposition of Ralph Ferrucci, dated March 25, 2008 ("Ferrucci Dep.") (attached as Exhibit 3 to the Youn Decl.), at 22:18-23:5; Sevigny Aff. ¶¶ 13, 33; Youn Decl. Ex. 18 (Thornton Dep.) at 51:17-54:2; Youn Decl. Ex. 5 (Krayeske Dep.) at 58:12-16. The Green Party's statewide activities have been stymied, at least in the early 2000s, because of chronic absenteeism at party meetings and resultant failures to reach a quorum. Sevigny Aff. ¶ 25. Schisms within the Green Party have impeded party-building and even resulted in the withdrawal of some 10% of its active membership in recent years. Sevigny Aff. ¶¶ 27-30.

The record establishes a similar lack of organization on the part of the Libertarian Party. The party has no paid staff or physical infrastructure. Youn Decl. Ex. 12 (Rule Dep.) at 113:19-25. Its supporters tend to be more invested in the ideological principles of the Libertarian philosophy, than in coordinating their efforts or building party infrastructure. *See, e.g.*, Youn Decl. Ex. 12 (Rule Dep.) at 26:6-11. As a matter of principle, the party is not interested in becoming a major party as defined by Connecticut law. Youn Decl. Ex. 12 (Rule Dep.) at 96:4-13.

Disorganization is not necessarily endemic to nonmajor parties. The Connecticut Working Families party was formed in 2002, but in just a few years has developed a strong organizational structure, including an executive director, a communications director, an organizing director, canvass directors, and congressional district organizers. Affidavit of Jon Green, dated July 9, 2008 ("J. Green Aff.") ¶¶ 10.

By contrast, the existing major parties have developed centralized infrastructures linking organized groups of supporters that exist in every area of the state, which groups can be counted on to perform party-building activities. Both parties have town committees in each of Connecticut's 169 towns, coordinated with central state operations that are headed by experienced, professional political strategists. Declaration of George Jepsen, dated June 27, 2008 ("Jepsen Decl.") ¶¶ 13, 17-18; Affidavit of George E. Krivda, Jr., dated June 26, 2008 ("Krivda Aff.") ¶ 7. The Democratic Party's town committees, for instance, number from 20 volunteers in the smallest towns to as many as 80 in typical towns. Jepsen Decl. ¶ 13. One Democratic state representative candidate alone has had several dozen volunteers working for three months to elect him. *Id.* Town committee members form the core of the 3,000 to 4,000 committed supporters a candidate for statewide office needs to run a competitive race. *Id.*

c. Lack of Strategy in Selection of Candidates and Conduct of Campaigns

The record further demonstrates that nonmajor parties' negligible strength prior to implementation of the CEP is due to their nonstrategic selection of candidates and the parties' extremely limited efforts to support their candidates' campaigns. There is no evidence that these factors will worsen because of the CEP.

The Green Party has not systematically vetted potential candidates for electoral viability, endorsing individuals who volunteer to run as a matter of course. Sevigny Aff. ¶ 35; Youn Decl. Ex. 18 (Thornton Dep.) at 104:8-19; Youn Decl. Ex. 1 (DeRosa Dep.) at 44:10- 45:4. It recruited Clifford Thornton to be the 2006 Green Party gubernatorial candidate, although he had never held or even sought elected office and was not even a member of the party. Youn Decl. Ex. 18 (Thornton Dep.) at 26:21-27:19, 28:21-24. It was known that at the time of her endorsement the Green Party's 2006 candidate for attorney general had been disbarred and was ineligible to practice law, according to Thornton's deposition testimony.[10] Youn Decl. Ex. 18 (Thornton Dep.) at 89:11-90:12. That attorney general candidate and the Green Party's 2006 candidate for state comptroller were simultaneously running for state legislative seats. Youn Decl. Ex. 21 (Thornton Dep., Ex. 5); Youn Decl. Ex. 18 (Thornton Dep.) at 114:15-116:3, 128:2-8, 129:2-13. The Green Party appeared oblivious that these dual candidacies threatened to violate the Connecticut Constitution's dual-job ban, which prohibits the simultaneous holding of positions in the executive and legislative branches. *See id.* at 129:2-6 (Thornton opines that a

[10] Plaintiffs' expert Professor Gillespie defined a frivolous candidate one who is ineligible from holding the office that he or she is seeking so that he or she has no hope of taking office. Deposition of John David Gillespie, dated February 27, 2008 ("Gillespie Dep.") (attached as Exhibit 4 to the Youn Decl.), 146:17-147:8. Gillespie admitted that a candidate who is running for Attorney General and who has been disbarred is a frivolous candidate. *Id.* at 147:9-148:2.

candidate running for more than one office simultaneously should be eligible for a double grant of CEP funding); Conn. Const. Art. Third, § 11.

Several former Green Party candidates have testified to campaigning without a winning strategy or intent. Sevigny has testified that he ran twice to be a state senator and once to be a state representative, as a Green Party candidate, without any expectation of winning these elections. Sevigny Aff. ¶ 36. Another unsuccessful, repeated Green Party candidate, Ralph Ferrucci, testified that he has declined to raise any funds for his own campaign as a "matter of principle." Youn Decl. Ex. 3 (Ferrucci Dep.) at 98:1-7. Plaintiff Michael DeRosa has testified to a number of goals in his state senate candidacy – for which he raised only $573 – not dependant on electoral victory: to gain publicity for his views on the war and the environment, as well as to retain ballot access for that office for the Green Party. Youn Decl. Ex. 1 (DeRosa Dep.) at 113:11-114:7. Sevigny similarly has testified that he launched his unsuccessful Green Party candidacies primarily to gain ballot access for the party, to increase the party's name recognition, and to broaden the public debate. Sevigny Aff. ¶ 37. The goal of Thornton's Green Party gubernatorial candidacy was to achieve one percent of the vote, which it failed to do. Youn Decl. Ex. 6 (Krayeske Ex. 3), Youn Decl. Ex. 5 (Krayeske Dep.) at 61:7-65:2, 107:14-109:19; Youn Decl. Ex. 21 (Thornton Ex. 5); Youn Decl. Ex. 18 (Thornton Dep.) at 113:9-114:2.

Similary, the Libertarian Party has had difficulty recruiting dedicated candidates, since many Libertarian supporters are unwilling to devote the "time, effort and . . . sacrifice" required for a political campaign. Youn Decl. Ex. 12 (Rule Dep.) at 44:10-45:6; *see also id.* at 78:1-18 (Libertarians "don't feel compelled to put a lot of effort into campaigns"). For instance, Libertarian Party candidates have aimed to raise less than the $1,000 mandatory disclosure limit on campaign funds in order "to avoid paperwork." Youn Decl. Ex. 12 (Rule Dep.) at 117:1-7.

The very concept of electoral success, Rule explained, conflicts with the core anti-government ideology held by many Libertarian Party supporters. Youn Decl. Ex. 12 (Rule Dep.) at 43:10-25 (" [I]t seems more worthwhile to lead our own lives – after all we tend to be individualists – than to waste time and effort with . . . a candidacy."). The party's candidates, he testified, have not necessarily aimed to win, but rather have performed a "place holding function" for ballot access or run to keep "Libertarianism in the public view." Youn Decl. Ex. 12 (Rule Dep.) at 34:25-35:12, 36:13-16.

The exceptional example of winning nonmajor-party gubernatorial candidate Lowell Weicker only serves to demonstrate that selection of candidates – a factor unrelated to the existence of public financing – strongly determines the strength of a nonmajor party. He successfully ran for governor in 1990, winning 40% of the vote, under the nonmajor-party banner of A Connecticut Party, a new party he had formed. *See* Kirk Johnson, *The 1990 Elections: Choice of Governor*, N.Y. Times, Nov. 7, 1990, *available at* http://query.nytimes.com/gst/ fullpage.html?res=9C0CE4DA1138F93BA35752C1A966958260.

As Weicker himself testified in deposition, he uniquely had the high name recognition, resources, and political infrastructure to succeed that an unknown nonmajor-party candidate lacks. *See* Deposition of Lowell Weicker, dated April 2, 2008 ("Weicker Dep.") (attached as Exhibit 22 to the Youn Decl.), at 30:9-19, 20:19-21:20, 37:1-15, 105:20-106:3. Formerly as a Republican, he had served as a state representative from 1962 to 1966, as a member of the U.S. House of Representatives for one term, and then as U.S. Senator for three terms, before founding A Connecticut Party and running as its gubernatorial candidate. Weicker attributes his success as a nonmajor-party candidate largely to the public goodwill and reputation he had earned in his nearly 30 years as a Republican elected official and his unique personal appeal. *See* Youn Decl.

Ex. 22 (Weicker Dep.) at 33:22-34:10. For instance, his campaign had little trouble raising over $2.3 million, in light of his winning record. *Id.* at 31:13-32:7. He was able to attract a thousand volunteers, who gathered over 100,000 signatures to place him on the ballot; Weicker testified that these volunteers could easily have gathered more signatures. *Id.* at 16:1-4, 17:16-18:2, 93:1-11. That A Connecticut Party's success – with Weicker's victory achieving major-party status, Conn. Gen. Stat. § 9-372(5) – was short-lived, with its 1994 gubernatorial candidate achieving just 19% of the vote, Youn Decl. Ex. 22 (Weicker Dep.) at 46:3-47:13 further serves to demonstrate that Weicker's particular candidacy was the source of its political strength.

In contrast to the existing nonmajor parties, the record shows, the existing major parties select candidates with the aim of winning elections in sufficient numbers to establish governmental influence. Jepsen Decl. ¶ 19; Krivda Aff. ¶¶ 7, 14. To this end, candidates are strategically recruited – after careful consideration of their capability and determination to win and of their personal records of community leadership and accomplishments, among other factors – and strategically fielded in particular districts. Jepsen Decl. ¶¶ 19, 23-24; Krivda Aff. ¶¶ 7, 14. The parties' leaders work to keep mediocre individuals from running, as mediocre candidates would jeopardize the parties' long-term credibility and ultimate goal of achieving meaningful levels of electoral victory. Jepsen Decl. ¶ 23; Krivda Aff. ¶¶ 7, 14. Successful major-party candidates invest great time and effort into campaigning – for instance, one repeat winner for state representative and state senate has personally knocked on 35,000 doors. Jepsen Decl. ¶¶ 20-22.

The record also demonstrates that nonmajor parties have failed to offer significant support to their candidates. The Green Party generally treats campaigns as individual endeavors and does not provide logistical or financial support. Youn Decl. Ex. 3 (Ferrucci Dep.) at 58:9-

19; Youn Decl. Ex. 12 (Rule Dep.) at 114:20-116:2. According to the deposition testimony of its own operatives, the Green Party fielded a full slate of candidates for statewide offices in 2006 despite not having the infrastructure, fundraising appeal, volunteers, or organization required to run these campaigns effectively. Youn Decl. Ex. 18 (Thornton Dep.) at 40:1-41:7; Youn Decl. Ex. 5 (Krayeske Dep.) at 102:18-103:5. For instance, deponent Krayeske, who led the fundraising effort for Thornton's 2006 gubernatorial campaign, testified to the Green Party's difficulty in raising funds because potential donors preferred to give money to parties they ideologically preferred or which they recognized as having a realistic chance of winning. Youn Decl. Ex. 5 (Krayeske Dep.) at 86:6-88:24, 89:9-90:5; *see also* Youn Decl. Ex. 18 (Thornton Dep.) at 106:6-:20. The party, Krayeske and Thornton testified, conceives of its races for CEP-covered offices in particular as vehicles for increasing the Green Party's visibility for local, non-CEP-covered elections. Youn Decl. Ex. 5 (Krayeske Dep.) at 66:13-25; Youn Decl. Ex. 18 (Thornton Dep.) at 97:1-14.

Libertarian Party officer Rule admitted that his party's negligible electoral showings were attributable to a lack of party infrastructure and organization supporting its candidates. Youn Decl. Ex. 12 (Rule Dep.) at 78:1-18, 87:14-21. As a matter of party policy, the Libertarian Party does not provide financial or logistical support to its candidates. Youn Decl. Ex. 13 (Rule Dep. Ex. 1) (party bylaws provide that "each candidate will organize, finance and operate his own campaign."); Youn Decl. Ex. 12 (Rule Dep.) at 114:20-116:12. Rule further admitted that fundraising is not considered a priority of the Libertarian Party and is a sporadic activity. Youn Decl. Ex. 12 (Rule Dep.) at 110:5-7. Its party-building activities have consisted of participating in "local parades," Youn Decl. Ex. 15 (Rule Dep. Exh. 3) at Bates 1234, and holding sparsely attended annual conventions, Youn Decl. Ex. 12 (Rule Dep.) at 110:10-111:7. Although

acknowledging that cross-endorsement can strengthen a nonmajor party's appeal and share of the vote by affiliation with a better known, major party, the Libertarian Party maintains a blanket policy against cross-endorsing, regardless of common positions. Youn Decl. Ex. 12 (Rule Dep.) at 101:16-105:11.

The Working Families Party, a nonmajor party, also currently lacks the infrastructure to win statewide elections; instead, it has primarily invested its resources in coordinating campaigns for local office, where it has determined success is more achievable. J. Green Aff. ¶ 8. The party has not run any candidate for a statewide office, because it has determined that it lacks the resources to support a viable statewide campaign and that running an incompetent campaign would undermine its long-term goal of winning widespread support. J. Green Aff. ¶ 8. Fundraising, for instance, has been extremely difficult for the party, because, according to its executive director, potential donors decline to give to a nonmajor party perceived as having a low chance of winning. J. Green Aff. ¶ 13. In 2007, the party's available funds were exhausted on races for three Working Families candidates for Hartford City Council, leaving nothing for state elections. J. Green Aff. ¶ 14. The Working Families Party has engaged in strategic cross-endorsement on state election ballots, enabling it to claim part of the credit for the victories of over 50 major-party candidates. *See* Foster Decl. ¶ 3; J. Green Aff. ¶ 9.

In contrast to the existing nonmajor parties, the Republican and Democratic parties offer their candidates significant centralized resources and coordinated support, in the form of statewide infrastructures and active memberships focused on winning elections. Both parties operate from a centralized party structure, commanded by a politically experienced state party chair, which provides resources for use by campaigns across the state. Jepsen Decl. ¶¶ 4-7, 12-18; Krivda Aff. ¶¶ 7, 9-11, 17, 19-20. Both centralized operations have, for instance, developed

easily updated and disseminated electronic databases of key demographic information for voter outreach. Jepsen Decl. ¶ 14; Krivda Aff. ¶ 19. Both also provide extensive trainings and logistical support for core campaign activities ranging from fundraising to voter outreach to candidate promotion. Jepsen Decl. ¶¶ 13-18, 24, 26, 30; Krivda Aff. ¶¶ 7, 9-11, 17-20. The existing network of Republican and Democratic volunteers can be counted on to contribute significant time and effort especially during election season, performing everything from door-knocking to phone-banking to fundraising on behalf of candidates up and down the ticket. Jepsen Decl. ¶ 13; Krivda Aff. ¶¶ 16, 20-21. Centralized coordination permits these parties strategically to allocate statewide resources including volunteer efforts among campaigns with different levels of need. Jepsen Decl. ¶¶ 17-18; Krivda Aff. ¶ 14.

5. Factors Explaining the Different "Strength" of Nonmajor-Party Challengers and Major-Party Challengers, Against a Dominant Major Party

Nonmajor-party challengers in areas previously dominated by one major party have, as described in Section B.2. of the Statement of Facts, *supra,* not been similarly situated to major-party challengers in the same situation, but rather have consistently fared less well. The reasons for these different showings of strength, the record evidence demonstrates, are that major parties are carefully strategic about taking on such challenges, and they enjoy an existing base of support and party infrastructure that nonmajor parties have not managed to develop. There is no evidence that these factors will be exacerbated because of the CEP. Indeed, nonmajor-party vote totals have historically been so small that it would be difficult to identify any decrease as resulting from CEP funding. D. Green Decl. ¶ 38.

The existing major parties have not fielded candidates merely for the sake of participating in a particular race, and the potential availability of CEP funds would do nothing to change that calculus. Krivda Aff. ¶ 14; Jepsen Decl. ¶ 25. The major parties' leaders keep close track of

shifting voter trends, especially in districts previously dominated by the opposing major party, to capitalize on the erosions of party dominance that can happen over time by fielding strong candidates in those districts. Jepsen Decl. ¶¶ 24, 26; Krivda Aff. ¶¶ 7, 14. For instance, certain of Republican-dominated districts will be especially promising to the Democratic Party, because they will have relatively high Democratic voter registration despite having a Republican in the office in question; often Democrats will hold other elected offices in these areas, because organized Democratic supporters exist in every town. Jepsen Decl. ¶¶ 24, 26.

Given the inherent two-party bent of U.S. elections, and the superior supporter networks and party organization of the major parties, even a new major-party challenger opposing a major-party incumbent – *i.e.* competing in a district considered to be "safe" for the opponent – poses a significantly more credible chance of surpassing 20% of the vote than any nonmajor-party candidate. D. Green Decl. ¶¶ 31-32. Indeed, based on past performance, it is unlikely that a nonmajor-party candidate will exceed this 20% threshold in such "safe" districts. *Id.* ¶¶ 33-34. Electoral data, discussed in Section B.2. of the Statement of Facts, *supra*, bear out these conclusions. Plaintiffs' witnesses themselves have admitted that votes for their candidates in such one party-dominant districts may represent votes not for their parties but in opposition to the dominant party – "protest votes" from voters who would vote for the other major party, if given the choice. Youn Decl. Ex. 23 (Winger Dep.) at 153:4-154:4, 158:1-6; Youn Decl. Ex. 4 (Gillespie Dep.) at 222:7-223:3; Youn Decl. Ex. 1 (DeRosa Dep.) at 106:3-12.

Thus, the undisputed electoral and campaign finance records of Connecticut's existing nonmajor parties demonstrate negligible political strength dating from long before implementation of the CEP, and the evidence explaining this record does not suggest that any factor will be exacerbated because of the CEP. Indeed, the nonmajor-party witnesses in this case

have admitted that the political strength of nonmajor parties would not further diminish because of the CEP or have said that they are unable to predict any change. *See* Youn Decl. Ex. 3 (Ferrucci Dep.) at 61:4-21, 104:18-105:10 (resources of major parties will merely continue to be much greater than of nonmajor parties), 105:12-25 (unable to determine whether CEP will affect political strength of Green Party); Youn Decl. Ex. 1 (DeRosa Dep.) at 28:7-12 (Green Party was unable to determine whether it would be able to make effective use of the CEP); *see also* Youn Decl. Ex. 23 (Winger Dep.) at 118:13-119:4 (plaintiffs' expert admits it is not yet possible to quantify whether the CEP has increased or lessened disparity in campaign funds between major and nonmajor parties); Youn Decl. Ex. 18 (Thornton Dep.) at 150:19-151:1; Sevigny Aff. ¶ 9.

C. Feasibility of Nonmajor-Party Candidates' Qualifying for CEP

1. Votes-Based Eligibility

Nonmajor parties have already achieved eligibility, based on vote percentages won in 2006, for full or partial CEP funding for their candidates in 14 legislative races this year – in four state senate districts and 10 state representative districts. *See* Foster Decl. ¶ 19. In one state representative district, a nonmajor party has achieved eligibility for a full CEP grant, on the same level as qualifying major-party candidates. *Id.* Looking ahead, the expansion of fusion balloting effective on October 1, 2007, 2006 Conn. Acts 07-194, § 16 (codified at Conn. Gen. Stat. § 9-453t), provides nonmajor parties more flexibility to win votes despite the two-party outcome structure of U.S. elections and thereby establish prior-votes based eligibility for CEP funding. D. Green Decl. ¶ 12.

2. Petition Signatures-Based Eligibility

Candidates who are unable to demonstrate eligibility for CEP funding based on prior vote totals may achieve eligibility by submitting sufficient numbers of valid petition signatures. *See* Conn. Gen. Stat. § 9-705(c)(2), (g)(2). For the next gubernatorial election, such a candidate may

become eligible for a full grant of $3 million by submitting 224,693 signatures. Foster Decl. ¶ 18. For state legislative districts, the highest, lowest, and average numbers of signatures required to achieve various levels of CEP funding for the 2008 elections are summarized in the following tables:

2008 Petition Signature Requirements – State Representative Districts

	Votes in 2006	10% (1/3 grant)	15% (2/3 grant)	20% (full grant)
Lowest Turnout	1,254 (District 4)	125	188	251
Highest Turnout	10,934 (District 16)	1,093	1,640	2,187
Average Turnout	6,325	633	949	1,265

2008 Petition Signature Requirements – State Senate Districts

	Votes in 2006	10% (1/3 grant)	15% (2/3 grant)	20% (full grant)
Lowest Turnout	10,131 (District 23)	1,013	1,520	2,026
Highest Turnout	39,337 (District 26)	3,934	5,901	7,867
Average Turnout	27,158	2,716	4,074	5,432

See Foster Decl. ¶ 18.

a. Demonstrated Signature-Gathering Capability of Nonmajor Parties in Connecticut

The record evidence demonstrates that nonmajor-party candidates in Connecticut have been capable of collecting large numbers of petition signatures. Evidence that they have met certain signatures thresholds does not serve to suggest that they cannot meet higher thresholds; until implementation of the CEP, candidates have only had an incentive to collect signatures in numbers equal to one percent of the prior vote for a given office – the requirement for ballot access. Conn. Gen. Stat. § 9-453d.

At least one nonmajor party, the Working Families Party, has successfully begun implementing a strategy to achieve CEP eligibility for its candidates based on petition signatures. For instance, it has determined the average number of signatures its candidates would need to qualify for full CEP funding in various state senate districts the party is targeting in 2008, has

calculated the number of signature-gathering shifts required to meet this number based on its issue-petitioning experience, and calculated the cost per campaign to become eligible for full funding. J. Green Aff. ¶¶ 18-20. In previous signature-gathering and fundraising drives, the Working Families Party has been able to collect as many as five-and-a-half $16 donations per four-hour shift, and has run over 600 canvassing shifts in one effort. *Id.* ¶ 20. The party has trained paid signature-canvassers and has begun canvassing for one of its senate candidates. *Id.* ¶¶ 23–24. One of its state representative candidates has already collected sufficient signatures to be eligible for partial CEP funding in 2008 and is continuing to collect signatures with the aim of achieving a full grant. *Id.* ¶ 22.

Undisputed evidence demonstrates that the Green Party is capable of collecting well over 1,000 petition signatures per week, using primarily part-time volunteers. For its statewide slate of candidates in 2006, its all-volunteer effort gathered 13,000 petition signatures – 10,000 of them in six weeks – to appear on the ballot. Youn Decl. Ex. 19, 20 (Thornton Ex. 3, 4); Youn Decl. Ex. 18 (Thornton Dep.) at 83:13-84:12, 85:3-86: 6. Green Party operatives Krayeske and Ferrucci both testified that they are each capable of collecting approximately 25 petition signatures per hour, or 200 per day. Youn Decl. Ex. 5 (Krayeske Dep.) at 73:3-11; Youn Decl. Ex. 3 (Ferrucci Dep.) at 73:12-14. The Green Party is also aware that it can hire petitioners at the rate of $1 per signature, and that doing so to achieve CEP eligibility could net a campaign significant funding. Youn Decl. Ex. 19 (Thornton Ex. 3), Youn Decl. Ex. 18 (Thornton Dep.) at 81:19-82:8, 124:20-23; Youn Decl. Ex. 5 (Krayeske Dep.) at 72:11-73:2; Youn Decl. Ex. 18 (Thornton Dep.) at 126:2-12 (not unreasonable for Green Party to expend $120,000 in order to get grant of $1 million). Indeed, contrary to the Green Party's assertions, its witnesses in depositions have admitted that the party may be able to achieve the CEP's petition-signature

thresholds. Youn Decl. Ex. 18 (Thornton Dep.) at 132:8-134:19; Youn Decl. Ex. 3 (Ferrucci Dep.) at 85:23-86:3. Two Green Party candidates, including Plaintiff Michael DeRosa, have indicated that they intend to participate in the CEP, although neither has filed the necessary paperwork with the SEEC formally indicating such an intent. Green Party of Connecticut's Response to Defendants' Interrogatories, dated May 26, 2008,¶ 1 (attached as Ex. 25 to the Youn Decl.); Garfield Decl. II ¶ 7.

The Libertarian Party has also demonstrated the ability to gather high numbers of petition signatures. It has collected as many as 17,172 signatures in a single ballot petition drive, paying professional petitioners to collect 15,806 of them. Youn Decl. Ex. 17 (Rule Dep. Ex. 8) at Bates 1212-14. It has been able to pay as much as $20,414.42 for a ballot petitioning drive. Youn Decl. Ex. 14 (Rule Dep. Ex. 2) at Bates 1157. It has also been capable of coordinating its efforts with those of other parties, in 2004 gathering over 8,000 signatures for its own purposes in two weeks of cooperative work. Youn Decl. Ex. 16 (Rule Dep. Ex. 3) at Bates 1266. Party officer Rule testified that the Connecticut Libertarian Party could expect logistical and funding assistance for petition efforts from its national counterpart, as it has received in the past. Youn Decl. Ex. 12 (Rule Dep.) 57:3-14, 58:5-61:3.

b. Expert Testimony of Signature-Gathering Feasibility

Defendants' expert witness, Harold Hubschman – a political consultant based in Massachusetts who has organized 26 successful ballot-qualification signature drives since 1997 using paid and volunteer petitioners – opines that it is readily achievable for a candidate with even a modest constituency and a campaign with the most basic organizing ability to be able to achieve the petition-signature requirements to obtain full CEP funding. Declaration of Harold Hubschmann, dated June 26, 2008 ("Hubschman Decl.") ¶¶ 1-2, 13. He notes that feasibility of the signatures requirements should be considered in light of Connecticut's seven-month

petitioning period, the actual signature numbers required for CEP eligibility, and the real opportunities for petitioning in Connecticut. Hubschman Decl. ¶ 5-6, 9.

Based on publicly available electoral data and his knowledge of petition-gathering, Hubschman has determined that 300 reasonably trained volunteers – which he opines is "a quite small number of activists for a statewide campaign in a state with about 2 million registered voters" – could collect a comfortable margin more than the number of signatures required for full gubernatorial campaign funding in 12 five-hour days. *Id.* ¶¶ 6-8, 12. Half that effort, he notes, would be required to qualify for one-third the full CEP grant for gubernatorial candidates. *Id.* ¶ 12. Professor Donald Green has opined that it is not unrealistic to expect a viable statewide campaign to identify 1,000 or more activists who could, over the course of the election cycle, collect 100-200 signatures each. D. Green Decl. ¶ 17.

Hubschman has similarly estimated that a state senate candidate petitioning for full CEP funding in the highest prior-turnout district could collect a comfortable margin more than the requisite number of signatures, with a team of 30 reasonably trained volunteers, in four five-hour days. Hubschman Decl. ¶¶ 6-8, 10. A state representative candidate petitioning for full CEP funding in the highest prior-turnout district, Hubschman opines, could comfortably exceed the signatures threshold with a team of 10 reasonably trained volunteers, in four five-hour days, or – given Connecticut's seven-month petitioning period – on her own in 38 days. *Id.* ¶¶ 6-9.

Signature-petitioning is a manageable organizing challenge, Hubschman explains, conquerable by a campaign with the basic skills to motivate and supervise petitioners, identify promising locations, efficiently aggregate multiple petitioning efforts, and strategically supplement volunteer efforts with paid petitioning. Hubschman Decl. ¶¶ 5, 14, 16-17, 20-23.

3. Qualifying Contributions

The testimony of nonmajor-party witnesses establishes that the CEP's qualifying contributions requirements, which equally apply to all would-be participants regardless of party, are attainable by serious candidates. Working Families Party director Jon Green, based on his campaign experience, has testified that any candidate who cannot collect the limited number of low-dollar contributions to qualify for the CEP is not an electorally viable candidate. J. Green Aff. ¶ 27. As former Working Families Party legislative candidate Stacey Zimmerman has testified, "If you don't know enough people to give $5 [to] $50 . . . . who . . . is going to vote for you?" Deposition of Stacey Zimmerman, dated February 13, 2008 ("Zimmerman Dep.") (attached as Exhibit 24 to the Youn Decl.), at 46:14-18. Indeed, former Green Party candidate Ralph Ferrucci has admitted that collecting the requisite 150 qualifying contributions for state representative "wouldn't be that hard." Youn Decl. Ex. 3 (Ferrucci Dep.) at 112:3-9, 116:8-13. Factors such as name recognition and the popular appeal of a particular platform – not mere nonmajor-party status – will determine a candidate's ability to raise the necessary qualifying contributions. *See* Youn Decl. Ex. 22 (Weicker Dep.) at 33:22-34:10; *see also* Youn Decl. Ex. 3 (Ferrucci Dep.) at 70:20-71:9 (less widely known platforms make it more difficult for nonmajor-party candidates to collect qualifying contributions than for major-party candidates). For example, State Senator Donald DeFronzo testified that he was able to raise the required qualifying contributions by sending direct mailings to 400 targeted contributors and by holding a single fundraising event. Affidavit of State Senator Donald DeFronzo, dated June 26, 2008, at ¶ 9.

D. Benefits of CEP for Nonmajor-Party Candidates

Record evidence demonstrates that existence of the CEP potentially benefits nonmajor parties and their candidates in several ways. First, the very process of attempting to qualify can

help advance a campaign, because, as petitioning expert Hubschman explains, signature-petitioning is not merely a challenge, but also a campaigning opportunity: it provides a vehicle for candidates to organize and mobilize their supporters. Hubschman Decl. ¶ 15. The process of circulating petitions is a way for candidates and supporters to meet and persuade voters and distribute campaign materials. *Id.* ¶¶ 9, 15. Indeed, Working Families Party director Green has testified that canvassing for signatures and seeking qualifying contributions are also opportunities to campaign for the party's candidates. J. Green Aff. ¶ 21. He explains that going door-to-door to promote a candidate and party platform is what any competitive campaign does, regardless of its desire to qualify for public funding. *Id.*; *see also* Jepsen Decl. ¶¶ 20-22 (relating example of successful major-party legislative candidate who personally knocked on 35,000 doors). A critical difference between petitioning for ballot-access and petitioning for CEP eligibility, Professor Green explains, is that the CEP provides a campaign with financial incentive for successful petitioning. D. Green Decl. ¶¶ 20-21.

Second, CEP funding presents a transformative opportunity for nonmajor parties in Connecticut. Youn Decl. Ex. 7 (Krayeske Ex. 5); Youn Decl. Ex. 5 (Krayeske Dep.) at 113:21-114:23. For example, Krayeske has stated that CEP funding far exceeds amounts Green Party candidates have been able to raise privately and could therefore enable unprecedented publicity for campaigns; he has called CEP funding "too good a prize to pass up" merely because qualification requires effort. Youn Decl. Exs. 7-10 (Krayeske Exs. 5-8); Youn Decl. Ex. 5 (Krayeske Dep.) at 114:15-23. Indeed, former Working Families Party candidate Stacey Zimmerman has testified that even a one-third grant under the CEP well exceeds the amount a candidate of his party is able to raise in private financing. Affidavit of Stacey Zimmerman, dated July 8, 2008 ("Zimmerman Aff.") ¶¶ 23-25, 32; *see also* J. Green Aff. ¶ 16 ("a full CEP grant for

a Senate campaign is . . . far more money than [we] could ever have imagined raising"). Professor Donald Green explains that, since even small spending increases have been shown to have a significant impact on the competitiveness of nonmajor-party campaigns, CEP grants would profoundly improve the achievements of Connecticut's nonmajor parties. D. Green Decl. ¶¶ 10-11. Working Families director Jon Green has testified that, because the CEP enables candidates to receive substantial amounts by collecting a limited number of low-dollar contributions, potential donors will know their contributions are more likely to result in a competitively resourced campaign and will therefore be more willing to give than in the strictly private financing context. J. Green Aff. ¶ 15. Based on his campaign experience, he has stated, a candidate unable to qualify for the CEP is not an electorally viable candidate in the first place. *Id.* ¶ 27.

Third, the CEP potentially benefits even nonmajor-party candidates who do not participate. It reduces competition for private donations. D. Green Decl. ¶ 36; J. Green Aff. ¶ 26. If the CEP incentivizes more major-party candidates to challenge incumbents, such challenges will destabilize political stasis to the long-term benefit of all challengers including nonmajor-party candidates. D. Green Decl. ¶¶ 36-38. Moreover, any emergence of more major-party candidates will not only not undermine the ability of nonmajor-party candidates to convey their messages, but potentially will improve it; such competition signals to the public that a race is "in play," creating more voter interest. *Id.* ¶ 40. Such increased voter interest benefits nonmajor parties, even if it is not caused by them. *Id.*

ARGUMENT

I. Legal Standards on Summary Judgment

Summary judgment is appropriate when, as here, "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any

material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is "material" only where it affects the outcome of the suit under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A moving party may show that it is entitled to summary judgment by demonstrating the absence of evidence supporting the nonmoving party's case. *See PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 105 (2d Cir. 2002) (*per curiam*). Once the movant demonstrates the absence of any disputed material fact, the burden shifts to the nonmovant to show that summary judgment should not be granted. *Gutwein v. Roche Labs.*, 739 F.2d 93, 95 (2d Cir. 1984). If the nonmoving party does not otherwise assert, the court should accept as true the moving party's factual statements. *See* D. Conn. Local Rule 56(a)(1).

Although the court should construe the facts in the light most favorable to the nonmoving party, *see Cioffi v. Averill Park Cent. Sch. Dist. Bd. of Educ.*, 444 F.3d 158, 162 (2d Cir. 2006), the nonmovant must do more than assert the existence of an unspecified disputed material fact, or offer speculation or conjecture, to defeat the motion. *See Western World Ins. Co. v. Stack Oil, Inc.*, 922 F.2d 118, 121 (2d Cir. 1990) (citations omitted). "[R]eliance upon conclusory statements or mere allegations is not sufficient to defeat a summary judgment motion." *Davis v. New York*, 316 F.3d 93, 100 (2d Cir. 2002). Summary judgment should be granted where the opposing party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

Moreover, the existence of conflicting expert testimony does not necessarily create a material issue of fact precluding summary judgment. *See Raskin v. Wyatt Co.*, 125 F.3d 55, 66 (2d Cir. 1997) ("[A]n expert's report is not a talisman against summary judgment."). The court

may exclude expert testimony in deciding on summary judgment if there is an insufficient basis for the expert's opinion or an insufficient link between the expert's knowledge and the pertinent facts of the case. *See, e.g., Brooks v. Outboard Marine Corp.*, 234 F.3d 89, 91-92 (2d Cir. 2000). The district court's "broad discretion" extends to the proper evaluation of expert evidence "under the circumstances of each case." *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004) (quoting *Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 265 (2d Cir. 2002)).

II. The Governing Constitutional Principles

A. The Validity Of The CEP Should Be Reviewed Under The *Anderson–Burdick* Test, Not Strict Scrutiny

Plaintiffs contend that the certain provisions of the CEP are unconstitutional because they allegedly impose unreasonable burdens on Plaintiffs' First Amendment rights of speech and association and because they allegedly discriminate against minor parties and petitioning candidates in violation of the Equal Protection Clause. While Plaintiffs' First Amendment and Equal Protection claims are in theory distinct, in practice they merge, and the courts have consistently held that the same constitutional standards – derived from the Supreme Court's decisions in *Anderson v. Celebrezze*, 460 U.S. 780, 786-89 (1983) ("Anderson"), and *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992) – are applicable to both claims. For example, in *Green Party of New York State v. New York State Board of Elections*, 389 F.3d 411 (2d Cir. 2004), the Second Circuit held that where, as here, plaintiffs claim that an election law places "discriminatory burdens on minor political parties" that allegedly "affect claimants' ability to exercise their First Amendment rights," the First Amendment and Equal Protection analysis "substantially overlap," and the court applied the *Anderson-Burdick* test. 389 F.3d at 420; *see also Anderson*, 460 U.S. at 787 n.7 (finding it unnecessary to "engage in a separate Equal Protection Clause analysis"); *ACORN v. Bysiewicz*, 413 F. Supp. 2d 119, 140 (D. Conn. 2005)

(Kravitz, J.) (inquiry under either doctrine "essentially the same"); *Rogers v. Corbett*, 468 F.3d 188, 193 (3d Cir. 2006) ("We clarify here that the *Anderson* test is the proper method for analyzing such equal protection claims due to their relationship to the associational rights found in the First Amendment."); *Fulani v. Krivanek*, 973 F.2d 1539, 1543-44 (11th Cir. 1992).

Indeed, this Court, in its opinion on the motion to dismiss, similarly noted that Plaintiffs' First Amendment claim was "part and parcel of their equal protection claim." *Green Party of Conn.*, 537 F. Supp. 2d at 367 n.10. The Court then went on to hold that strict scrutiny applied to Plaintiffs' claims, because Plaintiffs were alleging that the statute burdened their exercise of fundamental First Amendment rights in a discriminatory manner. *Id.* at 367-68, 379. The Court's ruling that strict scrutiny applies, however, was erroneous, and is inconsistent with the governing Supreme Court cases.[11]

In *Burdick*, where the Supreme Court upheld the constitutionality of Hawaii's prohibition of write-in voting, the Court explicitly rejected the contention that strict scrutiny applies to any claim that a state's election laws impermissibly burden First Amendment rights. 504 U.S. at 432-34. As the Court explained:

> Each provision of a[n] [election] code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects – at least to some degree – the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently.

[11] It should be noted that the parties had not briefed the strict scrutiny issue on the motion to dismiss. Defendants' motion contended only that the Supreme Court's ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976), was controlling, and did not attempt to set out a comprehensive constitutional analysis. Plaintiffs likewise did not contend on the motion to dismiss that strict scrutiny should be applied, and there was thus no occasion for Defendants to address the issue in reply.

Id. at 433. Accordingly, the Court held that "a more flexible standard applies," *id.* at 434, derived from *Anderson*:

> A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interest make it necessary to burden the plaintiff's rights."

Id. at 434 (quoting *Anderson*, 460 U.S. at 789).

Under this standard, the rigorousness of the court's inquiry depends on the extent to which the challenged law burdens First Amendment rights. Where "those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788).

The courts have consistently followed the *Anderson-Burdick* standards in a wide variety of voting rights and election law cases over the past twenty-five years. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358-70 (1997) (upholding constitutionality of Minnesota's prohibition of fusion voting despite alleged impact on minor parties); *Green Party of N.Y.*, 389 F.3d at 419-20 (evaluating constitutionality of New York voter enrollment scheme alleged to discriminate against minor party); *Schulz v. Williams*, 44 F.3d 48, 56 (2d Cir. 1994) (upholding petition requirements for ballot access against Libertarian Party challenge); *Prestia v. O'Connor*, 178 F.3d 86, 88 (2d Cir. 1999) (upholding petition signature requirements against Conservative Party challenge); *ACORN*, 413 F. Supp. 2d at 140 (upholding Connecticut's refusal to permit

election day registration). Indeed, the Supreme Court this Term noted that "our approach remains faithful to *Anderson* and *Burdick*," and applied the "flexible standard" articulated in those decisions to uphold a voter identification requirement, concluding after careful assessment of the evidentiary record that plaintiffs had failed to establish an unconstitutional burden. *Crawford v. Marion County Election Board*, 128 S. Ct. 1610, 1616 & n.8 (2008). "[E]ven assuming that the burden may not be justified as to a few voters," the Court held, "that conclusion is by no means sufficient" to warrant invalidation of an election statute serving important government interests on a facial challenge. *Id.* at 1621.

There is no reason to believe that the flexible *Anderson-Burdick* standard should not also apply to the issues in this case arising from Connecticut's public financing scheme. Indeed, this conclusion follows *a fortiori* from the cases in the ballot-access and voting restrictions area, since a public-funding restriction "is far less burdensome upon and restrictive of constitutional rights than the regulations involved in the ballot-access cases." *Buckley v. Valeo*, 424 U.S. 1, 101 (1976). As the Supreme Court in *Buckley* pointed out, the denial of public funding "does not prevent any candidate from getting on the ballot or any voter from casting a vote for the candidate of his choice." 424 U.S. at 94. In addition, as the *Buckley* Court explained, public funding enhances First Amendment values rather than restricting them:

> Although "Congress shall make no law . . . abridging the freedom of speech, or of the press," Subtitle H is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people. Thus, Subtitle H furthers, not abridges, pertinent First Amendment values.

Id. at 92-93. Thus, the Court explained, public-funding systems warrant greater judicial deference than ballot-access restrictions. *See id.* at 93-94.

B. Application of the *Anderson-Burdick* Test

1. The Character and Magnitude of the Alleged Injury

Under the *Anderson-Burdick* test, strict scrutiny is not appropriate unless the challenged law imposes a "severe" burden on the Plaintiffs' First Amendment rights. Before addressing whether the burden is "severe," however, the Court must first assess whether the challenged law imposes any "burden" at all on a fundamental right. While, as this Court noted, the Supreme Court "did not clearly delineate the boundaries of the right to political opportunity" under the First Amendment, *Green Party of Conn.*, 537 F. Supp. 2d at 375 n.18, *Buckley* did expressly reject any claim of a constitutionally protected right to "the *enhancement* of opportunity to communicate with the electorate" that may flow from public funding. *Buckley*, 424 U.S. at 95 (emphasis added). The Court also rejected the notion that different rules for major and minor parties worked an unconstitutional burden on any protected right to political opportunity. *Id.* at 97 ("[T]he Constitution does not require Congress to treat all declared candidates the same for public financing purposes."); *see also Am. Party of Tex. v. White*, 415 U.S. 767, 781 (1974) (upholding differential ballot-access and nomination-funding provisions against equal protection challenge by minor parties).

The *Buckley* Court articulated the test for establishing invidious discrimination in public funding: a "showing that the election funding plan disadvantages nonmajor parties *by operating to reduce their strength* below that attained without any public financing." *Buckley*, 424 U.S. at 98-99 (emphasis added); *see also Libertarian Party of Ind. v. Packard*, 741 F.2d 981, 991 (7th Cir. 1984) (citing this standard as factual test of whether public financing system invidiously discriminates against minor parties). In so formulating the test, the Court made clear that the right to political opportunity, like other First Amendment rights, is a right against governmental impingement rather than a guarantee of an equal playing field. Thus, the challenged funding

program here may be found to work an unconstitutional burden only if it is proved to *impede* minor parties' preexisting ability to exercise their First Amendment freedoms.

If such a burden is found, then the Court must consider the "magnitude of the asserted injury." *Anderson*, 460 U.S. at 789. Plaintiffs "have the initial burden of showing that [the challenged provisions] seriously restrict the availability of political opportunity." *Libertarian Party of Wash. v. Munro*, 31 F.3d 759, 762-63 (9th Cir. 1994) (upholding ballot restriction for minor party candidates as "rationally related to a legitimate state interest" because plaintiffs failed to demonstrate severe burden). Courts have generally struck down election statutes only on a showing that they wreaked a "heavy" or "severe" burden on the exercise of a protected right. *See Rubin v. City of Santa Monica*, 308 F.3d 1008, 1015 (9th Cir. 2002) ("Courts will strike down state election laws as severe speech restrictions only when they significantly impair access to the ballot, stifle core political speech, or dictate electoral outcomes.").

In evaluating the extent of the burden, the court must consider the challenged statute in the context of the totality of the state's electoral scheme. *See Burdick*, 504 U.S. at 435-37 (evaluating Hawaii's prohibition of write-in voting in context of other provisions permitting easy access to ballot); *Schulz*, 44 F.3d at 56-57 (considering alleged burden imposed by challenged provision "in light of the state's overall election scheme," in upholding New York petition requirement against Libertarian Party challenge); *Green Party of N.Y.*, 389 F.3d at 419 ("Courts are required to consider [challenged electoral] restrictions within the totality of the state's overall plan of regulation."); *Lerman v. Board of Elections*, 232 F.3d 135, 145 (2d Cir. 2000) ("The burden imposed by the challenged regulation is not evaluated in isolation, but within the context of the state's overall scheme of election regulations.").

The Court must also consider whether there is an alternative means for the plaintiffs to vindicate the protected right – for instance, the freedom to fund protected political activity privately, rather than publicly. The Supreme Court in *Crawford* recently upheld an Indiana restriction on in-person voting, despite noting that it could impose a considerable burden on some individuals, in part because the "severity of that burden" was "mitigated by the fact that, if eligible, [these] voters . . . may cast provisional ballots." *Crawford*, 128 S. Ct. at 1621; *see also Burdick*, 504 U.S. at 436 n.5 (explaining that *Anderson* struck down an Ohio law barring late independent candidacies because Ohio provided no alternative access to presidential ballot after March); *see also Jenness v. Fortson*, 403 U.S. 431, 440-41 (1971) (rejecting challenge to differential ballot restrictions for minor party candidates, because differences constituted "alternative routes"); *cf. Williams v. Rhodes*, 393 U.S. 23, 24-26 (1968) (Ohio made "no provision" for independents to appear on ballot and made it "virtually impossible" for new parties to do so).

2. Any Showing of Burden Should Be Weighed Against the State's Important Interests

Even if an election restriction is shown to burden the exercise of a fundamental right, "'important regulatory interests are generally sufficient to justify' the restriction[]." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788). Only if the burden is shown to be "severe" will the state be required to show a "compelling" interest in order to justify the regulation. *Id.* Whether or not the state's choice of policy is "the most effective," absent sufficient proof of an unduly great burden, a challenged restriction should be upheld so long as the state puts forth interests that are legitimate and important. *Crawford*, 128 S. Ct. at 1619. Nor does the Supreme Court "require elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons*, 520 U.S. at 364.

3. A Burden on the Exercise of a Fundamental Right May Be Justified in Light of the State's Interests

Even if a burden on the exercise of a protected right has been shown, the court should consider "the extent to which the state's interests make it necessary to burden plaintiff's rights." *Green Party of N.Y.*, 389 F.3d at 419. If the challenged restriction is reasonable and even-handed, the state's "important regulatory interests are sufficient to justify the restrictions." *Id.* Prophylactic needs may justify a particular restriction. *See, e.g.*, *Crawford*, 128 S. Ct. at 1619 (upholding voter identification requirement because of "risk" of voter fraud); *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986) ("We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.").

If a severe burden has not been shown, then "the state is not limited . . . to the least restrictive methods" of achieving its objectives. *Rogers*, 468 F.3d at 195. Rather, a restriction imposing a limited burden should be upheld if justified by "valid neutral justifications" concerning important state interests. *Crawford*, 128 S. Ct. at 1624. Such valid neutral justifications should not be disregarded even if "partisan interests may have provided one motivation" for the law. *Id.*

C. Plaintiffs Bringing a Facial Challenge to an Election Statute Face a Heavy Burden

Plaintiffs principally bring a facial challenge to the CEP's eligibility, qualification, and funding formulae.[12] However, in this year's decisions in *Washington State Grange v. Washington State Republican Party*, 128 S. Ct 1184, 1190 n.6 (2008) and *Crawford*, 128 S. Ct.

[12] While Count One of Plaintiffs' Amended Complaint also alleges that Plaintiffs are challenging the statute as applied, *see* Complaint ¶ 53, they allege no facts which would support an "as applied" challenge. Moreover, since the statute is only now being implemented for the first time this election year, there is no basis for the Court to evaluate any alleged "as applied" challenge.

at 1621-22, the Supreme Court has made clear that on a facial challenge, plaintiffs bear the heavy burden of presenting real evidence of the burden imposed by a challenged law, and cannot rely on speculation, hypotheticals or isolated instances. In *Washington State Grange*, the Court rejected the plaintiffs' facial challenge because they had not demonstrated that the First Amendment injury they feared would necessarily come to pass. Similarly, in *Crawford*, the Court stressed a plaintiff's "heavy burden of persuasion" in seeking facial invalidation of an election statute, and reminded the lower courts of their obligation "to give appropriate weight to the magnitude of that burden." 128 S. Ct. at 1621-22. As we demonstrate below in great detail, the Plaintiffs here have not come close to satisfying that heavy burden of persuasion.

D. The Challenged Connecticut Statutes Serve Important, Indeed Compelling State Interests.

In undertaking the *Anderson-Burdick* analysis, it is important to start by recognizing that the challenged provisions of the CEP – principally, the eligibility requirements applicable to nonmajor-party candidates – serve very important, in fact, compelling state interests.

First, as the legislative history demonstrates, the General Assembly's primary goal in enacting the CEP was to avoid the threat and appearance of corruption. It is "well settled" that states have a compelling interest in maintaining a program for public financing of elections in order to prevent corruption and the appearance of corruption arising from the influence of private money on elected officials. *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996); *see Buckley*, 424 U.S. at 96 ("public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest"); *RNC v. FEC*, 487 F. Supp. 280, 284-85 (S.D.N.Y.) (three-judge court), *aff'd*, 445 U.S. 995 (1980). The Connecticut legislature also sought to free candidates and elected officials from the burdens of political fundraising, so that they could devote more time to their duties and to their constituents.

Garfield Decl. I Ex. 28, at 43 (statement of Sen. Handley). It is equally "well settled" that the government's interest in reducing the time that politicians have to spend raising campaign contributions rather than engaging in dialogue on matters of public importance is also a compelling justification for public funding. *Rosenstiel*, 101 F.3d at 1553; *see also Buckley*, 424 U.S. at 90-91 ("public financing . . . [is] a means to reform the electoral process . . . to free candidates from the rigors of fundraising"); *RNC*, 487 F. Supp. at 284-85.

In establishing a voluntary public financing scheme, the State also has a compelling interest in setting the amounts of the grants provided to candidates high enough to give candidates the incentive to opt into the system and forego their opportunity to seek private contributions. *See Rosenstiel* at 1553 ("given the importance of these interests [in establishing an election finance system free of the appearance of corruption], the State has a compelling interest in stimulating candidate participation in its public financing scheme") (citing *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993); *Wilkinson v. Jones*, 876 F. Supp. 916, 928 (W.D. Ky. 1995)).

In designing the CEP as it did, the legislature also advanced the compelling interest of "protect[ing] the public fisc" by not squandering public monies to fund "hopeless candidacies." *Buckley,* 424 U.S. at 103; *see also Anderson v. Spear*, 356 F.3d 651, 676 (6th Cir. 2004) (upholding Kentucky's denial of public funding to write-in candidates, because states have a "significant" interest in "not funding hopeless candidacies with . . . public money"). In establishing a system of public financing, the state has no obligation to level the playing field by artificially fostering candidacies that have not proven themselves to be viable in the absence of public funding. "The Constitution does not require the Government to finance the efforts of every nascent political group, merely because Congress chose to finance the efforts of the major

parties." *Buckley*, 424 U.S. at 98 (citations, and footnotes omitted); *see RNC*, 487 F. Supp. at 287 ("To require that public funding equalize . . . differences [among candidates] would distort its purpose, which is to facilitate political communication by providing an alternative to private funding with its burdens and unhealthy influences.").

Similarly, in setting CEP qualification and eligibility thresholds at levels that would weed out candidates without significant public support, the Connecticut Legislature also sought to avoid "providing artificial incentives to splintered parties and unrestrained factionalism," which the Supreme Court in *Buckley* also recognized to be an "important public interest." *Buckley*, 424 U.S. at 96 (citations and quotation marks omitted); *see also Timmons*, 520 U.S. at 367 (recognizing state's interest in combating the "destabilizing effects of party-splintering and excessive factionalism."); *Munro*, 479 U.S. at 196 (State can properly condition access to general election ballot 'on a showing of a modicum of voter support[,] . . . to avoid the possibility of unrestrained factionalism"). The Court has long recognized the danger that an electoral scheme such as Connecticut's is vulnerable to manipulation, either by major party primary losers running as independent candidates or by "a party fielding an 'independent' candidate to capture and bleed off votes in the general election that might well go to another party." *Storer v. Brown*, 415 U.S. 735 (1974). In *Buckley*, the Court held that the avoidance of such dangers justifies differential funding for major parties – who have proven widespread public support and have a track record of viable candidacies – and nonmajor-party candidates; as the Court acknowledged, "[i]dentical treatment of all parties . . . would [ ] artificially foster the proliferation of splinter parties." *Buckley,* 424 U.S. at 98.

Indeed, the legislative history of the CEP makes clear that the Connecticut Legislature was specifically concerned with preventing this type of destabilizing manipulation. As noted

above, *see* Section A of the Statement of Facts, *supra*, a number of legislators, looking to the experience of other states, expressed concern that the major parties could abuse the public financing system by deploying or exploiting "splinter" minor party or independent candidates, without any real constituency or chance of winning, as "spoilers" intended merely to take votes away from the other major party. In setting the CEP thresholds, the Legislature attempted to prevent public funds from being abused in this way, and to ensure that the CEP did not provide artificial incentives to destabilizing conduct, by requiring recipients of public campaign funds to demonstrate substantial public support.

As discussed in Section IV, *infra*, the challenged provisions of the CEP are narrowly tailored to advance these important, indeed compelling, interests without unduly burdening the interests of nonmajor parties and candidates.

III. The CEP Does Not Unconstitutionally Burden the Political Opportunity of Nonmajor-Party Candidates.

A. The CEP Does Not Reduce the Political Strength of Nonmajor Parties Below the Levels Attained Prior to its Enactment.

Under *Anderson* and *Burdick*, there is no basis for applying strict scrutiny to Plaintiffs' constitutional claims unless they can show that the CEP imposes a "severe" burden on their political opportunity. However, not only have Plaintiffs failed to demonstrate any such "severe" burden, the record is devoid of evidence that would establish *any* burden at all on their political opportunity. In fact, the undisputed testimony and evidence show precisely the opposite – rather than being burdened, nonmajor parties and candidates can expect substantial, even transformative benefits from the CEP system.

In order to establish any constitutionally cognizable burden on their political opportunity, Plaintiffs must show "that the election funding plan disadvantages nonmajor parties by operating to reduce their strength below that attained without any public financing." *Buckley*, 424 U.S. at

98-99. Plaintiffs cannot come close to meeting this standard. The undisputed evidence establishes that minor party and petitioning candidates' political strength in Connecticut – whether measured by election returns, party identification, voter enrollment, fundraising, activism, name recognition, legislative influence, or any other conceivable measure – has never come close to the strength of the existing major parties'. There is no evidence that the relatively weak position of the nonmajor parties is the result of any discrimination against them, nor that the CEP will further weaken their political strength. As a three-judge panel in this district has observed:

> [A]ny dominant position enjoyed by the Democratic and Republican Parties is not the result of improper support, or discrimination in their favor, by the State. Rather, the two Parties enjoy this position because, over a period of time, they have been successful in attracting the bulk of the electorate, so that they now have substantial followings. . . . "Success" in this endeavor, such as the major parties have achieved, . . . does not necessarily call for strict constitutional scrutiny by the judiciary so as to increase the political strength of those who have not actively attempted to advance their political views.

Nader v. Schaffer, 417 F. Supp. 837, 843 (D. Conn. 1976) (three-judge court) (upholding Connecticut's closed primary system against First Amendment and equal protection challenge by unaffiliated voters); *see also Timmons*, 520 U.S. at 362 (states have no duty to remedy the "[m]any features of our political system – *e.g.*, single-member districts, 'first past the post' elections, and the high costs of campaigning – [that] make it difficult for third parties to succeed in American politics").

Plaintiffs have adduced no facts to show that the operation of CEP will have any adverse effect on the political opportunities of nonmajor parties will be caused by operation of the CEP provisions, rather than by the different resources, capabilities and public appeal that undisputedly and demonstrably explain their relative standing prior to the enactment of the CEP. Thus, given the undisputed fact that the existing political landscape in Connecticut is dominated by the

existing major parties, Plaintiffs have failed to demonstrate that the CEP will reduce nonmajor parties' political opportunity or tilt the playing field further in favor of major parties. As discussed in detail below, Plaintiffs are simply unable to establish (1) that the CEP in any way impinges upon Plaintiffs' existing avenues for political expression or activity; (2) that the fact that other candidates may qualify for CEP funding burdens Plaintiffs' First Amendment rights; or (3) that CEP funding acts as a subsidy, rather than a substitute, for major party private fundraising.

1. The CEP Does Not Impinge Upon the Existing Political Opportunity of Non-Participating Minor Party and Petitioning Candidates

First, Plaintiffs cannot point to any evidence that the grant of full CEP funding to major-party candidates would in any way impinge upon nonmajor-party candidates' existing abilities to exercise their First Amendment rights. Every avenue by which non-participating candidates have attempted to achieve their political strength remains unchanged under the CEP.

The undisputed testimony shows that minor parties in Connecticut have simply been playing for different stakes than major parties. Whereas major parties in elections for state office have run campaigns to win, minor parties have often fielded candidates even where they have had no realistic hope of winning a particular election. Instead, minor parties have aimed for the more modest nonelectoral goals of increasing public awareness of their platforms, electing candidates to municipal rather than state level offices, and/or attracting public support for future party building. Even being outspent by the major parties by an average ratio of 238 to one in senate races and 20 to one in house races, *see* Foster Decl. ¶¶ 23-24, nonmajor-party candidates have had some success in achieving their non-electoral goals. Plaintiffs have made no showing, however, that the CEP will in any way reduce their ability to reach these goals.

As the Supreme Court observed in *Buckley*:

> Plainly, campaigns can be successfully carried out by means other than public financing; they have been up to this date, and this avenue is still open to all candidates. And, after all, the important achievements of minority political groups in furthering the development of American democracy were accomplished without the help of public funds. Thus, the limited participation or nonparticipation of nonmajor parties or candidates in public funding does not unconstitutionally disadvantage them.

Buckley, 424 U.S. at 101-102 (footnote omitted). As long as a minor party "remains free to endorse whom it likes, to ally itself with others, to nominate candidates for office, and to spread its message to all who will listen," electoral regulations that may have an adverse impact on the party are neither unreasonable nor discriminatory. *Timmons*, 520 U.S. at 361 (rejecting lower court's assumption that fusion balloting ban would hinder minor parties' First and Fourteenth Amendment rights as "a predictive judgment which is by no means self-evident"). The mere fact that a public funding system does not alter a preexisting imbalance in nonmajor parties' favor, *Buckley*, 424 U.S. at 97-98, does not mean that it "protect[s] existing political parties from competition" or that it results in "the virtual exclusion of other political aspirants from the political arena," as long as nonmajor-party candidates remain free to compete "for campaign workers, voter support, and other campaign resources." *Anderson*, 460 U.S. at 801-02. There is no evidence in the record that the CEP will burden any of those freedoms. Nor will the CEP interfere with the ways in which nonmajor parties currently exercise their First Amendment rights in Connecticut: qualifying for ballot access, raising private funds, seeking publicity, and otherwise disseminating their political message.

Moreover, although the non-electoral goals of nonmajor party candidates may be laudable, the State is not constitutionally required to expend the funds it has allocated to the CEP for the purpose of reducing corruption among elected officials in order to advance the particular non-electoral goals of the nonmajor parties and their candidates. *See Rosenstiel*, 101 F.3d at 1556 ("[I]n every race for elected office one candidate possesses certain advantages over his

opponent, regardless of whether the campaigns are publicly or privately funded, and . . . it is inconsistent with the purposes underlying a public campaign financing program to attempt to eliminate this discrepancy.") (citation omitted). As a three-judge panel, subsequently affirmed by the Supreme Court, has reasoned:

> As long as it has a legitimate public purpose a public campaign funding law should not be required to remedy pre-existing inequalities between candidates, any more than the "equal time" requirement of the 1934 Communications Act, should be altered to remedy disparities between parties or candidates using public media.

RNC, 487 F. Supp. at 287 (citations omitted) (rejecting equal protection challenge by nonincumbents to Presidential Election Campaign Fund Act, where "there is no indication that inequalities would be less under private financing"). Although it may be true that the existing major parties have been able to speak with louder voices in the political marketplace, this "strength" of the major parties has not been attributable to public funding, and the CEP is not constitutionally obligated to level the playing field.

2. That Fact That Other Candidates May Qualify for Benefits Does Not Burden the First Amendment Rights of Non-Participating Candidates.

Even assuming *arguendo* that the CEP enables major party candidates to qualify for substantially more public funds than they would privately raise – and the figures demonstrate that this is not the case, *see* Foster Decl. ¶¶ 22-24 – Plaintiffs could still not thereby establish a burden on non-participating candidates' political opportunity. Benefits conferred on candidates who opt into a public funding system are "a premium earned by meeting statutory eligibility requirements rather than a penalty imposed on those who either cannot or will not satisfy the requirements." *Vote Choice*, 4 F.3d at 37-39 (upholding Rhode Island public financing system against challenge that grant amounts were so high as to be unconstitutionally coercive). Under well-established First Amendment principles, political opportunity is not a zero-sum game, such

that subsidizing one candidate "effectively reduc[es] the relative freedom of speech of a non-subsidized candidate." *Greenberg v. Bolger*, 497 F. Supp. 756, 775 (E.D.N.Y. 1980) (citations omitted); *see also Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983) (rejecting equal protection challenge to federal law subsidizing lobbying by only one category of speakers); *Buckley*, 424 U.S. at 93, n.127 ("Legislation to enhance . . . First Amendment values is the rule, not the exception. Our statute books are replete with laws providing [categorical] financial assistance to the exercise of free speech"; campaign speech is not a "scarce communication resource[]"). Plaintiffs fail to show how the provision of public funding grants to major-party candidates would in any way impede nonparticipants' freedom to raise funds for political purposes or otherwise impinge upon their First Amendment freedoms. *See Buckley*, 424 U.S. at 99 (upholding funding system treating major and minor party candidates differently in part because non-participants remained free privately to raise as much as participants received, even though "admittedly [achieving] those limits may be a largely academic matter" to nonmajor-party candidates); *see also Timmons*, 520 U.S. at 361 (upholding election provision against First Amendment challenge when minor party "remains free to endorse whom it likes, to ally itself with others, to nominate candidates for office, and to spread its message to all who will listen"). That other candidates might qualify for public grants while Plaintiffs might not suggests no impingement on any constitutionally protected opportunity.

3. CEP Funding Functions as a Substitute for Private Fundraising, Not as a Subsidy for the Major Parties.

In any event, the CEP acts as a substitute for private funding rather than as a subsidy for the existing major parties. Plaintiffs simply are unable to establish that minor and petitioning party candidates will be materially more outspent under the CEP than they were under the previous regime of private campaign funding. *See RNC*, 487 F. Supp. at 287 (rejecting equal

protection challenge to Presidential Election Campaign Fund Act where "there is no indication that inequalities would be less under private financing"); *Daggett v. Comm'n on Governmental Ethics and Election Practices*, 205 F.3d 445, 467 (1st Cir. 2000) ("[a] law providing public funding for political campaigns is valid if it achieves 'a rough proportionality between the advantages available to complying candidates . . . and the restrictions that such candidates must accept to receive these advantages.'") (citation omitted).

The evidence shows that the CEP grants are do not materially exceed historical spending levels, in both competitive and non-competitive races.[13] Thus, it is simply not true that the amount of the CEP grants exceeds the amount of private fundraising that candidates have historically done in Connecticut. Moreover, as set forth in greater detail above, in previous races, minor and petitioning party candidates have consistently been outspent several hundredfold in statewide races, and by an average of 238 to one in Senate races and by 20 to one in House races. *See* Foster Decl. ¶¶ 22-24. The CEP does not materially change these ratios.

Plaintiffs argue that the expenditure limits on participating candidates are "meaningless" because of organization expenditures that may be made on behalf of participating candidates (Am. Compl. ¶ 28), but this argument is unavailing, because Plaintiffs have failed to establish how the possibility of such expenditures on behalf of participating candidates serves to reduce

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[13] In 2004, the average major-party senate candidate facing major-party opposition spent over $80,000, Foster Decl. ¶ 23, and the CEP grant amounts for such candidates is $85,000. Major-party senate candidates who were unopposed spent an average of nearly $58,000, *id.*, and the CEP grant amounts for such candidates are $25,000. Major-party senate candidates who faced only nonmajor-party opposition spent an average of almost $40,000, *id.*, and the CEP grant amounts for candidates facing only nonmajor-party opponents whose expenditures are less than the qualifying contributions thresholds are $51,000. In the most highly contested senate races, average expenditures were in excess of $200,000. Garfield Decl. II Ex. 20, at 2.

In 2004, the average major-party state representative candidate facing major-party opposition spent nearly $20,000, Foster Decl. ¶ 24, and the CEP grant amounts for such candidates is $25,000. Major-party state representative candidates who were unopposed spent an average of $14,500, *id.*, and the CEP grant amounts for such candidates are $7500. Major-party state representative candidates who faced only nonmajor-party opposition spent an average of almost $17,500, *id.*, and the CEP grant amounts for candidates facing only nonmajor-party opponents whose expenditures are less than the qualifying contributions thresholds are $15,000. In the most highly contested state representative races, average expenditures were in excess of $58,000. Garfield Decl. II Ex. 20, at 2.

the opportunity of any nonmajor-party nonparticipant. First, such organization expenditures will remain freely available to nonmajor-party non-participants after implementation of the CEP, just as they were before. Any greater ability that major-party candidates have had in attracting organization expenditures does not result from the CEP, and the CEP is not constitutionally obligated to remedy it.

> Indeed, regardless of whether a campaign is publicly or privately funded, it is inevitable that some candidates will have advantages over others. To require that public funding equalize these differences would distort its purpose, which is to facilitate political communication by providing an alternative to private funding with its burdens and unhealthy influences.

RNC, 487 F. Supp. at 287. That Plaintiffs currently lack the political strength to make use of these potential sources of support does not mean that they can constitutionally require these sources to be taken away from viable candidates.

Second, it is simply inaccurate to equate organizational expenditures with direct contributions to a candidate's campaign. An organizational expenditure is one which is not under the control of the candidate's campaign. Moreover, as set forth in Section A of the Statement of Facts, *supra*, the CEP has already been amended to limit substantially the organizational expenditures that can be made on behalf of participating candidates, and to impose strict disclosure requirements on organizational expenditures.

Nor does the CEP's provision of possible matching grants erode the meaningfulness of the program's spending limits. First, as with organizational expenditures, these trigger funds should not be viewed an action by the participating candidate to "circumvent" the CEP's spending limits, since the triggering of these funds is outside of the candidate's control – only the acts of others *in opposition to* the candidate can trigger these grants. *See* Conn. Gen. Stat. §§ 9-713-9-714, 9-601(18)-(19). Moreover, plaintiffs can assert no harm from the operation of the trigger provisions because, it is not the trigger funds per se that make a particular election a

high stakes race, but instead the unilateral spending decisions of a *nonparticipating* candidate. Once a non-participating candidate independently chooses to spend campaign funds well in excess CEP spending limits (as Gov. Rowland did, spending over 6 million in his 2002 gubernatorial campaign), the election is already a high-dollar race, and any resulting injury to nonparticipating candidates – and we submit there is none – is not due to either the participating candidate or the operation of the CEP. Plaintiffs' submissions are devoid of any reasoning or evidence that would explain how providing participating candidates with sufficient funds to defend themselves against the expenditures could result in *more* of whatever unspecified harm Plaintiffs claim they will incur in high-dollar races. Moreover, the availability of trigger funds is capped at certain absolute limits, no matter how high the non-participant's or independent entity's expenditures, and the spending limits – even including maximum triggered grants – are in line with actual spending levels in the most contested races. *See* Garfield Decl. II Ex. 20, at 2. ("High" expenditure range for senate elections is over $200,000, while "High" expenditure range for house races is over $58,000).

4. The CEP Will Provide Substantial Political Benefits for Nonmajor-Party Candidates

As set forth in Section D of the Statement of Facts, *supra*, the CEP represents a revolution for nonmajor-party candidates who will, for the first time, have access to funds sufficient to allow them to run viable, competitive campaigns. *See* Youn Decl. Ex. 7 (Krayeske Dep. Ex. 5) (opining that CEP funds have transformative potential for Green Party candidates); *see also Rosenstiel*, 101 F.3d at 1557 ("Appellants fail to acknowledge the ways that the State's program actually operates to the benefit of [qualified] challengers, rather than to their detriment," by providing "a public subsidy" greater than the funds a relatively unknown candidate would be able to raise).

The grant of CEP funds has the potential to dramatically transform the prospects of nonmajor-party candidates. As Professor Green explains, the dismal electoral prospects for nonmajor-party candidates have led to an "inevitable downward spiral" in terms of public support – voters do not want to waste their money or votes on candidates with no chance of winning. D. Green. Decl. ¶ 5. However, the CEP has the potential to break that spiral by allowing candidates who demonstrate even low levels of public support – 10%, 15%, or 20% – sufficient funding to make them competitive, and therefore more attractive to voters. *Id.* ¶ 9. Moreover, for nonmajor parties, even small increases in funding can lead to significant benefits in their infrastructure and public visibility. *Id.* ¶ 11. Even at partial funding levels, then, grants of CEP funds may well transform nonmajor-party candidates in Connecticut from perpetual losers into viable competitors. For example, the Working Families Party has embraced the CEP as an integral part of its party-building strategy.

The availability of public funding to major-party candidates may also have unforeseen benefits for nonparticipating nonmajor-party candidates by freeing up sources of private funding. Once participating major party candidates are barred from accepting private contributions other than low-dollar qualifying contributions, non-participating candidates may benefit from the resulting fundraising vacuum. As the *Buckley* Court noted, "the elimination of private contributions to major-party Presidential candidates might make more private money available to minority candidates." *Buckley*, 424 U.S. at 96 n.128.

Thus, not only have Plaintiffs failed to establish how the CEP reduces the political opportunity of nonmajor-party candidates, but the evidence shows that there is a real possibility that nonmajor-party candidates' current eligibility for CEP funding shows that nonmajor-party candidates could well be better off as a result of the CEP's enactment.

5. Plaintiffs' Speculative Allegations of Harm Are Unavailing When Considered Against the Totality of Connecticut's Liberal Election Laws.

Plaintiffs' unsupported assertions of harm are particularly unavailing when considered against the totality of Connecticut's electoral system, which is unusually favorable to nonmajor parties and candidates. Plaintiffs' assertion that the CEP burdens their political opportunity should be evaluated – and rejected – in the context of the totality of Connecticut's electoral scheme. *See, e.g.*, *Schulz*, 44 F.3d at 56 (applying *Burdick*'s "totality approach" to uphold differential petitioning requirement); *Green Party of N.Y.*, 389 F.3d at 419 ("Courts are required to consider [challenged electoral] restrictions within the totality of the state's overall plan of regulation."); *Lerman*, 232 F.3d at 145 ("[t]he burden imposed by the challenged regulation is not evaluated in isolation, but within the context of the state's overall scheme of election regulations"); *Prestia*, 178 F.3d at 88 (same). To the extent that the CEP burdens plaintiffs' "political opportunity" at all, any such burdens are more than offset by other provisions of Connecticut election law that are conducive to broad political participation by minor party and petitioning candidates.

For instance, the ability of nonmajor-party candidates to access the ballot in the first place is relevant to considering whether a public-funding restriction somehow burdens their exercise of political opportunity. Connecticut's ballot restrictions – petition signatures from registered voters equal to one percent of prior votes cast for a given office, *see* Conn. Gen. Stat. § 9-453d (2008) – are far less onerous than requirements that have been approved by the Supreme Court. *See Storer*, 415 U.S. at 724 (five percent of total votes in prior election); *Jenness*, 403 U.S. 431 (five percent of eligible voters as of last election). Indeed, many other states impose much higher requirements. *See, e.g.*, Ga. Code Ann. § 21-2-170(b) (2007) (requiring five percent of eligible voters as of last election for given office); 10 Ill. Comp. Stat.

5/10-3 (2008) (requiring five percent of the number of votes cast in the last election for officers of the same district); N.C. Gen. Stat. § 163-122(a)(2) (2008) (requiring four percent of total number of registered voters in district). In Connecticut, a candidate for State Representative could petition onto the ballot this year with as few as 13 signatures, and a State Senate candidate with as few as 101. *See* Foster Decl. ¶ 18. The ease of meeting these requirements is enhanced by the very generous time frame of some seven months that Connecticut permits for signature-gathering. *See* Conn. Gen. Stat. §§ 9-453b, 9-453i; Garfield Decl. II Exh. 22; *cf. Storer*, 415 U.S. at 739 (requiring some 325,000 signatures in 24 days).

Further, Connecticut has very generous laws that guarantee a minor party a place on the ballot with the most minimal of electoral showings. A party attains official "minor party" status for a given office – and thereby becomes eligible to nominate a candidate for automatic placement on the ballot under its party name in the next election, rather than the candidate being required to gather petition signatures – if its candidate obtains just one percent of the vote for that office. *See* Conn. Gen. Stat. §§ 9-372(6), 9-379. Moreover, only major parties are required to hold primary elections, subject to certain exceptions, to allow voters to resolve competitions for their general-election nominations; nonmajor parties may select their nominees by their own, internal procedures, as long as those procedures have been filed with the state. *See id.* §§ 9-415, 9-451.

Connecticut is also one of very few states that permit the practice of cross-endorsement, also known as fusion balloting, under which a candidate may appear on the ballot as the nominee of multiple parties. *See* Conn. Gen. Stat. § 9-453t; *see also* Garfield Decl. II Ex. 21, at 1-2 (noting that at least 40 states ban fusion balloting). It has no constitutional obligation to do so. *See Timmons*, 520 U.S. at 369-70 (upholding Minnesota's fusion voting ban because it does not

"unconstitutionally burden [a minor party]'s First and Fourteenth Amendment rights"). The ability to cross-endorse or obtain cross-endorsement permits a minor party to draw on supporters of other parties to promote its issue positions or its candidates in an election. *See* D. Green Decl. ¶ 12. Through cross-endorsing major-party candidates in the 2006 election, the Working Families Party has attained eligibility for partial CEP funding for its own candidates in two districts in addition to the seven districts in which its own candidate achieved eligibility. *See* Foster Decl. ¶ 6.

6. The CEP Compares Favorably to Other Public Finance Systems When Viewed in Context

Although the constitutionality of Connecticut's electoral scheme, including the CEP, should stand or fall on its own merits, *see Rogers*, 468 F.3d at 197 (holding that different choice by other states is no basis for rejecting Pennsylvania's legitimate interests in different ballot-access requirement for minor-party candidates), to the extent that the experience of other public funding systems is instructive, the Court should take into account the totality of the election laws in other states. In the Court's opinion on the motion to dismiss, the Court noted that a number of other jurisdictions offer public financing programs for certain elections, and stated that aspects of the Connecticut system compared unfavorably to the other state systems. See *Green Party of Conn.*, 537 F. Supp. 2d at 381-90. However, whether each of these programs "is . . . [substantially] party-neutral; . . . has no prior success formula, and imposes no other qualifying criteria only on minor party candidates," *Green Party of Conn.*, 537 F. Supp. 2d at 389 – and is therefore materially more favorable to nonmajor-party candidates than the CEP – is not at all clear without examining the *entirety* of these states' election-law schemes.

For example, an examination of the totality of the presidential election public funding system, *see* Subtitle H, 26 U.S.C. §§ 9001 *et seq.* (2006) ("Subtitle H"), suggests that public

funding is more far more attainable by nonmajor-party candidates, at more generous levels, under the CEP than under Subtitle H.[14] First, Subtitle H makes candidates of parties failing to win at least five percent of the vote in the prior presidential election completely ineligible for funding in advance of an election, and provides no alternative route to pre-election funding. *See* 26 U.S.C. § 9004. By contrast, the CEP system provides alternative routes to eligibility via petition signature-gathering, so that any candidate, regardless of past performance, may potentially qualify for full public funding in a given election year. Moreover, the CEP allows minor parties to attain eligibility through cross-endorsement.

Further, Subtitle H's ballot-qualification prerequisite is steep. To be eligible for any funding under Subtitle H, including post-election funding, a candidate must appear on the ballot in at least ten states, *see Buckley*, 424 U.S. at 89 (citing 26 U.S.C. §§ 9002(2)(B) & 9004(a)(3)), a requirement that incorporates the considerable hurdle of achieving ballot qualification under the different laws of numerous states.

In addition, Subtitle H sets a higher threshold than the CEP for a candidate to receive full funding. Under Subtitle H, a candidate whose party received at least 25% of the popular vote for president, nationwide, in the previous election – an extraordinarily daunting task -- receives full funding; under the CEP, the prior-votes threshold for full funding is only 20%, and can be satisfied on a district-by-district basis.

Moreover the formula for partial funding is more generous under the CEP than under Subtitle H. For instance, partial general-election funding is available to eligible minor-party candidates under Subtitle H by a proportional formula which ties the percentage of funding to the percentage of the major-party vote that the minor-party received. *See* 26 U.S.C. § 9004(a)(2)(A).

[14] Specific descriptions of aspects of the CEP mentioned in this section may be found at pp. 6-10, *supra*.

In contrast, the CEP's partial grants are a more generous. For example, under Subtitle H, an eligible nonmajor-party candidate receiving 15% of the vote would receive only about 35% of the major-party grant, as opposed to 66% of the major-party grant under the CEP. Also, the CEP, unlike Subtitle H, provides participating candidates with limited matching funds, triggered by the spending of nonparticipating opponents or independent entities.

As another example, Arizona, which offers voluntary public funding, *see Green Party of Conn.*, 537 F. Supp. 2d at 383-85, imposes ballot restrictions for nonmajor-party candidacies that are much more stringent than Connecticut's relatively liberal standards. Arizona's electoral scheme requires a nonmajor-party candidate who wishes to participate in the public funding program to jump a series of interlinked hurdles, involving strict restrictions for qualified petition signatories, primary participation, ballot access, and party affiliation on the ballot.[15] In this light, access to the general election ballot for nonmajor-party candidates in Arizona is very difficult and complex, and few minor party candidates will be able to qualify, making the arguably more beneficial aspects of its public financing scheme irrelevant to most minor party candidates.

Moreover, as noted above, Connecticut is one of the few states that permit fusion voting, which provides greatly expanded opportunities for a minor party to achieve CEP qualification by cross-endorsing a candidate of one of the major parties, as the Working Families Party has

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[15] Arizona permits only candidates nominated via a party primary to appear on the general-election ballot with a party affiliation; any other candidates in the general election are unaffiliated independents. For a party to be eligible to hold a primary election, it must win at least five percent of the prior gubernatorial vote, have a certain number of registered voters, or collect a certain number of petition signatures. *See* Ariz. Rev. Stat. Ann. §§ 16-801, -804 (2008). For any candidate to participate in a primary election, she must obtain petition signatures from a certain number of registered voters who are not registered in another party and who have not already signed as many petitions as there are open seats for the given office, *see id.* §§ 16-321, -322, -314, or at least 40 days before the primary file her decision to run as a write-in candidate, *see id.* § 16-312. Besides by winning a party primary, a candidate may participate in a general election only by collecting a number of petition signatures equal to three percent of voters from the relevant jurisdiction who are not affiliated with a primary-eligible political party and who did not sign a primary nominating petition for the given office. *See id.* § 16-341(C)-(F). Candidates who are registered members of primary-eligible parties or who have filed failing nominating petitions for a primary election for the given office may not petition onto the general election ballot. *See id.* § 16-341(A)-(B).

regularly done. In contrast, Arizona does not permit fusion balloting. *See* Ariz. Rev. Stat. Ann. §§ 16-467(C), 16-311(A).

B. The Legislature's Determination Not to Provide Public Funds to Hopeless Candidacies Does Not Burden the Political Opportunity of Nonmajor-party Candidates.

1. The CEP System Requires All Candidates To Demonstrate a Significant Modicum of Public Support Before Receiving Public Funds.

Plaintiffs have argued that the CEP's provisions discriminate against nonmajor-party candidates by imposing an "additional threshold," requiring nonmajor-party candidates seeking public funding to satisfy either the district level prior vote total or the signature requirements of the statute. (Am. Compl. ¶ 23). However, as set forth above, considering the "totality" of the provisions of the CEP, as required under *Burdick*, the CEP requires *all* candidates to demonstrate a threshold level of popular support, and allows that demonstration to be made in several different ways. If the candidates' party does not satisfy the criteria of having achieved the necessary showing of statewide support, the CEP allows the candidate to qualify for CEP funding in two other ways: either by virtue of the parties' vote percentage for the office at issue in the last election, or by gathering signatures. It is simply wrong to view either of these requirements as imposing an "additional threshold," for nonmajor parties; on the contrary, these provisions provide two *additional means* for nonmajor parties to demonstrate sufficient popular support to qualify for CEP funding:

For parties and candidates unable to demonstrate broad statewide public support, the provision of additional avenues to make such a showing confers a benefit on the nonmajor parties, not a constitutional burden. *See Larouche v. Kezer*, 990 F.2d 36, 38-39 (2d Cir. 1993) (criticizing district court for treating each method of ballot qualification separately, and failing to

recognize that the alternative routes provided by Connecticut law were valid, *a fortiori*, because they provided "an additional means of ballot access").

As a matter of settled law, Connecticut "may legitimately require 'some preliminary showing of a significant modicum of support,' as an eligibility requirement for public funds." *Buckley*, 424 U.S. at 96 (quoting *Jenness v. Fortson,* 403 U.S. 431, 4442 (1971) (citation omitted)). It is equally settled that the state can create different routs for major and nonmajor parties to demonstrate this quantum of public support. As the Supreme Court held in *American Party of Texas*:

> So long as the larger parties must demonstrate major support among the electorate at the last election, whereas the smaller parties need not, the latter, without being invidiously treated, may be required to establish their position in some other manner.

415 U.S. at 782-83; *see Libertarian Party of Wash.*, 31 F.3d at 766 (rational for state to presume substantial support for major-party candidate based on party's past performance while requiring individualized signatures-based showing of support of nonmajor-party candidates). The Supreme Court in *American Party of Texas* made clear that states may allow major parties to make such a showing of support based on prior vote totals, even when statewide prior vote totals are used as a proxy for a legislative candidate's support in a particular district. [16] There, the Court upheld a state election scheme under which state legislative candidates of parties whose gubernatorial candidate polled more than 200,000 votes in the last general election automatically qualified for the ballot and could be nominated by primary election only, whereas candidates whose parties fell short of that threshold were required to meet additional ballot qualifications

[16] All 50 states use statewide measures to define party status. Indeed, only two states allow political parties to define themselves as political parties within a state subdivision by relying on measures limited to that subdivision. 10 Ill. Comp. Stat. 5/7-2 (allowing political parties to become political parties on the level of the state, congressional district, county, or municipality); Ind. Code §3-5-2-30 (defining major parties, with respect to any political subdivision, as one of the two parties whose nominees received the highest or next highest number of votes in that political subdivision).

and could not be nominated by primary. Thus, under *American Party of Texas*, there is no invidious discrimination in exempting major-party *legislative* candidates from a requirement imposed upon minority parties and candidates because the major parties had previously demonstrated support on a statewide basis. *See Am. Party of Tex.*, 415 U.S. at 782-83; *see also Buckley*, 424 U.S. at 99-100. ("popular vote totals in the last election are a proper measure of public support" for the purposes of determining eligibility for public campaign funds).

The Supreme Court and other courts have consistently upheld differential treatment of candidates for both legislative and statewide office based on prior statewide vote totals, especially where, as here, alternative avenues for demonstrating public support are made available to nonmajor-party candidates. *See Am. Party of Tex.*, 415 U.S. at 782-83; *Jenness*, 403 U.S. at 439-41; *see also Swanson v. Worley*, 490 F.3d 894 (11th Cir. 2007) (upholding constitutionality of Alabama's ballot access law, which required parties receiving less than 20% of prior vote to petition for placement on ballot). Indeed, the availability of district-based eligibility criteria for nonmajor-party candidates permits candidates whose party did not meet the statewide thresholds provides a means for nonmajor parties to capitalize on any unusually great popular support at the local level. *Cf. Bang v. Chase*, 442 F. Supp. 758, 768 (D. Minn. 1977) (invalidating public funding distribution formula for legislative offices premised solely on parties' respective showings of statewide support, because formula failed to account for variations in local support).

The Supreme Court and lower courts have also upheld election regulations basing differential electoral treatment on a 20% threshold showing of popular support.[17] *See, e.g.*,

[17] Six states (including Connecticut) use a 20% threshold to define a political party or to qualify a designated political party for differential electoral treatment. *See* Ala. Code § 17-13-40 (defining political party as organization for which more than 20% of vote is cast at county at state levels), Connecticut (Conn. Gen. Stat. §9-372), Georgia (Ga. Code. Ann. §21-2-2(25)) (defining political party as any political organization whose candidate for governor or

Jenness, 403 U.S. at 439-40; *Swanson*, 490 F.3d at 902-05; *Gelman v. FEC*, 631 F.2d 939, 943 n.13 (D.C. Cir. 1980) (dismissing constitutional challenge to provision of Presidential Primary Matching Payment Account Act, requiring candidate to reestablish eligibility to receive primary matching funds by demonstrating that he received 20% of votes in post-termination primary election). In *Jenness*, the challenged ballot access regulation had set up a two-tiered system of nominating petition requirements that exempted both statewide and legislative candidates belonging to a "political party," defined as an organization whose candidates had received 20% or more of the vote at the most recent gubernatorial or presidential election. In upholding the regulation, the Court noted that the 20% definition for political party:

> in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life. Thus, any political body that wins as much as 20% support at an election becomes a "political party" with its attendant ballot position rights and primary election obligations, and any "political party" whose support at the polls falls below that figure reverts to the status of a "political body" with its attendant nominating petition responsibilities and freedom from primary election duties. We can find in this system nothing that abridges the rights of free speech and association secured by the First and Fourteenth Amendments.

Jenness, 403 U.S. at 439-40.

Like the statutory definitions considered in *Jenness* and *American Party of Texas*, Connecticut's statewide definition of major parties, rather than enshrining existing major party status, is predicated on the inherently fluid measure of public support, not on some fixed and invariable status. Current minor parties remain as free to become major parties under the CEP as they were before, and the existing major parties are just as likely to dwindle – Plaintiffs fail to

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president polled at least 20% of vote in preceding election), Kentucky (Ky. Rev. Stat. Ann. § 118.015(1)) (defining political party as an organization whose candidate received at least 20% of vote at last election in which presidential electors were selected), Mississippi (Miss. Code. Ann. § 23-15-301) (limiting funding of party primaries to parties who garnered 20% of the vote for governor or president in each of two previous elections for that office), and Ohio (Ohio Rev. Code Ann. § 3501.01(F)(1)) (defining major political party as a party whose candidate for governor or president received no less than 20% of vote cast); *see also Jenness*, 403 U.S. 431 (upholding Georgia's nominating petition requirement, holding that it did not violate Equal Protection clause to exempt parties who received 20% of prior vote from this requirement).

establish any facts suggesting otherwise. In fact, A Connecticut Party briefly enjoyed major-party status as a result of its gubernatorial success in 1990, only to revert to nonmajor-party status after the 1994 election. Thus, the fact that the CEP allows major party candidates to demonstrate popular support on a statewide basis cannot be the basis for Plaintiffs' claim of invidious discrimination.

When assessing the constitutionality of the CEP system, it is also important to bear in mind that, in addition to the showing of statewide public support required for major party status, candidates seeking a major-party nomination face both *de jure* and *de facto* hurdles that their nonmajor party counterparts need not surmount. Becoming a major party nominee is by no means a cakewalk, and Plaintiffs cannot establish that it is more difficult to fulfill CEP eligibility requirements than to attain a major party nomination for state elected office. *See Jenness*, 403 U.S. at 440 (rejecting as "a premise that cannot be uncritically accepted" that "it is inherently more burdensome" to collect petition signatures than to win a major party's nomination). First, unlike nonmajor-party candidates, major-party candidates are required to be nominated by primary unless no other candidate receives 15% of the votes of party delegates voting in this endorsement and no other candidate collects sufficient petition signatures for a primary. *See* Conn. Gen. Stat. §§ 9-415, 9-416. Accordingly, in order to gain the nomination, major-party candidates must have demonstrated substantial support from their existing party. Moreover, as the testimony of George Jepsen and George Krivda establishes, both existing major parties have informal vetting processes designed to weed out mediocre or non-serious candidates. *See* Jepsen Decl. ¶ 23; Krivda Aff. ¶¶ 7, 14. Plaintiffs' own testimony highlights the vast difference between major-party and nonmajor-party nominees – it is impossible to imagine a major party in Connecticut nominating and endorsing candidates for statewide office who were legally

ineligible to hold the office sought, as Plaintiffs have done. Sevigny Aff. ¶ 35; Youn Decl. Ex. 18 (Thornton Dep.) at 104:8-19; Youn Decl. Ex. 1 (DeRosa Dep.) at 44:10- 45:4.

Finally, there is strong factual support for the Connecticut legislature' decision to use statewide measures of popular support for the party as a proxy for a candidate's support on a district level, and not to require major party candidates to satisfy the district vote or petition signature requirements. The facts show that statewide popular support for major parties has consistently translated into high showings on a district-by-district level for major party candidates. *See Libertarian Party of Wash.*, 31 F.3d at 766 (deeming it rational for state to presume substantial support for a major-party candidate based on her party's past statewide performance). Major party candidates have almost always passed the prior-vote total thresholds required for CEP funding: In 2004, no major-party senate candidate received less than 20% of the vote; all but eight of the 180 major-party state representative candidates (or 95.6%) facing major-party opposition achieved more than 20% of the vote, and all but one (or 99.4%) received more than 10% of the vote. Foster Decl. ¶ 10. Conversely, the failure to attain these statewide measures of popular support has proven to be an equally robust predictor of district-level failure in legislative races: In that same year only one out of 24 nonmajor-party senate candidates received more than 10% of the vote, and none received more than 20%; only one of the 67 nonmajor-party state representative candidates received more than 20% of the vote, and only seven received more than 10%. *Id.* ¶ 11. Accordingly, there was good reason for the state not to require a further district-level showing of public support for major party candidates in awarding CEP funds – such a requirement would be in the overwhelming majority of cases gratuitous and would needlessly burden taxpayers and the state with additional administrative costs.

2. There is No Basis For Plaintiffs' Claims that the CEP Eligibility and Qualification Requirements Are Impossible or Overly Difficult to Meet.

Plaintiffs allege, in essence, that the Connecticut legislature intentionally set the bar too high, by setting the CEP eligibility thresholds at allegedly "unattainable" 10%, 15%, and 20% levels, in order to "ensure that such candidates will not be able to participate in the public financing system" (Am. Compl. ¶ 27). In denying the motion to dismiss, the Court necessarily accepted these allegations as true, *Green Party of Conn.*, 537 F. Supp. at 377, but the record now establishes that there is no evidence to support Plaintiffs' claims. On the contrary, analysis of the legislative history and the undisputed historical facts demonstrates that precisely the opposite is the case – nonmajor-party candidates have historically surpassed these thresholds and continue to do so under the CEP system. Rather than categorically exclude minor parties from qualification under the CEP, the Connecticut legislature provided two realistically achievable ways for nonmajor-party candidates to become eligible for public funding.

As set forth in Section A of the Statement of Facts, *supra*, when assessing the attainability of the CEP eligibility threshold in 2006, the Legislature specifically considered data showing that 22 out of 168 minor party and petitioning legislative candidates in the previous three election cycles had received more than 10% of the vote and would have been automatically eligible for full or partial CEP funding, had the CEP been in place at the time. *See* Garfield Decl. II Ex. 18. Indeed, four of these 22 candidates had received over 20% of the vote and would have been eligible for a full CEP grant; six others received over 15% of the vote, and would have been eligible for a two-thirds grant. *Id.* With respect to the gubernatorial thresholds, if the CEP had been in force at the time, Lowell Weicker – the only successful third-party gubernatorial candidate in Connecticut's history – would automatically have made A Connecticut Party candidates eligible for full CEP funding in all statewide and legislative races

in the next election. *See* D. Green Decl. ¶ 14. Accordingly, the Legislature was fully aware that minor and petitioning candidates could and would be eligible for CEP funds.

With respect to the prior district-level vote totals, more nonmajor-party candidates passed the 10% threshold in 2006 than had done so previously. As a result, based on 2006 election results, nonmajor-party candidates are already eligible for full or partial CEP funding in 14 legislative district races in Connecticut (subject to the requirement for collecting qualifying contributions which both major- and minor-party candidates must satisfy). Foster Decl. ¶ 19. Even partial CEP funding opens up transformative political possibilities for nonmajor-party candidates by allowing them to access unprecedented levels of funding.

With respect to the petitioning thresholds, the evidence demonstrates that these requirements are readily achievable by viable minor-party and petitioning candidates who have any realistic shot at winning an election. On the legislative level, CEP funding can be achieved, on average, by gathering only a few hundred signatures per house district (to qualify for up to $25,000), or a few thousand signatures per senate district (to qualify for up to $85,000). As the testimony of Defendants' petitioning expert Harold Hubschman establishes, this level of signatures can be easily accomplished by any serious candidate, by her own effort, through use of volunteers, or by using paid solicitors. Indeed, given Connecticut's seven-month petitioning period, a viable and committed candidate should be able to achieve these thresholds on her own simply by petitioning on weekends. Hubschman Decl. ¶¶ 8-9. Moreover, with the availability of substantial public funds as a reward, the use of paid solicitors is economically profitable. With this effort-to-reward ratio, it is no wonder that Green Party petitioning coordinator Krayeske privately opined that the CEP is "too good a prize to pass up." Youn Decl. Ex. 10 (Krayeske Dep. Ex. 8.)

At least one Working Families Party house candidate has gathered sufficient signatures to make her eligible for partial CEP funding and expects to qualify for full CEP funding. J. Green Aff. ¶¶ 22-23. Given that the Working Families Party has developed a petitioning strategy for additional candidates, we can expect more such success stories prior to the qualification deadline of October 10.

In this light, the fact that Plaintiffs profess themselves absolutely unable to meet these thresholds is irrelevant to any constitutional claim. There is no question that the signature thresholds are easily achievable by any serious candidate with minimal commitment and organizing ability, and Plaintiffs inability to reach these thresholds, even if true, proves only the hopelessness of their candidacies rather than the unattainable levels of their thresholds.

Moreover, the process of gathering signatures is not merely a wasted effort necessary to overcome a bureaucratic hurdle. On the contrary, the canvassing and voter contact involved in a petitioning drive are integral to any successful minor party campaign and necessary to establish public support, especially for a candidate whose party and qualifications are relatively unknown. Youn Decl. Ex. 22 (Weicker Dep.) at 16:23-17:2; J. Green Aff. ¶ 21; Hubschman Decl. ¶ 15. Moreover, the CEP incentivizes the petitioning effort by providing levels of funding that – even at partial grant levels – dwarf previous levels of minor and petitioning party fundraising. J. Green. Aff. ¶ 16; *see* Foster Decl. ¶¶ 22-24.

On the gubernatorial and statewide level, the petitioning totals are proportionately higher, as one would expect. These thresholds are nevertheless reasonable and attainable for anyone who purports to be a serious candidate for statewide office, especially, considering the millions of dollars in public funding at stake and the popular support and organization needed to mount a viable bid to govern a state of more than 2,044,511 registered voters. Connecticut Secretary of

the State, "2007 Registration and Enrollment Statistics," *available at* http://www.ct.gov/sots/lib/sots/2007_Registration_and_Enrollment_Statistics.pdf. In 2008, a gubernatorial candidate would have to gather approximately 110,000 signatures statewide to qualify for a partial grant of $1 million, and 224,693 signatures to qualify the full CEP grant of $3 million. *See* Foster Decl. ¶ 18. As Hubschman's testimony establishes, these petitioning thresholds are achievable by a candidate with sufficient public support and organizational capability to have a realistic shot at statewide office. Even Plaintiffs' witnesses have freely admitted that – to have a realistic chance at winning – a statewide campaign needs a large base of committed activists. Governor Weicker's campaign had close to 1,000 activists, and the Democratic and Republican Parties both can field thousands of volunteers. Youn Decl. Ex. 22 (Weicker Dep.) at 93:1-11; Jepsen Decl. ¶ 13; Krivda Aff. ¶ 21. As Hubschman explains, given a team of 300 activists, a statewide campaign in 12 days could collect sufficient signatures to be eligible for the full CEP gubernatorial grant. Hubschman Decl. ¶ 12. Moreover, since petitions can be combined for a slate of candidates, those same signatures could make the entire statewide slate eligible for CEP funding. Accordingly, the suggestion that any candidate with sufficient public support and organization to mount a viable bid for statewide office would be unable to achieve these petitioning thresholds has no basis in fact.

The fact that the Green Party – whose gubernatorial candidate received less than one percent of the vote in 2006 – claims that the gubernatorial petitioning thresholds are "virtually impossible" to achieve is simply not material. The facts demonstrate that to the extent that a viable, competitive nonmajor-party candidate had not previously demonstrated popular support in past elections, he or she would face no undue difficulty in meeting these thresholds. Although Plaintiffs are entitled to continue to run such hopeless campaigns – and nothing in the

CEP or Connecticut's liberal election laws burdens their freedom to do so – they have no constitutional entitlement to require the State of Connecticut to fund their long-shot candidacies with millions of dollars in state funds that had been allocated to combat corruption among elected officials.

C. Plaintiffs Speculative Assertions of Lower Election Returns in One-Party Dominant "Safe" Districts Do Not Establish A Burden on Their Political Opportunity.

Plaintiffs have alleged that the CEP will cause them particular harm in so-called one-party dominant districts, and in its decision on Defendants' Motion to Dismiss, this Court expressed particular concern that in such districts, the CEP "changes the dynamic of many state legislative races in a way that further marginalizes minor parties," and thereby threatens to "snuff out the gains that minor parties have made." *Green Party of Conn.* 537 F. Supp. 2d at 377. However, Plaintiffs' speculative assertions of harm in these districts were premised on certain factual assumptions that they are unable to support, even after extensive discovery: (1) that the CEP system will "virtually compel" new major-party competition, (2) that new major-party challengers and non-major-party candidates are similarly situated in such districts, and (3) that non-major parties have made particular gains in such districts, such that an erosion of such gains will unconstitutionally burden their political opportunity. *Id.*; *see also* Pls'. Resp. in Opp'n to Defs. And Int.-Defs'. Joint Mot. To Dismiss and for J. on the Pleadings, at 27. Not only are there no facts to support these assertions with any admissible facts, the evidence overwhelmingly demonstrates that they are not true. Moreover, Plaintiffs again fail to demonstrate how their assertions about the impact of the CEP in party-dominant districts, even assuming *arguendo* they were true, would demonstrate any reduction in their ability to engage in First Amendment-protected political activity. Thus, even in these one-party dominant districts, Plaintiffs cannot raise a genuine issue of material fact that would allow their claims to survive summary judgment.

1. Plaintiffs' Assumption that the CEP System Will "Virtually Compel" Major Party Competition in One-Party Dominant Districts Is Factually Unsupported and Contradicted by Undisputed Record Evidence.

In their previous filings, Plaintiffs asked the Court to assume that the prospect of CEP funding will cause major parties to field candidates in one-party dominant districts when they otherwise would not, and the Court necessarily accepted this allegation for the purposes of its ruling on the motion to dismiss. *Green Party of Conn.*, 537 F.Supp. at 377. However, this assumption can no longer stand, since the electoral facts and undisputed testimony have demonstrated that it is not true. The available electoral data shows that, in this first general election following implementation of the CEP, the number of one-party dominant districts has remained roughly the same; although non-dominant major parties will compete in some former one-party dominant districts, they are offset by a number of other districts where the major parties have chosen not to contest previously contested districts. *See* Foster Decl. ¶ 14-15. Thus, the record shows no indication that there is any causal connection between the CEP and increased major-party competition in one-party dominant districts, and no indication that the CEP has incentivized major party challengers, to any significant extent, in such one-party dominant districts.

This is not at all a surprising result. Plaintiffs' assumption that the CEP system will incentivize major-party challengers in districts the non-dominant party had previously chosen not to contest evinces a profound misunderstanding of major-party motivations and strategies. The major parties' decision not to field challengers in one-party dominant districts is not motivated by any lack of available funds. Instead, as the undisputed testimony of major-party witnesses establishes, in selecting districts in which to field candidates, major parties respond to strategic incentives, which the CEP leaves unchanged, rather than monetary incentives. *See* Jepsen Decl.

¶ 23; DeFronzo Aff. ¶¶ 7-8. The major parties have no incentive to waste party resources in time, energy and personnel in a hopeless candidacy. Jepsen Decl. ¶ 23; Krivda Aff. ¶¶ 7, 14. Accordingly, far from "virtually compel[ling]" their participation, the CEP offers no substantial fresh incentive to major party candidates, who have always had access to equivalent levels of funds through private fundraising. As Professor Green has explained, major parties simply respond to different incentives than minor parties: major parties run candidates to win elections, not to make a statement through a hopeless candidacy. While minor parties have fielded hopeless candidates in order to gain publicity for their parties and their platforms, major parties have no similar incentives to expend party resources fielding losing candidates. *See* D. Green Decl. ¶ 36.

2. New Major-Party Challengers and Non-major-Party Candidates Are Not Similarly Situated, Even in One-Party Dominant Districts.

Plaintiffs also base their claim of invidious discrimination in one-party dominant districts upon another easily-refuted assumption – that new major-party challengers and non-major party candidates are "similarly situated" in one-party dominant districts in terms of their potential competitiveness. However, undisputed facts regarding historical vote totals, voter identification, and party infrastructure demonstrate that even in one-party dominant districts, major party challengers and minor party candidates cannot be deemed to be similarly situated for CEP eligibility or funding purposes.

As Professor Green explains, and undisputed testimony establishes, non-dominant major-party challengers have two key advantages over non-major-party candidates, even in one-party dominant districts. First, overwhelmingly more Connecticut voters identify with one of the two major parties, 54 % of voters, as opposed to the mere 3% percent of voters who identify themselves with a minor party. *See* D. Green Decl. ¶ 29. Thus, even in one-party dominant

districts, there is a vastly greater pool of major party supporters than nonmajor party voters even if this latent support is not always reflected in any given race. Second, even in one-party dominant districts, the major parties' organizational capacity – including their infrastructure, party activists, and fundraising capabilities – hugely outmatch the paltry resources of minor party or independent candidates. For example, the major parties have town committees in virtually every town in Connecticut, as compared to the mere handful of local chapters that the minor parties maintain. *See id.* ¶ 30; Sevigny Aff. ¶¶ 20-23; Jepsen Decl. ¶ 13; Krivda Aff. ¶ 16.

The electoral data show that these sources of major-party strength – developed through decades of party-building – translate into far greater electoral totals for major-party challengers in one-party dominant districts than for non-major-party candidates. *See* Foster Decl. ¶¶ 12-13. Thus, the requirement of a showing of statewide public support required of major parties to be eligible for public funding under Connecticut law translates, as a practical matter, into a significant showing of public support at the district level, even in one-party dominant districts. *See Libertarian Party of Wash.*, 31 F.3d at 766 (rational for state to presume substantial support for a major-party candidate based on her party's past performance, while requiring signature-based showing of support for non-major-party candidates).

Accordingly, there is good reason for the state not to require a further district-level showing of public support for major party candidates in awarding CEP funds – such a requirement would be gratuitous and would needlessly burden taxpayers and the state with additional administrative costs. Thus, providing full funding to qualifying major-party candidates without making them go through the exercise of gathering signatures does not invidiously discriminate against non-major-party candidates, in part because such major party

challengers are differently situated in terms of their demonstrated public support and potential competitiveness.

3. The Availability of the CEP to New Major-Party Challengers Will Not "Snuff Out" the Political Gains of Non-major-Party Candidates in "Safe" Districts.

Finally, even if Plaintiffs were able to establish as a factual matter that the CEP endangers their electoral gains in one-party dominant districts – and they cannot make such a showing, as explained above – they still would be unable to establish an unconstitutional burden on their political opportunity as a matter of law. Non-major-party candidates have no constitutionally protected interest in being the only alternative on the ballot to the incumbent major party in one-party dominant districts.

In the first place, Plaintiffs cannot establish a reduction of their freedom to pursue political opportunity merely by complaining about potential exposure to greater competition for Connecticut citizens' freely-given votes. Even if the CEP results in more frequent major-party competition in these districts, the resulting benefit to voters – who will have increased opportunities to cast votes for candidates of their preferred political parties – outweighs any detriment to non-major-party candidates who, it is not disputed, would remain free to compete. *See, e.g., Anderson*, 460 U.S. at 788 ("find[ing] on the ballot a candidate who comes near to reflecting his policy preferences" is important to a voter's exercise of his "most precious" right to cast a meaningful vote (internal citations omitted)). As the Supreme Court recently reaffirmed, the Constitution "does not call on the federal courts to manage the [political] market by preventing too many buyers from settling upon a single product." *New York State Board of Elections v. Lopez Torres*, 128 S. Ct. 791, 801 (2008)

Further, as both of Plaintiffs' expert witnesses admit, even the modest vote percentages received by non-major-party candidates in one-party dominant districts may substantially

overstate the actual public support for those candidates. Both of Plaintiffs' experts agree that many of the votes cast for nonmajor party candidates in races where a major-party incumbent is otherwise unopposed represent only "protest votes" from voters who identify with the non-dominant major party. Youn Decl. Ex. 4 (Gillespie Dep. 222:7-223:3; 223:7-19); Youn Decl. Ex. 23 (Winger Dep. 153:4-154:4; 158:1-6). These "protest voters," if given the opportunity, would much prefer to cast a meaningful vote for their major party of choice – with its undisputedly greater prospect of victory – than a "protest vote" for the only available alternatives. Youn Decl. Ex. 4 (Gillespie Dep. 222:7-223:3; 223:7-19); Youn Decl. Ex. 23 (Winger Dep. 153:4-154:4; 158:1-6); D. Green Decl. ¶¶ 39-40. As Plaintiffs' expert Richard Winger admits, the voter's interest in casting a meaningful vote for the candidate of his or her preference must take precedence over any particular candidate's interest in being the only alternative on the ballot to a major-party incumbent. Youn Decl. Ex. 23 (Winger 151:17-152:2; 155:14-157:1; 158:1-11). Plaintiffs cannot ask this Court to preserve their electoral totals by constraining voters' political choices.

Moreover, as Professor Green explains, nonmajor party candidates may even benefit from increased major-party competition in one-party dominant districts. An election featuring major-party competition should prove to be more fertile soil for minor parties to spread their political message than a race against an otherwise unchallenged incumbent in a one-party dominant district, for the common-sense reason that voters and media observers pay more attention to more competitive races. D. Green Decl. ¶ 40.

Plaintiffs thus cannot establish a burden on their political opportunity because they are unable to factually demonstrate – as they must under *Buckley* – that any protected political opportunity they enjoyed prior to the CEP will be reduced as a result of the CEP, including in so-

called "safe" districts. *See Buckley*, 424 U.S. at 97-99. Accordingly, the question whether the CEP will result in more major-party competition in one-party dominant districts is immaterial and cannot preclude a grant of summary judgment.

IV. Any Burden Imposed by the Challenged Provisions on Plaintiffs' First Amendment Rights Is Justified By Connecticut's Important State Interests.

As set forth above, Plaintiffs have failed to offer any evidence that the CEP system actually burdens, by reducing below levels achievable without public financing, their ability to exercise their First Amendment-protected political opportunity. *See Buckley*, 424 U.S. at 98-99 (requiring showing of "reduce[d] . . . strength below that attained without any public financing"). Even assuming *arguendo*, however, that Plaintiffs could establish some burden on their First Amendment rights resulting from the CEP's application, the challenged provisions are more than adequately justified under the flexible standard articulated in *Anderson* and *Burdick*. As explained in Section II.B.2., *supra*, in the election-law context, "the State's important regulatory interests are generally sufficient to justify" restrictions imposing limited burdens on protected rights, even restrictions that "may, in practice, favor the traditional two party system." *Anderson*, 460 U.S. at 788; *see Timmons*, 450 U.S. at 367. Indeed, even if Plaintiffs were able to demonstrate a "heavy" or "severe" burden on their political opportunity so as to require strict scrutiny – which the undisputed factual record demonstrates they cannot – the challenged provisions nevertheless should be upheld, as they are necessary to achieve the compelling interests of the people of Connecticut.

A. The CEP Eligibility Requirements Are Closely Drawn to Advance Connecticut's Compelling State Interests.

1. The CEP's Requirements That Candidates Show Demonstrable Public Support Advance Connecticut's Compelling Interests in Combatting Corruption and the Appearance of Corruption Among Elected Officials and Freeing Elected Officials from the Burdens of Private Fundraising.

First, the Connecticut Legislature's primary goal in enacting the CEP was to avoid the threat and appearance of corruption arising from the perceived influence of political contributions on elected officials and their decisionmaking. As discussed above, it is well settled that states have a compelling interest in maintaining a public funding program to avoid the reality and appearance of corruption arising from the influence of private money on elected government. *See Rosenstiel*, 101 F.3d at 1553; *Buckley*, 424 U.S. at 96. And it is equally well settled that the State has a compelling interest in relieving its elected officials of the burden of incessant fundraising, so that they can devote more time to their official duties. *See Rosenstiel*, 101 F.3d at 1553; *Buckley*, 424 U.S. at 90-91; *RNC*, 487 F. Supp. at 284-85.

Elected officials are the focus of both of these compelling interests. Thus, a public financing system only advances these interests to the extent that it grants public funding to candidates with a reasonable chance of being elected to office. As Plaintiffs' own political science expert, J. David Gillespie, admitted at deposition, the grant of public campaign funds combats corruption among elected officials only if the candidate who has received public financing is elected. Youn Decl. Ex. 4 (Gillespie Dep. 140:6-21). Accordingly, in designing a public funding system to reduce corruption and the appearance of corruption, the Connecticut legislature had a compelling interest in imposing reasonable qualification provisions that would limit the grant of campaign funds to candidates with a realistic chance of winning the election.

2. The CEP Participation Requirements Are Closely Designed to Advance Connecticut's Important Interest in Protecting the Public Fisc by Limiting Funding to Those Candidacies With Realistic Prospects of Election to State Office.

Moreover, the requirements imposed by the Connecticut legislature in enacting the CEP were also necessary and appropriate as part of its obligation to protect the public fisc. As noted above, the federal courts have consistently recognized the state's important interest in "protect[ing] the public fisc" by not squandering public monies to fund "hopeless candidacies." *Buckley*, 424 U.S. at 96, 103; *see also Anderson v. Spear*, 356 F.3d at 676.

For non-major-party candidates whose private fundraising efforts have met with little success, CEP funding is a rich prize that, in the absence of sufficiently high qualification and eligibility requirements, could foster a proliferation of candidates with little or no chance of being elected – thereby expending public funds without advancing the goals for which the CEP was enacted. Indeed, as discussed at Section B.3. of the Statement of Facts, *supra*, even the partial CEP grant amounts now readily available to many non-major-party candidates far exceed the amount of their actual fundraising, and provide a very substantial inducement to non-major-party candidates.

Such prudent stewardship of the public fisc, besides conserving the people's resources, is important to preserve public support for the public funding system itself. As the Maine Commission responsible for administering that State's public financing system has noted: "The system will lose public and legislative support if individuals who are widely perceived as 'fringe' candidates receive funding." *See* Mills Decl. ¶ 18.

Thus, the Connecticut Legislature set the CEP's prior-vote-based eligibility thresholds for non-major-party candidates at levels that would enable candidates of parties with a demonstrated ability to attract voters and run a competitive race to become automatically eligible for CEP

funding -- and to require other candidates to demonstrate a similar level of popular support through petitioning. The levels of support established by the CEP are not unreasonable. As Professor Green explains, political scientists consider an election loss with only 20% of the vote to be a landslide defeat. D. Green Decl. ¶ 27. By setting the prior vote threshold at 20% at the state and district level, and by offering partial funding to candidates with even half that total – Connecticut has ensured that candidates with even the faintest hope of electoral victory are automatically eligible for CEP funding.

The availability of the signature gathering route provides an alternative means for non-major party candidates to establish the requisite public support to warrant CEP funding. The Supreme Court has noted that the existence of such an alternative route to eligibility militates in favor of the law's constitutionality. *See Burdick*, 540 U.S. at 436 n.5 (upholding challenged ballot restriction in part because of the available of alternative means); *see also Crawford*, 128 S. Ct. at 1261 (burden on some voters mitigated by the fact that voters could cast provisional ballots).[18] Indeed, the courts have uniformly deemed petitioning to be a valid means of demonstrating the "significant modicum of public support" that a state is entitled to insist upon in its election regulations. *Jenness*, 403 U.S. at 442; *see Storer*, 415 U.S. at 732; *Schulz*, 44 F.3d at 78; *see also* Youn Decl. Ex. 23 (Winger Dep. 89:6-15) (Plaintiffs' expert acknowledging that petitioning signatures are reasonable means for state to determine which candidates deserve public campaign funds).

[18] It is instructive to note that *Buckley* upheld the presidential public financing system despite the noted lack of any alternative pre-election eligibility pathway, *see Buckley*, 424 U.S. at 101: candidates who failed to demonstrate eligibility for funding based on prior vote totals were entitled only to limited post-election funding in the event that they received a specified percentage of the vote, *id.* at 102.

3. The CEP Participation Requirements Advance Connecticut's Important Interests in Avoiding Incentives to Splintered Parties and Uncontrolled Factionalism

The qualification requirements of the Connecticut statute are also justified by State's "important public interest against providing artificial incentives to splintered parties and unrestrained factionalism." *Buckley*, 424 U.S. at 96 (citations and quotation marks omitted); *see also Timmons*, 520 U.S. at 367 (recognizing state's interest in combating the "destabilizing effects of party-splintering and excessive factionalism"); *Munro*, 479 U.S. at 196 (State can take measures "to avoid the possibility of unrestrained factionalism"): *Storer*, 415 U.S. at 735. In enacting such restrictions, a state is entitled to act prophylactically to prevent the possibility of such evils even if they have not yet manifested themselves. *See Munro*, 479 U.S. at 195-95 (State legislature entitled to take "corrective action" in advance, and is not limited to acting "reactively").

As discussed above, the legislative history makes clear that the Connecticut Legislature was concerned with preventing this type of manipulation. A number of legislators expressed concern that the major parties could abuse the public financing system by exploiting "splinter" minor party or independent candidates, who had no any real constituency or chance of winning, merely to take votes away from the other major party. *See, e.g.*, Garfield Decl. II Ex. 4, at 121 (Statement of Sen. DeFronzo); *id.* at 123 (Statement of Rep. McCluskey), 130 (Statement of Rep. Caruso). The eligibility thresholds established by the CEP were appropriately drawn to prevent public funds from being abused to foster such factionalism, by ensuring that recipients of public campaign funds actually demonstrate substantial public support. *See Timmons*, 520 U.S. at 365-66 (states have a "valid interest" in ensuring that ballot entrants "are bona fide and actually supported"); *Storer,* 415 U.S. at 735 (recognizing a state interest in discouraging "independent candidacies prompted by short-range political goals, pique, or personal quarrel").

B. The CEP Qualifying Contribution Requirements Are Likewise Closely Drawn to Advance Connecticut's Compelling Interests in Public Financing

The same state interests also justify the CEP's qualifying contribution thresholds, which apply to all candidates without exception. By setting the qualifying contribution requirements at their current levels, Connecticut has sought to ensure that public funds will go to candidates not only capable of attracting a significant modicum of public support, but also committed to running a campaign sufficiently effective to suggest a reasonable chance of winning an election. The qualifying contribution requirements advance the state's interests by providing funding only to candidates with a demonstrated ability and commitment to engage in grassroots campaigning to accumulate low-dollar contributions and to generate public support within their district. When setting the appropriate levels for the qualifying contribution thresholds, the Legislature devoted substantial consideration to determining levels that would weed out frivolous or hopeless candidates, while still being attainable by candidates with significant support among their proposed constituents. *See, e.g.*, Garfield Decl. II Ex. 2, at 18-19 (statement of Sen. Heagney; statement of Sen. McDonald). In so doing, the legislators drew on their own experiences as candidates and elected officials in Connecticut, as well as their knowledge of public financing systems in other states. *See, e.g.*, Garfield Decl. II Ex. 4, at 123 (statement of Rep. McCluskey); *id.* at 130 (statement of Rep. Caruso).

Requiring a candidate to demonstrate his or her fundraising ability, in the qualifying contribution context, further serves to advance the state's compelling interest in substituting public funds for potentially corrupting private donations. The qualifying contribution thresholds are easily achievable by any viable candidate. If a candidate is unable to raise even the CEP's threshold amounts of qualifying contributions, then there is little reason to believe that the candidate could raise private donations to the extent that would raise any concern about

corruption or the appearance of corruption. To the extent that a candidate purports to be unable to meet the CEP's qualification-contributions thresholds, that inability merely serves to prove that the candidate – who remains free to raise private funds – lies outside the scope of Connecticut's compelling interests in maintaining a public funding system. *See Buckley*, 424 U.S. at 95 n.129 ("If a party cannot raise funds privately, there are legitimate reasons not to provide public funding, which would effectively facilitate hopeless candidacies.").

C. The CEP's Grant Amounts Are Closely Designed to Advance Connecticut's Compelling Interests in Public Financing, to Incentivize Participation, and to Protect the Public Fisc

As noted above, and as courts in other circuits have readily recognized, the state has a compelling interest in incentivizing candidates to participate in a public financing program that is itself intended to serve the compelling interests of preventing corruption and permitting legislators to focus on their duties rather than fundraising. *See Rosenstiel*, 101 F.3d at 1553; *Vote Choice*, 4 F.3d at 39; *Wilkinson*, 876 F. Supp. at 928. The Connecticut legislature thus had a compelling interest in setting the amounts of the CEP's public funding grants at levels that would in fact encourage candidates to participate.

As set forth in Section A of the Statement of Facts, *supra*, in designing the CEP, the Connecticut legislature carefully considered historical campaign spending data and established CEP grant amounts at or below the level of historical spending limits in competitive elections. In fact, even matching funds, which only come into play in the highest-dollar races, when added to the base grant amounts, are not out of line with historical expenditures in the most competitive elections. *See* Garfield Decl. II Ex. 20, at 2 ("High" expenditure range for senate races is over $200,000 while "High" expenditure ranges for house races is $58,000). Moreover, the legislature recognized the need to adjust funding levels for uncontested and one-party dominant districts; *see* Garfield Decl. II Ex. 2, at 85-87; the CEP grant amounts to major parties are

reduced in elections where the election is uncontested, or contested only by non-participating non-major party candidates. Conn. Gen. Stat. § 9-705(j)(3)-(4). These realistic grant levels are necessary to incentivize participation by serious candidates, and therefore serve Connecticut's interest in avoiding the actual or perceived corruption of elected officials.

D. The Legislature Is Entitled to Deference in Setting Appropriate Thresholds

Plaintiffs provide no legal or factual basis for this Court to discard the carefully considered judgments of the Connecticut Legislature, and to substitute its own judgment as to appropriate CEP qualification and eligibility thresholds and grant amounts. In the absence of a showing of an impermissibly great burden on protected rights, the choice of the exact thresholds that will best advance the state's important interests should be left to the legislature. *See Daggett*, 205 F.3d at 466 ("such determinations are 'best left to legislative discretion and will be deferred to unless 'wholly without rationality'") (quoting *Vote Choice*, 4 F.3d at 32). In upholding a particular set of qualifying requirements in the presidential campaign financing system, the Supreme Court explicitly disclaimed any intention of setting a constitutionally mandated floor or ceiling for such requirements:

> [T]he choice of the percentage requirement that best accommodates the competing interests involved was for Congress to make. Without any doubt a range of formulations would sufficiently protect the public fisc and not foster factionalism, and would also recognize the public interest in the fluidity of our political affairs. We cannot say that Congress' choice falls without the permissible range.

Buckley, 424 U.S. at 103-104 (citation and footnote omitted). Having failed to establish any impingement on their political opportunity, let alone a heavy one, Plaintiffs cannot raise a triable issue of fact merely by asking this Court to second-guess the Connecticut legislature's reasoned and considered choice of appropriate thresholds.

Plaintiffs have also urged this Court to find evidence of invidious discrimination in the fact that certain qualification thresholds under the CEP are higher than corresponding thresholds in the public funding systems in Arizona and Maine. While other states may impose different requirements and benefits, Connecticut has no constitutional obligation to tailor its public-funding program to reflect the judgments of other populations with different priorities. If such requirements are constitutionally permissible, "differences in their level from state to state should reflect democratic choices, not court decisions." *Daggett*, 205 F.3d at 459 (internal quotation marks and citation omitted); *see also Rogers*, 468 F.3d at 197 (different states may legitimately pursue ballot-restriction interests differently). Connecticut – with its unique history of political corruption and scandal – is entitled to pursue its own legitimate and important priorities in the design of its public funding system.

CONCLUSION

For the foregoing reasons, this court should grant the Defendants' motion for partial summary judgment, dismissing Count One of the *Green Party* Complaint.

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Respectfully submitted,

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