

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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GREEN PARTY OF CONNECTICUT, ET AL	:	No. 3:06CV-1030 (SRU)
	:	915 Lafayette Boulevard
vs.	:	Bridgeport, Connecticut
	:	
	:	March 12, 2009
JEFFREY GARFIELD, ET AL	:	

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CONTINUED BENCH TRIAL

B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

LEWIS, CLIFTON & NIKOLAIDIS
275 Seventh Avenue, Suite 2300
New York, New York 10001-6708
BY: MARK J. LOPEZ, ESQ.
KEVIN JAMES, ESQ.

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, New York 10004
BY: MARK LADOV, ESQ.

FOR THE DEFENDANTS:

ATTORNEY GENERAL'S OFFICE
55 Elm Street
P.O. Box 120
Hartford, Connecticut
BY: PERRY A. ZINN ROWTHORN, ESQ.
MAURA MURPHY-OSBORNE, ESQ.

HOGAN & HARTSON
875 Third Avenue
New York, New York 10022
BY: IRA M. FEINBERG, ESQ.

(Continued)

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
 161 Ave of the Americas, 12th Floor
 New York, New York 10013
 BY: MONICA Y. YOUN, ESQ.
 ANGELA MIGALLY, ESQ.

Susan E. Catucci, RMR
 Official Court Reporter
 915 Lafayette Boulevard
 Bridgeport, Connecticut 06604
 Tel: (917)703-0761

I N D E X

WITNESS:

JOHN GREEN

Direct Examination by Mr. Zinn Rowthorn.....271
 Cross Examination by Mr. Lopez.....310

EXHIBITS:

Court Exhibits 1 through 6 (Full)..... 384

SUMMATIONS:

MR. LOPEZ.....420
 MR. ZINN ROWTHORN.....438
 MR. FEINBERG.....448
 MR. LOPEZ (Rebuttal)452

1 (9:40 O'CLOCK, A. M.)

2 THE COURT: Good morning. Mr. Zinn Rowthorn,
3 are you taking the lead here?

4 MR. ZINN ROWTHORN: I'm going to start. Let me
5 just for the record first mention that, not wanting to
6 disappoint people who are expecting a daily Rotman
7 declaration, we filed one last night at about ten o'clock.
8 I gave a copy to opposing counsel this morning. I have an
9 extra copy for the court.

10 THE COURT: I have it. Let me just confirm that
11 there's no objection to that being considered part of the
12 trial record.

13 MR. LADOV: We don't have any objections, Your
14 Honor. Just briefly just to respond, since I guess we
15 wouldn't want to disappoint that either, you know, we
16 don't think it changes anything from the discussion we had
17 yesterday. It certainly doesn't contest the facts about
18 the cost and burden of qualifying which is the main point
19 we were trying to drive home with that discussion.

20 It doesn't change the plain language of the
21 statute which we think is consistent with all of the
22 SEEC's prior public statements about what the qualifying
23 criteria are, and it doesn't really add that much to the
24 debate yesterday.

25 I guess the only other thing we would add,

1 there's some numbers about, you know, they kind of reach
2 back to September to show how many candidates received
3 grants. Four of the five minor party candidates who got
4 grants got them either on October 15th or 16th and that's
5 contained in our Exhibits 57 and 120. Those are the
6 meeting minutes from the SEEC.

7 And so, again, I think that evidence shows that,
8 the burden and time of qualifying is just pushing these
9 candidates so that they are know not getting the money
10 until the very last minute, regardless of how many
11 candidates are getting it earlier.

12 THE COURT: All right. Thank you.

13 MR. ZINN ROWTHORN: Your Honor, the intention is
14 to put John Green on this morning for a couple of limited
15 purposes. One, trying to address the issues that arose
16 yesterday with respect to Mr. Booker's spending and
17 filings. And, two, to update his experience and the views
18 of the Working Families Party with respect to the benefits
19 of this program.

20 Mr. Green is not here yet, so what I think we're
21 going to do is Attorney Youn is going to start a factual
22 presentation and then at an appropriate place we'll break
23 and put Mr. Green on.

24 Your Honor talked about addressing the standing
25 issue. Attorney Murphy-Osborne is going to address that

1 with respect to Count One. I believe the trigger
2 provision, standing issue is going to be addressed by the
3 Brennan Center. Is that right? Attorney Migally? Or --
4 don't want to put you on the spot.

5 MS. YOUN: I'm sorry, which issue was that?

6 MR. ZINN ROWTHORN: The standing issue two and
7 three. It's all -- all right, someone will address the
8 standing issue. And then I'd ask for leave to make some
9 sort of general summation remarks at the end.

10 THE COURT: Sure.

11 MR. ZINN ROWTHORN: Thank you.

12 THE COURT: Okay.

13 MS. YOUN: Your Honor, we prepared some
14 demonstratives. Actually there are summary charts and
15 tables which, at the conclusion of my presentation, I'd
16 like to move into the record pursuant to Rule 1006. So --
17 and we can wait until the conclusion of, we can wait until
18 the conclusion of my presentation before I make that
19 motion. In the meantime I wanted to go ahead and
20 distribute the demonstratives.

21 (Hands Court)

22 MS. YOUN: Thank you, Your Honor. Before we
23 even get to the demonstratives I prepared today, I wanted
24 to take a step back, because I, you know, obviously there
25 are a lot of facts in the record before Your Honor and I

1 think it's gotten a little bit granular in that we're
2 looking very deeply at certain very specific facts without
3 really having a sense of what -- or I think we're, you
4 know, at least I feel that the presentation yesterday was
5 losing a little bit of sight and what is the governing the
6 legal framework under which we need to be considering
7 these facts, and particularly in this hearing, the facts
8 with regard to the 2008 election and with regard to the as
9 applied challenge.

10 And we have found that plaintiff's theory of
11 injury as facts have come out in this case, has been
12 somewhat of a moving target. In the amended complaint,
13 the core of the plaintiff's case was paragraph two of --
14 "The public financing system created by the act violates
15 the First Amendment and the equal protection clause of the
16 14th Amendment by effectively excluding participation by
17 minor and petitioning party candidates through unduly
18 burdensome eligibility requirements."

19 So, you can see that at the start of the case
20 the plaintiff's theory was all about it would be virtually
21 impossible for minor parties to participate in the program
22 and that, you know, and that these petitioning thresholds
23 and the prior vote total thresholds were, in fact,
24 impossible for minor parties to reach.

25 By December we started hearing a lot less of

1 this kind of language and the focus sort of shifted from
2 the effects of the program on minor parties to whether
3 major parties derived benefits from the program.

4 So I'm quoting from the transcript of the
5 December 9th bench trial. This is Mr. Lopez, page 206.
6 "We would think it's sufficient to show how the CEP will
7 affect major party candidates. We think it's sufficient
8 to show that they are being given a benefit and a benefit
9 that's denied to my clients and we think that crosses the
10 constitutional line in and of itself. And that's because
11 in politicals, when some gain and there's a benefit given
12 to one, it is a burden to the other candidate in denying
13 them the benefit."

14 We heard a lot more along these lines yesterday
15 from Mr. Lopez, although we don't yet have a transcript of
16 that, and you'll notice that yesterday's presentation by
17 the plaintiffs on their evidence focused almost entirely
18 on the major parties, on major party expenditures, on
19 whether to measure major party expenditures had increased
20 by what amount in certain districts, et cetera, et cetera,
21 and we started hearing a lot less about the minor parties.

22 So I think what our factual presentation focuses
23 on today is have minor parties been able to benefit from
24 this program in significant numbers. Has there been any
25 decline in their political opportunity.

1 We dispute that -- plaintiffs presentation
2 yesterday really focused on whether, you know, on the
3 question of whether there's any increase in major party
4 expenditures, whether there's any increase in major party
5 contestedness of districts, whether this has resulted in
6 any change in the strategic behavior of minor parties in,
7 you know, adapting to the existence of public financing in
8 the Connecticut, in the Connecticut system.

9 And first of all, we disprove -- we dispute that
10 plaintiffs have proved any of these propositions on the
11 facts, and we will demonstrate that later. But I think
12 even more fundamentally, before we get into that back and
13 forth, this framework is not the governing law in this
14 case that Your Honor will have to apply.

15 The question of whether major parties benefit
16 from the public financing system is only the starting
17 point of the constitutionality, of an analysis of the
18 constitutionality of the system. I think you can just
19 derive this logically because in deciding whether or not
20 to participate in a program, any candidate engages in a
21 cost benefit analysis. I think that's just common sense.

22 A candidate is not going to participate in a
23 program where they feel like the cost, whether that be the
24 burdensomeness of gathering qualifying contributions, et
25 cetera, et cetera, outweigh the benefits.

1 They won't participate in the program if they
2 feel like the money is not enough to induce them to
3 undergo the costs of not being able to get big checks
4 anymore from PAC contributors, from not being able to get
5 large checks from individual donors, from not being able
6 to engage in public -- in private fundraising whatsoever.

7 Now, we can see this starting with the Supreme
8 Court's consideration of Buckley under public financing,
9 because Buckley assumes that the major party is going to
10 be given a benefit. Now, obviously Buckley says that
11 there are, you know, there are countervailing
12 disadvantages, that benefit is not unlimited and that
13 benefit is not coercive, but I would think that Buckley in
14 no where says and in no way mandates that the costs and
15 benefits of participation in a public financing program
16 for major party candidates have to be in perfect
17 equilibrium or else there's going to be some kind of
18 constitutional infirmity with that program.

19 And you can see that if I look to this, to page
20 95 of the Buckley opinion, where it says -- and this is in
21 response to the claims brought by the minor parties in
22 this case -- in that case. "Any disadvantage suffered by
23 operation of the eligibility formuli under Subtitle 8 is
24 thus limited to the claimed denial of the enhancement of
25 opportunity to communicate with the electorate."

1 Buckley specifically said, yes, the major
2 parties will have enhancement of their opportunity and
3 that enhancement may be denied to minor parties because of
4 the qualificational requirements of that program, but that
5 in and of itself do not result in the constitutional
6 problem with that program. The analysis has to go
7 further.

8 THE COURT: But Buckley also doesn't really
9 apply to this case in any meaningful sense because we have
10 a statewide proxy being applied to every legislative race
11 in Connecticut. It's as if -- in Buckley they have said
12 in every congressional race across the country we're going
13 to do X Y Z, and the problem is Buckley I think was well
14 supported in its demonstration that there was a reasonable
15 basis for having the very low qualifying criteria in that
16 case, given the historical predominance of the two major
17 parties. Here we have a record that suggests there isn't
18 that predominance by two major parties in every one of the
19 legislative districts here. So it's hard to apply Buckley
20 to anything but statewide races, isn't it?

21 MS. YOUN: No, I don't think it's at all hard to
22 apply Buckley, and I think the factual assumptions in
23 which Your Honor engaged for the purposes of the motion to
24 dismiss, because, you know, this is basically the argument
25 made in the motion to dismiss, have been conclusively

1 disproven by the record in this case.

2 In the motion to dismiss, the court engaged in
3 analysis and said that indeed Buckley did not control the
4 outcome of this case because for the purposes of the
5 motion to dismiss, you accepted two factual allegations of
6 the complaint to be true. First of all, you accepted as
7 true the plaintiff's proposition in their complaint which
8 we've just read that it would be impossible for nonmajor
9 party candidates to qualify, impossible or virtually
10 impossible. Secondly --

11 THE COURT: What if it's extremely difficult?

12 MS. YOUN: Well, Your Honor, you know, extreme
13 difficulty is, of course, not a line that I as an advocate
14 am going to be able to draw, but under the prior vote
15 threshold, as I will show you when we get to the
16 demonstration of what actually happened in 2008, it's not
17 only that five minor party candidates qualify, it's also
18 that 21 minor party candidates are automatically eligible
19 for CEP funding in the next election under this program in
20 2010.

21 THE COURT: Right. The bigger concern, I think,
22 is if you have an uncompetitive district, a district where
23 a Democrat has virtually always won and you have a
24 Republican who's got a history of getting 19 percent of
25 the vote --

1 MS. YOUN: Yes.

2 THE COURT: -- why should that candidate be
3 treated differently than the Green Party candidate who's
4 been getting 12 percent of the vote?

5 MS. YOUN: And, Your Honor, I know that that's
6 really the issue that I feel like you've been struggling
7 with the most in trying to come to the right answer here,
8 and let me address this on the facts.

9 The facts are that in a legislative district,
10 even considering the weakest subset of major party
11 candidates, that nondominant, you know, in the Republican
12 and the Democratic district, and visa versa, the minor
13 party candidate has never in the ten years in which
14 election results, has never beaten even the weaker major
15 party candidate, not a single time, and that result would
16 not change in this election. Secondly --

17 THE COURT: Well, that's true perhaps in the
18 legislature. It's not true statewide. We have Governor
19 Weicker. We have Senator Lieberman. In other words, it's
20 not -- plus we have a huge percentage of the voters in
21 Connecticut who are not affiliated by any party.

22 MS. YOUN: Yes, and, Your Honor, with response
23 to that, I don't think you can say that Governor
24 Weicker -- and I'm sympathetic to Your Honor's concern
25 because you don't want to uphold a law that you think is

1 going to prevent the next Lowell Weicker from running or
2 the next Lieberman from running or put those candidates at
3 an unfair disadvantage with regard to, with regard to
4 major party candidates. But I think it's important for
5 Your Honor to understand that those two candidates do
6 not -- simply are not representative of minor party
7 candidates. Those two candidates were --

8 THE COURT: Isn't there a chicken and the egg
9 problem here? In other words, if the Green Party has a
10 history of running candidates on budgets of 500 to \$2,500,
11 someone who is objectively a strong candidate isn't
12 realistically going to consider running as a Green Party
13 candidate, they are going to look to one of the major
14 parties. Why? Because they can get the money to possibly
15 win. But if you have a fair system that allows the
16 potential for minor party candidates to get public
17 financing, you're going to get stronger candidates running
18 on the minor party tickets, aren't you? In which case
19 their electoral success presumably is going to be
20 afforded greater opportunity.

21 MS. YOUN: Your Honor's reasoning there would
22 overturn Buckley. Buckley specifically said it's okay to
23 treat major party candidates and minor party candidates
24 differently.

25 THE COURT: When there's -- when there is, as

1 there was in Buckley, a well supported factual record for
2 doing so.

3 MS. YOUN: Yes.

4 THE COURT: 43 percent, unless my math is wrong,
5 43 percent of the districts in Connecticut, one of the
6 major party candidates would not qualify for public
7 financing if they were held to the same standards as minor
8 parties.

9 MS. YOUN: Your math is not wrong there, Your
10 Honor, but your math is not relevant to the question at
11 hand. A 43 percent number number has been one that we
12 have been -- I simply believe that Your Honor's wrong to
13 find that 43 percent number and here's why.

14 The reason that 43 percent number doesn't apply
15 is if you assume that in any, in any of those 43
16 districts, a vast majority of those 43 districts were
17 uncontested, right? You assume that in those districts,
18 the nondominant major party candidate or the new major
19 party challenger is equivalently situated to a minor party
20 candidate.

21 THE COURT: Well, they are in the sense of their
22 success in the last election.

23 MS. YOUN: They are but I think that the state,
24 the statewide proxy argument that Your Honor, that really
25 we're indirectly talking about here, is not something

1 that -- is something that, as Your Honor says, is
2 dependent on whether it was a reasonable factual
3 prediction for the legislature to make in drawing this
4 line and in setting out this program.

5 And the fact is the legislature's prediction has
6 proven right over 96 percent of the time. Over 96
7 percent of the time, major party candidates get over
8 20 percent of the vote, and even in those few isolated
9 instances, the 4 percent or 12 candidates in which these
10 candidates did not get 20 percent of the vote, those
11 candidates, only one of those candidates participated in
12 the program.

13 THE COURT: Well, wait a minute. Your
14 96 percent presumably excludes races where a dominant
15 party did not run.

16 MS. YOUN: But it includes --

17 THE COURT: Right? So, in other words, if you
18 took all the races and you said in what percentage of the
19 time, figuring two per race, two dominant party candidates
20 per race, what percentage of the time did they get a
21 20 percent or more, then it's going to be lot lower number
22 if you factor in the races where one party has so little
23 hope of getting a victory they don't even run anybody.

24 MS. YOUN: It might be a lower number but I
25 still think it's -- and I'm sorry I don't have that number

1 off the top of my head, but if you look to the Foster
2 declaration that we put in with our first summary judgment
3 papers, we specifically wanted to address this concern
4 that Your Honor raised in the motion to dismiss. So we
5 looked specifically at the weakest possible major party
6 challengers, which of the new major challengers in party
7 dominant districts, we found the same pattern holds.

8 THE COURT: But all that proves is that the
9 major parties are major parties.

10 MS. YOUN: I'm sorry, I don't --

11 THE COURT: The point is you're trying to
12 justify a system that as a practical matter only funds
13 major parties.

14 MS. YOUN: Yes, I am, and I would say that that,
15 that justification is set forth in Buckley.

16 THE COURT: On a single -- right, on a single
17 office race, it is.

18 MS. YOUN: Yes.

19 THE COURT: There's nothing in Buckley that
20 suggests that Senator Lieberman, who ran and won as an
21 Independent, but would not have qualified presumably for
22 public financing if Buckley, if the federal system applied
23 nationwide to every congressional race, because his party
24 was brand new.

25 MS. YOUN: Your Honor, I want to respond to this

1 and I want to respond to it specifically with regard to
2 the examples -- I don't have any information
3 unfortunately, I didn't follow the Lieberman race that
4 carefully, but I do know about Governor Weicker and we did
5 take his deposition and also there was some discussion of
6 the Nader example that was being batted around yesterday.

7 With respect to Governor Weicker, the
8 petitioning threshold for the gubernatorial race in the
9 upcoming 2010 election is, I guess in order to get a full
10 grant you would have to get 240,000 signatures.

11 THE COURT: Let me just interrupt you for a
12 second, because I want to go back to Buckley for a second.

13 MS. YOUN: Yes.

14 THE COURT: And the difference in Buckley is
15 this. Buckley has three, four and five percent. The
16 federal system has three, four and five percent
17 qualifications. So that there is a realistic hope by a
18 minor party of obtaining funding. Not winning, you're not
19 going to win with three percent or even five percent,
20 you're probably not going to win a single electoral vote,
21 but there is the opportunity to get federal financing.

22 MS. YOUN: Now --

23 THE COURT: And they did not limit, in other
24 words, in Buckley or the federal system, they did not
25 limit public financing to major parties.

1 MS. YOUN: In the --

2 THE COURT: And that's what is happening here.
3 To get full funding, you have to be a major party.
4 Twenty percent is a major party.

5 MS. YOUN: That's not true, Your Honor. You
6 have to either have a 20 percent prior vote showing or you
7 have to be at a 20 percent petitioning requirement.

8 THE COURT: Exactly. Twenty percent is the
9 definition of a major party.

10 MS. YOUN: Twenty percent is the definition of a
11 major party, but have they set the threshold lower,
12 because I know in the hearing in December, Your Honor
13 said, well, isn't it a little bit suspicious that the line
14 was set at 20 percent because isn't that exactly the
15 boundary line between major parties and minor parties?

16 THE COURT: That's perfect. It's the line that
17 the major parties are always going to hit and the minor
18 parties are virtually never going to hit.

19 MS. YOUN: I don't think the facts bear that
20 out. The minor parties are not going to hit the line
21 whether you place -- you know, are not going to hit the
22 line in greatly increased numbers because of the ten
23 percent.

24 THE COURT: What about 3 percent?

25 MS. YOUN: Three percent is fine but I don't

1 know that the State of Connecticut is required to give
2 \$3 million --

3 THE COURT: They are not required. No, they are
4 not required, and I'm not going to require them to do
5 anything, but the point is this: The difference between
6 Buckley and this system is Buckley had the opportunity for
7 funding for minor parties.

8 MS. YOUN: Let's talk about the Nader example
9 with respect to Buckley. First of all, Buckley is not
10 three, four or five percent. Buckley is five percent.
11 And the main difference between just simple levels, and I
12 think that we've warned Your Honor in our discussion of
13 LaRouche v. Kezer about just looking at a bare percentage
14 without regard to the underlying context of that
15 percentage, the amount of time, et cetera, that you're
16 given to meet a particular requirement.

17 But holding all of that aside, with respect to
18 the Nader example, Nader would not -- it was suggested
19 yesterday that it would be easier for Nader to qualify for
20 presidential public financing than it would for him to be
21 able to qualify for public financing as the Governor of
22 Connecticut. That is absolutely wrong. And here's why.

23 The Buckley prior vote total is exactly that, a
24 prior vote total. Unless a minor party candidate gets
25 five percent of the entire country, they are absolutely

1 barred from that program, irremediably.

2 In the Connecticut program, if a candidate's
3 party has no prior vote history, and only in that
4 circumstance and we saw at least one major party candidate
5 automatically eligible for a full CEP grant in this cycle
6 of elections, in the 2008 elections, because their party
7 had made that 20 percent showing.

8 THE COURT: Not on a statewide basis. We're
9 talking about government in the statewide.

10 MS. YOUN: But in the legislature, Ralph Nader
11 running for government, a candidate like Ralph Nader who
12 has a lot of grass roots support but doesn't have
13 currently the means to compete with a major party in
14 Connecticut because, as we've heard, the Green Party is
15 not a big check party, they won't want to rely on big
16 check contributors, this program for the first time gives
17 Nader the opportunity to prove that he has a grass roots
18 showing by collecting petition signatures.

19 THE COURT: Right.

20 MS. YOUN: Now, Lowell Weicker --

21 THE COURT: If he can collect as many signatures
22 as votes would be, would make him a major party candidate,
23 then he can run under the program. I mean that is, that
24 is mind boggling, frankly, in its difficulty. Collecting
25 20 percent, signatures from 20 percent of the registered

1 voters of Connecticut?

2 MS. YOUN: Your Honor, Lowell Weiker collected
3 petition signatures from ten percent of the registered
4 voters in Connecticut using only volunteers, just to kind
5 of show that he could, and he did not spend a penny
6 getting those signatures because he had grass roots
7 support. He didn't spend -- he spent, I think on the
8 record, couple months doing so. The, you know, the
9 Connecticut system has a seven month petitioning window so
10 he spent less than a third of the, he spent less than a
11 third or a third of the petitioning window. He didn't
12 spend a penny on these volunteers. He may have spent some
13 money paying for a petitioning coordinator to deal with
14 the hordes of volunteers that were stepping forward to
15 support his candidacy, but he wasn't paying these people
16 to collect signatures. I think that the State of
17 Connecticut --

18 THE COURT: So, basically there's probably five
19 people in Connecticut who could do it. I mean Chris Dodd
20 if he left the Democratic party probably could do it. And
21 maybe Dick Blumenthal. Probably Lieberman.

22 MS. YOUN: Yes.

23 THE COURT: Help me out here. Who else could do
24 it? I'm sure Governor Rell could do it if she wanted to.

25 MS. YOUN: I'm sure she could. And, Your Honor

1 --

2 MR. LOPEZ: Your Honor --

3 MS. YOUN: Would you tell me answer?

4 MR. LOPEZ: I haven't interrupted and we've had
5 a long legal discussion. I'm not -- I'll save my
6 responses to the legal arguments but in terms of Governor
7 Weicker, he raised 100,000, 100,000 signatures, raw
8 signatures over many months and they were never verified.
9 And what he would have to do here to get a full grant
10 would be over 200,000 signatures and then provide for a
11 cushion that we all agree that a candidate has to provide
12 for. So there's a big, there's quite a site between
13 100,000 and what we submit are the 350 or 400,000 that you
14 would have to collect. I just would correct that factual
15 statement.

16 MS. YOUN: We asked Governor Weicker at his
17 deposition whether he thought that he would have been been
18 able to qualify for a full grant. He said yes.

19 Now, your point before -- I'm trying to recall
20 your point, I'm sorry. I was a little distracted. From
21 prior, from just before Mr. Lopez spoke?

22 THE COURT: Well, I was saying there were maybe
23 five people in Connecticut --

24 MS. YOUN: Five people could do it?

25 THE COURT: Right.

1 MS. YOUN: Your Honor, you know, I'm just going
2 to step out on limb here. We're talking about being the
3 Governor of Connecticut. I don't think I could be the
4 Governor, I don't think most of us could be the Governor
5 of Connecticut. But --

6 THE COURT: We're not talking about being the
7 Governor. We're talking about qualifying for public
8 funding to run for Governor.

9 MS. YOUN: No, we're talking about who the State
10 of Connecticut should give \$3 million or even more dollars
11 to out of state funds in order to fund their candidacy.
12 I'm going to say that the State of Connecticut is allowed
13 to set a viability threshold and is allowed to allow all
14 parties to make a showing, either based on the -- either
15 based on past party affiliation, which the State of
16 Connecticut shows has been in the statewide election a 100
17 percent predictor that a candidate is going to be
18 sufficiently viable, or based on some other showing.

19 THE COURT: So what you're doing is confirming
20 that if you have the equivalent of major party status,
21 then you can get funding. You're confirming that this
22 program makes certainly no attempt, certainly at the
23 statewide level, to permit the funding of any minor party
24 candidates.

25 MR. FEINBERG: No, no, no, we're not.

1 THE COURT: Well, help me out. What's wrong
2 with that?

3 MR. ZINN ROWTHORN: I'll tell you in one way
4 we're wrong, we're focusing on the 20 percent figure which
5 is \$3 million. Governor Weicker, I don't think there's a
6 realistic dispute that Governor Weicker would have been
7 able to qualify for \$1 million, then with his, you know,
8 his name recognition, gather additional qualifying
9 contributions. So I think it's important to talk about
10 big numbers and, by the way --

11 THE COURT: So there's five people in
12 Connecticut who can get a third grant.

13 MR. ZINN ROWTHORN: Judge, I don't think there's
14 anything in the record that we should suggest that that's
15 the case, that there are five people. The point is at
16 that statewide level, you know, one should be -- you know,
17 to receive that amount of money, one should have a high
18 degree of name recognition, you know --

19 THE COURT: All right, but --

20 MR. ZINN ROWTHORN: -- I don't see why that's a
21 problem. And then --

22 THE COURT: The defense is focusing on Buckley
23 and 5 percent, and saying Buckley says in effect you can
24 do 10, 15, 20. I'm reacting to that by saying Buckley
25 gives a nonmajor party candidate a realistic opportunity,

1 not any way a guarantee. Getting 5 percent of the vote is
2 a difficult thing. I bet you in the history of
3 Connecticut, other than Weicker and Groark, who ran after
4 Weicker, there was probably no third party candidate for
5 statewide office who has gotten ten percent of the vote.

6 MS. YOUN: Your Honor --

7 MR. ZINN ROWTHORN: We would suggest that that
8 indicates that third party candidates probably haven't
9 demonstrated to this point, with rare exception,
10 sufficient viability to deserve 1 million, 2 million or
11 3 million from the State.

12 THE COURT: And maybe you were out of the room
13 when I said this. It's the chicken and the egg. If
14 you're going to deny them any hope of getting funding, any
15 decent candidate, be it Weicker or anybody else is going
16 to go to a major party unless they have some other
17 independent wealth to draw on to run a statewide campaign.

18 MR. ZINN ROWTHORN: But you know, really -- go
19 ahead.

20 THE COURT: The question in my mind is whether
21 it's legal or not, constitutional or not, to only fund
22 major parties.

23 MS. YOUN: Yes, Your Honor, because if the
24 system in Buckley were applied in Connecticut today,
25 Governor Weicker would be barred from receiving funding,

1 at least in the first election hearing. He wouldn't be
2 able to do it. There would be -- no matter how many
3 petitions, no matter how many volunteers step forward in a
4 particular race -- and, you know, under Governor Weicker's
5 position, they had a candidate and they had a cause. They
6 were up at arms about the financial system in Connecticut.
7 And yet there was no way, there would have been no way had
8 the Buckley system been implemented in Connecticut for
9 Governor Weicker to get public financing for that
10 election.

11 MR. LOPEZ: That's not true, Your Honor. He
12 would have gotten a post election grant, a full grant, and
13 that would have paid for his campaign and it would have
14 solidified his position for the next campaign.

15 THE COURT: That's the whole idea. That's why
16 every year when he runs, he tries to get the 5 percent
17 because he was going to reimburse his campaign for --

18 MS. YOUN: That was a misstatement of Buckley.
19 He doesn't get a full grant. Under Buckley, the minor
20 party is limited to the ratio of what percentage of the
21 vote they got compared to the major party. So, for
22 example, if the minor party got 5 percent of the vote,
23 major party got 40, they would get one-eighth of a full
24 grant.

25 MR. LOPEZ: But if they had gotten, as Governor

1 Weicker did, a full grant -- I mean if he had received
2 25 percent of the vote, as he did in November --

3 MS. YOUN: No, he would have gotten a ten
4 percent grant.

5 MR. LOPEZ: No, it's a full grant.

6 MS. YOUN: No, he would have gotten 25 -- if he
7 got a 25 -- sorry, my mouth is not that good and I usually
8 rely on Mr. Proulx for these figures. But if Governor
9 Weicker got 25 percent and the major party got 40 percent,
10 then Governor Weicker would have gotten 25-over-40th of a
11 grant. He would not have gotten a full grant.

12 MR. LOPEZ: That's not my understanding how it
13 works. I believe if you win the election you get the same
14 amount of money as you did --

15 MS. YOUN: No.

16 MR. LOPEZ: Well, we can clarify that.

17 THE COURT: We can figure that out. That's in
18 Buckley. I can go back and reread it. But the point I'm
19 trying to press is this.

20 Are the defendants trying to suggest that
21 there's a realistic opportunity for minor party candidates
22 to get funding, especially on a statewide basis, or are
23 you simply saying the state doesn't have to fund minor
24 party candidates.

25 MS. YOUN: No, Your Honor --

1 MR. ZINN ROWTHORN: I think we're saying both,
2 frankly. We're saying yes, there is a realistic
3 possibility, it's been demonstrated, we're going to have a
4 witness who can testify about how it was realistically
5 achieved. And at the statewide level we think a partial
6 grant is still going to be a significant advantage to the
7 minor party candidates, relative to what they've done in
8 the past and also understanding that the full grant for
9 major party candidates is actually less than -- at the
10 gubernatorial level at least, less than historic spending
11 of late, so it's going to, we think --

12 THE COURT: Less than one race.

13 MR. ZINN ROWTHORN: On the one race, right.

14 THE COURT: Right.

15 MR. ZINN ROWTHORN: On the gubernatorial level.
16 But we also think, Judge, in answer to the second question
17 is we don't have to fund minor parties unless not doing so
18 sets them back more than they were before in the system.
19 We think -- you may disagree that the result in Buckley is
20 compelled here but we think the test for what the
21 constitutional harm is and what has to be proved, that
22 you're worse off because of it because there's no right to
23 enhancement of the political opportunity against being set
24 back from where you were --

25 THE COURT: So, your position --

1 MR. ZINN ROWTHORN: -- I think that's very
2 difficult to show, especially at the statewide level.

3 THE COURT: Just to be clear, your position is
4 if the act said Democrats and Republicans qualify for
5 public funding, period, that is acceptable because it
6 doesn't set the minor parties back. They can raise money
7 just as easily as they did before.

8 MR. ZINN ROWTHORN: No, because what that omits,
9 Your Honor, is minor party and major party are flexible
10 concepts.

11 THE COURT: Not really.

12 MR. ZINN ROWTHORN: No, Your Honor, yes, really.

13 THE COURT: Well, this act precludes, doesn't
14 it, as a practical matter, precludes a minor party from
15 ever becoming a major party.

16 MR. ZINN ROWTHORN: No, Your Honor, that's not
17 the case.

18 MS. YOUN: I look at this from a slightly
19 different perspective. We, the defendant intervenors, are
20 not the State. We are a group of advocates, group reform
21 advocates. The people we have had testify are not on
22 behalf of the State. They are representatives of the
23 Working Families Party, representatives of various, of --
24 if we seriously thought that the Connecticut legislature
25 were trying to squish minor parties out of existence under

1 the guise of an acting public financing law, we wouldn't
2 step forward to defend this statute. We don't have to
3 defend this statute.

4 THE COURT: But I'm not going to rule on the
5 basis of who's intervening on what side. I have to look
6 at the law and what it's doing.

7 MS. YOUN: But, Your Honor, I feel like we've
8 been combatting against this sort of boogyman here in that
9 this idea that the Connecticut legislature was somehow
10 just out to self-deal and squish the little guy, and I
11 would say that every -- you know, nothing in the
12 legislative history or in my knowledge about politics in
13 Connecticut suggests that. I mean this --

14 THE COURT: Well, we heard yesterday that the
15 legislature expressly turned down a three/four/five plan
16 that was supported by most folks on this side of the room.
17 Now -- and they went to a 10/15/20 plan.

18 MS. YOUN: Yes, and I think that the legislature
19 has interests both in protecting the public fisc but also
20 in, you know, and we put in testimony from Maine showing
21 the kind of attack that that public financing program has
22 been in because the public has perceived that it has been
23 funding candidates with no realistic chance of getting a
24 seat, that it's been spending millions of dollars on these
25 candidates who are coming forward in droves to get this

1 funding.

2 MR. LOPEZ: That's not in the record. The
3 record is just the opposite. The Maine -- and the
4 legislature took testimony from the Maine officials that
5 it's working seamlessly and that the minor parties are not
6 oppressed to any degree. Why would you make that
7 representation?

8 MS. YOUN: I make that representation --

9 MR. LOPEZ: You put that report into the record.
10 You proffered that witness, Senator Mills. He got up and
11 we took his deposition and he testified that the system is
12 working seamlessly, and this is true about Arizona as
13 well.

14 MS. YOUN: Your Honor, in our last -- just to
15 respond to that particular allegation, we put in a
16 declaration from the head of the Maine State Ethics
17 Commission testifying to the problems they have had,
18 they've discovered in Maine since that system was
19 implemented, and they have been exactly along those lines.

20 Now --

21 MR. LOPEZ: Are you referring to the one or two
22 minuscule problems where there were one or two crooks who
23 tried to game the system out of the thousands of
24 candidates that benefited under the system? Is that what
25 you're referring to?

1 MS. YOUN: I think that that is an absolutely
2 inaccurate characterization of what this declaration says
3 and, you know, the record speaks for itself on this point.
4 And Your Honor --

5 MR. LOPEZ: It does.

6 MS. YOUN: -- is free to read this declaration
7 and see what it says and see what weight this court wants
8 to give it, especially in light of the existence of a slew
9 of newspaper articles from all over Maine condemning the
10 system for exactly this reason.

11 Now, so -- and I'm not, you know, and just to be
12 clear, I'm not sure that a public financing system could
13 constitutionally fund only major party candidates. I
14 haven't had occasion to look into that record and I don't
15 think that there is any case that deals with that holding.
16 What Buckley looks to is a factual test. Buckley looks to
17 a factual test of whether a system constitutionally
18 discriminates against nonmajor party candidates.

19 THE COURT: But isn't that the point that I was
20 trying to get to before? When you use a statewide proxy
21 for every single legislative district, you're not -- it's
22 not fact-based at that point.

23 Let's assume for a minute that Governor Rell
24 remains dramatically popular while the Republican party in
25 general becomes very unpopular, and so she gets 70 percent

1 of the vote in the next election and Republicans are a
2 major party despite the fact they don't have a single seat
3 in the legislature.

4 MS. YOUN: The statewide proxy is nothing more
5 and nothing less than a legislative prediction. Your
6 Honor has to decide based on the factual record as set
7 forth both in the OLR reports, et cetera, that the, that
8 the legislature considered and also the factual, the
9 factual record as it's developed since that time, whether
10 the governor -- whether the legislature's prediction that
11 the statewide proxy would be an accurate predictor that
12 major parties would always get 20 percent of the vote in
13 legislative districts or over 95 percent of the time would
14 get more than 95 percent of the vote in legislative
15 districts was accurate. I think that over 95 percent is a
16 really pretty good prediction.

17 THE COURT: But 57 percent is not.

18 MS. YOUN: What is 57 percent, Your Honor?

19 THE COURT: That is the balance between 100 and
20 43 percent. So, if 43 percent of the time the major party
21 wouldn't qualify --

22 MS. YOUN: Yes, so if the legislature were to
23 give money to, well, say, the Republican Party in
24 Bridgeport even though they haven't run a candidate,
25 that's really what the 43 percent represents. Instead,

1 the new major party challengers, the one in which -- the
2 new major party -- if a Republican stepped forth in
3 Bridgeport today, they might, they might not, but if a
4 Republican Party determined it was worth their while to
5 have that candidate run, then the legislature's prediction
6 is that that candidate would get 20 percent of the vote
7 and the facts bear that out.

8 THE COURT: Even if the Green Party or some
9 other party has been running a candidate for years and
10 getting 15, 18 percent, they wouldn't have -- even though
11 they've been doing it year after year after year and
12 nobody's getting 15 to 18 percent, the Green Party who's
13 never run anybody, comes in and get full funding
14 automatically.

15 MS. YOUN: Exactly, and we see that happening
16 actually, there's an example where that happens, because
17 even when the Republican party has never run anyone, they
18 decide that district, really, we're not going win it so
19 let's not deal with a candidate, when they do step in,
20 they blow the minor party candidate out of the water.
21 They always have more than 20 percent of the vote. When
22 they decide to run, they get 20 percent of the vote.
23 That's what the legislative predicted and that's what the
24 factual record bears out in this case.

25 THE COURT: And yet, if you have a system that

1 required the Republican party in that circumstance to
2 qualify the same way the minor parties had to, query which
3 one is going to qualify and which one has the opportunity
4 then with public funding to do better.

5 Of course, when the Republican comes in with
6 full funding and runs in a race, they are going to do
7 quite. Well, if the Green Party had full funding, my
8 guess is they would do a lot better than they've been
9 doing.

10 MS. YOUN: Your Honor, let's look to -- I'm
11 sorry, that's the wrong demonstrative.

12 I think the -- my understanding, Your Honor, is
13 that even without that interfering factor of the full
14 funding, when a major party candidate steps into a
15 nonmajor party district, a party dominant district, and
16 runs, even without the benefit of CEP funding, they still
17 get 20 percent of the vote. That's what the record showed
18 before the --

19 THE COURT: Right, they have party funding or
20 whatever.

21 MS. YOUN: Yes, and Your Honor is not required
22 and cannot constitutionally equalize those resources. You
23 can't say we're going to treat -- you can't you cannot
24 say --

25 THE COURT: I couldn't agree more. I'm not

1 trying to equalize anything. I'm trying to decide whether
2 this plan is constitutional.

3 MS. YOUN: Yes, but Your Honor could not -- but
4 you're not -- I believe that Your Honor cannot just look
5 at candidates and assume that parties and their increments
6 do not exist. I think that there were -- there's
7 constitutional law and the associational rights of parties
8 that would prevent that. I think that you can't try to
9 factor out the influence of the parties. That's not the
10 way the political system works and that's not what the
11 Constitution requires or even allows.

12 MR. FEINBERG: I was just going to say, Your
13 Honor, for the same reasons that that major party
14 candidate is almost always going to get 20 percent of the
15 vote, that major party candidate is also going to be able
16 to satisfy the petitioning requirement if the court were
17 to require one. And the legislature --

18 THE COURT: Let me just say I'm not imposing
19 anything.

20 MR. FEINBERG: No, but if the court were to hold
21 that it was Constitutionally required that the legislature
22 couldn't draw a distinction between the major party
23 candidate and the minor party candidate who wanted to try
24 to reach that 20 percent, and the legislature could
25 reasonably say it is a waste of everybody's time to

1 require the major party candidate under the circumstances
2 to gather all those signatures because we can predict with
3 certainty or with near certainty that they will be able to
4 satisfy it.

5 THE COURT: It's rarely a waste of time to
6 require by law that equally situated people be treated
7 equally.

8 MR. FEINBERG: But they are not equally
9 situated. The major party candidate is not equally
10 situated with the minor party candidate who has no ability
11 to demonstrate the same level of support, either funding
12 support -- you know, Professor Green submitted a
13 declaration to make the point that the major party
14 candidate, even in a district where the candidate hasn't
15 run before, even in a district which is a party dominant
16 district of the other party, that that major party
17 candidate has a wealth of resources, both locally and
18 statewide, and a reservoir of support that no minor party
19 can compete with. They are not equally situated and,
20 Judge --

21 THE COURT: And never will be.

22 MR. FEINBERG: -- it would be an error of law to
23 hold that they are similarly situated in these
24 circumstances.

25 THE COURT: All right. Well, we may find that.

1 MR. LOPEZ: Your Honor, you don't have to find
2 that they are similarly situated. Our point is -- you
3 said something very early, earlier. What does the
4 20 percent number prove? All it proves is that you have
5 major party status. It's completely untethered in
6 Connecticut, unlike in Buckley, it's completely untethered
7 to the ability of 80 percent of the major party candidates
8 in Connecticut, the losing major party candidates in
9 Connecticut, to raise the amount of money necessary to run
10 a winning campaign or even a close campaign. It's
11 unrelated to their ability to run a viable campaign.

12 All these candidates -- we can agree that
13 there's 43 percent of them out there, Your Honor, that --
14 and there are 43 percent of the districts are neglected,
15 we can agree about that. They want you to believe that if
16 you throw a pot of money at them, money that they couldn't
17 raise privately, there's no record to, no basis to believe
18 they could raise it privately, that's why the district,
19 they got it -- they want you to believe that these
20 candidates stand on equal footing with the dominant major
21 party candidate in those districts.

22 In fact, as we know, there is a wide -- that the
23 weaker major party candidate consistently loses by
24 landslide margins. Sometimes they receive less than 20 of
25 the vote, not too often, but statistically significant.

1 It's very interesting that there's a dozen or so that lose
2 by that many, that receive less than 20 percent of the
3 vote. But if you look at it from a bigger picture, an 80,
4 75 percent of the candidates who are losers only get
5 28 percent of the vote, 30 percent of the vote, 35 percent
6 of the vote, and that's why we submit that this 20 percent
7 line, like the qualifying contribution line, is arbitrary
8 because it's untethered from the ability of these
9 candidates to raise that money competitively -- I mean
10 privately, and to compete the way candidates are presumed
11 to compete at the presidential level.

12 MS. YOUN: Your Honor, if there is a candidate,
13 a minor party candidate, who has the apparent power to a
14 major party candidate, we see this example with Denze who
15 ran this year. Denze had over a 20 percent showing in
16 2006 as an Independent party candidate who received a full
17 grant on the same terms as a major party candidate. This
18 is not major party protectionism. This is trying to
19 insure that candidates make a showing of public support
20 and that showing of public support can be made through
21 prior vote thresholds, as well as the petitioning process.

22 It's not that every minor party is automatically
23 burdened. It's only those who have not made a previous
24 support, showing of popular support in that particular
25 district who have to step forward and make that showing.

1 MR. ZINN ROWTHORN: Your Honor, could I just add
2 a point about the notion that the 20 percent major party,
3 minor party distinction is arbitrary under Connecticut
4 law? It's not. It's the level at which we say across
5 districts, we use a statewide proxy based on gubernatorial
6 performance. No matter how a minor party -- major party
7 major party candidate did in a particular district, they
8 still get major party status, which means they get
9 particular benefits. They will get primary funding at
10 primary public expense, they get ballot positioning, they
11 get all kinds of privileges.

12 And I don't think there's any question it's
13 constitutional with respect to that kind of state benefit
14 to make a distinction based on a statewide proxy that
15 applies even in places within the state where that proxy
16 may not apply or that distinction may not apply locally.
17 And I think that's in recognition of the fact that there
18 is latent support and party resources that flow across the
19 state.

20 THE COURT: Well, not necessarily. Because if
21 you look at Weicker's win, he had -- what was it, My
22 Connecticut Party?

23 MR. ZINN ROWTHORN: A Connecticut Party.

24 THE COURT: A Connecticut Party, whatever. When
25 they run two years later, this system had been in place, A

1 Connecticut Party, which had no history of anything, no
2 party organization, they had an individual who was very
3 strong, suddenly they are a major party, suddenly they get
4 funding in every single district as if they were the
5 Republicans or Democrats and there's no basis, there's no
6 basis for doing that on a statewide basis.

7 MR. ZINN ROWTHORN: But they didn't run a full
8 slate of legislative candidates. And when I deposed
9 Governor Weicker, he said the reason they didn't do well
10 is between those intervening elections they did no party
11 building. So that really was -- and so what we say is
12 between every two year election, the major parties are
13 doing the kinds of party building that's sustains them.
14 As major parties, the Republicans or the Democrats may one
15 day abandon that exercise and they may become minor
16 parties.

17 THE COURT: But what do you think would have
18 happened if this law had been in effect in the election
19 after Weicker won? We would have had A Connecticut Party
20 represented in virtually every race across the state.
21 Why? They didn't have to have party building. They
22 didn't have to meet any private financing. They get a
23 huge amount of money because they attach their name to the
24 party name.

25 MR. ZINN ROWTHORN: I'm not sure it's the case,

1 first of all, that we can make that prediction. But also,
2 you know, it isn't -- we shouldn't totally forget the fact
3 that major party candidates still at a local level have to
4 demonstrate personal support and personal commitment.

5 And, you know, the testimony from Governor Weicker was
6 that they didn't have the kind of organization --

7 THE COURT: Not to get the money.

8 MR. ZINN ROWTHORN: Yes, they do.

9 MS. YOUN: Yes, they do.

10 MR. ZINN ROWTHORN: They have to gather
11 qualifying contributions and I don't think there's any
12 reason, Your Honor, to suggest that we do think major
13 parties have probably a better ability to do that based on
14 party infrastructure, but there are examples in this
15 instance where major party candidates didn't do it.

16 MS. YOUN: Yes, there were 13 major party
17 candidates again who were exceptionally weak in this
18 cycle, exceptionally weak. They ended up getting not much
19 less but slightly less than 20 percent of the vote. Only
20 one of those candidates qualified for CEP funding. Only
21 one of them was able to get out on the streets, get out
22 there and get the qualifying contributions.

23 It's not as if every major party candidate can
24 just coattail along on their party. They have to get out
25 there. They have to knock on doors and collect donations

1 in small increments.

2 MR. FEINBERG: And Your Honor's prediction about
3 what would happen to A Connecticut Party's situation is
4 disproved by the fact that this year, in 2008, it is not
5 true that the Republican party ran a candidate in every
6 district in the state, even though they presumably could
7 have taken advantage of the money.

8 There were many districts and, as Professor
9 Green can explain, professional politicians who know they
10 are going to get clobbered don't want to weigh in just so
11 they can grab the money. There are many districts where
12 people do not run. There were a lot of uncontested
13 districts this year. So the prediction doesn't hold true,
14 Your Honor.

15 THE COURT: This case is not going to be decided
16 on my predictions or anybody else's.

17 MS. YOUN: Exactly. And I want to talk a little
18 more about the FECA, which is the presidential public
19 finance system. It's not true that once you get to
20 5 percent you get a full grant under FECA, as we've
21 already established. That's Section 9002 of FECA. But
22 also, the way in which major party status was defined in
23 FECA was 25 percent nationwide. So until you hit that
24 number and until you hit that number based on a prior vote
25 showing, there wasn't even any petitioning route to

1 demonstrate grass roots support. Until you hit that
2 number, you didn't get the same grant amount as the major
3 party candidates.

4 THE COURT: Right. If you're a major party,
5 under FECA you get major party funding.

6 MS. YOUN: Yes.

7 THE COURT: If you're a minor party but you hit
8 5 percent, you get the percentage of your vote as compared
9 to the grant, full grant, given to the major party -- no?

10 MS. YOUN: No, you don't get the percentage of
11 your vote. You get the percentage of your --

12 THE COURT: The ratio.

13 MS. YOUN: Yes, the ratio. Which is going to
14 guarantee that the minor parties are always getting less
15 than the major parties.

16 THE COURT: Right.

17 MS. YOUN: I want to go ahead. While we're
18 talking about major party performance, major party
19 incentive, whatever, we have a lot of hypotheticals. We
20 don't have to rely on those hypotheticals anymore, Your
21 Honor. We have facts. If you turn to folder -- Tab 3 in
22 the demonstrative folders.

23 MR. LOPEZ: Your Honor, Ms. Youn -- I thought
24 this was going to be factual presentation but an hour's
25 gone by of legal argument in effect and I haven't

1 presented legal argument, it's not my intention to present
2 legal argument now. But there are, there were some
3 misstatements about our proof and about the posture of
4 this case.

5 It was suggested that, you know, we've been --
6 our legal theory has shifted. First of all, there's
7 nothing wrong with legal shifting, there's been shifting
8 as the case evolves to conform to developments and to the
9 evidence, and ours has had to shift a fair bit because the
10 field keeps -- or the sands keep shifting in this case.

11 But I mean, from the very start we have alleged
12 that the politics is zero sum game, and when you subsidize
13 weak major party candidates, that will provide an
14 incentive. You will confer communications benefit on
15 major party candidates which will over time read down to
16 the disadvantages of our candidates. So, it's factually
17 inaccurate to say that we're raising those claims for the
18 first time now.

19 The other point I would make is that Ms. Youn
20 makes the point that she heard very little evidence
21 yesterday about how this law hurts my clients. That's
22 simply not accurate, Your Honor. We put on an abundance
23 of evidence and in our finding. I just spared everyone
24 the pleasure of reading that evidence into the record.
25 But we have ample affidavit evidence from our clients how

1 this law hurts them, and they have ample statistical data
2 about how this law hurts them. And if the point was
3 missed yesterday, it hurts them because they are
4 competing, both my clients and minor party candidates as a
5 whole, are competing in a much more expensive environment
6 and a much more crowded environment and, in fact, there
7 are fewer minor party candidates who ran in the last
8 cycle. And, in fact, in the districts in which minor
9 party candidates targeted in '06, in '08 there were more
10 major party candidates.

11 So, with that said, I'm happy to let you
12 proceed.

13 MS. YOUN: Your Honor, I just want to quickly
14 address that point that Mr. Lopez brought up about
15 politics being a zero sum game. The Buckley court is
16 really clear on this point. Under a system on public
17 financing, politics is not zero sum game. It's not true
18 that the provision of a benefit to, to one party somehow
19 suppresses the speech of another party. Davis doesn't
20 overturn that holding. In fact, Davis specifically cites
21 that holding of Buckley in the public financing context.
22 Public financing is speech enhancing, it is not speech
23 suppressive.

24 And I want to look at how that plays out. Now,
25 if you will turn, if you will turn to Tab 1 of the

1 demonstratives.

2 I think this is proof that politics is not a
3 zero sum game, even if there were some slight increase in
4 expenditures of the major parties in the 2008 election.
5 Minor parties did better even in, even in non -- I want
6 to, you know, we've already heard the statistic that minor
7 parties overall did better, but that enhancement and
8 performance was not due entirely to the operation of the
9 CEP.

10 If you look to the second line of this chart,
11 even if nonparticipating minor party candidates did better
12 under the CEP, you can compare that 7.9 number in 2008 to
13 the 6.4 number in 2006 where the CEP did not yet exist.
14 There is no way that the CEP ended up being a zero sum
15 game for minor party candidates. There's no support for
16 that in the record and plaintiffs have failed in their
17 burden of proving that to be the case.

18 Secondly, you know, in terms of the breakdown of
19 percentages, we see that the percentage of nonmajor
20 parties who were able to make a significant showing,
21 either ten percent of the vote or 20 percent of the vote,
22 went up by substantial margins in 2008.

23 Percentage of nonmajor party candidates getting
24 ten percent of the vote was 26 percent in 2006 and
25 28 percent; that jumps by almost ten points to 36 percent.

1 Secondly, in terms of the percentage of nonmajor
2 party candidates received at least 20 percent of the vote,
3 that went from 4.3 to 10.2. That number doubled and of
4 course those candidates are automatically eligible for CEP
5 funding on the same terms as major parties. So to say
6 that --

7 THE COURT: What percentage, what percentage of
8 that number were cross endorsed by a major party?

9 MS. YOUN: None. That's based on strict vote
10 percentages.

11 THE COURT: All right.

12 MS. YOUN: If you want to go down to the cross
13 endorsement number, that appears five lines further down
14 in, in nonmajor parties automatically eligible for CEP
15 funding in the next election. So, candidates eligible for
16 a full grant based on cross endorsements.

17 So, out of the candidates who, out of the, out
18 of the districts in which nonmajor party candidates were
19 able to make a 20 percent showing and, therefore, are
20 eligible for a full grant on the same terms as major party
21 candidates, I believe that that was, that that was due
22 mostly to the operation of the CEP and not due to cross
23 endorsements.

24 MR. LOPEZ: Your Honor, I have several comments
25 on this exhibit. First of all, as we argued yesterday,

1 the impact of this CEP, the fact that minor parties across
2 the board did marginally better, the difference between
3 6.4 and 8.5, is neither here -- is neither here nor there,
4 because our principal for purposes of the constitutional
5 analysis, our principal objection is that larger amounts
6 of money are being driven to major parties to fund their
7 speech and it's not being driven to us. And so we've made
8 that point adequately yesterday, I believe.

9 But in terms of the increased number of minor
10 party candidates who poll more than ten percent, that,
11 that confirms a trend that started last cycle in '06. I
12 believe there were 12 in '06 and, what you are saying
13 now --

14 MS. YOUN: Do you want to cite some evidence on
15 this point?

16 MR. LOPEZ: Well, you are the one that prepared
17 the comparison. But, in any event, it confirms a trend,
18 but the point is, Your Honor, the fact that there are 21
19 minor party candidates who polled ten percent on their own
20 or as a result of cross endorsements, from our point of
21 view as a legal matter, that provides in our view less
22 justification for the discrimination and not more
23 justification.

24 Now, we also know, as a legal matter, we also
25 know from 2006, Your Honor -- and this is their evidence,

1 Your Honor, and it's probably in these tables somewhere.
2 We'll find it in our tables but it's probably in this
3 table somewhere because they compare '06 with '08 -- I've
4 only seen these tables for the first time today, Your
5 Honor, but we know that there were 14, 16, 18 minor party
6 candidates who were eligible for a partial or full grant
7 this time around.

8 Your Honor, only one, only one qualified for a
9 grant. So, what does that tell us about the ability of
10 minor party candidates who are theoretically eligible
11 based on vote totals to go out there and qualify? Even
12 minor party candidates with the resources of the Working
13 Families Party that we heard about yesterday, it's no
14 small burden, Your Honor, to go out there and qualify, and
15 it's a burden that we submit is largely -- that the '08
16 election results show us is largely -- cannot be overcome.

17 MS. YOUN: Your Honor is focused less on the --
18 you know, I'm directing more Your Honor's concern about
19 the differential treatment aspects of the CEP rather than
20 the aspects such as the qualifying contributions burden
21 that are applied to all candidates, whether minor party or
22 major party candidates?

23 And, given that, I'd like -- so just going back
24 to what we were saying about this chart, if you look to,
25 if you look -- so, again, we have five candidates, five

1 minor party candidates, as opposed to -- who are
2 automatically eligible for full grant. We have a full 21
3 minor party candidates who are automatically eligible for
4 a grant.

5 Now, I want to think about what Your Honor has
6 seen in the record about the past fund raising practices
7 of minor party candidates and understand what an
8 opportunity this presents for them. Minor party
9 candidates I mean, well -- let's turn to the next page.

10 If you look at the -- you know, we have average
11 party, we have -- the next page represents expenditure
12 information for the nonmajor party candidates. Once
13 again, we see the same is true. We see, first of all,
14 massive benefits to the participating candidate who have
15 seen their expenditure levels go up by about 15 times, and
16 that's -- actually it's -- I'm understating that figure in
17 fact because that's the average overall.

18 But, once again, you see this disproval of the
19 plaintiff's causal assertion on which, again, they bear
20 the burden of proof that politics is a zero sum game. You
21 will see that even for the nonparticipating candidates,
22 their average expenditures went up after the CEP.

23 It's simply untrue that minor party
24 nonparticipating candidates are being disadvantaged by the
25 operation of this system. It's simply untrue that any

1 benefit to the major parties results in a corresponding
2 disadvantage to minor parties.

3 MR. LOPEZ: Your Honor, this table doesn't
4 support -- there's no foundation for that conclusion in
5 this table. All this table, all this table tells us is
6 that five minor party candidates qualify for partial, for
7 partial or full funding and that's what drove up the
8 average expenditures of minor party candidates. It tells
9 us nothing about the average expenditures of, of my
10 clients or, excuse me, or all the other minor party
11 candidates who, who ran in '08. Nor does it tell us how
12 this correlates -- and maybe I'm jumping the gun and maybe
13 they will tell us how this correlates with, how
14 significantly major party expenditures increased. You saw
15 the charts yesterday. You saw how many major party
16 candidates had their expenditures go through the roof.

17 MS. YOUN: I want to talk about minor parties
18 right now and the effect of this program on minor parties.
19 It's not true that this table only represents the effect
20 of driving up the CEP. That number, 14,225, yes, indeed
21 that does represent what Mr. Lopez was just referring to,
22 the effects of the CEP in inflating overall average
23 expenditures, but it's that second line which I think is
24 really directly on point for Your Honor's concern, which
25 is that is nonparticipating candidates only. That 692

1 figure is people who did not benefit from any driving up
2 effect. That number went up in the Senate. Two lines
3 down you see that, again -- that's nonparticipating house
4 candidates. Once again, their expenditures went up, as
5 did their vote totals. You know, there is simply no
6 evidence that the CEP has operated to the disadvantage of
7 nonparticipating nonmajor party candidates.

8 THE COURT: Let me make sure I'm reading this
9 right. What you're saying is in 2008 a nonmajor party who
10 did not get a CEP grant spent on average \$34 more than
11 they did in 2006.

12 MS. YOUN: Yes, I'm seeing Your Honor's
13 skepticism as you're saying that and I'm not trying to
14 demonstrate a causal proposition. What I'm saying is
15 plaintiffs who have the burden of proof here have not
16 proven their causal proposition that the CEP will drown
17 out voices of minor party candidates, that the
18 operation -- that the provision of benefits of the CEP to
19 participating candidates will cause any corresponding
20 disadvantage in nonparticipating candidates, whether they
21 be major party or minor party.

22 THE COURT: Okay, this is helpful but I think
23 their point is slightly different. I don't know what the
24 inflation adjusted figure would be. Let's assume it's
25 going to be approximately the same. So they have

1 approximately the same expenditure --

2 MS. YOUN: It didn't hurt them. There's no
3 evidence it hurt them.

4 THE COURT: Well, this is -- it didn't hurt the
5 amount of money that they spent, but let's assume we have
6 a situation in which there's five people in this room who
7 all want to talk at the same time and then we have a
8 situation where there's -- two of those people are given
9 megaphones. Their point is they are getting drowned out
10 by the two people with the megaphones.

11 MS. YOUN: Yes, and first of all, I would say
12 that that happened before the CEP and it will continue to
13 happen after the CEP and you can't give everyone -- you
14 know, it's a level the playing field, you know, rationale
15 to give everyone a megaphone just because their voice
16 unfortunately under the previous system was weaker.

17 But on the second point, I think I would dispute
18 the characterization of politics as a room in which
19 everyone is trying to talk at the same time. Politics is
20 a program in which, yeah, there's an intense amount of
21 attention focused on an election in the weeks before an
22 election but, you know, I think that that has always been
23 the case. We have seen, we've seen minor parties, you
24 know, find their own constituencies, we've seen them find
25 their own voice, find their own ways of reaching those

1 voters, and I don't think it's analogous to a situation of
2 five people in the same room trying to talk to their own
3 people. They have their own people, they have their own
4 platform, they have people to support their positions and
5 they are able to communicate with those voters, and
6 there's no evidence that they have been harmed in their
7 ability to communicate and that, I think you could see in
8 the figure that says that even nonparticipating candidates
9 did better in this election, not worse.

10 I think you can also see that in the percentage
11 of -- you know, let's go down to the very lowest level,
12 you know, we heard a lot of testimony that the nonmajor
13 party candidates, a lot of them are, you know, which is
14 perfectly fine, they want to maintain ballot access, and
15 once again, there's been no deterrent in their ability to
16 receive ballot access. There's still -- they've made
17 slight improvements in that regard.

18 The minor party, you know, it's hard to tell of
19 course after one election but there is simply no proof in
20 the record that the CEP operates in the way that
21 disadvantages nonparticipants, whether they be major party
22 or minor party.

23 All right. I now want to turn to -- sorry. And
24 I think that's also true for the Green and Libertarian
25 Parties, the demonstratives four -- Demonstrative 4.

1 So, this represents the effects of the CEP, you
2 know, for purposes of the as applied challenge to the
3 Green Party and the Libertarian Party. Once again, you
4 see that, you know, obviously these are all
5 nonparticipating candidates. Their average vote totals
6 went up in Remy Chevalier or Chevalier? Saw his vote
7 percentage jump. And, you know, every single Green Party
8 candidate who ran in 2008 did better than they had done in
9 2006 except for minor party candidate DeRosa. That is
10 what this table shows.

11 MR. LOPEZ: Your Honor, we don't know why they
12 did better but we do know that in three of the five
13 districts that they ran in, they -- there was a CEP funded
14 candidate whose receipts attributable to the grant and the
15 qualifying contributions greatly increased the money that
16 that candidate spent in that election, and my candidate
17 competed in that more, that more expensive environment.
18 The fact -- we don't know why my candidate polled more or
19 less votes in that particular circumstance, but we do
20 know, we've put on evidence yesterday that the three of
21 the five districts where our candidates competed, there
22 was this one or two CEP funded candidates and as a result
23 spending skyrocketed in our district.

24 MS. YOUN: Well, let's look -- I'm going to look
25 at this supposedly skyrocketing figure. In -- after John

1 Green's presentation when we turn to the minor party
2 candidates but -- major party candidates, but for right
3 now, I mean I think that we know that unless -- I think
4 that we know that the mere provision of a benefit to a
5 major party candidate under Buckley doesn't necessarily
6 make a program unconstitutional, but what the Buckley
7 court looked to was effects of the minor party candidates
8 which is what I'm trying to focus on right now and which
9 --

10 MR. LOPEZ: Objection, Your Honor. That's not
11 the holding in Buckley.

12 THE COURT: Well, I can read Buckley.

13 MR. LOPEZ: Buckley looks at the relative
14 positions of the party. If you increase the relative
15 strength of one party, that's just -- it's as if you
16 decrease the relative strength of the other party. And
17 Ms. Youn's whole presentation is overlooking this critical
18 aspect of Buckley. The holding in Buckley is that the,
19 the field was not changed because public funding simply
20 substituted what the market would produce otherwise. And
21 I think as this court understands, that's not what's
22 happening here.

23 MS. YOUN: Well, Your Honor, vote percentages,
24 unlike speech, are in fact a zero sum game so I think we
25 see in this chart that, you know, this is not vote totals,

1 this is vote percentages. This is the Green Party
2 competing against major party candidates in their district
3 and in that particular zero sum game they did better, not
4 worse.

5 THE COURT: And you attribute that to the CEP?

6 MS. YOUN: I don't attribute that to the CEP, I
7 don't necessarily attribute this to the CEP, but what I'm
8 saying is in terms of the plaintiffs who have brought this
9 constitutional lawsuit trying to bear their burden of
10 showing this pursuant hurts their party on an as applied
11 challenge, I just don't see that.

12 And I think that the same is -- the Libertarian
13 Party, I have to say, goes the other way if you look to
14 the next page. We're not trying to hide these figures
15 from you. Their vote percentage went down. They only ran
16 one candidate in this cycle, but I think that given that
17 the Libertarian Party is philosophically opposed to
18 participating in the CEP, it's really hard to draw any
19 conclusions from that, especially if you look to
20 Demonstrative Number 2.

21 MR. LOPEZ: The Libertarian Party is
22 philosophically opposed to public funding going to major
23 party candidates because --

24 MS. YOUN: No, actually --

25 MR. LOPEZ: -- because of the advantage it gives

1 to major party candidates.

2 MS. YOUN: No, actually the Libertarian
3 representative who was offered in a deposition
4 specifically said that they are opposed to all public
5 financing programs.

6 MR. LOPEZ: We don't disagree with that but --

7 THE COURT: All right --

8 MR. LOPEZ: I'll stand on my comments.

9 THE COURT: It doesn't matter.

10 MS. YOUN: It doesn't matter. But if you go
11 down to, if you go down to the Libertarian Party
12 candidates, which is the third page of this chart, you can
13 see that Libertarian Party candidates, you know, it seems
14 that their, it seems that their, frankly their strength in
15 Connecticut is waning and that started happening long
16 before the CEP was put into effect.

17 I think that, you know, you also see a similar
18 declining trend in the absolute number of nonmajor party
19 candidates. Those numbers have been declining and, once
20 again, that preceded the CEP and is not causally
21 attributable to it.

22 But the overall fact of the matter is that non
23 -- there is no proof for plaintiff's proposition that
24 nonmajor party candidates did worse or, you know, were
25 hurt, sorry, by the CEP. They may talk about major party

1 expenditures all they want but in terms of this effect on
2 minor parties, it's just not there.

3 And I am now going to -- I understand that our
4 witness has arrived and I'm going to turn it over to
5 Attorney Zinn Rowthorn.

6 MR. ZINN ROWTHORN: Thank you. Is now a good
7 time to take a break before we put on the witness, Your
8 Honor?

9 THE COURT: Sure. Why don't we take 15 miutes.
10 Come back at ten after eleven. Stand in recess.

11 (Whereupon a recess was taken from 10:55
12 o'clock, a. m. to 11:15 o'clock, a. m.)

13 MR. ZINN ROWTHORN: Thank you, Your Honor. The
14 defendants and intervenor defendants would call John
15 Green.

16 THE COURT: All right. Mr. Green, plese stand
17 and raise your right hand.

18 J O H N G R E E N, called as a witness on behalf of
19 the defendants and intervenor defendants, having been duly
20 sworn by the Court, testified as follows:

21 THE COURT: Please be seated.

22 DIRECT EXAMINATION

23 BY MR. ZINN ROWTHORN:

24 Q. Good morning, Mr. Green. Do you hold a position with
25 the Connecticut Working Families Party?

1 A. Yes, I do.

2 Q. What position is that?

3 A. I'm Executive Director.

4 Q. Okay, and I don't want to linger too long on your
5 background because I know you've submitted two
6 declarations in this case. But just briefly, can you
7 describe for the court what your positions are, what your
8 responsibilities are within the party?

9 A. Sure. My job responsibilities primarily are
10 recruiting and retaining staff, raising funds, in some
11 cases directly, you know, managing or overseeing campaigns
12 of the party, working with constituent organizations and
13 building relationships with constituent organizations that
14 care and share the values -- care about and share the
15 values of the party.

16 Q. Would it be fair then to say that you have
17 significant involvement in the political and electoral
18 strategy of the party?

19 A. Yes.

20 Q. There was some discussion yesterday about an
21 organization called Citizen Services, Inc. Are you
22 familiar with that organization?

23 A. Yes.

24 Q. And do you have a role in that organization?

25 A. Right, Citizen Services, Inc. is a consulting firm

1 that provides staff services, campaign management services
2 to a range of community organizations, labor
3 organizations, political campaigns throughout the country.
4 I'm employed by them and as an employee of CSI -- Working
5 Families Party contracts with Citizen Service,
6 Incorporated, for staff services; in that capacity I serve
7 as Executive Director.

8 Q. Okay. It was characterized yesterday that CSI was an
9 arm or unit of the Working Families Party; is that
10 correct?

11 A. No, Working Families Party is a client of CSI.

12 Q. Okay. Just to take this last election cycle as an
13 example, did CSI provide services for any -- for
14 candidates of parties other than the Working Families
15 party?

16 A. Oh, yes.

17 Q. Can you give some examples?

18 A. A guy named Barack Obama comes to mind.

19 Q. Okay. What kind of services did CSI provide for
20 Mr. Obama?

21 A. We didn't provide those services in Connecticut but I
22 can say that CSI did grass roots get-out-the-vote work in
23 the primaries in some of the states.

24 Q. Does CSI, or has CSI ever to your knowledge provided
25 services to Republican candidates?

1 A. Yes.

2 Q. There's obviously a lot of testimony and record
3 evidence that the Working Families Party qualified some
4 candidates for public campaign financing under the
5 Citizens Election Program. Just very briefly, can you
6 tell the court which candidates were qualified, what
7 offices they were seeking, and what districts they were
8 seeking them in?

9 A. Sure. Cicero Booker was a candidate for State Senate
10 in the 15th Senatorial District who was able to qualify
11 for a full grant.

12 Deborah Noble was a candidate for State
13 Representative in the 16th State Representative District.
14 She qualified for two-thirds grant.

15 Q. Okay. And what route did they use to qualify? I'm
16 asking whether it was through petitioning or through prior
17 performance of the party in the district?

18 A. Both cases through petitioning.

19 Q. Okay, and let me just -- there was some discussion
20 yesterday about when petitions, or when it became apparent
21 that candidates could petition onto the -- for into the
22 program. Did either of your candidates have prior ballot
23 access in the district but qualified by virtue of the
24 State Election Enforcement Commission's declaration ruling
25 that even those candidates couldn't petition onto the

1 ballot?

2 A. Yes. In the 16th state rep district, the Working
3 Families party was qualified as a party for purposes of
4 ballot access, but did not achieve a percentage of the
5 vote that would have made a candidate eligible for any
6 form of grant under the CEP except through the petition
7 route.

8 Q. Okay. And when did Working Families Party become
9 aware that that was an option for Ms. Noble?

10 A. I frankly assumed it was an option from the start, so
11 I would say it was sometime in May or June that we became
12 aware that it was conceivable that it would not be an
13 option. I'm trying to recollect the timeframe here.

14 Q. Sure. And so I take it then that Ms. Noble didn't
15 have any difficulty obtaining petitions to circulate prior
16 to the deadline for doing so?

17 A. You know, I think it was around the time that she
18 submitted the application to get the physical petition
19 that the issue was brought to the attention of the SEEC by
20 the Secretary of State's office.

21 Q. Okay. And did you or someone on behalf of either of
22 your candidates communicate with the SEEC about the date
23 the petitions would become available?

24 A. I don't recall.

25 Q. Well, let me ask a more general question. Did you

1 have occasion throughout the campaigns or did, did the
2 candidates have occasion throughout the campaigns, have
3 occasion to contact the SEEC with questions about how the
4 program operated?

5 A. Absolutely, yes.

6 Q. And approximately how many times were you in contact
7 with the SEEC?

8 A. I mean I would say extremely frequently. Over the
9 course of, you know, the maybe five months leading up to
10 the election, my guess would be that I contacted someone
11 at the SEEC's office maybe two or three times a week on a
12 close to a regular recurring basis with some question
13 about --

14 Q. Did you find that the SEEC staff was responsive to
15 your inquiries?

16 A. They were, yes.

17 Q. I want to ask you -- yesterday there was a lot of
18 discussion about some allegations in plaintiff's proposed
19 findings of fact with respect to Mr. Booker, primarily
20 Mr. Booker. And I put in front of you what -- Plaintiff's
21 amended and supplemental proposed findings of fact and in
22 particular paragraphs 210-E and 210-F.

23 A. Right.

24 Q. Have you had a chance to review those paragraphs?

25 A. I have.

1 Q. Let me ask you as sort of a background question,
2 did CSI provide any services to either of your candidates
3 for purposes of gathering either petition signatures or
4 qualifying contributions?

5 A. Yes.

6 Q. Okay. And how, if you can, if you can recall,
7 approximately how much money did the Booker campaign pay
8 CSI to gather petition signatures?

9 A. I don't recall. And I want to point out that I think
10 in the process of CSI's invoicing these campaigns, the
11 invoice distinguished between services provided
12 specifically for the purposes of petitioning only, from
13 other services provided that entailed both gathering
14 signatures and raising qualifying contributions. So it
15 would be -- but the total in the invoice, you know, is
16 probably in the range of 8,000 -- I'm guesstimating that
17 that's 8- or 9,000.

18 Q. Okay, and let me just ask you differently, I think
19 you may have just answered it, but prior to receiving his
20 grant --

21 A. Yes.

22 Q. -- how much did Cicero Booker pay CSI?

23 A. I think what's before me is that it appears that it
24 was about \$11,000.

25 Q. Okay. Do you have any reason to dispute that figure?

1 A. That's sounds right.

2 Q. Okay. Now --

3 THE COURT: What are you looking at?

4 THE WITNESS: I'm looking at the plaintiff's --

5 THE COURT: Plaintiffs proposed findings.

6 THE WITNESS: What's that?

7 THE COURT: Yes, okay.

8 MR. ZINN ROWTHORN: I believe that figure is at
9 figure 210-C, Your Honor, on the previous page.

10 THE WITNESS: \$11,354.24.

11 THE COURT: Okay.

12 BY MR. ZINN ROWTHORN:

13 Q. Now, the claim was made in the proposed findings and
14 again yesterday in court, that Mr. Booker paid CSI and
15 generally expended more money than he was permitted to do
16 before receiving a grant. What's your reaction to that?

17 A. That's definitively false. I'd be happy to explain
18 further.

19 Q. Please do.

20 A. Let me first point out that frankly it was the
21 candidacy of Deborah Noble that more so brought our
22 attention to the need to be very cautious and cognizant of
23 not exceeding expenditure limits in the prequalification
24 phase of the campaign. And her campaign really came
25 closer to doing that, but because of that, I want to make

1 it clear we were acutely aware of this threshold and
2 limit.

3 What is described here is that following submission
4 of the application for the grant, Booker's campaign and
5 CSI executed a contract, which is described here \$48,845,
6 that entire incurred expenditure was for services to be
7 provided following the date of being awarded grants. None
8 of that amount was retrospective for services that had
9 been provided or expenses that may have been incurred
10 prior.

11 Q. So, let me ask you why you -- I assume you reported
12 that expenditure, according to the plaintiffs, on
13 October 20th, 2008; is that consistent with your
14 recollection?

15 A. I was neither a treasurer or a deputy treasurer for
16 this campaign but that sounds like there may have been a
17 filing date seven days prior to the date of an election or
18 something like that.

19 Q. Okay. I would assume at that point CSI had not
20 performed \$40,000 worth of services for the candidate, is
21 that correct?

22 A. Not entirely but a substantial portion, yes.

23 Q. Okay. I guess there are two points. The first one
24 is, I think you referenced it, was the contract for
25 services rendered prior to receiving a grant?

1 A. Absolutely not.

2 Q. Okay. And did, was it the candidate's and the
3 party's view that you had to report a contract as an
4 obligation or only when expenditures were actually made
5 pursuant to that contract?

6 A. It's always been our understanding that the date when
7 expenses are incurred is what is required for SEEC
8 reporting purposes. So when a contract is executed, that
9 obligates the campaign to pay for services. At that point
10 those expenses have been incurred and, therefore, have to
11 be reported, even though they haven't, the services
12 themselves may not have entirely been provided at that
13 date, and the payment may not have been rendered at that
14 date.

15 Q. Now, the suggestion was made that this might have
16 been a contingent arrangement upon -- that CSI would
17 provide services and be paid only if Mr. Booker received
18 the grant. Is that an accurate characterization?

19 A. It's, I think it's inaccurate to describe it that
20 way. I think the contract itself may have stipulated that
21 it was contingent upon the receipt of funds, that once the
22 grant was approved, CSI would begin performing services
23 and, and the candidate would be obligated to pay.

24 Q. I want to be clear on this point though. So, was it
25 that CSI would perform services if a grant was -- or CSI

1 had performed services but only would be paid if a grant
2 was made?

3 A. Right, it was not in any way an assumption of any of
4 ours that CSI would perform services and only receive
5 payment if the grant was approved.

6 Q. Okay. Now, I think we cleared this up by describing
7 the relationship between CSI and the Working Families
8 Party, but there was a suggestion that, that somehow
9 inappropriately that \$40,000 or whatever the figure was
10 that Mr. Booker was paid was somehow funneled back into
11 the coffers of the Working Families Party. What's your
12 reaction to that suggestion?

13 A. Absolutely not. Those, the expenditure of the
14 campaigns was to pay for services provided to the
15 candidate.

16 Q. All right. Now, what services was CSI in particular
17 providing to Mr. Booker between the time that the grant
18 was awarded and the election?

19 A. I think there were three or four different types of
20 services provided. CSI, you know, has staff people who
21 design direct mail and I believe that we, you know,
22 designed and created and executed four pieces of direct
23 mail to a universe of somewhere around 15,000 voters in
24 that district. The campaign provided door to door field
25 services, knocking on doors, speaking with voters, asking

1 them if they would support the candidate. The campaign
2 provided services for producing a television ad that ran
3 on cable television, not that we were the vendor who
4 actually produced the advertisement but we were the vendor
5 who did the consulting on the creative aspects of the
6 advertising, and the campaign provided some sort of
7 general over, an overarching management service. I think
8 there was a small amount in that for administrative
9 services relating to compliance with SEEC filings.

10 Q. And, by the way, is the rate -- you may not know this
11 but if you do -- is the rate that CSI charged Mr. Booker
12 for its service consistent with the rate that it has
13 charged other candidates in similar races for the same
14 services from different parties?

15 A. Yes. The rate that Senator John Fonfara paid to CSI
16 for producing direct mail or literature and the rate that,
17 you know, John Fonfara or Eric Coleman paid for
18 door-to-door services was identical to the rate that
19 Mr. Booker paid.

20 Q. Okay. Let me -- I don't want to jump around but the
21 reason I asked you what the, sort of the nature of the
22 services that Mr. Booker was provided between the time of
23 the grant and the election was, relates to the second
24 paragraph that I asked you to look at. Look at paragraph
25 210-F.

1 A. Right.

2 Q. Have you had an opportunity to read that paragraph?

3 A. Yes.

4 Q. To sum it up briefly, the discussion yesterday,
5 looking at some filings by Mr. Booker that were dated
6 after the grant was made and the last sort of two or three
7 weeks of the election, was that the services that were
8 charged to CSI were for, quote, door-to-door donations.
9 That's how it read on the form.

10 Let me ask you this general question. Was CSI,
11 between the time that Mr. Booker received his grant and
12 Election Day, providing any fundraising assistance to
13 Mr. Booker?

14 A. No. The Booker campaign would not have been able to
15 receive any contributions.

16 Q. Why is that?

17 A. Because upon receiving a grant, my understanding is
18 that you're -- maybe not prohibited but any contributions
19 you raised would allow your opposing candidate to receive
20 matching funds, but I think you can't even raise
21 contributions once you qualify and receive a grant.

22 Q. And at time that Mr. Booker provided his grant
23 application to the SEEC, did he have to demonstrate that
24 he had the necessary quantum of qualifying contributions?

25 A. Yes, absolutely, of course.

1 Q. So I'm going to ask you how would you explain, if you
2 can, why those filings would reference door to door
3 donations?

4 A. I can only assume it's an error. And I'd like to see
5 the actual document. It would have made sense for it to
6 say door to door operations which is a word that looks a
7 lot like donations potentially in handwriting, but I can't
8 say. It seems it would just have to be an error.

9 Q. But it is your testimony that there was no further
10 fundraising by Mr. Booker after the date that he received
11 his grant?

12 A. Absolutely correct.

13 Q. All right. I want to -- you referenced the Noble
14 experience and that the party was a little more focused on
15 the expenditure limit for Ms. Noble?

16 A. Correct.

17 Q. Why was the party focused on that?

18 A. I think because in that case -- well, there's a
19 couple of things that are worth pointing out. The
20 qualifying contribution threshold, which is the same as
21 the prequalification expenditure limit, is \$5,000 in a
22 state rep race, \$15,000 in a state senate race. However,
23 the number of in-district contributions needed is 150 in a
24 state rep case race as opposed to 300 in a state senate
25 race. So the proportionality of those two figures does

1 not match up. You need, you have one-third the amount of
2 money to get one-half of the number of contributions
3 relative to comparing a state rep and a state senate race.
4 People with me on that so far? Okay.

5 So for I think that reason, one gets closer to the
6 \$5,000 threshold in the state rep race if you're having to
7 spend money to raise money or spend money to gather
8 nominating petitions, you get closer to the \$5,000
9 threshold faster than you get close to the \$15,000
10 threshold.

11 I think it's also the case that in Ms. Noble's
12 district, Mrs. Noble's district, the number of signatures
13 needed as a percentage of the population was higher
14 because turn-out in the 16th rep district is higher than
15 turn-out in the 15th state senate district as a
16 percentage.

17 Q. Did the party have occasion to make an organizational
18 expenditure on behalf of Ms. Noble?

19 A. That's exactly what we did to avoid the concern about
20 exceeding the expenditure limit, so --

21 Q. And what was the, what was the expenditure? How much
22 was it and what was it for?

23 A. The Working Families Party made an organizational
24 expenditure I believe in the ballpark of \$1,100. Again
25 that's to the best of my recollection, and it was for

1 gathering nominating petition signatures to get her to a
2 further point in terms of eligibility for a larger grant.

3 Q. Okay. Now, we discussed that organizational
4 expenditure a little bit yesterday. The claim on this
5 side of the room was that was an unlawful organizational
6 expenditure. In other words, it wasn't for one of the
7 purposes defined by statute as a proper organizational
8 expenditure. What's your view on that?

9 A. You know, the Working Families Party also supports
10 candidates through cross endorsement for other parties and
11 under a new statute that took effect in December of 2007,
12 the ability, the legislature essentially created an
13 ability to cross endorse through the nominating petition
14 process which had not previously existed. So, very early
15 on in 2008, we anticipated that the Working Families Party
16 might want to do a very large volume of petitioning in
17 some cases for our own candidates but also for major party
18 candidates to cross into and to petition them onto the
19 Working Families Party line. And I believe in February of
20 2007 -- of 2008 rather, we asked this question directly of
21 the SEEC, had an email exchange as well as a phone
22 conversation, and were advised that gathering nominating
23 petitions was indeed an allowable organizational
24 expenditure and, in fact, it seems on the face of it what
25 could be more appropriate as an organizational expenditure

1 than petitioning a candidate onto the ballot line of that
2 party.

3 Q. I just want to follow up on this. So you had an
4 assurance from the SEEC that the specific organizational
5 expenditure that you made for Ms. Noble was appropriate?

6 A. That is correct.

7 Q. Okay. And you -- I just want to follow up a little
8 bit on the statement that what, sort of what could be more
9 appropriate for a party to engage in expenditures for.
10 There's been I think a general characterization of the
11 petitioning process for purposes of qualification as
12 simply a burden; in other words, with no redeeming
13 characteristics.

14 A. Right, right.

15 Q. And it's to a mean -- a means to an end only. Is
16 that your view?

17 A. It is not actually.

18 Q. Why?

19 A. Well, minor party candidates, for reasons that Your
20 Honor alluded to earlier, I had a chance to listen to some
21 of the earlier exchange, minor parties tend to attract
22 candidates who are in some respects less professional
23 politicians or maybe less experienced and well known
24 because those candidates that really want to win and hold
25 office are inclined to gravitate toward a major party

1 because that has advantages well beyond just funding but
2 the recognition or the brand that that party has within
3 the district.

4 So, minor party candidates begin any campaign with a
5 whole series of deficits, including name recognition. We
6 look at it as frankly if we have the opportunity to go
7 door-to-door and talk to thousands of voters in a
8 district, mention our candidate and ask that voter to take
9 some small but explicit step in support of that
10 candidate's candidacy, it's very similar, they are not
11 identical, to what we would do anyway. I mean whether or
12 not it actually was a requirement of being on the ballot
13 or being eligible for public financing, the activity of
14 communicating with voters about our candidate and building
15 the candidate's name recognition as well as frankly
16 building the party's name recognition and brand in that
17 district, is itself quite valuable and was something we
18 would want to do anyway.

19 Q. We've already sort of moved off the process questions
20 and into sort of more general questions about the Party's
21 view about the program. But I want to be perfectly frank
22 with the court, it is fair to say, isn't it, Mr. Green,
23 that you have not been an uncritical supporter of the CEP,
24 is that correct?

25 A. Yes. It's not exactly the system I would have

1 designed, that's true.

2 Q. Now, if you had your druthers, what would you have
3 done differently --

4 A. Yeah --

5 Q. -- in designing the program?

6 A. -- I think a few things, and some of them speak
7 specifically to minor party, to competitiveness issues and
8 some of them speak to more general operational issues. I
9 think that, I mean I do feel that it would be a better
10 system, one that allows for easier access for minor party
11 candidates and petitioning candidates if the thresholds
12 for the percent of the vote required or the percentage of
13 signatures required were lower numbers. I think in
14 testimony at an informational hearing of the SEEC, I
15 suggested even just going down to ten, you know 5/10/15, I
16 think would do a lot to insure, you know, slightly better
17 opportunities than access for minor party candidates,
18 while still maintaining a level of seriousness for the
19 program. I think secondly, you know, my view would be
20 that a better version of the program would be one that had
21 elements of the full public financing system that
22 Connecticut now uses combined with elements of more of a
23 matching fund system like the one used in New York City.
24 And that a way to do that might be to have slightly lower
25 thresholds for the amount of qualifying contributions and

1 money that candidates would need to have to raise to be
2 eligible to participate, and then the availability of
3 matching funds for additional qualification, qualifying
4 contributions received after sort of accessing the program
5 by meeting that initial lower threshold.

6 And I think the advantage of that would be -- well,
7 there would be several but one would be that candidates
8 would be able to not look at their campaign as being
9 entirely contingent on raising what is, you know, a
10 substantial amount of money. The all-or-nothing
11 proposition of that is something that I think forces
12 candidates to focus so much of their attention on the
13 fundraising aspect, whereas had they been able to qualify
14 for some amount earlier, then they could say, well, look,
15 if I want to go out, if I can make sense for my campaign,
16 I need another \$10,000, I can go raise another \$3,300 in
17 qualifying contributions, but they may feel that's not in
18 fact what they want to focus their time on.

19 Q. And that's consistent, is it not, with what you have
20 testified publicly to in an informational forum before the
21 SEEC, correct?

22 A. Exactly right.

23 Q. Now, the sort of bottom line question I have -- I
24 have other questions -- but warts and all --

25 A. Right.

1 Q. -- do you think that the Working Families Party is
2 better off because of the CEP than it was before the CEP
3 existed?

4 A. I do, I do think it is.

5 Q. Why is that?

6 A. I think that the CEP creates the opportunity for
7 minor party candidates to substantially narrow or
8 altogether eliminate the financing gap that is
9 traditionally enormous when comparing the amount of
10 resources that minor party candidates have been able to
11 raise compared with what major party candidates
12 traditionally raise.

13 I think there's just no doubt that under this system,
14 minor party candidates admittedly, after doing a fair
15 amount of work, but those minor party candidates that do
16 that work have the ability to communicate their message
17 with the voters on a magnitude that dwarfs any other, with
18 the exception of extremely well financed, you know,
19 personally wealthy candidates, who might operate outside
20 any type of public financing system. With that exception,
21 this creates the opportunity for those candidates to, you
22 know there's much, much more communication with voters
23 than they would be able to do previously.

24 Q. Okay. Now to follow on that, you may have heard the
25 phrase zero politics is a zero sum game, and there is

1 evidence in this case that there has been some increase in
2 overall expenditures. The view on this side of the room
3 is that that has by necessity, regardless of sort of vote
4 totals and maybe other objective indications of political
5 strength, just that increase in expenditures to major
6 party candidates has resulted in a harm to the Connecticut
7 Green Party.

8 Do you agree that -- well, do you agree with that and
9 do you see the same kind of harm flowing from the system
10 to the Working Families Party?

11 THE COURT: Let's focus on the second question.
12 His opinion about whether the Green Party's been harmed --

13 MR. ZINN ROWTHORN: Fair enough.

14 BY MR. ZINN ROWTHORN:

15 Q. Do you share that concern as to the Working Families
16 Party?

17 A. I don't.

18 Q. Why not?

19 A. Well, I won't speak to the comparison but I feel that
20 the, to whatever degree the growth in major party
21 expenditures enlarges the gap in expenditure between major
22 and minor party campaigns, that sort of diminution of
23 minor party viability in my view is so vastly offset by
24 the enhancement of minor parties' abilities to expend
25 funds by participating in this system.

1 To take a bit of a step back, I just think it's worth
2 putting it in the context of an electoral system, a
3 win-or-take-all system or, you know, single member
4 district plurality system, that in so many other ways
5 indirectly disadvantages minor party candidates, that that
6 aspect of our electoral system indirectly influences the
7 ability of minor party candidates to attract resources,
8 not merely financial resources but the talent, the
9 interest of high quality candidates, the interest of
10 volunteers, the willingness of voters to just literally
11 support a candidate with their vote, that in that context,
12 the diminution of the minor parties' viability caused by a
13 modest increase in spending of major parties seems to be
14 infinitesimally small, quite frankly.

15 And, by contrast, this system -- and the reason for
16 that is that people who participate in politics and spend
17 resources, whether it's time, money or their vote, in
18 politics do so because they want to be able to shape
19 government policy, and the perception that minor party
20 candidates have no ability to, you know, compete or win
21 drives all of those resources, all of them, the talent,
22 the candidates, the votes, the financial resources, to
23 major party candidates because that's, you know, people
24 are just going to hedge their bet on a potential winner.

25 This system is one that gives a minor party candidate

1 a window of opportunity to have equal financing. Doesn't
2 close any of the other gaps necessarily, but it gives the
3 financial aspect, it gives those minor party candidates
4 the possibility to narrow and close altogether that gap.

5 Q. I'll ask a related question. Another claim on this
6 by the plaintiffs is that this system is going to provoke
7 increased major party competition and that there's some
8 constitutional protection against facing increased
9 electoral competition. We absolutely dispute the premise
10 of that and we think electoral competition is a net value
11 for the public, but does the Working Families Party
12 share that concern with respect to the CEP?

13 A. We don't, although we probably take a vastly
14 different approach to the whole question, but we don't
15 share that concern.

16 Q. Okay. Maybe you can share with us your different
17 approach.

18 A. Well, again, it sort of gets back to a bit of a
19 theory about what the purpose of a political party is.
20 Our view is that the purpose of a political party is
21 people come together with a set of ideas or values and
22 they want to shape government policy to, you know, cleave
23 to those values.

24 For minor parties in the U. S. electoral system that
25 in so many ways that I've mentioned privileges a political

1 system dominated by two political parties, there are very
2 few opportunities to actually have influence over policy
3 for a minor party, and the system doesn't lend itself to
4 that.

5 The idea of cross endorsement, which is legal here in
6 Connecticut and other places, is one exception to that
7 rule. That gives I think minor parties some ability to do
8 that more. The minority representation statutes are again
9 sort of an exception that, you know, create a mechanism
10 for minor parties to really govern. But in the absence of
11 those two things, it's frankly the threat of spoiling an
12 election that I think gives a minor party, is maybe the
13 only thing that gives a minor party the ability to wield
14 any kind of influence over policy. To the degree that
15 elections are more contested as a result of this system,
16 the opportunities to spoil would increase.

17 Q. So let me see if I can distill that. The claim here
18 is that the Green Party candidate is harmed because
19 instead of facing one major party opponent, now might face
20 two major party opponents. Am I right to understand your
21 testimony that the Working Families Party views it as when
22 there are two major party opponents in a race, your party
23 has the ability to wield more influence in that race?

24 A. Let me put it like this. Yes, that is correct. To
25 an elaborate it further, if one looks at the goal of

1 political party or the purpose of a political party in the
2 narrow essence of to elect our candidates, which is not
3 the approach that we look at it, the philosophy we have
4 with respect to the, you know, the premise of the party,
5 but if that were the case, then, you know, one is talking
6 about leaving aside the CEP, just on this question of more
7 candidates in the race versus fewer candidates in the
8 race. I think that one is talking about the ability of a
9 minor party candidate to either be totally annihilated,
10 or -- let's put it to be annihilated by two opponents or
11 to be annihilated by one opponent, and neither of those
12 scenarios, having nothing to do with the CEP, speaks to
13 the viability of that party to be able to elect its
14 candidates.

15 Q. Is it, in fact, in the Working Families Party's
16 experience that it has been able to influence policy
17 perhaps or electoral results in races with two major
18 party candidates?

19 A. Yes.

20 Q. Okay. Can you cite an example?

21 A. Sure. In 2002, which was the first year that the
22 Working Families Party fielded candidates, a Democratic
23 state senate candidate was challenged by a Republican --
24 I'm sorry, a Democratic state senate incumbent was
25 challenged by a Republican. That state senator was one

1 who had taken positions that we considered to be very far
2 from the positions of the Working Families Party and had
3 used positions of leadership in the legislature to
4 undermine and oppose legislations that we and our
5 constituents support.

6 In 2002 we fielded a candidate in that race and was,
7 you know, we got annihilated by two candidates. We got
8 maybe 1.3 percent of the vote. Our candidate received
9 about 450 votes, I believe. The Republican challenger won
10 that election by just over 500 votes. And --

11 Q. Go ahead.

12 A. The important part about influencing the outcome is
13 in subsequent elections that Republican has gone
14 unchallenged by Democrats and we have made decisions at
15 times to cross-endorse that Republican, and that
16 Republican was one of a small number of Republicans who,
17 or is one who consistently support frankly whatever the
18 highest priority issue of the Working Families Party is in
19 the state legislature.

20 Q. There's two things I want to follow up on. I
21 appreciate that response. It's been characterized here
22 that the Working Families Party is essentially an arm of
23 the Democratic Party. In the circumstance you were just
24 talking about, the legislator that you entered the race to
25 challenge was a Democrat, right?

1 A. Right, an incumbent legislator who blamed us for
2 this, an incumbent Democrat.

3 Q. Do you have a sort of general reaction to the
4 assertion that you really can't distinct from the
5 Democratic Party?

6 A. Yes. I think the Democratic Party has the same
7 reaction, which is that that's not really true. There are
8 issues on which we may, we may agree with parts or
9 majority of Democrats, parts of the Democratic Party.
10 There are issues where we, you know, take a, you know,
11 either a different position or a more forceful position or
12 a push for a more, you know, better result for our
13 constituency than what we believe the Democratic Party
14 represents. Look, if we were the same, it wouldn't exist,
15 right? People formed this party because they believed
16 that the Democratic party was not effectively representing
17 the positions of our constituency.

18 Q. There's evidence in the record that the Green Party
19 had a meeting and passed a resolution a couple weeks ago
20 to determine how it would alter its strategy in response
21 to the CEP. When -- well, let me ask.

22 At some point did the Working Families Party assess
23 the Citizens Election Program and make some strategic
24 decisions in light of that?

25 A. About how we would function as a party?

1 Q. About whether you would take advantage of the system,
2 how you would take advantage of it?

3 A. Right.

4 Q. Is the answer yes?

5 A. I think only in the context of specific candidates,
6 maybe not in a general sense.

7 Q. All right. Let me -- you also reference, I think,
8 one of the distinctions between you and the Democratic
9 Party, and I'm going to ask you a general question about
10 the party. Is there a certain demographic that the party
11 seeks to represent or advocate for?

12 A. Yes, I would say that we work around a set of issues
13 that benefit working class, middle class and low income
14 family, predominantly issues what we would consider
15 economic, justice, workplace issues, tax policy issues,
16 predominantly those sorts of economic issues. We frankly
17 avoid some of the, what are considered hot button, you
18 know, social issues. We don't have a position, say, on
19 gun control, as an example. So, we advocate for things
20 like a universal system of affordable health care, raising
21 the minimum wage. We're working on passing legislation to
22 require employers to provide paid sick days to their
23 employees. So those are the kind of economic fairness
24 issues that speak to working class and middle class and
25 poor families in society. That's our demographic and our

1 constituency.

2 Q. The claim by the Green Party is that the CEP actually
3 results in detriments to the type of people that you've
4 just described, that it makes it less likely that those
5 voices will be heard in the political process. Do you
6 agree with that?

7 A. I mean I don't quite understand it, to be honest.
8 I'm not sure I get what the argument is.

9 Q. I don't either but I'm just asking you whether you --

10 A. Not intuitively, no.

11 Q. You mentioned cross endorsement at a couple points
12 along the way. We learned recently that one of the
13 strategies potentially that the Green Party is going to
14 consider adopting is cross endorsement, and in particular
15 cross endorsing candidates who are ideologically
16 empathetical to the fundamentals of the party.

17 Let me ask you -- I'm going to ask you two questions.
18 First question is the record is clear that Working
19 Families Party has been active in cross endorsement, is
20 that correct?

21 A. Right.

22 Q. And I assume it's active in cross endorsement because
23 it sees cross endorsement as a benefit to the party, is
24 that correct?

25 A. Yeah, I mean we look at cross endorsement as a way to

1 use the party's existence and ability to garner votes to
2 maximize our ability to influence policy outcomes.

3 Q. Okay. Do you view cross endorsement as requiring the
4 Working Families Party to essentially sell its soul?

5 A. I mean I would say that it is a less, in some
6 respects a less pure or less ideologically pure strategy
7 than the strategy of just running one's own, one's own
8 candidates all the time.

9 There have been instances of candidates who we have
10 cross endorsed who, first of all, where there is
11 disagreements within the party about whether to do that,
12 right? There are non-unanimous decisions about those
13 things. And, secondly, where, you know, they were, there
14 was an agreement on some but not 100 percent of the issues
15 that we cared the most about.

16 So the strategy is one that, or the tactic is one
17 that sort of trades a certain amount of ideological purity
18 for a certain amount of practical relevance.

19 Q. I guess I'll just ask you a slightly different
20 question. Do you view the CEP as resulting, in all
21 likelihood, in the Working Families Party cross endorsing
22 candidates that it is less ideologically in sync with?

23 A. It would have no bearing on it actually.

24 Q. Are there any political opportunities that the
25 Working Families Party enjoyed prior to the enactment of

1 the CEP that it no longer does as a result of the CEP?

2 A. No, I don't think so.

3 Q. Do you believe that the Working Families Party is, is
4 a less, is a weaker party as a result of the CEP?

5 A. Definitely not.

6 Q. All right. We've had some discussion back and forth
7 about how one might approach evaluating a party's strength
8 in a state or in a district. Would it be relevant to you,
9 the vote total that your candidate achieved in an election
10 in determining your party's strength in that district?

11 A. That seems like the most conventional measure.

12 Q. Is there a -- I take it in the last election, in the
13 2008 election, more Working Families Party candidates were
14 eligible to qualify for some level of a grant based on
15 2006 results, and yet the Working Families Party only
16 qualified or sought to qualify two candidates. Can you
17 tell me why you didn't try to qualify more candidates?

18 A. Yeah, it's really a political -- the first criteria
19 for us is the political lens of what does it mean
20 politically in terms of our ability to influence policy
21 for us to field the candidate in a given race versus
22 cross-endorse a candidate versus do nothing. I mean
23 weighing all those options, you know, first you look at
24 that through the sort of political frame in terms of what
25 builds our overall power and influence with respect to

1 government policy.

2 So, in the majority of those cases, I can't say for
3 certain all of them but I think in the majority of those
4 cases the party made a decision that instead of running
5 its own candidate, there was a Democratic candidate or
6 maybe in one or two cases a Republican candidate who we
7 preferred, and we thought as a political strategy the
8 cross endorsement of a viable major party candidate would
9 do more to advance our, you know, legislative goals or
10 policy goals than, you know, running our own candidate,
11 with or without public financing.

12 Q. So I take it then from that it was not primarily a
13 resource decision or an assessment that the burdens of
14 qualifying were more than the party could take on?

15 A. That's right. That was not, that was not, I don't
16 think, a factor in a single one of those decisions.

17 Q. All right. Let me ask you, there was some back and
18 forth this morning about qualifying at the gubernatorial
19 level and the figure's been used of 110,000 valid
20 signatures to qualify for a partial grant of \$1 million.
21 Do you think that the, that that is a realistic
22 accomplishment for a Working Families Party candidate?

23 A. And the expenditure limit for the prequalification
24 phase, if I'm not mistaken, is -- \$250,000? Am I right
25 about that? Yes? I'm seeing nods of agreement.

1 Q. Yes. We've come to find out the expenditure limits
2 are a little more complicated, but let's operate with the
3 250,000.

4 MS. ROTMAN: Prenomination.

5 MR. ZINN ROWTHORN: Prenomination.

6 THE COURT: We're going to take this as an
7 assumed fact since she's not really testifying to it.

8 MR. ZINN ROWTHORN: Right.

9 THE WITNESS: Fine. I think that that would be
10 challenging but not prohibitive for us to achieve.

11 BY MR. ZINN ROWTHORN:

12 Q. Do you think it might, for \$1 million it might be a
13 worthwhile endeavor to attempt?

14 A. Again, that's a lot of money for minor parties, but
15 the first lens through which we look at that question is
16 the political question. So we first have to decide that
17 it politically made sense to field the Working Families
18 Party candidate, and I suspect that the leadership of the
19 Working Families Party would be instinctively resistant to
20 that as an electoral strategy. They might, again, in
21 that sort of hedge-their-bets way that our win-or-take-all
22 system induces feel they'd have, it would be better to
23 take a shot at electing a Democrat for one of those
24 positions.

25 However, having said that, there could be Democrats

1 who we would not support who might win the Democratic
2 nomination, and were that the case, it seems conceivable
3 if the political analysis made sense that it would be
4 worth doing, then I do think it would, you know, it would
5 be something we would want to pursue.

6 Let me put it like this. If anything, the existence
7 of the CEP would incentivize us to be more likely to field
8 a candidate for one of those offices than us.

9 THE COURT: What's your estimate of what it
10 would cost to obtain those signatures?

11 THE WITNESS: I'd have to think about it, but my
12 hunch would be in the advantage of it being a statewide
13 candidate brings that cost number down in a real practical
14 sense. In the range of 100- to \$150,000? Maybe 200,
15 tops.

16 THE COURT: So basically a dollar a signature.

17 THE WITNESS: Yeah, but I mean -- so, as a
18 technical consideration, a candidate, the cost per
19 signature for a statewide candidate is going to be lower
20 than the cost per signature for a district candidate. And
21 the reason for that is that, partly that one isn't
22 restricted about, geographically about where those
23 signatures come from. When we do signature gathering,
24 let's say for a state rep district in a city where because
25 of the population density, the district is only one part

1 of, let's say, the City of New Haven or the City of
2 Bridgeport, that signature gathering in order to be done
3 effectively and reliably really has to be done door to
4 door because the alternative using, for example, the high
5 traffic location, the percentage of signatures that are
6 invalid based of being not in the district is going to be
7 too high.

8 For a statewide candidate, you know, it works in
9 the opposite direction. Any signature from anywhere, if
10 it's a real registered voter, is going to be valid so that
11 would really be very helpful in terms of being able to run
12 a petitioning practice that would bring the, you know,
13 cost per signature down I think a fair amount.

14 BY MR. ZINN ROWTHORN:

15 Q. Would the party be able to mobilize some volunteers
16 to assist in that effort?

17 A. You know, this is all so hypothetical. Depending on
18 who the candidates were, presumably the candidate would
19 have some base of volunteers that would care about that.

20 I think, again, one of the advantages of the CEP for
21 a minor party is that, you know, when one of our
22 candidates in this cycle, for example, whether Cicero
23 Booker or Deborah Noble asked for financial support from
24 an individual, part of the rationale or part of the ask
25 was by giving me this contribution of five bucks, hundred

1 bucks, whatever it was, you're making it possible for me
2 to fund a real campaign. So in that sense the CEP system,
3 I mean, in other words, if you ask me would we be able to
4 mobilize volunteers to gather 200,000 nominating petitions
5 without the prospect of a million dollar grant for the
6 campaign, I think that's a much more challenging task for
7 a political organizer to do.

8 However, the availability, the reward or the
9 incentive that your effort leads to something that could
10 help us run a viable campaign or have vastly more
11 resources to communicate with voters and get our message
12 out to the public, that would, I think, substantially
13 improve our ability to energize a base of people around
14 that campaign.

15 Q. I have one last question. I'm sure plaintiff's
16 counsel might have some, His Honor might.

17 You testified before that your experience this time
18 didn't alter your opinion prior to the election that the
19 CEP, while perhaps not perfect in your view, leaves you
20 better off than you were and that "you," I mean the Party
21 were before.

22 I take it then the corollary is true, that if an
23 order issues out of this case that the CEP is no longer
24 available to you and your candidates, have you lost
25 something of value to the party?

1 A. That would be a setback, I believe, yes.

2 MR. ZINN ROWTHORN: Thank you, Your Honor.

3 Nothing further.

4 THE COURT: Let me jump in before cross. You
5 talked about the relationship, if any, between CSI and the
6 Working Families Party. What relationship, if any, other
7 than client and adviser is there between those two
8 entities?

9 THE WITNESS: That's the sum total of the
10 relationship.

11 THE COURT: Okay. You talked about the eight or
12 \$9,000 Mr. Booker had spent to obtain signatures.

13 THE WITNESS: And raise funds.

14 THE COURT: That's what I was trying to get at.
15 Is there a larger number that includes the fundraising
16 toward the qualifying?

17 THE WITNESS: That is the larger number that
18 includes both.

19 THE COURT: So it's both.

20 THE WITNESS: I mean some percent, you know,
21 some portion of that \$11,000 expenditure that was
22 reported, I think the lion share, something like \$9,000 or
23 \$8,000 in expenses incurred was for CSI to perform both
24 the services of gathering nominating petitions and raising
25 qualifying contributions.

1 THE COURT: All right. And what's your
2 understanding of expenditure limit on candidates seeking
3 to obtain signatures and qualifying contributions prior to
4 qualifying?

5 THE WITNESS: My understanding is that the, the
6 expenditure limit is the same as the qualifying
7 contribution threshold.

8 THE COURT: So you can spend up to the
9 qualifying contribution threshold.

10 THE WITNESS: Expend or incur to be expended,
11 yes, expend or incur expenses. That's my understanding.

12 THE COURT: So your understanding is that a
13 candidate could run a deficit and then be reimbursed once
14 they receive --

15 THE WITNESS: Only up to the point of the
16 qualifying contribution threshold. In other words, one
17 couldn't incur an expense of \$80,000 prior to receiving
18 the grant or prior to qualifying, but one could incur
19 expenses up to \$15,000 in the state senate race prior to
20 the, prior to qualifying the program.

21 THE COURT: And then pay for those expenses
22 using the grant.

23 THE WITNESS: That's my understanding, yes. And
24 if you fail to, you know, if the candidate then fails to
25 qualify, the candidate is still legally obligated to pay

1 for those expenses that have been incurred.

2 THE COURT: And what's your basis for your
3 understanding that the deficit can be reimbursed from the
4 grant?

5 THE WITNESS: I can only assume at some point,
6 having that conversation with folks at the SEEC and coming
7 away from that conversation with that impression.

8 THE COURT: All right. Cross?

9 MR. LOPEZ: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. LOPEZ:

12 Q. Good afternoon, Mr. Green.

13 Mr. Green, you submitted two declarations in this
14 case, is that correct?

15 A. I think that's right.

16 Q. All right. You remember when you submitted the first
17 one? Did you submit a declaration in this case on
18 July 9th, 2008?

19 A. I'm not going to remember the dates. I apologize.

20 Q. And in that declaration, you represent that you
21 had -- in connection with Mr. Booker's campaign, you
22 represent that you had reviewed public filings as of
23 July 9th and that he had incurred \$9,210 for canvassing
24 services?

25 MR. ZINN ROWTHORN: Your Honor, I might ask out

1 of fairness to the witness if he could have the
2 declaration in front of him?

3 MR. LOPEZ: Okay.

4 MR. ZINN ROWTHORN: And also --

5 MR. LOPEZ: I'd like to direct the court where
6 they are. This is in the record. They are in the
7 defendant's record, Your Honor, if the court wants to
8 follow.

9 MR. ZINN ROWTHORN: Well --

10 THE COURT: Just give it to him, we'll take the
11 testimony.

12 BY MR. LOPEZ:

13 Q. I'll give you -- okay, for the record I'm giving you
14 a declaration, Mr. Green, your declaration submitted in
15 this case -- dated July 9th, '08 and a second supplemental
16 declaration dated September 4th.

17 A. Okay.

18 Q. Okay, do you recognize those?

19 A. (Nodding head affirmatively.)

20 Q. Are those the declarations you submitted in this
21 case?

22 A. You know, it looks like it is.

23 Q. Okay. Let me direct you to your, first to your --
24 excuse me -- to your July -- excuse me -- first to your
25 September 4th declaration.

1 A. Uh huh. (Affirmative.)

2 Q. I stand corrected, sir. Let me direct you to your
3 July --

4 A. Okay.

5 Q. -- declaration.

6 MR. ZINN ROWTHORN: Is there a particular
7 section?

8 MR. LOPEZ: Yes, give me a second, Perry.

9 MR. ZINN ROWTHORN: Okay.

10 THE COURT: Actually, Mr. Lopez, while you're
11 looking, I'm going to ask one more question because I
12 realized I did not follow up on one I wanted to ask about.

13 Mr. Green, you implied in your testimony that
14 the election of Working Families Party candidates is not a
15 principal goal of your party. Is that a fair statement or
16 not?

17 THE WITNESS: Well, I mean it's not a fair
18 statement because where we believe we have the ability to
19 elect candidates, that is the goal and we generally
20 succeed and we've elected two people to the Hartford City
21 Council, one to the Hartford Board of Ed, one person to
22 the Registrar of Voters for the City of Hartford, not
23 cross-endorsed candidates but direct Working Families
24 Party.

25 THE COURT: I should rephrase it then. Am I

1 correct in understanding that the Working Families Party
2 has not to date had a principal goal of electing
3 candidates to offices for which CEP funding is available?

4 THE WITNESS: I mean I think that's right,
5 although I just think the question of the goal, it's more
6 a matter of what we think is realistic in the context of
7 our electoral system. I think if we could elect
8 candidates, we would want to do that, but we have to take
9 a clearly, you know, kind of face the brutal facts
10 position.

11 THE COURT: You've taken a realistic position
12 that you're unlikely to elect and so you sought another
13 avenue --

14 THE WITNESS: Correct, correct.

15 THE COURT: -- for the electoral process.

16 THE WITNESS: That is correct.

17 THE COURT: All right.

18 BY MR. LOPEZ:

19 Q. Mr. Green, if I can direct you to your September 4th
20 declaration, paragraph nine. Therein you state that you,
21 in paragraph nine, that you reviewed Mr. Booker's public
22 filings which indicate an expenditure of \$9,210 for
23 canvassing services, and then in paragraph ten, you note
24 that Mr. Booker campaigned, as of that date had raised
25 approximately \$11,000, is that right?

1 A. That looks right.

2 MR. ZINN ROWTHORN: I'm sorry --

3 Q. What public filings did you review?

4 A. I couldn't tell you. I assume that was the public
5 filings that he submitted to the SEEC that had been, you
6 know, that were filed at that time.

7 Q. Do you know if that -- are you referring to a
8 campaign finance disclosure statement, Form 30?

9 A. I assume so.

10 Q. And do you know when that disclosure was dated and
11 when it was filed?

12 A. I don't. I couldn't tell you.

13 Q. Do you know what period was covered during the
14 disclosure required with that filing?

15 A. You know, I think that there's probably a factual
16 answer to whatever period -- I can't say based on my own
17 recollection but I suspect one could find as a matter of
18 fact what period would have been disclosed up until, you
19 know, prior to that.

20 Q. I want to clarify for the record that you weren't
21 referring to any invoices in your own office or any
22 personal records you have of his, of how much money he had
23 raised or spent on canvassing services at the date that
24 you filed this declaration on July 9th?

25 A. I don't know.

1 Q. Now, if I can turn you, ask you to turn to your
2 July 9 declaration?

3 A. Okay.

4 MR. ZINN ROWTHORN: I'm sorry, what was the
5 citation?

6 MR. LOPEZ: I didn't give you one yet.

7 MR. ZINN ROWTHORN: Oh, I'm sorry.

8 BY MR. LOPEZ:

9 Q. And ask you to turn to paragraph 22, all right?

10 MR. ZINN ROWTHORN: I'm sorry, we are still on
11 September 4th?

12 MR. LOPEZ: No, we are on July 9th.

13 THE WITNESS: Paragraph 22?

14 BY MR. LOPEZ:

15 Q. Have you had a chance to review that?

16 A. (Witness reading)

17 Okay.

18 Q. Okay. And in your declaration you represent that as
19 of July 9th, Deb Noble who is one of the WFP candidates
20 who subsequently qualified for a partial grant had already
21 collected 1,400 of the 2,200 signatures that she was
22 required to collect?

23 A. I guess that was my recollection at the time. It
24 sounds right, sounds plausible.

25 Q. And if you scroll down to paragraph 23, you represent

1 that Cicero Booker had already collected 3,500 signatures
2 at that time to meet the 2,700 authenticated signatures he
3 would be required to collect?

4 A. That sounds correct.

5 Q. Okay. So if you turn back to your September 4th
6 declaration -- well, first, let me back up.

7 Do you know when Cicero Booker and Deb Noble
8 submitted their signatures for approval by the Secretary
9 of State?

10 A. Well, the deadline to do so is in the, I believe the
11 first week of August, so I assume they did so the day of
12 or the day before the deadline.

13 Q. And that, in fact, it was August 6th; does that
14 refresh your recollection?

15 A. If you say so. Take your word for it.

16 Q. Now, if I could ask you, if I could direct your
17 attention to paragraph 12 of your September, your
18 September 4th declaration, a full month after the
19 petitions were submitted, is it correct that you state in
20 your declaration that as of September 4th, the signatures
21 had not yet been validated?

22 A. As of September 4th?

23 Q. Well, September 4th is the date you prepared this
24 declaration.

25 A. Yes, I don't know. It sounds like -- that sounds

1 plausible.

2 Q. Did you, in fact, state -- can you read what you
3 wrote?

4 A. The SEEC's validation of these signatures was -- oh,
5 I'm sorry. "The SEEC's validation of these signatures,
6 Ms. Noble is expected to be eligible for a two-thirds CEP
7 grant of 16,667."

8 Q. Now, if you would return to paragraph 13?

9 A. In the same declaration?

10 Q. And strike that. I'm going to ask you to confirm the
11 same information about Mr. Booker. I just have to find
12 the appropriate paragraph.

13 (Pause)

14 Excuse me, sir.

15 (Pause)

16 Oh, I would direct you to paragraph 8 --

17 A. I was there.

18 Q. -- of your September 4th declaration. And did you
19 state in that declaration that at the time you had
20 prepared this declaration that the validation of the
21 signatures was still pending as of September 4th?

22 A. Yes, that appears to be what I stated.

23 Q. Now, I understand that you've had a number of
24 conversations with the officials at the SEEC, the SEEC in
25 an effort to assist you and maybe other Working

1 Families -- and other minor parties in qualifying for,
2 meeting the requirements for participation in the CEP.

3 Did you --

4 A. I wouldn't characterize it as assisting us in meeting
5 the requirements. I would characterize it as assisting us
6 in understanding the rules.

7 Q. Fair enough, sir, I just didn't articulate it as well
8 as you did.

9 But did you contact SEEC officials at any time
10 between August 6th and September 4th at the time you wrote
11 this affidavit to, to learn why the petitions had not been
12 validated?

13 A. Well, I think that the hold-up is in the Secretary of
14 State's office more so than in the SEEC's office. The
15 Secretary of State's Office, you know, and we're partly to
16 blame for this, I suppose, but was -- you know, had
17 received a very, very, very large volume of petitions that
18 they first had to review, right? So my understanding of
19 the process is that petitions are submitted to the
20 Secretary of State's office, they are then verified by
21 town clerks and registrar's of voters in the towns of
22 those petitions, sent back to the Secretary of State's
23 office. The Secretary of State's office then essentially
24 validates them and in the case of candidates seeking to
25 qualify under the CEP, orders a letter of authorization or

1 a letter indicating that those candidates had met the
2 petitioning requirements or at least indicating the number
3 of signatures that they had, were deemed valid. That then
4 goes to the SEEC and the SEEC makes a determination about
5 the level of financing that those candidates would be
6 eligible for.

7 Q. Has that been your experience in qualifying WFP
8 candidates for the ballot in Connecticut?

9 A. That it goes to the Secretary of State's office, then
10 to the town, and back to the Secretary of State?

11 Q. Correct.

12 A. That is correct, yes.

13 Q. Has it been your experience there's generally a delay
14 of as long as a month in getting those signatures
15 validated?

16 A. At times. I mean I think in this case it was -- in
17 many instances a longer delay than previous years. I mean
18 keep in mind that we had submitted, you know, probably in
19 excess of 40,000 signatures for various candidates this
20 year, maybe more than that. The town clerks -- I mean,
21 look, I'm the first person to complain that this process
22 doesn't move a little faster than we'd like it to. Again,
23 the town clerks take their time and then it goes to the
24 Secretary of State. It often is certainly weeks before we
25 get an answer.

1 Q. Well, I'm just -- you know, for everyone's sake, is
2 30 days or longer or shorter representative of how long it
3 takes?

4 A. You know, I wouldn't want to generalize but, you
5 know, I think that at times it takes that long. I believe
6 there's a statutory window of time from the date that the
7 town clerks receive a petition to the time they then have
8 to complete their count and then get that information back
9 to the Secretary of State's office. My experience has
10 been that statutory requirement is not met as frequently
11 as it is met.

12 Q. If I could just focus on Mr. Booker's relationship
13 with CSI. When did he first make the payment to CSI?

14 A. I don't recall.

15 Q. As of July 9th, he had -- we've already
16 established -- as of July 9th, can we agree that he had
17 already collected half of the number of signatures that he
18 was required to collect?

19 A. Whatever was in the declaration I stand by.

20 Q. And had he paid you to aid him in collecting those
21 signatures that were collected by July 9th?

22 A. My recollection is that in his first filing, which I
23 believe would have been due on July 1st, covering the
24 months of April, May and June, he indicated that a portion
25 of those expenditures had been, had been paid but I can't

1 say for sure. That's my -- to the best of my recollection
2 that's what those reports disclosed.

3 Q. Okay. And do you, do you or don't you remember when
4 you first entered into a contract with Mr. Booker for, for
5 providing canvassing services?

6 A. I don't recall. I would say to the best of my
7 recollection it would have been sometime in the month of,
8 probably in the month of May.

9 Q. And how much would that contract have been for?

10 A. I don't recall.

11 Q. And did he make payment on that contract?

12 A. That's what I believe was disclosed in the June
13 filing.

14 Q. Did you enter into a contract with Deb Noble for --

15 A. Citizens Services, yes.

16 Q. -- canvassing services?

17 A. Correct.

18 Q. CSI did?

19 A. Yes.

20 Q. And that would have been in May also?

21 A. I think it was not until June.

22 Q. Can we infer from your testimony that as early as May
23 2008, the -- Cicero Booker was targeted by the WFP as a
24 candidate who was going to run in the 15th congressional
25 district?

1 A. I think so. I can't recall the date the Working
2 Families Party, the state committee which votes on
3 endorsements, had meetings May and June and July and
4 August, all for the purpose of nominating candidates. To
5 the best of my recollection, the endorsement of Cicero
6 Booker I think occurred in May, and I think that the
7 endorsement of Deborah Noble didn't, in fact, officially
8 occur until June but I'm not certain of that.

9 Q. Do you know when Mr. Booker's signatures were
10 validated by the --

11 A. I don't.

12 Q. -- by the Secretary of State's office to the SEEC?

13 A. I don't recall.

14 Q. Do you recall if you ever contacted officials at the
15 SEEC or Secretary of State's office?

16 A. I'm sure I contacted officials at the Secretary of
17 State's office with a great deal of frequency regarding
18 not only those petitions but the petitions of scores of
19 other candidates that we were --

20 Q. Did you contact any -- because your affidavit
21 actually says that, that you were awaiting validation from
22 the SEEC.

23 A. Right.

24 Q. And I'm wondering did you contact -- is that a
25 correct statement, first of all?

1 A. Yeah, it's a correct statement. The SEEC ultimately
2 has to recognize what level of the petitioning threshold
3 has been met, if any. That is the determination that
4 impacts the level of public financing that those
5 candidates would be eligible for.

6 My impression, though I can't speak with certainty,
7 is that the SEEC in effect does nothing more than really
8 rubber stamp what the Secretary of State's office
9 concludes based on the counts done at the town level with
10 the registrars and the town clerks.

11 Q. And did I ask you -- do you, in fact, know when the
12 Secretary of State verified the signatures for Booker and
13 Noble?

14 A. You did ask and I said I did not.

15 Q. Okay. Do you have any explanation for why Cicero
16 Booker and Deb Noble's application for a grant was not
17 approved until October 15?

18 A. I don't think they had raised the necessary
19 qualifying contributions. They didn't apply until they
20 could raise the sufficient qualifying contributions, which
21 is partly why the question of the signatures was not much
22 of a hold-up.

23 We knew how many signatures we had that were valid
24 because we counted them and compared them to a voter
25 database so we had confidence in the number of signatures.

1 It still didn't allow us to access a grant until the
2 qualifying contributions were made.

3 Q. So, who was collecting these qualifying contributions
4 during -- between the period that they had submitted their
5 signatures and the period that they had submitted their
6 grant?

7 A. Primarily the candidates themselves. They helped
8 fundraising defense, they wrote letters, they solicited
9 their list of contacts.

10 Q. And did your office provide any assistance?

11 A. CSI did, also assisted with the fundraising. Not --
12 at that point I don't believe we were continuing to do any
13 of the door to door fund raising because I believe by that
14 time we had already met the requirement for in-district
15 contributions.

16 But, yes, we contacted and allowed candidates to make
17 contact with people who had contributed previously to
18 Working Families Party or other candidates' campaigns that
19 we supported.

20 Q. Did you provide any services?

21 A. That's what I'm describing, yes, we did.

22 Q. Did you provide any canvassing services that included
23 asking -- that included going door to door and asking
24 people to make small contributions?

25 A. I don't think -- to the best of my recollection after

1 the signatures were filed I don't believe we did any other
2 door to door fundraising work for those candidates.

3 The reason that we did door to door fundraising was
4 primarily to help those candidate meet the in-district
5 contribution requirements. I don't believe that after
6 that time, and I think we had met that requirement in both
7 cases relatively early because of the volume of door to
8 door work that we were doing.

9 To the best of my recollection, I don't think we did
10 that sort of grass roots fundraising after the petition
11 filing date.

12 Q. You do know that on October 11th, Cicero Booker's
13 disclosure reports indicate that it incurred an expense
14 with CSI for fundraising service for \$34,000?

15 A. Yes. As I said earlier, I think that is an error,
16 that there was absolutely no fundraising -- that the
17 contract that was executed after the date of his
18 application covered services CSI was performing from that
19 date forward, which I also described earlier as including
20 door to door campaigning, direct mail creation, consulting
21 on a cable television advertisement. There was some other
22 field services like phone banking that we provided, and
23 overall campaign management.

24 Q. Did it include at the very least any fundraising
25 services that were to be provided after he got his grants?

1 A. No.

2 Q. Let me ask you this. How did Cicero Booker pay for
3 his campaign from the period August 6th right through the
4 time he got his grant?

5 A. The campaign didn't do much in that period, other
6 than, you know, him having to work his list of personal
7 contacts with some assistance from CSI and people in the
8 party, both individuals, you know, organizations that
9 supported us, doing that assistance in terms of contacting
10 people for contributions.

11 Q. Sir, what's the relationship, just again, between CSI
12 and WFP?

13 A. CSI provides staff services to the Working Families
14 Party.

15 Q. What's the address of CSI?

16 A. It has offices in multiple locations, so I mean --
17 headquartered in Little Rock, Arkansas. Offices in
18 Minneapolis, D. C. and Hartford.

19 Q. What's the office in Connecticut --

20 A. 30 Arbor Street in Hartford.

21 Q. Let me get the question out. What's the office
22 address of the Connecticut Working Families Party?

23 A. 30 Arbor Street, Hartford, Connecticut.

24 Q. And what's the office address of the branch, the CSI
25 branch in Connecticut?

1 A. 30 Arbor Street in Hartford.

2 Q. Do you have a suite number?

3 A. No, actually it's all --

4 Q. What kind of property is that?

5 A. It's a multi, you know, sort of an old converted
6 industrial property. It's a four or five story building.

7 Q. Let me ask you straight out. Do you share the same
8 office?

9 A. Uh huh. (Affirmative.)

10 Q. And do you share a copying machine?

11 A. We, neither of those entities owns a copying machine.

12 Q. You share telephones?

13 A. What's that?

14 Q. You share telephones?

15 A. Yes.

16 Q. You share staff?

17 A. We don't share staff. CSI provides staff that the
18 Working Families Party pays for.

19 Q. Okay, but unless I misunderstood something, I thought
20 you described yourself as an employee of CSI?

21 A. Correct.

22 Q. And the director of WFP?

23 A. Correct, in my capacity as consultant. The role I
24 play within Working Families is the executive director.

25 Q. Okay. How many staff does WFP have?

1 A. None.

2 Q. Okay, and how much staff does CSI have?

3 A. Presently about eight.

4 Q. Okay, and what's the total budget for WFP?

5 A. You know, last year, between the state central
6 committee and the federal PAC, my guess is that the total
7 budget was about, would be 160- to \$170,000.

8 Q. And you spent this money advocating for the election
9 or --

10 A. I mean the party, you know, pays for occupancy and it
11 pays for, you know, materials. Most of those funds are
12 for the services of employees working on political
13 campaigns that the party supports.

14 Q. Do those funds go to pay for the services of CSI?

15 A. Correct.

16 Q. And how many -- you said there were eight staff on
17 CSI; what's the budget of CSI?

18 A. I couldn't tell you.

19 Q. What's your position at CSI?

20 A. I'm the Connecticut Office Director -- you mean the
21 national budget of CSI? I don't know.

22 Q. No, no, the Connecticut office.

23 A. Oh, probably in the ball park of \$400,000.

24 Q. Is all that money raised through vendor services or
25 are they the beneficiaries of some other type of funding?

1 A. No, it's all vendor services.

2 Q. And how much of that \$400,000 is paid for by WFP?

3 A. Again, looking to last year in 2008, my hunch is
4 between federal campaign expenditures and state campaign
5 expenditures, probably in the ball park of 160,000. That,
6 now -- there's also candidates that consult the CSI
7 consulting services that's not included in that number.

8 Q. And where, if at all, does Acorn fit into this
9 picture? And for the record, who's Acorn?

10 A. Ask John McCain, you might get a different answer,
11 but Acorn is the Association of Community Organizations
12 for Reform Now which is a national nonprofit community
13 organization that represents low to moderate income
14 families across the nation.

15 Q. And are they -- are their offices also at 30 Arbor?

16 A. They are.

17 Q. And in your same office space?

18 A. Yes.

19 Q. And are the employees of CSI the same employees of
20 Acorn?

21 A. No.

22 Q. Do they have their own employees?

23 A. They do.

24 Q. And how many employees do they have?

25 A. Two or three.

1 Q. Are you an employee of ACORN?

2 A. I am not. I am an employee of CSI.

3 Q. (Pause)

4 Okay. Excuse me for a second, Your Honor?

5 (Pause)

6 In your September 4th declaration, you sort of break
7 down the costs of what it cost --

8 A. Uh huh. (Affirmative.)

9 Q. -- for Mr. Booker to hire your canvassing services?

10 A. Uh huh. (Affirmative.)

11 Q. Is that right? And you refer to a per shift cost.

12 Can you tell us what a shift is?

13 A. Typically a shift is one person doing about four to
14 five hours of work in the field of applied, you know,
15 contact with constituents in this case.

16 Q. Okay. And for door to door services, what is your
17 per shift cost?

18 A. Cost for CSI or for the campaign?

19 Q. For the campaign.

20 A. It's, I believe, \$70 is what it states here.

21 Q. No, okay, so let me direct you to paragraph nine.

22 You can review it.

23 A. Okay.

24 Q. Paragraph nine, September 4th statement?

25 A. Uh huh. (Affirmative.)

1 Q. You refer to two?

2 A. Right, so there's a distinction, and this is the
3 distinction I made earlier between field staff, you go
4 door to door for the purposes of both petition gathering
5 and fundraising versus signature gathering only.

6 The signature gathering only is typically done at
7 high traffic locations as opposed to door to door, is a
8 less -- is an easier job to do and is a shorter shift.

9 So those costs represent those two different
10 activities, \$70 per shift for the high traffic signature
11 only gathering program. \$100 per shift for people who go
12 door to door to gather those signatures and collect money
13 from the qualified contributions.

14 Q. So if I understand you correctly then, it costs the
15 candidate \$100 a shift for a single canvasser?

16 A. Right. For a fundraising canvasser, right.

17 Q. Now -- and that money is paid directly to CSI?

18 A. Correct.

19 Q. And does CSI, in addition, take a percentage of any
20 money collected?

21 A. No.

22 Q. Now, in your earlier declaration, you talk about the
23 cost of fundraising and you say that, at least during one
24 fund raising drive and this is the one you hold out as
25 representative in your statement, you collected \$16 per

1 shift. That was what you collected.

2 A. No, that's not what I said.

3 Q. Okay. Let me direct you to I think paragraph 20 of
4 your declaration.

5 A. Which declaration? The earlier one?

6 Q. That would be the July 9th declaration.

7 And I stand corrected, you collect five and-a-half
8 contributions per shift.

9 A. With an average amount of each contribution being
10 \$60.

11 Q. Right. So you do the math so I don't get it wrong
12 because I got something wrong already --

13 A. Something like 80 bucks per shift, ball park.

14 Q. Okay. So just -- am I missing something? Is it
15 costing you \$100, the candidate \$100 but he's only getting
16 an \$80 return; is that how I read this statement?

17 A. Roughly correct, yes. I would point out the reason
18 why we feel this is so valuable is that it would cost the
19 candidate roughly \$100 to employ a person to go door to
20 door and talk about that candidate. Using this model, it
21 only cost the candidate a net of \$20 because the, the
22 canvasser is raising a substantial portion of their costs.
23 It's an extremely efficient way to do a large volume of
24 door to door voter activity.

25 THE COURT: Or if my math is right, it's closer

1 to \$100. Five and-a-half times 16.

2 MR. LOPEZ: It's an end, zeros out?

3 THE COURT: It's close to zero.

4 MR. LOPEZ: Right, right, right.

5 MR. FEINBERG: Eighty-eight. I was a math
6 major.

7 THE COURT: Math major, all right.

8 MR. LOPEZ: I got 88 also, Your Honor.

9 THE COURT: Eighty-eight, fair enough. More
10 than 88.

11 THE WITNESS: The point is the net cost of that
12 is so much less than the net cost of just paying people to
13 go door to door and talk about your candidate which
14 campaigns do all the time.

15 BY MR. LOPEZ:

16 Q. Now, are we in agreement that the WFP only ran four
17 candidates this cycle, in the legislative cycle?

18 A. That's funny. You mean other than cross endorsed
19 candidates?

20 Q. Yes.

21 A. I feel a little embarrassed, I can only recall three.

22 Q. Do you have any plans to increase that number in 2010
23 or are you happy with your policy of cross-endorsing?

24 A. Again, it's, it's not about a general -- I wouldn't
25 want to generalize about an approach. It's really looking

1 in each district and weighing what the pros and cons are
2 of fielding the candidate, cross endorsing a candidate,
3 doing nothing in terms of what is going to advance our
4 policy goals.

5 Q. Well, just on that point, I mean I'm curious that why
6 you ran Deb Noble this cycle because you know she got two
7 and-a-half percent of the vote and you put a lot of effort
8 into running her against a --

9 A. Uh huh. (Affirmative.)

10 Q. Who did she run against?

11 A. She ran against Linda Schofield.

12 Q. You put a lot of effort into that and she only got
13 two and-a-half percent. Were you part of that decision
14 and what were you thinking?

15 A. I mean I don't get a vote so in that respect I wasn't
16 a part of the decision, but the Democratic incumbent was a
17 candidate who we had cross endorsed the previous election
18 cycle and who, for the most part, opposed after our
19 endorsement of her, opposed many of the things that we
20 cared about in terms of state legislation. And in one
21 instance, it was the only Democrat in the house to oppose
22 a bill that we cared a lot about, so we felt that -- and,
23 again, I will point out that there was not unanimity among
24 the Working Families Party state committee on this topic,
25 but the majority felt that it would have value to sort of

1 draw a line in the sand in this one instance and say that
2 we were going to break from our normal pattern of cross
3 endorsements, field our own candidate in this race and
4 seek to qualify the candidate for public financing.

5 Partly the thinking was proving our ability to do
6 that. Now, we thought we might get more than two
7 and-a-half percent of the vote, to be fair, but proving
8 the ability to do that in a district that was considered a
9 closely contested election, right? The Democrat had
10 defeated the Republican the previous year by, I believe
11 less than 1 percent of the vote or maybe just over
12 1 percent of the vote. Very closely contested election
13 and it was going to create a lot of waves and lot of
14 discomfort for people.

15 So it was a decision to break from that normal
16 pattern and instead support a candidate that was less
17 likely to win but they would have served a political goal
18 of sort of drawing a line in the sand and saying -- most
19 of the time we were looking to reward our friends; once in
20 a while we have to take the stick and not the carrot.

21 Q. What I found curious about her campaign is that she
22 only got a two-thirds grant and she went to all that
23 trouble of raising the qualifying contributions. Why did
24 she stop short of qualifying for a full grant? Are we
25 agreed, it was just a matter of a couple hundred

1 signatures. Can you explain that?

2 A. I don't know how many signatures she was off at the
3 end of the day. I think that between what she had
4 available and the resources of her and her own campaign,
5 and the limited amount that the Working Families Party
6 spends in organizational expenditures to support that, you
7 know, we just figured this is what we could accomplish and
8 the deadline was what it was and we had to file with what
9 we had.

10 Q. Let me just ask you, and realistically and candidly,
11 but at least from the point of view of the Working
12 Families Party, is the qualifying criteria the real hurdle
13 or is it the petitioning requirements that's the real
14 hurdle?

15 A. I think it depends a little bit on the nature of the
16 district.

17 MR. ZINN ROWTHORN: Just for the record, I'm
18 sorry, I didn't get the question. Was it contributions
19 versus petitions, I think you said criteria?

20 MR. LOPEZ: That's right.

21 MR. ZINN ROWTHORN: All right. Sorry.

22 BY MR. LOPEZ:

23 Q. Because I noticed very early in the process that the
24 candidates, as of July 9th the candidates were well on
25 their way to meeting the petitioning requirements but they

1 didn't submit their applications until October 10th, the
2 deadline, and you had said earlier in your testimony that
3 you assume that was because they hadn't raised the
4 requisite number of qualifying contributions. Can I infer
5 from that, that colloquy, that you believe that the
6 greater difficulty is the qualifying contribution
7 requirement?

8 A. You mean the in-district contribution or the total
9 cost, the total amount of contributions? Are you making a
10 distinction there?

11 Q. I'm not.

12 A. Okay. I think it does depend on the district. It
13 was not my view that that one was necessarily harder than
14 the other, you know, or was universally harder than the
15 other. I think that for us and our candidates, raising
16 the in-district contributions was sort of a piece of cake.
17 That was the easiest element here. Raising the total
18 amount of money was to some degree more challenging but I
19 wouldn't -- it's just, I can't generalize about which is
20 harder.

21 Q. Well, let me ask you this. The one fundraising
22 example you gave in your representative, was that a
23 petitioning drive or strictly a fundraising that you refer
24 to in paragraph 20 in your July 9th affidavit?

25 A. That was not an electoral campaign. People were

1 gathering signatures at the same time they were raising
2 qualifying contributions, but it was not --

3 Q. What kind of campaign was that?

4 A. It was an advocacy campaign.

5 Q. Were you doing anything other than collecting
6 signatures? I mean collecting contributions?

7 A. Yes.

8 Q. What were you doing?

9 A. Asking people to sign a statement of support or a
10 petition, something that's very commonly used in
11 canvassing operations. It's not a legal petition per se
12 but it's a document saying I support this, the goals of
13 this campaign.

14 In some cases I think canvassers also invited
15 constituents to write a letter to their elected officials
16 or to the governor on the subject of health care reform.

17 Q. And this was on the subject of, it's a campaign on
18 the subject of advocate for universal health care? What,
19 is that -- tell me more about that campaign. If I want to
20 doublecheck it against some record, what was the official
21 nature of this campaign?

22 A. I mean it wasn't -- actually I think the affidavit
23 may be incorrect on a technicality in that this was not a
24 political campaign and CSI did this work -- it was
25 probably not done as a client, Working Families Party was

1 not the client in this case. But it was a campaign to
2 urge people to contact legislators and build support in
3 communities for health care reform legislation. You know,
4 like Save the Whales passing out there, that kind of
5 thing.

6 Q. I can't tell from this paragraph. I see that there
7 are over 600 shifts but were you collecting anything --
8 and I can figure out how much money you made but were you
9 correcting anything else? Were you collecting signatures?
10 And if you were, could you tell me how many signatures you
11 collected?

12 A. We were collecting signatures. I couldn't -- if I
13 had to estimate, you know, my best guess would be it would
14 be in the range of 20 to 25 signatures per shift.

15 THE COURT: Mr. Lopez, I may be missing the
16 point but we seem to be kind of drifting away from some of
17 the central issues.

18 MR. LOPEZ: Right. Well, I'm done with that
19 area, Your Honor, and I think I've got one or two more
20 questions.

21 BY MR. LOPEZ:

22 Q. In '06 a number of your candidates received more than
23 ten percent on the Working Families Party line in
24 situations where they cross-endorsed them, the major party
25 candidates, is that right?

1 A. And I think in situations where we ran our own
2 candidate.

3 Q. Do you remember how many that was?

4 A. I don't.

5 Q. Were any of those candidates seeking public funding
6 in the '08 cycle?

7 A. None of those candidates ran. The cross endorsed
8 candidate, most of them did seek public financing. As for
9 the Working Families Party only candidates, I don't
10 believe any of those candidates that ran and qualified in
11 '06 ran as candidates in '08, and the reason had frankly
12 nothing to do with the CEP program.

13 Q. In 2010, I understand based on '08 election results
14 there are a number of WFP candidates who earned ten
15 percent on their line would be eligible for a partial or
16 full grant in 2010?

17 A. Just technically, the eligibility applies to the
18 candidate of the party, not the candidate, right? So any
19 candidate of the Working Families Party in this district
20 would be eligible, not the candidate who ran in '06 or
21 '08, right? Yes, so that is correct.

22 Q. Do you know how many?

23 A. I don't.

24 Q. At this time do you have any plans to break with the
25 cross endorsed candidate and run your own candidate?

1 A. I can't say that in any specific districts that we
2 have plans to do that. My hunch is that, as has been the
3 case in previous cycles, there will be some places where
4 we decide it's more in our interest to run our own
5 candidate.

6 Q. And in '06 you didn't do that?

7 A. We did do that.

8 Q. I mean in '08 you didn't do that?

9 A. We did do that.

10 Q. You ran your own independent candidates. Did you
11 break with any of the cross endorsed candidates in '08 --

12 A. Yes.

13 Q. -- and run against them in --

14 A. Yes, as I testified five minutes ago, Deborah Noble
15 ran against Linda Schofield in the 16th state
16 representative district, a Working Families Party
17 candidate, in 2008. In 2006, the Working Families
18 candidate in that district was Linda Schofield.

19 Q. Okay. Was that the only example?

20 A. A candidate who we cross endorsed and then opposed?
21 I think off the top of my head, that is the only example.

22 Q. Thank you.

23 MR. LOPEZ: I'm done, Your Honor. Thank you.

24 THE COURT: Any redirect?

25 MR. ZINN ROWTHORN: Your Honor, I don't think so

1 but if I could just have a moment?

2 (Pause)

3 MR. ZINN ROWTHORN: I have nothing further, Your
4 Honor.

5 THE COURT: Thank you, sir. You're excused.

6 (Whereupon the witness was excused.)

7 THE COURT: I assume this would be good time for
8 lunch.

9 MR. ZINN ROWTHORN: Thank you, Your Honor.

10 THE COURT: All right, come back around
11 2:00 o'clock.

12 (Whereupon the luncheon recess was taken at 1:00
13 o'clock, p. m.)

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A F T E R N O O N S E S S I O N

(2:00 O'CLOCK, P. M.)

THE COURT: Ms. Youn?

MS. YOUN: Your Honor, I just wanted to make a couple of more points with regard to minor parties and then move onto the major parties side of the picture.

I think that what you've heard from the testimony of John Green is rather than making minor parties behave like major parties, what the CEP congressional showings allow them to do is to really step up and become players and it allows them an avenue for doing that.

Many of the, many of the minor parties candidates have been able to vault into positions where they are treated, you know, they are given equivalent resources through a major party candidate and I want to emphasize this point. They have never had those resources before. They have never been able to raise that amount of money.

When you look at major party fundraising on average for major parties, it's always been well under \$1,000. They've never had anything like the amount of \$25,000 to kick around before, to be able to hire services like we saw Cicero Booker does, to get out there to run a professional, viable campaign and to translate that into

1 permanent gains for their parties.

2 THE COURT: You mean minor party financing.

3 MS. YOUN: I mean minor party fundraising, yes.

4 Now, I wanted to turn to, you know, I think that
5 we set forth a picture that on average even
6 nonparticipating nonmajor party candidates have not shown
7 any appreciable decrease in any of these measures as a
8 result of the CEP. I wanted to talk about now a couple of
9 other forms of injury that the plaintiffs talk about with
10 regard to minor parties.

11 They say, all right, well, it's not a vote total
12 scene but maybe the Green Party and the Libertarian Party
13 have been crowded out of districts that, you know, in
14 which CEP participants have come in. Maybe as a result of
15 that, they'll have to change the districts that they
16 strategically target because they don't like to compete in
17 districts where more than one, you know, major party has
18 competed. And I would say that just, there's no --
19 there's no evidence in this record and, in fact, the
20 evidence specifically contradicts the idea that the Green
21 Party, the Libertarian Party have historically targeted
22 those districts with only one major party candidate so
23 that we're somehow going to be robbing them of, you know,
24 we're going to preventing them from deploying candidates
25 by if there's an increase in competition in those

1 districts.

2 I think that this can best be evidenced by
3 Demonstrative Number 5. Demonstrative Number 5 is, the
4 first page of it is a map, is a map of the Green Party.
5 Now, this -- there are two separate tables on this chart,
6 on this page, which stand for two separate propositions.

7 The first, the first proposition is that the
8 Green Party, you know, haven't, you know -- have run
9 candidates even in districts with CEP funding. It doesn't
10 seem -- they run, they in fact run more candidates in this
11 election in districts with CEP funding than without.

12 And the second table indicates that, you know,
13 in terms of this idea that the Green Party only likes to
14 run candidates where there's only one party in the
15 district, this has not historically been true. In the
16 second line on the second graph represents districts with
17 only one major party candidate, and of the Green Party
18 candidates who have run, a minority of them have been
19 running in those districts historically. It's not true
20 that the only party -- the only place the Green Party runs
21 candidates or chooses to run candidates is in single
22 party, single major party districts.

23 Secondly, there's a kind of, you know, there's
24 this position that has been taken which is that the Green
25 Party strategic choices will have to change because

1 they'll have to change the districts that they target and
2 deploy candidates, et cetera. That's simply not true
3 because there's -- the Green Party has specifically
4 disclaimed that they are the sort of party that, you know,
5 makes top down decisions about where they would best
6 strategically deploy their candidates. Instead, the
7 Party's founders and co-chairs have said no, if someone
8 volunteers and wants to run as a Green Party candidate,
9 they say great, you know, go ahead and run as a Green
10 Party candidate. They don't try to recruit candidates for
11 elections and they've never tried to.

12 So, for example, I'm quoting Mr. Fournier's
13 deposition at page 62 where he says, you know, in 2008,
14 and in elections prior, the question was was there a
15 strategic plan on who they ran? Answer, no, it was ad
16 hoc. There was nothing wrong with that, but the idea that
17 this is going to change some top down strategy making of
18 the Green Party or the Libertarian Party, I think, is
19 just, is a position that has been adopted for this
20 litigation. And to the extent that the resolution of the
21 Green Party that has been, has been put before this court
22 suggests that, that again was a document that I think was
23 drafted the night before the depositions of Mr. Fournier
24 and Mr. Hanson and I think Mr. Hanson testified at
25 deposition that it was done with quite a bit of input from

1 Mr. Lopez, so there's no -- Mr. Fournier, I'm sorry -- in
2 his deposition.

3 So, it's not going to cause them to
4 strategically avoid districts where they otherwise would
5 have competed in the past. Green Party candidates have
6 run in districts with two major parties and run with one
7 major party.

8 And also I think I would add, if you would turn
9 to the next page, you know, given the very small number of
10 Libertarian candidates who have run for legislative
11 office, again, there's no called for conclusion that can
12 be made in which, you know, the evidence does not seem to
13 support the idea that the Libertarian Party also engages
14 in this kind of top down decision making.

15 And I think we would also take issue with the
16 idea that this kind of, you know, causing candidates to
17 change their decisions about who they deploy in what
18 district is actually a constitutional harm. You can think
19 of any number of regulations, contribution limits, term
20 limits, all of those are going to, you know, to the extent
21 that top making -- top down decision making is going on,
22 all of those factors are going to be things that cause a
23 party to change, to adjust, to shift strategy.

24 So long as they have a fair chance to compete,
25 and we submit that they do, and that -- you know, as the

1 evidence in my first demonstrative is, then that's fine.
2 Parties can adapt and change to new laws all the time.

3 MR. LOPEZ: But, Your Honor, under both Buckley
4 and Davis, the state cannot give one political point of
5 view, one group of candidates a communications or an
6 electoral benefit, or increase their electoral
7 opportunities, and that's what this law does and that's
8 what distinguishes this case, for instance, from ballot
9 access cases or from other cases that might involve the
10 election laws. And that's why this case, for instance, is
11 subject to strict scrutiny and the ballot access cases and
12 other election cases are not subject to strict scrutiny,
13 and because we're directly funding political points of
14 view.

15 MS. YOUN: Yes, Your Honor, I would say that
16 contrary to Mr. Lopez' statement, Buckley holds exactly
17 the opposite. Buckley upheld a law that distinguished
18 between major parties and minor parties and giving
19 benefits to major parties that were denied to the minor
20 party candidates. I mean that is what it means to have a
21 public -- in the Buckley case that is what it meant to
22 have that public financing system upheld.

23 And I think -- and the Davis court specifically
24 recognized Buckley and said that, you know, Buckley is
25 different. In the public financing context, speech is not

1 a zero sum game so in the public financing context, the
2 provision of the benefit to one candidate does not drown
3 out the voice of another candidate. Instead, an
4 enhancement of speech to someone doesn't create a
5 corresponding detriment to that person's opponent.

6 MR. LOPEZ: Your Honor, as far as I can tell,
7 Ms. Youn is repeating the arguments that she's made in the
8 motions to dismiss. The court has already rejected those
9 arguments that Buckley is a, that Buckley is on all fours
10 on this case. Buckley, from our point of view and I
11 thought the court accepted this and I think the court does
12 accept it from its comments, Buckley stands for, made the
13 finding there was no benefit to major parties. It
14 preserved the status quo. They didn't -- they aren't
15 enriched by this program because the subsidy simply
16 preserved or replicated what the market would produce and,
17 as we say over and over again, that's not what's happening
18 in Connecticut.

19 Now, I don't think it's fair that I go back and
20 forth and argue the law because I thought we going to
21 argue the law as part of our summation but Ms. Youn has
22 spent her time arguing the law and then supplementing it
23 with facts and I'm not -- I mean what's your pleasure?

24 THE COURT: You did some of that yesterday.
25 I'll let her --

1 MR. LOPEZ: All right.

2 THE COURT: It's all right.

3 MS. YOUN: I didn't understand this to be
4 limited to facts alone, this particular presentation. I
5 never heard we can't discuss law except in summation.

6 THE COURT: Well, just proceed.

7 MS. YOUN: Okay. With respect to the court's
8 motion to dismiss holding whether or not -- and, you know,
9 I think that the court -- you know, I think Mr. Lopez is
10 absolutely right to say that the court did hold that under
11 those particular circumstances the statute is not on all
12 fours with Buckley.

13 What we seem to have an issue with is that this
14 case has moved on since the motion to dismiss case. There
15 is now a factual record in the case which we are trying to
16 present, and the allegations in the plaintiff's complaint,
17 including that minor parties will be virtually, it would
18 be virtually impossible for minor parties to derive any
19 benefit from this statute and that the major parties would
20 be virtually compelled to, you know -- or to compete in
21 districts because of the availability of this funding, the
22 facts have since proven those two facts on which the
23 court's distinction of Buckley was based to be
24 conclusively wrong on this record. So that the court's
25 holding on whether Buckley was on all fours with this case

1 was predicated on factual assumptions that have now been
2 disproven.

3 I now wanted to talk to the idea about the
4 argument which I think this flows nicely, in fact, because
5 this is the question of another fact that the court took
6 as, you know, as pleaded in the motion to dismiss.

7 Whether new major party challengers and minor party
8 candidates are similarly situated in one party dominant
9 districts.

10 Now, we have already told you that over
11 95 percent major party candidates get more than
12 20 percent, over 95 percent of minor party candidates get
13 less than 20 percent. Now, under -- we've also just
14 showed you that under, under the CEP, we've now seen that
15 trend reversing. We've seen minor parties start to get
16 more than 20 percent more often and we have seen the major
17 party's vote share in Connecticut decreasing, and we think
18 that's a wonderful achievement and we're very excited
19 about that.

20 But with respect to -- so, I think as a matter
21 of averages, it is not true that a new major party
22 challenger is similarly situated to a nonmajor party
23 candidate. If so, I think you haven't seen a case in the
24 past ten years in which a new major party challenger had
25 beaten a major party candidate. That hasn't happened.

1 They haven't consistently even come close.

2 Now, the plaintiff, the primary example that the
3 plaintiffs emphasize --

4 THE COURT: Is that the only basis for being
5 similarly situated? Electoral success versus what's the
6 history in the district versus, you know, what are the,
7 what requirements are imposed on one versus the other?
8 When neither have, neither one ran a candidate last
9 election cycle, et cetera.

10 MS. YOUN: I'm sorry --

11 THE COURT: All right, let's take a district
12 where only the Democrat ran in '06. Why isn't -- why
13 aren't anybody but the Democratic Party in that district a
14 new candidate subject to the same restrictions on anybody
15 who doesn't have in the last round, 10, 15, 20 percent of
16 the vote?

17 MS. YOUN: Sure. I think that, you know,
18 that's -- and that's the question to answer here, and I
19 think that it is because the legislature made a prediction
20 that major party candidates would behave like major party
21 candidates. They would hit 20 percent of the vote pretty
22 much all the time and that minor party candidates would
23 not do as well, although if they do do as well in one
24 round, then the next time around -- if they do make a
25 showing they are doing as well, then the next time around

1 they get treated like minor party candidates.

2 THE COURT: Is that a prediction that they made
3 in the legislative history or is that something you're
4 inferring from the text of the statute?

5 MS. YOUN: I'm inferring it from the text of the
6 statute and the legislative history. I'm not sure there
7 is a specific legislative history that is recorded in the
8 transcripts that we've looked at.

9 THE COURT: So, no legislator has said, in other
10 words, we are predicting what you just said.

11 MS. YOUN: Not that I'm aware of, but I think
12 I'm inferring a prediction on the part of the legislature,
13 as I always infer a prediction on the part of the
14 legislature whenever we're talking about a level setting.

15 I'm sorry. With respect to the particular
16 examples that the -- I'm sorry, let me step back for a
17 second.

18 Another reason besides just vote totals, you
19 know, that they are always going to hit 20 percent and the
20 other, and minor parties are almost never going to hit
21 20 percent on their first time out is that, you know,
22 we're not required to turn a blind eye to the existence of
23 party infrastructure. We have put in extensive testimony,
24 extensive evidence of this in the record that, you know,
25 the approximate Democratic and Republican parties have

1 massive resources that are not available to minor party
2 candidates at this stage of the history.

3 THE COURT: Is that what the history is caused
4 by or is it caused simply by voter registration patterns?
5 There's more than 20 percent of the people who are
6 registered Republicans and, therefore, they are going to
7 get, presumably if they run a candidate they are going to
8 get 20 percent of the vote.

9 MS. YOUN: Yes, I mean the definition of major
10 party can be based either on statewide voter totals or on
11 a registered voter totals or --

12 THE COURT: No, I'm trying to press your point,
13 is there anything in the record that suggests that the
14 reason why each major party consistently gets 20 percent
15 of the vote when they run a candidate is party machinery
16 or is it more likely tied to voter registration patterns?

17 MS. YOUN: You know, I think it's hard to draw
18 that kind of -- I would think that party machinery is part
19 of it, voter enrollment is certainly part of it, and also
20 the intangibles about which both sides have argued in this
21 case, about name recognition, about brand trust, about the
22 voters feeling that, you know, if the Republicans are
23 willing to endorse this guy, then he's someone I can, you
24 know, he's someone I can probably rely on, I think I know
25 how this candidate's going to behave. I think I know how

1 the candidate is going to vote and that is how I want that
2 candidate to behave or vote. And as repeat players they
3 have a certain stake in their reputation, as all parties,
4 of course, do, but I think they've achieved a level of
5 brand recognition which causes them to get that and that's
6 not something that's influenced by the CEP and it's
7 something that certainly has far preceded it.

8 Let's look at the hypothesis that -- let's look
9 at when a Republican party does badly, a Republican party
10 candidate does badly, and whether this means that they are
11 similarly situated to the minor party candidate, because
12 the plaintiffs have proffered the testimony of Mr. Hanson
13 and have tried to show that Mr. Hanson is similarly
14 situated to the Republican party candidate in New London.
15 They say in their proposed findings of fact, paragraph
16 229-D, in effect the Greens and Republicans are on equal
17 footing in New London in terms of political clout and
18 viability.

19 Let's look at Demonstrative 6 in the folder.
20 You know, this example is kind of a converse of what we
21 were saying. The Green Party candidate had never run
22 before, the Greens had never run a candidate in that
23 district. Mr. Hanson got 8.6 percent of the vote which is
24 a wonderful showing and which is much to his credit. The
25 2008 Republican candidate did less well than they had

1 historically done and, in fact, won under 20 percent of
2 the vote, but that was the first time they had gotten that
3 low in perhaps ever. I don't think that one can infer
4 from merely this data, the data about New London, that the
5 Greens and Republicans are on equal footing in New London.

6 MR. LOPEZ: Your Honor, what you can infer from
7 this chart though is that Democrats and Republicans are
8 not on real footing, and this exhibit drives home our
9 point that the CEP is subsidizing candidates like this, or
10 making CEP funds available to candidates like this who
11 don't stand on equal footing. They stand in the same
12 relation to the Democrat as our candidate stands to the
13 Republican.

14 MS. YOUN: Let me address that point. The
15 reason Mr. Lopez accurately used the elocution "candidates
16 like this" is, in fact, the Republican candidate in this
17 district was not a CEP participant, neither was the
18 Democrat in New London.

19 As we stated before and I think I accidentally
20 said 13 last time, it should have been 14, 14 major party
21 candidates instead did not make the 20 percent, a
22 20 percent showing in this election cycle. However, the
23 idea that the CEP is subsidizing those candidates is not
24 borne out by the record. Only one of those 14 candidates
25 received a CEP grant. The rest of them did not. So I

1 think that the -- I don't see the harm to plaintiffs in
2 that.

3 MR. LOPEZ: But the record plainly -- that's
4 true as far as it goes, but the record plainly shows that
5 dozens of major party candidates -- and this is in our
6 evidence -- who received less than 40 percent of the vote
7 or less than 30 percent of the vote did qualify for CEP
8 funds.

9 MS. YOUN: I think that's --

10 MR. LOPEZ: Right, that's where we part company.
11 You think it's legitimate. The defendants, the
12 intervenors think it's legitimate to, that the State can
13 come in and subsidize that point of view. And our point,
14 Your Honor, is that it's not legitimate because the, the
15 legitimacy of a public financing program depends on
16 whether it achieves its ends and its ends are to replace
17 private money -- replace private money with public money.
18 This is going way beyond that because these otherwise
19 uncompetitive candidates couldn't raise the amounts of
20 money that would incentivize them to run for office or
21 that would allow them to run the type of campaign that
22 this kind of money allows them to run.

23 MS. YOUN: Let's look at major parties just so I
24 can dispute Mr. Lopez's characterization of what the facts
25 in this case show.

1 I find it a little hard to understand frankly
2 this side of the room's position on this issue. They keep
3 making this argument that this Republican candidate
4 received only 40 percent of the vote, this somehow means
5 that a minor party candidate who received 5 percent of the
6 vote should be treated -- I just, I don't understand what
7 they are saying. The relevant line here that we're trying
8 to justify and that we've been drawing is the 20 percent
9 line. Whether, a 40 percent candidate is not similarly
10 situated to a 5 percent candidate. Yes, they both lost
11 but I think the legislature is allowed to say, no, we're
12 not just going to fund winning candidates. Obviously that
13 would be a bit of problem. We are instead going to
14 fund -- you know, that a major party candidate lost
15 doesn't mean they are similarly situated in terms of
16 political viability in the long term to a minor party
17 candidate. I mean Republicans do win in Connecticut in
18 legislative races. A minor party has never won a
19 legislative race in Connecticut. In terms of who is
20 viable, who is actually, you know, who can actually be
21 expected to make a showing is something the legislature is
22 entitled to take into account.

23 I wanted to point to another -- I'm sorry,
24 before we move to the major party record, I wanted to talk
25 about two other districts in Connecticut that have, you

1 know, have come up a lot in the last couple of days.

2 The example of Waterbury has been put around and
3 the independent candidate, the independent party has a
4 presence in Waterbury and has real strength there. And I
5 think that the best evidence of that is it was in
6 Waterbury that Frank Burgio who is the -- it was in
7 Waterbury that, I'm sorry. It was in Waterbury -- sorry.

8 It was in Waterbury both that Mr. Denze, who was
9 the Independent Party candidate in 2006 and 2008, was
10 treated as a major party candidate because he had received
11 20 percent of the vote in 2006. He got a full grant and
12 he received a full grant of funding.

13 It is also in Waterbury that an Independent
14 Party candidate who managed to petition to get on the
15 ballot, this is a man named Frank Burgio, he had never run
16 before in the district. He went out, he collected the
17 signatures necessary for a one-third grant. I think that
18 that total is of signatures that he needed was something
19 like 342 signatures. What he managed to turn that 342
20 signatures into was a one-third grant that gave him, you
21 know, \$8,300 and a 20 percent showing in this election.
22 So Frank Burgio and the Independent Party get automatic
23 CEP funding again in that district in Waterbury.

24 So, you know, I think we see that this major
25 party and minor party line, this 20 percent line that Your

1 Honor is concerned about is not impermeable. It doesn't
2 fix the minor parties in a permanent position of second
3 classness. Instead what we are seeing is they are using
4 it to move ahead to a situation where the, where for the
5 first time, as we heard John Green testify, they have the
6 resources, they have the resources and the money to be
7 players in Connecticut.

8 MR. LOPEZ: Well, Your Honor, none of the
9 Working Families Party candidates qualified. Based on --
10 neither Noble nor Booker qualified. They actually fell
11 short of the number that would qualify them in the next
12 cycle. Our friend Mr. Denze, who received a full grant
13 this time around, actually had the misfortune of drawing
14 two publicly funded candidates and his vote total got
15 driven down by eight points and I think he finished at
16 12 percent. He qualified for a partial grant but he's
17 worse off than he was previously by that measure.

18 MS. YOUN: I think this kind of example taken
19 out of context are probably not as helpful as being able
20 to look at the record as a whole.

21 If you turn back to Demonstrative Number 1, you
22 see that in the last election the percentage who received
23 at least ten percent of the vote, and these are the
24 candidates, this is not cross endorsements, these are
25 candidates again, as Your Honor very rightly asked, is

1 36 percent. So more than -- one out of three minor party
2 candidates managed under their own steam to qualify for
3 automatic financing next time around. Four of those, or
4 ten percent of 39 minor party candidates for a full grant.
5 And altogether, including cross endorsed candidates, as we
6 see five lines from the bottom, 21 candidates, that's
7 54 percent of 39 candidates. 21 candidates are eligible
8 in the next election.

9 So, if the same number of minor party candidates
10 ran, more than half of them are going to be automatically
11 eligible for CEP funding in the next election, including
12 the Green Party candidate.

13 MR. LOPEZ: Your Honor, that data was comparable
14 to data from '06 and what the evidence showed is that
15 minor party candidates did not in the main participate in
16 the public financing system, except in our view under the
17 extraordinary circumstances of Mr. Booker and Deb Noble.
18 In the main they did not participate.

19 The eligibility rates in '08, after '08, were
20 pretty much the same as the eligibility rates in '06. And
21 that's partly because the Working Families Party
22 successfully qualifies a candidate through the process of
23 cross endorsements.

24 MS. YOUN: I think, you know, these facts speak
25 for themselves. What we're talking about is the

1 20 percent line and what we're also talking about is, yes,
2 minor parties have a capacity to be automatically in --
3 automatically eligible in all districts. They didn't
4 always take advantage of that opportunity. Similarly,
5 major party candidates had the opportunity to be eligible
6 in some districts and there's no evidence they rushed in
7 to take advantage of that either.

8 If we turn to Demonstrative Number 3 in the
9 folder, contrary to the picture that the plaintiffs
10 provided of the effects of the CEP, major party candidates
11 are just not rushing in to say, oh my God, there's money
12 available, I have to take that money. For major party
13 candidates, there has always been money available. They
14 have always had the fundraising machine behind them that
15 can give them these equivalent resources. The idea that
16 the sudden availability of \$25,000 in funding, whether
17 that be private or public, is a game changer for major
18 party candidates is simply contradicted by this record.

19 In fact, we had one fewer major party candidate
20 in the advent of the CEP. Once again, this is, you know,
21 relatively -- you know, we have only seen the effects of
22 this in one cycle, but in terms of the plaintiff's causal
23 proposition that the CEP will virtually compel major party
24 competition in districts, I think that that -- these
25 figures conclusively disprove that hypothesis.

1 MR. LOPEZ: Your Honor, Ms. Youn misstates what
2 it proves and disproves. It's an argument. We have a
3 different argument. We tell the court to look at
4 particular districts. In historically neglected
5 districts, major parties flock to the districts. They
6 vacated some districts and we presented data showing that
7 those districts weren't historically neglected. Major
8 parties gravitated toward historically neglected
9 districts. And that is the relevant measure.

10 This chart, it doesn't take any of that into
11 consideration and just offers the court, you know, the
12 undisputable fact there was no difference in the number of
13 contested and uncontested elections.

14 THE COURT: How did that break down by party?
15 Obviously in 2008 it was a presidential election year and
16 it was a historic presidential election year.

17 MS. YOUN: I'm sorry, I'm unclear of the exact
18 proposition of Mr. Lopez's that you were --

19 THE COURT: He's saying that major parties
20 flocked to previously uncompetitive districts, I take this
21 to mean.

22 MS. YOUN: I don't think that's supported by the
23 record.

24 THE COURT: Well, to the extent that he thinks
25 it is, I'm trying to figure out whether this was Democrats

1 running in previously safe Republican districts or
2 Republicans running in previously safe Democratic
3 districts, or you can't really break it down that way.

4 MR. LOPEZ: Well, Your Honor, I'm not sure, I'd
5 have to consult at least Table 1 and 2 of the Narain
6 declaration which shows, which lists all the previously
7 vacated districts, and I'm not sure we can indicate those,
8 whether it's by Democrat or by Republican.

9 THE COURT: The point, for what it's worth, is
10 2008 is probably not the greatest year to have as the one
11 year when we have results.

12 MS. YOUN: I mean all I'm talking about, Your
13 Honor, I'm not saying that Your Honor can draw a positive
14 causal conclusion from a mere one year's data, and this
15 being a special year, as we very well know. But I'm also
16 saying the plaintiffs have no support in the evidence for
17 their assertion of virtually compelled major party
18 competition, and it's the plaintiffs who bear the burden
19 of proof on this issue.

20 MR. LOPEZ: Ms. Youn can say that as much as she
21 wants but we think we have ample evidence --

22 THE COURT: And we heard it yesterday, so that's
23 fine.

24 MS. YOUN: I had put off my argument as to
25 whether the Narain declarations, et cetera, purported to

1 show what they are putting it forward for until today. I
2 would ask Mr. Lopez to allow me to present my data.

3 MR. LOPEZ: Your Honor, I do have an answer to
4 your question. You had asked if it was the Democrats or
5 the Republicans that were flocking to previously
6 neglected districts and if you turn to Table -- but you
7 don't have to -- Table 1 and 2 of the Narain declaration
8 do provide that information under the '06 candidate
9 designation. It will say no Democratic or no Republican
10 candidate and by and large it's -- there was --

11 THE COURT: I'll take a look at it. That's
12 fine.

13 MR. LOPEZ: Thank you.

14 MS. YOUN: Yes, Your Honor, and we're saying
15 when he says they flocked to previously uncompetitive
16 districts, well, they flocked out of competitive districts
17 at exactly the same rate. There is no net increase in
18 contestedness. There is no causal proposition that the
19 CEP caused major party candidates to flood into districts
20 that they would otherwise not compete in.

21 THE COURT: You may well be right, especially to
22 the extent that Republicans are flocking out of strong
23 Democratic districts in an historically strong Democratic
24 year and Democrats are flocking into historically strong
25 Republican districts at the same, then it seems to me the

1 causal connection is more likely to be the fact that
2 Barack Obama is running a strong campaign and a lot of
3 people are jumping on his coattails.

4 MS. YOUN: Exactly. And that's a point I would
5 put against the Republican candidate in House District 39,
6 which is again a Hanson district, for the first time ever
7 going below 30 percent. It's the year of unprecedented
8 Democratic turn-out, Your Honor.

9 But, in any case, with respect to the, you know,
10 and we keep hearing about whether major parties are
11 flooding into districts, whether there is an increase in
12 competitiveness, now we don't concede even if an increase
13 in competitiveness existed, that it would be a harm to the
14 parties. Neither do we, neither do we concede that if an
15 increase in expenditures occurred, that that would be a
16 harm to minor parties, as we keep hammering this nail on
17 the head it's not a zero sum game in terms of speech. The
18 court held that in Buckley.

19 But if you do want to look at what happened in
20 the districts that minor parties think of as their turf,
21 the minor party districts, the districts where minor
22 parties competed in 2006, 2008, and you want to see how
23 the expenditure picture differed in those districts, you
24 can look to the same chart, line seven and eight.

25 Average major party expenditures in nonmajor party

1 senate districts, average major party expenditures in
2 nonmajor party house districts. This is the minor party's
3 turf, subset.

4 You'll see that the major party expenditures did
5 increase slightly. They went up from 83,000 to 87,005.
6 That, he did the math for me, is an five percent increase.
7 We note that --

8 THE COURT: The House number's closer to
9 50 percent.

10 MS. YOUN: Yes, the House number's closer to
11 50 percent. But I think that if you turn to -- I think
12 that you can't look to just major party expenditures.
13 You've also seen a corresponding decline of a million
14 dollars in organizational expenditures that were able to
15 be deployed on the party's behalf.

16 THE COURT: What this doesn't tell me, this is
17 the average major party expenditure.

18 MS. YOUN: No, and --

19 THE COURT: So I don't have here expenditure by
20 district, total expenditure by district.

21 MS. YOUN: Exactly, and it's not that we are
22 trying to hide that information from Your Honor. We have
23 the SEEC staff basically drinking from a fire hose for
24 weeks trying to get even these figures. The reason is
25 working nights and working weekends, because the data was,

1 you know, only available really very recently. I'm sure
2 Mr. Lopez had the same experience. And also the way in
3 which expenditures are defined in 2006 and 2008 differs,
4 so that you actually have to go back to the underlying
5 candidate reports in order to figure out what constituted
6 an expenditure in 2006 versus what constitutes an
7 expenditure in 2008. It's not just comparing two lines on
8 a chart unfortunately, as we know to your great chagrin.

9 MR. LOPEZ: Your Honor, we take issue with the
10 average major party expenditures and nonmajor party
11 expenditures. Our data shows there was a, our data shows
12 that it was a significant increase but I do have a
13 statistical objection.

14 The '08 data that they provide backs out, if I
15 understand Mr. Proulx's declaration correctly, backs out
16 return money which apparently was very significant. The
17 '06 data doesn't back out return money according to his
18 affidavit.

19 MS. YOUN: The '06 data I believe does. That's
20 exactly the painstaking analysis that we have the SEEC
21 doing so as to be able to present you with an apples
22 versus apples comparison for these numbers.

23 MR. LOPEZ: So it's your contention that major
24 party candidates running against minor party candidates
25 are spending on average \$83,000, is that --

1 MS. YOUN: No, that's not what this says.

2 MR. LOPEZ: Then I'm not sure what it says.

3 Okay.

4 MS. YOUN: This is a per district comparison. I
5 think that the claim that the, I think the claim that the,
6 that this side of the room is making in this case is there
7 are certain districts that we consider to be minor party
8 districts. These are where we compete, this is where we
9 like to compete, this is where you historically compete.

10 Because of the CEP, all of a sudden these
11 districts are much more expensive, it's much more
12 expensive to run a race here. This is what that data is
13 put to. No, it's not much more expensive for a minor
14 party candidate to run a race here. \$1,000 goes just as
15 far as \$1,000 ever did in that district.

16 MR. LOPEZ: Well --

17 THE COURT: Well -- that's all right. Let me
18 just make sure I understand. What this doesn't show me is
19 whether the nonmajor party in 2006 is facing a single
20 opponent who spent \$83,000 and in 19 -- in 2008, the minor
21 party's facing two major party opponents who are each
22 spending \$87,000.

23 MS. YOUN: That's true. This data doesn't show
24 that. I don't know what causal proposition Your Honor
25 would like that data for. I mean there has been no net

1 increase in contestedness. We said this over and over.

2 THE COURT: Well, \$1,000 versus \$83,000 is
3 different than \$1,000 versus \$175,000.

4 MS. YOUN: Yes, we're looking at averages here,
5 Your Honor.

6 THE COURT: No, I know.

7 MS. YOUN: We don't have any data that says --

8 THE COURT: This is what the averages is not
9 telling me.

10 MS. YOUN: We don't have that currently broken
11 down. I don't think that I -- I don't think that that's
12 the particular -- I don't know what, I don't know what
13 causal proposition that data would support. What we're
14 trying to say is the districts aren't more expensive.

15 THE COURT: For major party candidates.

16 MS. YOUN: No, for minor party candidates.

17 Districts in which minor party candidates compete aren't
18 more expensive as a result of the CEP. Mr. Lopez kept
19 saying yesterday as a result of the CEP, the districts
20 where are minor parties compete have become more crowded
21 and more expensive. Line one of this refers to whether
22 they've become more crowded. No, they haven't. This is
23 how those districts become more expensive.

24 THE COURT: All right. I think we're, despite
25 your efforts I think maybe we're looking at apples and

1 oranges.

2 MS. YOUN: Okay.

3 THE COURT: The number of candidates says
4 nothing about whether any particular district is a
5 contested or uncontested district.

6 MS. YOUN: That is correct.

7 THE COURT: The average expenditure says nothing
8 about the number of candidates spending an average of
9 \$87,000.

10 MS. YOUN: I'm sorry, I said yes too quickly to
11 the last -- to the ultimate sentence of Your Honor. The
12 second line of the chart is number of contested
13 districts.

14 THE COURT: Right.

15 MS. YOUN: And that has not increased.

16 THE COURT: Right, fair enough. But when I'm
17 looking at an average major party expenditure, it makes a
18 difference to know whether the minor party is facing one
19 candidate who's spending 83,000 or two who are spending a
20 total of 175,000, because if I'm, if I'm running a race
21 and I want to have impact in the race, I'd rather run
22 against one candidate who spent 83 than against two
23 candidates who are spending 175 combined.

24 MS. YOUN: What this chart shows -- and it's not
25 exactly what Your Honor was asking before, but what this

1 chart shows is on average whether someone was spending --
2 one candidate who spent \$87,000 or two candidates, each of
3 whom spent 43,500 apiece, the districts have not become
4 more expensive, so --

5 THE COURT: All right, maybe I don't understand
6 this. When you say average major party expenditures, does
7 that mean the average total expenditures in the district?

8 MS. YOUN: Yes.

9 THE COURT: Oh, that helps. Okay.

10 MS. YOUN: I'm sorry.

11 THE COURT: I thought it was per party.

12 MS. YOUN: Per candidate or something, yes --

13 THE COURT: Per party.

14 MS. YOUN: -- no.

15 THE COURT: How much on average does a Democrat
16 spend, how much on average does a Republican spend?

17 MS. YOUN: It's whether the districts contain
18 more incentive.

19 THE COURT: Got you, okay.

20 MR. LOPEZ: Your Honor, in our tables --

21 THE COURT: Yes, I see. I know.

22 MR. LOPEZ: -- we set it out by district --

23 THE COURT: I know.

24 MR. LOPEZ: -- in real numbers. We don't
25 average it because they don't like averages at the last

1 hearing. We set it out in real numbers and our real
2 numbers, and this is flat out inconsistent with theirs, in
3 minor party districts unless we're defining them
4 differently, in Senate races, for instance, in '08 -- the
5 '06 money in minor party districts was 869,000. In '08,
6 just in expenditures attributable to the CEP, it was
7 1.3 million, a net change of \$400,000, and the data is
8 here to be read. And it's all pulled from expenditure
9 reports, so maybe they are presenting a different set of
10 data.

11 MS. YOUN: And I'm happy to get into -- actually
12 the next page of my presentation here shows major
13 methodology flaws in their data but I was going to get to
14 that in a little bit. But in terms of why we prefer
15 averages to the full spread of data and obviously the
16 averages are derived from the full spread of data, but I
17 believe that the full spread of data, we're talking about
18 causal propositions here and I feel like the most
19 probative evidence on that point is averages rather than
20 cherry picking examples.

21 I think before we go to, before we get off this
22 page, I wanted to, Your Honor, also to look at
23 organizational expenditures because, as plaintiffs pointed
24 out, organizational expenditures have to be taken into
25 account when you're thinking about spending and whether

1 spending has increased.

2 The fact that organizational expenditures for
3 major parties decreased by, I think, 70 percent, and you
4 can run the numbers yourself, 1.479 million down to
5 464,000, that's a significant decrease in the amount of
6 money major parties are spending in districts. We've
7 broken it down by district; obviously that's not what the
8 major party is actually spending in a particular district
9 but it does represent what sort of capacity the major
10 party has to deploy money.

11 I also would like to take issue with the idea
12 that organizational expenditures are purely something
13 that's available to major parties and somehow are, you
14 know, that there's no problem with them in that regard.
15 As we note from the Supreme Court's opinion in McConnell,
16 you can't just, you know, you can't get rid of party
17 activity. You can't block it out. You can't completely
18 cut out organizational expenditures. To do so would be a
19 real problem with the association of rights of parties and
20 I think you can see that.

21 The Garfield declaration that we put in, Docket
22 342-5, paragraphs 30, 32, shows that the independent party
23 spent -- The Waterbury Town Committee, this is where their
24 strength is, spent \$32,000 in 2008. They had eight
25 candidates. Now, I'm not saying all of that money went to

1 those candidates, of course, but we're talking again in
2 terms of capacity.

3 The Working Families Party spent \$60,000 in
4 2008. They had 38 legislative candidates, a number of
5 municipal and town committee candidates. But, you know,
6 again, organizational expenditures are not something
7 that's just taken advantage of by big, rich parties.

8 The Working Families Party represents a working
9 class constituency. That represents a lot of very small
10 donations of a lot of people without a lot of money that
11 the Working Families Party has been able to deploy on
12 behalf of its candidates.

13 But again, the organizational expenditures cap
14 means that to the extent the major parties had previously
15 been able to flood the money into these systems and really
16 throw their weight around in terms of organizational
17 expenditures, that capacity has substantially decreased.

18 MR. LOPEZ: There were no organizational
19 expenditures in 2006, Your Honor.

20 MS. YOUN: Yes, we can --

21 MR. LOPEZ: She can draw that conclusion. Prior
22 to 2006 parties were allowed to engage in, in direct
23 expenditures with the candidate around the state.

24 MS. YOUN: That is correct. So what the -- this
25 is all explained if you look at the footnote in Garfield

1 declaration, paragraph 26.

2 When the, when the Connecticut Campaign Finance
3 Reform System as a whole was enacted, it included a lot of
4 different provisions and one of those was one to
5 substantially put limits on organizational expenditures.
6 Now -- or coordinated expenditures, may be a better term
7 and alleviate the confusion. Before that they had been
8 absolutely unlimited. You could pour \$1.5 million into
9 the system. After that it was -- after the law was
10 enacted, it was confined to specific committees that were
11 unable to make those expenditures on behalf of the
12 candidate. Each candidate I think now can have one
13 committee, et cetera.

14 MR. LOPEZ: Your Honor, the Garfield declaration
15 is something that, there's something we flagged when we
16 looked more carefully at it. In 2006, we looked at the
17 records or whoever you delegated this to but it's
18 described in your declaration -- he looked in the records
19 of 400 committees. We can't tell from your declaration
20 what the universe of committees were that are still
21 allowed to engage in organizational expenditures. There's
22 no way for us to determine that from the public record and
23 if the number remains as large as 400, we would suggest
24 that that's another reason for the court to be taking into
25 consideration the breadth of what we describe as a

1 loophole.

2 MS. YOUN: I think looking at 400 as a number is
3 somewhat misleading when you think about how many more
4 candidates each of the major parties are running. That's
5 kind of why we did this breakdown per district that they
6 ran candidates in. So that turns into maybe an average
7 Senate -- you know, of the Senate organizational
8 expenditures, it's maybe \$7,000 per senate candidate and
9 every set of candidate got the same amount of money.

10 For the House, it's about 13-, \$1,400 per House
11 candidate. Now, compare that to the capacities of the
12 Independent Party and the Working Families Party who,
13 yeah, have a smaller, absolutely, amount of money but also
14 run a lot fewer candidates. So the Independent Party ran
15 eight legislative candidates, they had \$32,000 available
16 to them. The Working Families Party spent \$60,000. They
17 had, you know, they had three candidates.

18 So I think that it really does keep the major
19 parties from really bringing in their, you know, all of
20 their money-making machines. It sets limits on that by
21 capping them now.

22 I think another issue that maybe has not gotten
23 as much attention as it should in this case, but that I
24 think that Your Honor should take into account, is the
25 administrative burden, because, Your Honor, you know, is

1 asking rightly, well, what is the reason for not requiring
2 nonmajor party challengers to go through the same
3 petitioning process, or new major party challengers to go
4 through the same petitioning process that minor party
5 candidates who haven't made a prior vote total showing
6 have to go through.

7 And I think the answer to that is really one of
8 administrative burden and remedially. And so, asking the
9 major party new challengers to go through that process
10 would have maybe saved one candidate from getting a CEP
11 grant in that cycle.

12 In order to save that one candidate from
13 getting, prevent that one candidate from getting, you
14 know, what -- you know, a CEP grant, the one unanimously
15 uncompetitive major party candidate from getting a CEP
16 grant, they would have had to have a ten-fold increase in
17 the number of petition signatures that individual town
18 clerk's offices would have had to purport. This is set
19 out in the -- Garfield declaration? Sorry. No, it's --

20 (Pause)

21 MS. YOUN: Yes, paragraph 56 through 59 of
22 Docket 347-3, we figured out how many, how many valid
23 signatures basically all of the minor party CEP
24 participants would have had to have validated and that's
25 about 5,600 signatures total.

1 If you -- we then looked at the major party
2 challengers, the new major party challengers, and said,
3 okay, if you would put those people also through the
4 petitioning process, how many more valid signatures would
5 the town committees have had to verify. And it would have
6 been 60,000. So that's a --

7 THE COURT: So how much new major party
8 candidates are you talking about?

9 MS. YOUN: Forty-two.

10 THE COURT: So there were 42 races that,
11 where -- I think in 2008, where major parties ran where
12 they haven't run before.

13 MS. YOUN: And 42 where a major party didn't run
14 where they had run before.

15 THE COURT: Right, right. And is there any
16 indication that the legislature was concerned about that
17 administrative burden on the parties, the registrars and
18 town clerks who were going to have to look at those
19 signatures?

20 MS. YOUN: I'm not able to answer that question
21 off the top of my head right now.

22 MR. LOPEZ: Your Honor, we would note that
23 there's -- the 42 is primarily House candidates. There's
24 only a handful of Town candidates and there's 169 towns,
25 so we're dispersing 42 among 169 towns. That's a pretty

1 minor --

2 MS. YOUN: But there's --

3 THE COURT: One at time. What's your point?

4 MR. LOPEZ: There's 169 town committees.

5 MS. YOUN: But --

6 THE COURT: Right.

7 MR. LOPEZ: There's 42 of these so-called new
8 challengers. That 42 is dispersed over 169 town
9 committees and most of those new challengers are House
10 candidates, so they correspond nicely with town
11 committees. Senate gets a little more complicated.
12 There's only a handful of new Senate challengers.

13 MS. YOUN: So, in order to put that accurately,
14 the 60,000 would be divided into the 42. It's only those
15 42 town committees that would be impacted by that because
16 petition signaturers are verified on the town level, so
17 they each have to get I guess over 10,000 signaturers.
18 Maybe around -- I was not a math major in college -- maybe
19 around 13 -- I can't do the math -- around 13,000
20 signatures.

21 We have a declaration in Romanti (ph) who is the
22 Town Registrar in -- Hartford? Hartford. He testified as
23 to the hundreds of hours it took his staff to verify,
24 what, 3,000 signatures? We're talking about town
25 committees who are dealing with a couple of part time

1 employees.

2 THE COURT: Right. What I'm trying to figure
3 out is whether this was an interest the state was
4 concerned about when it passed the statute or whether this
5 is something you've come up with after the fact to suggest
6 a reason for supporting the statute.

7 MS. YOUN: I don't know --

8 MR. FEINBERG: Your Honor, I'm not aware of
9 anything in the legislative history that goes specifically
10 to this question of the administrative burden.

11 MS. YOUN: As we said, unfortunately the
12 legislative history is very sparse on the discussion of
13 the major/minor party distinction, period. We are
14 inferring what we can infer from the OLR reports that the
15 legislature commissioned when they were in the process
16 of --

17 THE COURT: Right.

18 MS. YOUN: But --

19 THE COURT: But in the OLR reports, is there
20 anything?

21 MS. YOUN: Not that I'm aware of, Your Honor.

22 THE COURT: Right.

23 MR. LOPEZ: And, of course, Your Honor, if a
24 minor party candidate wanted to run for statewide office,
25 he'd be really taxing the system because he would have to

1 submit 200, over 200,000 valid signatures, which means the
2 clerks would be trying to fight through half a million
3 signatures and I would just submit if this is really a
4 consideration by the legislature, they could have easily
5 dispensed with the petitioning requirement and just went
6 with a program that is based on qualifying contributions
7 or seed money funds or qualifying contributions, which is
8 the way the federal system makes it and the way the
9 comparable state systems are.

10 MS. YOUN: Even the qualifying contributions, I
11 think -- well, actually the qualifying contributions I
12 think are even handedly applied but the plaintiffs are
13 challenging even qualified contributions in this
14 litigation.

15 MS. MURPHY-OSBORNE: Your Honor, just at a break
16 I wanted to clarify Mr. Lopez said earlier he had no way
17 to know whom it was that could make organizational
18 expenditures?

19 MR. LOPEZ: Wasn't my question. My question was
20 we know that you looked at a universe of 400 committees
21 that could drive organizational expenditures into the
22 system in 2006, if that was permitted in 2006. He
23 identified and provided me a list. It's attached to his
24 affidavit.

25 What I don't know is how much -- are we looking

1 at an universe of are we still looking at an universe of
2 400 committees --

3 MS. MURPHY-OSBORNE: That's what I wanted to
4 clarify.

5 MR. LOPEZ: -- that can drag money into the
6 system? Because I don't know the answer to that.

7 MS. MURPHY-OSBORNE: The statute makes clear who
8 can engage in organizational expenditures, and so I guess
9 just to clarify that point, that it is -- under 601(25) it
10 states that "Organizational expenditures means an
11 expenditure by a party committee, a legislative caucus
12 committee or a legislative leadership committee." And
13 party committee is defined in that Section 601(2), "A
14 party committee is a state central committee or a town
15 committee." So that's the universe --

16 MR. LOPEZ: The universe is the state central --
17 so that's what we're trying to get at. So it's 169 --

18 MS. MURPHY-OSBORNE: It's in the statute.

19 MR. LOPEZ: -- so it's still in our view a very
20 large group of committees that can individually drive in
21 significant amounts of money into the system.

22 And, of course, as you know, Your Honor, at the
23 statewide elections, there is no cap, they can drive in
24 unlimited amounts of money into statewide elections.

25 MS. YOUN: Okay. I wanted to turn now to

1 plaintiff's discussion of data from yesterday --

2 THE COURT: Did you want to move the admission
3 of your demonstrative exhibits?

4 MS. YOUN: I think I'm -- yes. Yes, I will now.
5 I'm now ready to move the admission of these summary
6 tables.

7 THE COURT: Any objection?

8 MR. LOPEZ: There are no objections, Your Honor.

9 THE COURT: All right. Each of the six
10 demonstratives is admitted as full exhibits.

11 (Whereupon Court Exhibits 1 through 6 were
12 marked full.)

13 MS. YOUN: Just with --

14 THE COURT: Just a moment.

15 (Pause)

16 MS. YOUN: With one caveat on that point. We've
17 just been informed in Defendant's Demonstrative Number 5,
18 the line that shows the years in which the various
19 legislative districts had Green Party competition, that's
20 inadvertently been omitted so we would seek to file a --

21 THE COURT: We'll substitute it here.

22 MS. YOUN: Well, it's handwritten, it's rather
23 sloppy.

24 THE COURT: You know what? I don't think the
25 Court of Appeals is going to care.

1 MS. YOUN: We'll just do the second page and
2 hand it up at the break.

3 I wanted to talk a little bit about plaintiff's
4 presentation of data from yesterday -- and we do have
5 this.

6 THE COURT: All right, so we're substituting in
7 the pages that you've now corrected. And that's
8 Demonstrative Number five?

9 MS. YOUN: Yes.

10 THE COURT: All right. So --

11 MS. YOUN: And we'll serve you with a corrected
12 copy of that demonstrative tomorrow.

13 Without spending too much time on this because I
14 think that Your Honor is perfectly capable of going
15 through the various presentations of the data and
16 distinguishing what the court finds probative, just to
17 highlight the differences that we have with the
18 plaintiff's presentation of data, we have a very clean
19 disagreement on, you know, whether or not returned funds
20 should be backed out.

21 There was a substantial amount of return, of
22 grant amounts that ended up being unused and were, in
23 fact, returned. You know, whether it was that candidates
24 had overestimated the amounts that they thought they were
25 going to need or whether it was that candidates were just

1 competing because, you know, they didn't -- they liked the
2 idea of public funding, they wanted to be a public funding
3 candidate, is very unclear, but there is a substantial
4 amount and our averages and other figures in our
5 declarations reflect that and plaintiff's various tables
6 did not. And I think that Your Honor can make a relevance
7 call as to whether funds that were awarded but not
8 actually used results in any cognizable injury to
9 plaintiffs.

10 THE COURT: Do I have in the record the
11 information concerning returned funds?

12 MS. MURPHY-OSBORNE: It's in the chart that's
13 attached to the Rotman declaration that was filed on March
14 5th.

15 THE COURT: Thank you.

16 MS. YOUN: Secondly, there was a lot of time
17 spent yesterday on Narain Table 5 which is attached to his
18 declaration docket number 144. And I think in going
19 through that table, I think Your Honor quite rightly asked
20 the question, you know, are these tables showing all of
21 the districts in which nonmajor party candidates competed
22 in 2006 and 2008 and the answer to that question is no.
23 We submit this is just one-half of the picture and it's
24 misleading for that reason. What this omits is it omits
25 districts in which, rather than just facing one major

1 party candidate, nonmajor party candidates face two major
2 party candidates, you know, as we have shown you in the
3 previous demonstrative with Green and Libertarian Parties,
4 minor parties compete both in single party and in two
5 major party districts. And I don't -- we didn't see what
6 causal proposition was being supported by the omission
7 districts with two major party candidates.

8 Moving onto -- also, this table as set forth in
9 the Proulx declaration, omits a district that it should
10 have included and it omits -- it further omits any
11 district in which a 2008 major party candidate did not
12 receive a CEP grant, so we know that to be about
13 20 percent of the districts. I'm not sure what causal
14 proposition is being forwarded by putting in such an
15 incomplete picture of what happened with nonmajor party
16 candidates in 2008.

17 Nikolaidis updated Tables 3 and 4 was also
18 something where some time was spent yesterday. I think
19 Your Honor might recall from the December hearing, I had
20 challenged Tables 1 and 2 that plaintiffs had spent quite
21 a bit of time on because plaintiffs had included newly
22 contested districts in an average without putting in newly
23 uncontested districts, and I said, well, that is what it
24 is but you can't really call it an average unless it
25 includes both the plus and the minus.

1 This Nikolaidis updated Tables 3 and 4 suffer
2 from not the exact same but I think a similar distortion
3 in that they, they omit -- basically they put in a zero
4 for -- let me explain this. They compare the total major
5 party CEP receipts in each 2008 districts and compare it
6 to the, you know, in the course of the comparison against
7 the 2006 figure for that. However, when there was a new
8 major party competitor, they treat that as 100 percent
9 increase equivalent to the amount of the CEP grant.
10 That's fine if you do it on the other side but, once
11 again, they didn't include the negative side of the
12 equation.

13 So, for example, if a 2008 Democrat in a
14 particular House district had CEP receipts totaling
15 \$30,000 and there hadn't been a 2006 candidate in that
16 district, they call that a \$30,000 increase in receipts.
17 However, the opposite is not true. If a 2006 Democrat
18 raised, you know, in a particular House district in 2006
19 raised \$50,000, and then they didn't have a candidate in
20 2008, they don't treat that as a net, as a minus \$50,000.
21 I think that's clear.

22 So, that's just laying out the methodology
23 differences between the two tables so that Your Honor can
24 make its own decision.

25 I think, once again, I'd like to take a little

1 step back, I'm pretty much done with putting in facts
2 here, and just talk about, just talk about what a lot of
3 this data is put in to show.

4 We have again descended to a granular level and
5 I'd like to take it back to what it is the evidence
6 regarding major party candidates is meant to show and what
7 it actually does show.

8 Because the plaintiffs' theory of injury, the
9 plaintiff's theory of injuries is that major parties saw
10 increased expenditures, we can argue about the levels but
11 increased expenditures; that there was increased
12 competition, which we don't think is factually supported
13 but that's their theory, and; that there was a resulting
14 change in strategic decision-making on behalf of the Green
15 Party and Libertarian Party which, again, we don't think
16 is factually supported but, you know, this is their
17 theory.

18 And this is I think quite troubling to us
19 because when this was a case about thresholds, I think we
20 knew what we were talking about. We were talking about
21 whether the thresholds are too high, too low, whether
22 people will be able to make them, whether they wouldn't be
23 able to make them. I think you can -- we have seen --
24 Your Honor can draw your own conclusions about the level
25 at which the thresholds are set but there are ways in

1 which we can do that and we've put in data about how many
2 nonmajor party candidates were able to participate, et
3 cetera.

4 But now that we're just talking about the -- we
5 stopped looking at the minor parties and we're simply
6 looking at major party increased expenditure, major party
7 increased competition, without respect to its effects on
8 minor party vote totals, minor party expenditures, minor
9 party power or strength, now that we're just talking about
10 the benefit side of the equation, not the decreased
11 political opportunity side of the equation, the
12 implications of whether or not this court finds
13 constitutional injury in the benefits side of the equation
14 become very, very troubling to us, because if Your Honor
15 finds that increased expenditures for a public financing
16 recipient, increased competition as a result of public
17 financing, changes in strategic behavior, if any of those
18 are found to constitute constitutionally cognizable injury
19 in this case, then that, that will undermine the
20 constitutionality of every public financing system. None
21 of those depends on a major or minor party distinction,
22 and I think this is why this case is, you know, this is
23 why I think I have pointed out the shift in plaintiff's
24 strategy, because when plaintiffs were saying, okay, you
25 know, minor parties are going to find it impossible to

1 qualify, that's a factual disagreement. We can have that
2 factual disagreement. But once we're focusing purely on
3 the benefit side of the equation, this is where we have a
4 problem.

5 I'm done, but I know that there is some
6 additional presentation by the Attorney Generals office.

7 MR. ZINN ROWTHORN: I don't know if this is a
8 good time to take an afternoon break, but I think what we
9 had anticipated was we would have discussion or argument
10 on the standing issue. My hope was to be able to make
11 something in the nature of a summation at the end after
12 that. So I think we'll proceed however the court wants.

13 THE COURT: That's fine.

14 MS. MURPHY-OSBORNE: Are we taking a break?

15 MR. FEINBERG: Excuse me, Your Honor.

16 (Pause)

17 MR. ZINN ROWTHORN: Oh, I'm sorry. There was
18 another aspect of the factual presentation, Your Honor,
19 that I've forgotten about. So maybe we can do that I
20 think relatively quickly and then take a break and then
21 proceed to the standing argument.

22 THE COURT: Sure.

23 MS. MURPHY-OSBORNE: Okay, I'm thoroughly
24 confused. So at this point would you like to address the
25 standing? Because the points, the factual points that I

1 wanted to make I decided would make sense just to roll
2 them into the standing analysis because I think it's most
3 helpful for the court to point to specific parts of the
4 record.

5 THE COURT: So, you're going to do the factual
6 and legal argument on standing?

7 MS. MURPHY-OSBORNE: Yes.

8 THE COURT: Fine. So why don't we then take a
9 break and we'll talk about standing and then we'll do
10 whatever closings people have.

11 We'll see you back here at 3:30. Stand in
12 recess until then.

13 (Whereupon a recess was taken from 3:15 o'clock,
14 p. m. to 3:30 o'clock, p. m.)

15 MS. MURPHY-OSBORNE: Good afternoon. Maura
16 Murphy-Osborne for the State defendants. I just wanted to
17 address at this point of the proceedings some of our
18 objections to plaintiff's standing. In particular,
19 there's been quite a bit of briefing in the case on
20 standing as to Counts Two and Three, but at this point
21 it's the State's position it's appropriate to raise the
22 issue regarding Plaintiff's failure to establish standing
23 as to Count One.

24 Ms. Youn has covered a lot of the points that
25 also go into the standing analysis in her presentation

1 here today and I don't think I could improve upon that,
2 but in order to give Your Honor some sort of guidepost as
3 to, you know, where I'm going, I just want to discuss
4 briefly what the State's understanding of what plaintiff's
5 harm has been in this case to date is essentially a
6 diminishment of their political opportunity arising out of
7 the application of the CEP. And it has been our
8 understanding that the harm that they are alleging has
9 been that they are going to be somehow negatively impacted
10 because of, directly because of something relating to the
11 CEP.

12 And, I think, Your Honor, your ruling on the
13 motion to dismiss adopted this understanding, that while
14 you, while you stated that you didn't believe Buckley
15 controlled, you didn't utilize the right that was at issue
16 in Buckley and that was described in Buckley.

17 The understanding of political opportunity isn't
18 something that is clearly established anywhere, but the
19 state and intervenor defendants have been endeavoring to
20 grasp onto that some type of objective criteria in order
21 to understand and measure what the harm is to plaintiffs.
22 Because, as Your Honor knows, in order to have standing
23 you have to show some actual or imminent injury or harm.

24 And as the Burden and Anderson line of cases
25 discuss, which we relied upon in our summary judgment, in

1 order to assess the harm, in order to establish what
2 standard of review applies in this case, you have to
3 assess the magnitude and the quality of the injuries to
4 the plaintiff.

5 Some of the objective measures that Ms. Youn
6 went through today in detail and that we've addressed
7 repeatedly in our papers are objective measures such as
8 prior vote totals, participation in recruitment of
9 candidates in elections, fund raising ability, and one
10 factor we haven't really discussed has been just the
11 generalized ability to participate in the political debate
12 and that's obviously something that's a bit less tangible.

13 And those particular objective measures are
14 actually factors that when Mr. Fournier, who's a cochair
15 of the Green Party, those were his own, essentially his
16 own words and what he, how he evaluated political
17 opportunity. Mr. Fournier talked about the ability to
18 recruit candidates, raise money, to field candidates, to
19 do issue advocacy and to incrementally build support for
20 the party and that's in his deposition, page 20.

21 So, in order to establish standing on Count One,
22 it's the state's position that the, that the plaintiffs
23 have the burden of showing some diminution of their
24 political opportunity in some objective manner. And I
25 think Ms. Youn's presentation has made very clear that

1 they were not able to do that. So for that reason we
2 would, we believe that this court should find because they
3 really haven't shown any actual harm based on any sort of
4 objective measure that the court can employ, they lack
5 standing as to Count One as well as Counts Two and Three.

6 But another aspect of the standing that the
7 plaintiffs obviously would raise and that the court should
8 consider is whether or not they've been denied a benefit
9 in some way and they've been treated unequally because, as
10 they allege, they're similarly situated as other parties
11 who are permitted to obtain this government benefit of
12 public money for their campaigns.

13 But even on that measure of a denial of a
14 benefit, the plaintiffs have also lacked standing. These
15 plaintiffs lack standing to raise a claim as to Count One,
16 and that's primarily because of their failure to actually
17 avail themselves of the program in this election cycle.

18 At some level it's remarkable to me that the
19 plaintiffs, you know, obviously knowing full well that
20 they were seeking to bring down this landmark piece of
21 litigation didn't even attempt to, and also being
22 cognizant of the fact that they had some standing
23 obligation, didn't even attempt, didn't make any
24 meaningful attempt to actually participate in the program
25 in 2008 and for -- as much as I try to understand what the

1 up side of that was, I haven't been able to find any
2 reason why the plaintiffs didn't even make some sort of
3 bare attempt to participate. So, even assuming the
4 plaintiffs' argument is, assuming arguendo that a benefit
5 to others, providing a benefit to others is sufficient to
6 establish a harm to them, which I believe, you know,
7 Ms. Youn in her presentation has pretty sufficiently
8 debunked, but even assuming that, they still have some
9 obligation to show that they actually sought this benefit
10 in a meaningful way and that they were ready and able to
11 avail themselves of it. And the factual record in this
12 case makes clear that they didn't. And I think both the
13 deposition and the declaration of Mr. Hanson and
14 Mr. Fournier help, are helpful in illustrating the flaws
15 in plaintiff's standing in this case.

16 I guess first by way of background, I apologize
17 if this is repetitive, but the Green Party fielded five
18 candidates in this election. Mr. DeRosa ran in the First
19 Senate District. He ran against one Democrat opponent and
20 one Republican opponent and the Democrat did receive CEP
21 funds.

22 Collin Bennett ran as a Green in the 33rd Senate
23 District. He ran against a Democrat and a Republican
24 which were the same make-up of the race in '06, and both
25 of those candidates did receive some CEP funds.

1 Zack Chaves ran in the 36th district. He ran
2 against a Democrat and Republican and that was also the
3 same make-up of the race in '06. There was no new major
4 party candidate in that race as well. Neither one of them
5 received CEP funds.

6 In the House for the Greens, Kenric Hanson ran
7 in the 39th District. There was a Democrat and a
8 Republican in that race as well but there also was one in
9 '06, and neither of those candidates sought or received
10 CEP funds.

11 And in the 135th District, Remy Chevalier ran as
12 a Green. He ran against one Republican.

13 And in '06 a Green, Nancy Burton also ran in a
14 district against just one Republican.

15 So there was no change in the major party
16 participation in that race as well.

17 And Marc Gottman, who's Libertarian, ran in the
18 20th Senate District but it's our position as to
19 Libertarians, because they've made abundantly clear that
20 they have a philosophical opposition to public financing
21 and Mr. Rule, Andrew Rule, who is an officer in the
22 Libertarian Party, indicated in his deposition that
23 regardless of what the qualifying criteria would be of a
24 proposed financing scheme, the Libertarians wouldn't want
25 to participate in it because of their opposition to

1 government involvement in campaigns. So, for that reason
2 it's abundantly clear that the Libertarians don't have
3 standing.

4 THE COURT: Are you making this standing
5 argument with respect to Count One only with respect to
6 the as applied challenge?

7 MS. MURPHY-OSBORNE: Right now, yes. That's the
8 purpose, sort of going and making a record, a clear record
9 as to the plaintiff's lack of standing as to the as
10 applied portion of the case.

11 THE COURT: All right. And why would the
12 Libertarians not have standing simply because they won't
13 take the money? If the money is unconstitutionally being
14 provided to somebody else, wouldn't they have standing to
15 challenge it if it they are competing against the party
16 who is receiving the money improperly?

17 MS. MURPHY-OSBORNE: Would they have challenge
18 of standing simply to make a facial challenge?

19 THE COURT: Or as an as applied challenge.
20 Let's assume that the statute said we're going to give
21 unlimited amounts of money only to the Democrats, period.
22 And the Libertarians have, either have or intend to run
23 against a Democrat.

24 MS. MURPHY-OSBORNE: Well --

25 THE COURT: They won't take the money if it's

1 available to them. If they could somehow qualify as
2 Democrats, they wouldn't take the money, but they are very
3 upset that the Democrats in their view are
4 unconstitutionally being provided this money. Why don't
5 they have standing if they are going to run against a
6 Democrat who's being unconstitutionally advantaged?

7 MS. MURPHY-OSBORNE: Your Honor, they would have
8 standing, I guess, to bring that, a challenge to that
9 statute because they would allege that -- that would just
10 not even be a rational statute, I mean I think under the
11 Lujan analysis.

12 THE COURT: But it shouldn't turn to the
13 standard of review. In other words, the question is are
14 they harmed sufficiently to be a proper party and for the
15 court to have jurisdiction?

16 And so, if the claim is the statute is
17 unconstitutional and it's unconstitutionally benefiting
18 our opponents, whether there's even an opportunity for
19 them to take the money or not, why wouldn't they have
20 standing if they are competing against someone who stays
21 unconstitutionally many assisted?

22 MS. MURPHY-OSBORNE: Well, I guess you're right.
23 It does go more to the merits as to whether or not they
24 could -- our contention is that to essentially be -- it
25 was trying to attempt to establish sheer standing because

1 of a benefit to another. I guess it gets back to the
2 point that in order to object to the benefit that is being
3 provided to the other, you have to somehow establish
4 that -- one of two things. That either you are ready and
5 able to seek to obtain that benefit but you're unable to
6 but you're on equal footing with other people who are
7 able to obtain that benefit. Or you would have to show
8 some diminution of your political opportunity. So they
9 could have standing if they were able to show that they
10 were harmed by that.

11 And, for example, if the Libertarian Party then
12 just disbanded after that hypothetical statute was
13 enacted, would one who wanted to associate with the
14 Libertarians or didn't like the Democrats, just simply
15 didn't like Democrats, would they be able to challenge
16 that statute? I mean you have to show some type of harm
17 flowing to you because of that and I think the
18 hypothetical you just gave of the very one-sided statute,
19 they would have to be able to show some type of harm
20 flowing to them.

21 THE COURT: Let me give you a better example.
22 The state passes a law that any party that swears
23 allegiance to the Catholic Church and will follow the Pope
24 gets --

25 MS. MURPHY-OSBORNE: Whatever is in the clause.

1 THE COURT: -- gets public financing. Now, the
2 Libertarians don't want to, they don't want to qualify.
3 They are not going to try, they have no interest in
4 qualifying under that statute. But some other party does
5 and they are running against that party. They don't have
6 to be denied a benefit if they are harmed by a benefit
7 being provided to their competition unconstitutionally.

8 MS. MURPHY-OSBORNE: But what would make that
9 unconstitutional? That hypothetical -- I'm not trying to
10 be difficult -- that would obviously violate the
11 establishment clause of the First Amendment, and so --

12 THE COURT: Right, but putting aside the merits,
13 they have an argument that it violates the establishment
14 clause. Here there's an argument about a First Amendment
15 problem with the statute. The question is are these the
16 proper plaintiffs and does the court have jurisdiction.
17 And that decision doesn't turn on the ability or
18 willingness of a party to accept the benefits offered by
19 the state statute. It turns on whether the party has been
20 harmed. And so for a standing analysis, you have to be
21 able to say the plaintiffs have not been harmed by the
22 fact that their competition has in their view
23 unconstitutionally been benefited.

24 MS. MURPHY-OSBORNE: Well --

25 THE COURT: And it's a very difficult argument

1 to make on a facial level, and I understand you're not
2 making that right now, but even on the as applied level it
3 shouldn't matter that the party who's seeking to make the
4 claim doesn't want to take the benefit.

5 MS. MURPHY-OSBORNE: Okay. First of all, the
6 establishment clause hypothetical you just gave, on its
7 face there is a clear establishment clause issue, okay?
8 The reason why that's not applicable to the First
9 Amendment context in the election law area is that
10 throughout the election law area, there's all kinds of
11 differing treatment that the minor parties are impacted
12 by. And so, in order to show that there's some injury to
13 you, you have to, I think, show one of two things. That
14 you're now somehow -- you have sought to avail yourself
15 of -- for example, if a candidate never even tries to
16 petition for office, would they then have standing to
17 challenge the ballot access provisions of the statute? I
18 mean it seems there has to be some -- the benefit of the
19 standing analysis is that it permits the state and the
20 court to use some objective measures in assessing whether
21 or not there's actually been a harm. So I think the
22 difference is that on the face of the hypothetical you
23 just give with respect to the establishment clause, the
24 harm is apparent on the face of it.

25 Here, in this case it's not apparent from the

1 face of the CEP that there is a harm to the Libertarian
2 Party. So --

3 THE COURT: All right.

4 MS. MURPHY-OSBORNE: So, with respect to
5 Mr. DeRosa, and let me just preface this by saying that I
6 don't in any way seek to disparage the Green Party or
7 their philosophy or anything that they believe in, but I
8 think that the facts -- or, you know, their efforts on
9 behalf of their beliefs, but I think the facts are
10 troubling with respect to their attempts or halfhearted
11 attempts to appear to be attempting to participate in the
12 CEP, at least with respect to Mr. DeRosa.

13 The record reflects that Mr. DeRosa filed what's
14 been referred to throughout the proceedings as a one meet
15 exemption in March of 2008, and the significance of that
16 being that's his statement saying I don't intend to raise
17 or expend more than \$1,000 in this election. So as of
18 March 2008, Mr. DeRosa essentially had made a public
19 filing indicating that he was not even going to -- that
20 reflected the fact that he was not going to attempt to try
21 to participate in the CEP in that -- in 2008.

22 Now, I think plaintiffs would say in rebuttal to
23 that that, well, he wasn't sure that he would be able to
24 because he was one of those candidates that was in the
25 area of having already had ballot access in the First

1 Senate District because the prior -- although it wasn't
2 Mr. DeRosa who ran in '06, another Green ran in '06 and
3 got a sufficient number of votes to maintain the ballot
4 access in the First Senate District. But -- so he had
5 one percent but they didn't get the full ten percent that
6 would have permitted them to not have to petition for the
7 CEP funds.

8 But as of -- well, first let me also just
9 mention that Deborah Noble, the Working Families candidate
10 that you heard from John Green about, was also in that
11 category between one and ten percent candidates, and she
12 was able to gather enough petitions for a two-third grant.

13 And moreover, as of May 2008, it was clear from
14 the Secretary of State's letter to the SEEC that the
15 Secretary of State would, would likely be allowing people
16 to petition onto the ballot who already had ballot --
17 would be allowing people to petition -- would accept
18 petitions from candidates and would count the petitions
19 from candidates who already had ballot access who were
20 seeking to obtain CEP funds through petitioning.

21 And Mr. DeRosa, throughout his campaign, raised
22 a total of \$150 in 2008, and there's no indication, so
23 it's clear, there's no indication that he made a
24 meaningful attempt to even raise qualifying contributions
25 which, putting aside the petitioning issue that applies to

1 him, he, there was no barrier to him attempting to raise
2 the \$15,000 qualifying contributions and he made no
3 attempt to do so.

4 His letter to the CEP or his filing to the CEP
5 on September 18th of 2008 indicating he did want to
6 participate in the CEP really, you know, should be taken
7 for what it is, which is essentially an attempt to avoid
8 this type of challenge to standing that the State's
9 raising at this point.

10 And Mr. DeRosa's claim that he wasn't aware of
11 the August 6th petitioning deadline, it's just not
12 credible in light of the fact that it's -- well, one, he's
13 a very experienced candidate and, you know, even if he
14 doesn't know the precise deadline is August 6th, he knows
15 it's likely to be early August since he has run, I think,
16 three times or possibly more for the same Senate seat.

17 With respect to Kenric Hanson at his deposition
18 at pages 35, 51 and 52, he makes it very clear that he was
19 just a place holder candidate for the Green Party and that
20 he never even really intended to be the person who was
21 actually on the ballot for the Green Party in the 39th
22 District. And by place holder candidate, I mean minor
23 parties are permitted to put a name out there in order to
24 gather sufficient petition contributors to obtain ballot
25 access, and then at the close of the nominating period for

1 the minor party, they are actually able to switch out that
2 name for someone else that they actually nominated and
3 Kenric Hanson understood that initially that he was
4 intended to merely be a place holder candidate.

5 And so his claims in his declaration that it was
6 the petitioning requirements that deterred me from
7 participating in the CEP, that's at Hanson declaration 30,
8 those simply aren't borne out and they are contradicted by
9 his deposition testimony. Moreover, Mr. Hanson said in
10 his deposition at page 89 that he didn't even attempt to
11 qualify for the CEP.

12 THE COURT: Again, I'm struggling with the
13 concept that one or more of the plaintiff party members
14 has to seek to qualify for funding in order to have
15 standing to challenge the statute. If one of the
16 challenges is it's extremely difficult or extremely
17 expensive or extremely burdensome in some other way to
18 qualify, why would the plaintiff have to make the
19 presumably unsuccessful attempt in order to have standing?

20 MS. MURPHY-OSBORNE: Well, that is a concept
21 obviously in the area of First Amendment which is a
22 futility argument essentially, and that it's not something
23 that is accorded to a plaintiff lightly, so we would refer
24 you to some of the cases that discuss this obligation in
25 the equal protection context, discuss the obligation to

1 make a showing that you are somehow ready and able to
2 obtain the benefit that you're claiming has been
3 unconstitutionally denied to you.

4 The case, and we're happy to brief this further,
5 because it is an area that hasn't been necessarily briefed
6 in the case, as to the standing as to Counts Two and
7 Three, but in the 9th Circuit in Carroll v. Nakatini,
8 which is 342 F3d 934, the 9th Circuit discusses that a
9 plaintiff who is trying to obtain a government benefit
10 that is given to other people can't simply be saying,
11 can't simply have standing because they claim that a
12 benefit was given to somebody else and it wasn't given to
13 me unless they can show that they meaningfully attempted
14 to obtain that benefit themselves.

15 Another case out of the 2nd Circuit in the First
16 Amendment context involving religious freedom of
17 incarcerated people, Jackson Bay v. Hanslmaier, which is
18 115 F3d 1091, similarly makes that same point, that in
19 order to bring an equal protection challenge claim that
20 you were denied some benefit of that you're entitled to
21 under the First Amendment, you have to make some showing
22 that, that you attempted to obtain the thing that you say
23 you are unconstitutionally foreclosed from benefiting from.

24 THE COURT: Right, which makes a lot of sense if
25 you're applying for a welfare benefit or social security

1 benefits or whatever. But I don't understand the
2 plaintiffs in this lawsuit to be saying we should have
3 been given money under the CEP. They are saying instead
4 the CEP is unconstitutional, you cannot pass a law that
5 does what the CEP does. And so they don't have to try to
6 get the benefits under the statute that they claim is
7 unconstitutional or they claim to be injured by the
8 passage of the unconstitutional statute. Do they?

9 MS. MURPHY-OSBORNE: I think they do have to
10 show a harm.

11 THE COURT: I agree with you. That's --
12 standing is harm, right.

13 MS. MURPHY-OSBORNE: And I think that the harm
14 could be shown in several ways, or at least two. The
15 first being they could show some kind of diminution to
16 their political opportunity. I mean it's a little bit
17 difficult to analyze in a way because if the plaintiffs
18 had attempted or had obtained CEP funds and they did then
19 have a diminution of their political opportunity, there'd
20 be no way to make a causal link between the providing of
21 CEP funds to a major party candidate and the diminution of
22 plaintiff's political opportunity. Here they can show a
23 harm from either a diminution of their political
24 opportunity, which as I started out saying, seems to be,
25 one, on its face difficult to measure and the State and

1 intervenor defendants have been struggling to try to put
2 some objective criteria into what that objectively means.
3 So they can show that --

4 THE COURT: Does Davis help you there?

5 MS. MURPHY-OSBORNE: Well, a diminution of their
6 political opportunity? Arising out of Davis?

7 THE COURT: Right.

8 MS. MURPHY-OSBORNE: I don't see how Davis --

9 THE COURT: The government gave money to Davis'
10 opponent and Davis had standing to challenge the statute,
11 even though he didn't apply to be part of the program?

12 MS. MURPHY-OSBORNE: Davis isn't about political
13 opportunity generally. It's about -- it was about speech,
14 which is different. The right that the court was
15 addressing in Davis was about the millionaire's speech
16 rights, and the fact was that the millionaire was
17 inhibited in his speech because if he, if he expended a
18 certain amount of money in making that speech, he then was
19 going to essentially liberate his opponent from the
20 typical obligations of contribution limits. So it's a
21 speech case and it's distinguishable, I think, on that
22 grounds. So I don't see how Davis assists us in any way
23 in sort of understanding the harm to the plaintiffs'
24 political opportunities as that concept is stated in
25 Buckley.

1 I mean I think, Your Honor, you made it pretty
2 clear throughout the proceeding you aren't too enamored of
3 our claims about the plaintiff's failure to make any
4 meaningful effort to actually participate in the CEP this
5 election cycle, and I think it is important to us though
6 just to have a record of it in these proceedings. So, you
7 know, with your indulgence, I guess I would proceed.

8 Mr. Hanson also testified that -- well, first of
9 all, let me just clarify, I asked Mr. Hanson, he said that
10 he didn't even try to qualify for the CEP and just the
11 time line makes clear that he didn't, based on when he
12 even sought to obtain any petition signature nominating
13 pages.

14 THE COURT: Let me just interject because I
15 think what you're doing is arguing from the record, not
16 making a record, so to the extent that you want to make a
17 standing argument, I think you've preserved the record.
18 In other words, you're not giving me anything I don't have
19 already in the record, right?

20 MS. MURPHY-OSBORNE: What we're trying to do is
21 mainly highlight it and clarify it and put together
22 disparate pieces of the record that when put together sort
23 of crystallize the fact that the plaintiffs really haven't
24 made any meaningful attempt to participate in the CEP in
25 2008.

1 THE COURT: Right, but you just told me your
2 concern is to maintain the record for appeal and I don't
3 want to inhibit that but what I'm suggesting to you is
4 that you're not advancing that aim by arguing further and
5 citing to evidence that's already in the record. It's
6 already in the record.

7 MS. MURPHY-OSBORNE: Right, except it's not
8 clearly clear, I guess, whether this entire record will be
9 going up on to the 2nd Circuit. So in part, to the extent
10 there's sections from Mr. Hanson's deposition or -- I
11 don't know if every transcript or every single piece of
12 the record will be going up to the 2nd Circuit, so --

13 THE COURT: The record is whatever the parties
14 put together for the appendix. It's been admitted into
15 evidence. You have the opportunity to mark it, send it up
16 to them. Whatever you don't mark, they ask for, we box it
17 up, truck-load it up there, down there, whatever. They'll
18 have every single piece of paper.

19 MS. MURPHY-OSBORNE: Well, let me -- I'll just
20 wrap up very quickly then.

21 Mr. Hanson also made clear that he had obviously
22 no opponent in his election in 2008. Excuse me, that no
23 opponent participated in the CEP in 2008. And he also
24 made clear that the CEP didn't in any way impact his
25 ability to raise money, to do voter outreach, to do any

1 get-on-the-vote efforts, to obtain any volunteers, to buy
2 ads, to get on the ballot in any way, and that's at his
3 deposition at page 91.

4 Moreover, what Mr. Hanson's deposition also made
5 clear and what Mr. Fournier, Mr. Fournier confirmed in his
6 deposition is that essentially the way the Green Party
7 proceeded is in a lot of its decisions to run candidates
8 is, first of all, very decentralized, and Ms. Youn alluded
9 to this earlier, this concept that the new resolution that
10 they enacted in January of 2008 reflecting some attempt
11 to -- sorry, 2009, January 2009 to enter into this grand
12 strategy as a result of the CEP is really undermined by
13 the record which indicates their history has been
14 throughout to essentially make ad hoc decisions about
15 whether or not to run a candidate and that's --
16 Mr. Fournier has testified that -- excuse me, Mr. Hanson
17 had testified that for his campaign and this, the record
18 reflects this is typical throughout the Green Party, that
19 he's not aware of any GOTB assistance from the Green Party
20 generally to his campaign, that he was not aware there was
21 any canvassing or any assistance provided to his campaign
22 at all. And that's at his deposition, page 44, 43 to 44,
23 that there were no ads by his, by the Green Party on
24 behalf of his campaign.

25 His campaign, no voter lists were provided to

1 him by the Green Party, no independent expenditures were
2 provided to him by the Green Party, that he only had one
3 fundraiser and it wasn't very well done. And that's in
4 the deposition at 33 and also contradicts his declaration
5 which tends to imply he had multiple fundraisers.

6 So, these facts that are demonstrated by Mr.
7 Hanson and also corroborated in Mr. Fournier's deposition,
8 demonstrate that, that the Green Party and even the
9 Republican Party in the 39th District are not similarly
10 situated, and they are not on an equal footing, as is
11 contended by the plaintiffs.

12 And Mr. Fournier testified that, and confirmed
13 that the Green Party has operated on an ad hoc basis in
14 selecting candidates -- and that's at deposition 63 and
15 65. That the Green Party, that Green Party state
16 candidates fly so low without party support -- that's
17 deposition 35. That the Green Party does not yet have a
18 strategic plan -- that's at 62. That they've never had a
19 long term written strategic plan -- that's at page 72.
20 That they didn't have any fundraising plans for 2010, and
21 that's at page 74. And, as Mr. Lopez indicated yesterday,
22 that they actually have no candidate for any statewide
23 races for 2010.

24 And Mr. Fournier also confirmed at his
25 deposition, page 78, that he wasn't aware of any Green

1 Party candidate who sought to qualify for the CEP in 2008.

2 THE COURT: Ms. Murphy-Osborne, I'm going to ask
3 you to put this in a brief.

4 MS. MURPHY-OSBORNE: Okay.

5 THE COURT: That's way we'll have everything you
6 want in the record and we can save the remaining time for
7 summary argument. Is that all right?

8 MS. MURPHY-OSBORNE: Thank you.

9 THE COURT: Thank you.

10 MR. FEINBERG: Your Honor, you had indicated
11 some interest in hearing more about standing as to Counts
12 Two and Counts Three. I don't mean to belabor the point.
13 We briefed that issue quite extensively and our position
14 is really quite simple, that in terms of their challenges
15 to the trigger provisions in particular, these plaintiffs
16 cannot possibly show that they are injured by those
17 provisions because they are not, they have not remotely
18 had any candidate who comes close to spending the kind of
19 money that would trigger the trigger provisions or -- and
20 have not made any independent expenditures. And their
21 theories about how they might conceivably in the future be
22 impacted are far too speculative to support standing.

23 THE COURT: Now, do they have to make the
24 independent expenditure for them to be harmed?

25 MR. ZINN ROWTHORN: Yes, I think --

1 THE COURT: Why? If their opponent receives
2 money because a third party makes an independent
3 expenditure, haven't then been harmed? Isn't that --

4 MR. FEINBERG: And there is no showing on this
5 record that that has happened and there's no showing that
6 they are involved in any race, in any specific race in the
7 future where that is destined to happen. That in itself
8 is a hypothetical.

9 THE COURT: The second part is in the record.

10 MR. FEINBERG: That what?

11 THE COURT: The predictions from the CEP about
12 the 2010 expenditure rights being triggered by independent
13 expenditures is in the record.

14 MR. FEINBERG: No -- fair enough, but in order
15 for them to be affected, they have to be a candidate in a
16 race that involves a high spending race. Otherwise --

17 THE COURT: They have to be involved in a
18 race --

19 MR. FEINBERG: Where there's independent
20 expenditures, I'm sorry.

21 THE COURT: Correct. Okay.

22 MR. FEINBERG: Okay. I don't know if there's
23 any showing that has happened in this past year or any
24 reason to believe that's going to happen in 2010 or 2012
25 or anytime.

1 THE COURT: As a facial challenge, why isn't
2 there standing at least to challenge the independent
3 expenditure triggers? Because I can take judicial notice
4 of the fact that independent expenditures are made
5 frequently by third parties. It's well documented in the
6 case law.

7 MR. FEINBERG: Well, the Green Party has never
8 made any independent expenditures.

9 THE COURT: That's why I asked you.

10 MR. FEINBERG: They say they intend to.

11 THE COURT: That's why I asked you if they have
12 to make them or not. If they don't have to make them --
13 if somebody else is going to make them, the NRA is going
14 going to come in and say defeat the Democrat, that
15 triggers more money for the Democrat which has the effect,
16 if they are running against the Democrat, of harming them.

17 MR. FEINBERG: Theoretically, yes, but here we
18 have the Green Party saying, they are targeting races that
19 are basically races that are so uncontested that you're
20 going to have a, you know, their best opportunities are
21 races that there's only one major party candidate running.

22 THE COURT: Right.

23 MR. FEINBERG: Those are, by definition, likely
24 to be the races where there's no independent spending.

25 THE COURT: Right, okay, fair enough. So have

1 they shown that they are likely to be harmed by
2 independent expenditures?

3 MR. FEINBERG: I think not.

4 THE COURT: Okay.

5 MR. FEINBERG: That's our position, Your Honor.

6 THE COURT: I understand.

7 MR. FEINBERG: We put in a supplemental
8 memorandum to answer a couple points that you had raised
9 in the December hearings, on March the 4th, and if you
10 have any questions on that, I'm happy to answer them.
11 Otherwise I'll sit down, Your Honor.

12 THE COURT: Okay.

13 There is one piece of factual information I'd be
14 interested in hearing or seeing something about. What is
15 the 2008 registration, party registration data,
16 percentages, by House and Senate District?

17 MR. LOPEZ: We have it in the record, Your
18 Honor.

19 THE COURT: 2008?

20 MR. LOPEZ: I believe --

21 MR. ZINN ROWTHORN: I'm not sure we do have the
22 most up-to-date. What we'll do is work with the Secretary
23 of State's office and get the most updated information to
24 the court.

25 THE COURT: All right. Is there any problem in

1 including that in the trial record?

2 MR. ZINN ROWTHORN: No, Your Honor.

3 MS. YOUN: There's no problem with including
4 that in the record. I would assume that your Honor has
5 already recognized that this is an exceptional election
6 and also one in which we are dealing with a state with a
7 closed primary system. So the fact that the Democrats in
8 a year in which the Democratic primaries encountered
9 unprecedented levels of attention, I would say the fact
10 that the Democratic registration went up in that year is
11 not necessarily probative of any injury associated with
12 the CEP.

13 THE COURT: I would tend to agree. I'm not
14 looking at it and trying to see if there's any increase in
15 Democratic registration or not. If you want to give me
16 2006, I'm happy to see that as well. 2004, whatever.

17 MS. MURPHY-OSBORNE: The Secretary of State
18 typically publishes party enrollment data typically in
19 October of each year, so the data we can get as of today
20 might be different from the data that would have been
21 published in October of '08. So, just for clarification,
22 would you want the party enrollment statistics as of this
23 day or as of a different time?

24 THE COURT: Whatever's the most current would
25 be, that's readily available by district would be helpful.

1 MR. LOPEZ: Your Honor, at our Finding Number
2 75, we have last visited the Secretary of State website
3 December 2nd, 2008. It reports the '07 numbers.

4 THE COURT: By district?

5 MR. LOPEZ: We have seen an OLR report on this
6 which is in the record and I'll try to flag that for you,
7 Your Honor, but -- Your Honor, may I address the standing
8 issue? Because --

9 THE COURT: You know, I would be interested in
10 hearing summations. If you want to include standing in
11 your summation, that's fine.

12 MR. LOPEZ: Then I will, and I think I'll start
13 with my standing discussion. You did flag that yesterday
14 as well.

15 THE COURT: If you want to -- I don't want to
16 hear a whole lot about standing because I've cut the State
17 off so I think what I would prefer to do is get their
18 brief in and if you want to respond to their brief, do
19 that. Ms. Murphy-Osborne is going to submit a brief --
20 when?

21 MS. MURPHY-OSBORNE: When would you like it?

22 THE COURT: Can you get it in ten days?

23 MS. MURPHY-OSBORNE: All right.

24 THE COURT: And then why don't I give you a week
25 to respond. All right? So, I think you don't need to

1 spend a whole lot of time on standing, you're going to
2 brief it.

3 MR. LOPEZ: I'll spend three minutes on it, Your
4 Honor.

5 First of all, as to Count One I would simply
6 make the point that we stand in the same position as the
7 plaintiffs in Buckley. We're one group that is treated
8 differently from another group and the federal courts
9 allow us to bring that challenge and complain of that
10 distinction. That's exactly what happened in Buckley.
11 And at the end of the day in Buckley, the plaintiffs
12 didn't bear their burden of proving that the system was
13 discriminatory, but that had no effect on the standing
14 issue.

15 Even in this court's case, phase one of this
16 case, right? Again, we're talking about two separate
17 groups of speakers. We're talking about lobbyists and
18 contractors, and we're talking about everyone else, and
19 ultimately this court concluded that our client -- that
20 the lobbyists and contractors weren't injured by this
21 statute and it wasn't discriminatory and there was no
22 burden on the First Amendment rights that wasn't justified
23 by state interests. And, but that didn't affect the
24 standing question. In fact, the plaintiffs didn't prevail
25 in this step, but it didn't affect their right to come in

1 and challenge the disparate treatment, if you will. And
2 this is common sense, right?

3 I mean a gender pay case or race pay case, you
4 say that the men are getting paid more than me for the
5 same work? I may lose but I'm allowed to make that claim.
6 Okay?

7 THE COURT: All right. I think the State's
8 point is a little bit stronger than that, which is we're
9 not at the motion to dismiss stage anymore, we're at
10 trial, and the plaintiff has the burden of proving by a
11 preponderance of the evidence many harm. So, it's not
12 simply that you come in and you say we've been harmed. I
13 think their argument is you have to show harm.

14 MR. LOPEZ: But we are harmed. For standing you
15 have to show that you have a direct stake in the outcome
16 of the litigation, that you are affected by the statute
17 and that a remedial order order will provide you the
18 relief you're seeking and that's what happened here.
19 We're the complaining party. We're harmed because we are
20 treated differently. We're excluded. We have to jump
21 through a higher hoop. That's the harm that's immediate.

22 We have a direct stake in it because there's
23 going -- a favorable ruling will benefit us, of course,
24 and we think at least on Count One that's a pretty
25 straight forward analysis. Count two, I think you hit it

1 right on the head. Our modest resources, whether we
2 distribute on Count Two, independent expenditures, whether
3 we spend, you know, \$100 distributing handbills, if we
4 distribute handbills that oppose a participating
5 candidate, to vote no to that candidate, that could
6 trigger the trigger provisions.

7 And we've already, it's in the record, we ran a
8 statewide slate. We ran a gubernatorial candidate. We're
9 going to in 2010. That's in the record. The independent
10 expenditure provision is almost certainly going to be
11 triggered in the gubernatorial race and probably both the
12 primary and the general election according to Secretary
13 Garfield.

14 There's another aspect of standing for the
15 independent and the excess expenditure provision and
16 you've been presented the issue. Candidates aren't under
17 this statute because speech by a third party outside of
18 control of the candidate could trigger matching increased
19 funding for the, for the participating candidate. So you
20 have a situation where the candidate has standing to
21 challenge the provision and you have a situation where the
22 party has standing to challenge it because the party
23 speech would be penalized in one scenario and the
24 candidate's speech would be penalized under a different
25 scenario.

1 And that's important because that would bring us
2 in to both the, legitimately into both 713 and 714, both
3 the excess expenditure and the independent expenditure
4 provision. And that's all, unless you have any questions,
5 that's all I'll say about standing. Okay.

6 One explanatory note, yesterday at the end of
7 the day I sort of fumbled the disclosure issue because I
8 had thought, I just assumed it was legitimately in Counts
9 Two and Three, and in doing so I think I misspoke.

10 The excess expenditure reporting requirements
11 are set out in 9-712 and I think are fairly encompassed in
12 our complaint, we challenge the CEP as a whole. The
13 reporting requirements for the independent expenditure
14 provisions are actually found in 9-612, but they work in
15 tandem as to all the other aspects of Section 9-600 with
16 the CEP program. The 9-7 in the series and we believe are
17 fairly considered to be part of the provision and part of
18 our claim against the independent expenditure provision.
19 And unless you have any questions, that's all I'll say
20 about that. Okay.

21 Your Honor, in trying to figure out what to say
22 today, I thought your opinion was the best guide and I
23 came to this conclusion, your opinion on the motion to
24 dismiss was the best guide and I came to this conclusion
25 after consulting with many of my colleagues, and so I'm

1 going to briefly talk about what I thought would be the
2 important parts of it.

3 The court properly focused its analysis on
4 whether the CEP burdens the political opportunities of
5 minor party candidates. The court concluded that it did
6 for purposes of the motion -- all my comments should be
7 understood with that caveat -- that the CEP confers a
8 substantial communications benefit and we think that's
9 key. It's that benefit on major party candidates that
10 will allow them to run full throttle campaigns in
11 legislative districts that they would not otherwise have
12 the resources to compete in.

13 The court further concluded that the CEP would
14 change the dynamics of elections in Connecticut by
15 artificially expanding the political opportunities of
16 otherwise hopeless major party candidates in those
17 districts. And that's where the number 43 percent comes
18 in, because those were the 43 percent of districts that
19 were neglected or in which major party candidates had
20 performed very poorly in the past.

21 In fact, in our view the numbers of hopeless
22 major party candidates are much greater since almost
23 15 percent of the elections are in planning cycles. The
24 rest are either abandoned or won by landslide margins or
25 20 percent or more. And I didn't just pull that number

1 out of the air. That's the defendants' number. That's
2 their expert. He submitted, we have four reports now. He
3 took the stand.

4 And seats that are held by 20 points or more are
5 considered safe seats and not competitive. Nevertheless
6 on the public financing program, the legislature has opted
7 for funding those challenges in those seats.

8 In our view the court stated the obvious when it
9 observed that the CEP slants the playing field. Major
10 party -- minor party candidates who are denied the benefit
11 of public financing will be competing in a much more
12 difficult environment than they did prior to the adoption
13 of the CEP. And I think that's true, and if we don't know
14 it for sure after this cycle -- I think we know a lot
15 after this cycle, but I think we know from the face of the
16 statute and from how it provides subsidies for major party
17 candidates, that over time it will have the effect of
18 solidifying the positions of the major parties themselves
19 and incentivizing candidates to participate in previously
20 neglected districts.

21 Now, the court identified at least one case in
22 our view that was directly on point that prohibits this
23 type of funding scheme and it's Bang v. Chase, it's a
24 District Court decision out of Minnesota. And in that
25 case the three judge court struck down a financing scheme

1 that subsidized major party candidates without regard to
2 their actual political restraint. It was basically a
3 subsidy to the party based on their major party status,
4 and was distributed and had the effect of what it does
5 here of financing many weak -- of distorting the playing
6 field in many party dominant districts.

7 The court in that case held that the
8 distributions arbitrarily favored weak minor party
9 candidates. What's significant about this decision, being
10 a district court decision, is it was summarily affirmed by
11 the Supreme Court.

12 In this court's decision denying the motion to
13 dismiss, the court also distinguished Buckley, in our view
14 properly, on the grounds that funding under FECA for
15 presidential elections did not confer a benefit on the
16 major parties and did not change the dynamics of
17 elections.

18 Public funding maintained the relative positions
19 of the parties and merely substituted public funds for
20 what the market would have produced. In fact, the court
21 in Buckley concluded, and this is where we have a
22 significant point of departure with opposing counsel, the
23 court in Buckley concluded that major party candidates
24 gained no benefit whatsoever from the public financing
25 scheme because they were bound by strict expenditure

1 limits, because they were bound by strict expenditure
2 limits and because the public money merely substituted for
3 private money.

4 In fact, the record in Buckley shows that the
5 public grants were below what the parties had raised
6 historically.

7 Now, of course, just the opposite is true in
8 this case. Neither grants nor the qualifying criteria are
9 substitutes for what the market would produce. The
10 qualifying criteria, Your Honor, are discriminatory
11 because the line is drawn just high enough to exclude
12 minor and petitioning candidates but just low enough to
13 fund any major party candidate, regardless of their actual
14 political strength.

15 The same can be true about the -- excuse me.
16 The qualifying criteria are arbitrary, in addition to
17 being discriminatory, because they are not tailored to the
18 major party candidate's ability to raise the full grant
19 amount or run a viable race. The CEP arbitrarily funds
20 major party candidates who would not otherwise have the
21 incentives or resources to seek office.

22 And as a result, the CEP confers a substantial
23 electoral and communications benefit on major party
24 candidates that, one, increase their electoral and speech
25 opportunities and, two, solidify the position of the major

1 parties.

2 For this reason, Your Honor, it is our view that
3 this case is best understood as involving political and
4 discrimination and as involving an outright subsidy to the
5 major parties.

6 There are numerous cases that have struck down
7 funding and subsidy schemes that exclude minor parties and
8 they are listed in our brief. In addition to Bang v.
9 Chase, there's Greenberger v. Bolger, which Congress
10 passed a law that said that major parties get postal -- I
11 mean reduced postal subsidies, reduced postal rates, minor
12 parties excluded. Judge Weinstein from the Eastern
13 District says no, you can't engage in that type of
14 political discrimination. The government's interest in
15 preserving the public fisc, which is what the defense
16 offered, isn't sufficient to hold up that kind of program.

17 There was a case out of the Southern District,
18 Socialist Workers Party, which is cited in our briefs,
19 also summarily affirmed by the Supreme Court, three judge
20 panel. Where voter lists, which have a value of about
21 \$50,000, were given to the major parties but they were
22 denied to the minor parties.

23 Under the same -- these are all post Buckley
24 decisions, by the way, and that scheme was struck down
25 because what we had was a scheme that subsidized the major

1 parties and excluded the minor parties and the only
2 justification was the public fisc.

3 Now, that statute in Socialist Workers Party, or
4 that city regulation for some reason was enacted -- it was
5 actually a state law -- was enacted in all material
6 respects by the state legislature and this time it got to
7 the 2nd Circuit and the 2nd Circuit struck it down for all
8 the reasons that the District Court had struck it down ten
9 years earlier, and felt it was bound by the fact of the
10 summary affirmance, by the way. Okay.

11 And there's a half dozen other of these similar
12 types of cases where you have sort of valuable benefits
13 being driven to the major parties that are denied to the
14 minor parties and courts have uniformly struck them down.

15 Now, if I could return to your opinion, Your
16 Honor, following the court's discussion in how the CEP
17 burdened political opportunities on minor party
18 candidates, the court turned to the question of whether
19 the CEP was narrowly tailored in advancing compelling
20 state interest.

21 Accepting that the state has an interest in
22 safeguarding the public fisc by not funding hopeless
23 candidacies, the court concluded that the CEP did not
24 rationally, much less narrowly, advance that interest
25 because the CEP funds scores of hopeless major party

1 candidates.

2 The ease with which major party candidates can
3 qualify for full funding and supplemental grants is more a
4 threat to the public fisc than any threat posed by minor
5 party candidates. And I think we know this now from the
6 Secretary Garfield's budget. I mean the amount of money
7 that is -- is going to go to fund the statewide elections
8 in 2010, I think it's budgeted at \$39 million. In the
9 last cycle it was at \$14 million. I mean that is as much
10 a threat to the public fisc as any minor participation by
11 my clients and other minor party candidates, at least at
12 the legislative level.

13 Now, the court also concluded that the CEP was
14 not narrowly tailored when measured by Buckley and the
15 other state public financing programs that the legislature
16 considered.

17 Now, as far as we can tell, Your Honor, nothing
18 on the ground has really changed since the court issued
19 its opinion. We've had the benefit of an election cycle.
20 We've thrown a lot of numbers at you. We think the
21 numbers support our case. They sort of fill out the -- I
22 think the numbers support what the legislature hoped to
23 accomplish when it passed this law, that it would
24 increase -- that it would bring new challengers into the
25 system, and would level the playing field as between the

1 major parties, and that's really the key thing that I can
2 tell has happened since we first had this discussion, I
3 think it was almost two years ago, or since your opinion,
4 which -- was it a year ago, year and-a-half ago?

5 Now, in our view the CEP has lived up to its
6 billing. It has opened up a transformative opportunity
7 for major party candidates. They are flocking to the
8 system, and I know counsel has made fun of my use of that
9 word, but it's true, Your Honor. They are flocking to
10 previously neglected districts. There's no dispute about
11 that.

12 We concede that there are an equal number of
13 newly vacated seats this cycle and we have no explanation
14 for that, but we know it's not because those candidates
15 couldn't raise the money to participate in the program.

16 The participation rate in Connecticut is double
17 that of any other public financing system for legislative
18 elections. Although not all candidates will benefit
19 equally, the biggest beneficiaries will be the candidates
20 who are running in previously abandoned districts or in
21 districts where they had no realistic chance of winning
22 because they could not raise the type of money to compete
23 effectively.

24 The CEP changes that dynamic, although it has
25 not really changed election results. Dominant major

1 parties continue to dominate elections in Connecticut.
2 The handful of major party candidates who are opting out
3 are disproportionately -- I'll withdraw that, Your Honor.

4 With a handful of exceptions, minor and
5 petitioning candidates have been effectively shut out.
6 There has been much talk of the two WFP candidates who
7 qualified through the petitioning process, but their
8 experience only highlights the substantial burden that
9 they must overcome.

10 I don't know what happened in this cycle, Your
11 Honor. The record seems confused on the issue. But we do
12 know that of the five minor party candidates who qualified
13 in this cycle, they didn't get their grants until the very
14 last moment. That to us suggests substantial burden
15 either in raising the, meeting the petitioning
16 requirements or raising the necessary qualifying
17 contributions.

18 Now, both candidates raised and spent thousands
19 of dollars just to gather the needed signatures with the
20 help of the WFP paid canvasses. Both qualified at the
21 last opportunity after spending months -- and I didn't
22 realize how long, I didn't realize those candidates had
23 started the process way back in May. I thought they had
24 started the process in July and August like other
25 candidates do, but they had actually started the process

1 way back in May, and they didn't qualify until three weeks
2 before the election.

3 Both candidates spent months collecting the
4 needed signatures and qualifying contributions. Major
5 party candidates of course didn't have to collect the
6 signatures. Moreover, the qualifying requirement for them
7 is, for all intent and purposes, a mere formality.

8 Now, candidly, Your Honor, the only meaningful
9 thing that has changed since the court issued its
10 opinion -- well, let me back up and just address the issue
11 of qualifying contributions for a minute. I thought it was
12 in this presentation.

13 But from our point of view, the qualifying
14 contribution limit is discriminatory and arbitrary for the
15 same reason that the 20 percent threshold is. All it
16 proves is that major party candidates have the ability to
17 meet that threshold. It says nothing about the ability of
18 those candidates to raise this money privately or about
19 their ability to even run a campaign once you give them a
20 full grant, run a campaign that can come within 20 or 30
21 points of their point, if you give them a full grant.

22 It's discriminatory because it's set just high
23 enough that it was going to exclude my clients. And the
24 legislature knew this when they adopted the law. They
25 knew my clients and other Working Families candidates

1 don't raise this kind of money because that's not their
2 constituency.

3 The Working Families folks, they go door to
4 door, they raise five dollar units. It's a very, very
5 difficult and cumbersome process. Major party candidates
6 can tap into a proven list of donors can who can give the
7 maximum \$100.

8 If you look at the Booker disclosure statements,
9 they are all five, ten dollars. If you look at the
10 Deborah Noble disclosure statements, they are all five,
11 ten dollars. That's the constituency that minor party
12 candidates, including the Green Party targets, and that's
13 a substantial -- raising that is a higher burden for them
14 than it is for major party candidates.

15 Now, candidly, Your Honor, in our view the only
16 meaningful thing that has changed since the court issued
17 its opinion is the legal landscape. The Supreme Court's
18 decision in FEC v. Davis was decided in a way that fully
19 comports with this court's initial skepticism of the CEP
20 and with the theories that we've alleged here. Davis
21 makes explicit what was implicit, that a benefit given to
22 one candidate is a burden to the candidate denied the
23 benefit if it affects their relative positions.

24 Davis makes absolutely clear that the state's
25 effort to address corruption or the perceived inequalities

1 of private financing cannot be furthered by means that
2 have the effect of altering the electoral opportunities
3 of the candidate affected.

4 We've maintained all along that this was the
5 main lesson in Buckley. Davis brings the point home.
6 The defendants are dismissive of Davis, describing it as a
7 case involving discriminatory contribution limits and
8 nothing more. In fact, Davis is an expenditure limit case
9 because the trigger provisions impose substantial burdens
10 on the candidate whose speech triggered this
11 discriminatory contribution limits. The court applied
12 strict scrutiny and outright rejected the argument that
13 Congress could have any interest in leveling the political
14 opportunities of candidates if the effect was to restrict
15 or limit these opportunities for other candidates.

16 That perfectly describes this case. In the
17 service of leveling the playing field between the major
18 parties, minor party candidates are pushed aside.

19 From our point of view, the arguments made by
20 the defendants have already been rejected by this court or
21 are distractions. The argument that Anderson v. Burdock
22 is the controlling analysis is wrong and has not been
23 employed in any public financing or campaign finance case.

24 That is because campaign finance cases involve
25 direct restraints on speech, even if it is a passive

1 restraint that increases the advantage of your opponents
2 as in Davis.

3 Ballot access cases and other cases involving
4 voter candidate or party qualifications don't involve
5 direct restraint on speech. They implicate associational
6 interests that are governed by a more deferential
7 standard. We understand that the argument -- we
8 understand the argument that the right to vote is
9 preserved with all other rights, but the Supreme Court has
10 seen fit to analyze direct restraints on speech more
11 critically. And the case law is set out in our briefs.

12 The defendants have tried to create a factual
13 dispute over the fact of, one, whether the -- over, one,
14 the impact of the CEP on electoral opportunities and of
15 major party candidates and, two, the reasonableness of the
16 qualifying criteria.

17 We submit that that train has already left the
18 station. The CEP will dramatically expand the political
19 opportunities of major party candidates by providing them
20 with the resources to compete on a level playing field in
21 districts where they previously could not.

22 The fact that some candidates may nevertheless
23 choose not to run does not disprove the obvious
24 correlation. All it shows is that there were other
25 factors that came into play. It is entirely reasonable

1 for a candidate to conclude that public financing will do
2 nothing to change the outcome, so why bother.

3 It is entirely reasonable for a candidate, it is
4 also entirely reasonable for a candidate to think that
5 public financing might make a difference and to grab for
6 the ring. The dynamics of elections are changing because
7 of this latter group.

8 The defendants disagree with our assessment of
9 the impact of the CEP on major party candidates. They are
10 wrong. We have prepared charts that compare past
11 expenditures with '08 expenditures under the CEP. They
12 very clearly demonstrate how dramatically the CEP grants
13 will alter the political landscape in Connecticut.

14 The dispute over the reasonableness of the
15 qualifying criteria is in our view also a fig leaf. It is
16 apparent from the face of the statute that it is
17 substantially more difficult for nonmajor party candidates
18 to qualify. The issue is whether the legislature was
19 justified in drawing the line where it did.

20 The court has rejected that argument once. The
21 court was right. We now have the benefit of the
22 legislative history to guide us, to set -- the defendants
23 sought to amend the statute to relax the qualifying
24 criteria and close the organizational expenditures
25 loophole in order to comply with Buckley. Their testimony

1 provided the blueprint for the legal arguments we raise in
2 this case.

3 The defendants are dismissive of this testimony
4 but in our view they are stuck with it in the same way
5 they would be if they had given testimony in this, in the
6 chair here today in court.

7 The defendants' other arguments about the
8 appropriateness of a facial challenge and standing in our
9 view are also distractions. We think the court dealt with
10 those issues in the motion to dismiss and we think the
11 court got it right.

12 Thank you.

13 THE COURT: Thank you.

14 MR. ZINN ROWTHORN: Thank you, Your Honor.

15 I think I would like to start out by thanking
16 the court and court staff for the really remarkable time
17 and attention that you have given the parties in this case
18 over the past three years. This is obviously a very
19 important case for the State of Connecticut and we do
20 appreciate that.

21 I also want to commend Mr. Lopez and his
22 colleagues for really the exceptional efforts that they've
23 put forward on behalf of their clients.

24 I think on a case that's as difficult as this
25 and as long as this, I think it's fair to say that we have

1 been able to work I think remarkably well together and
2 it's been a pleasure to work with them.

3 I think also, Your Honor, it's very important to
4 commend and recognize the plaintiffs in this case. Now,
5 we, as I think by necessity because of the nature of the
6 claims in this case, have had to characterize their state
7 of organization and their state of strength, but what I
8 don't want to do and what I'm not doing is disparaging
9 them in any sense.

10 I think that the political life in the State of
11 Connecticut is much better off because people like Mike
12 DeRosa and the Green Party and the Libertarian Party
13 participate.

14 You know, I genuinely recognize that they bring
15 this case out of a sense of commitment toward the
16 democratic process, and in no way do we disparage that,
17 but unfortunately I think what the plaintiffs ask to do,
18 which is to strike down this historic and important piece
19 of legislation, would not only be unwarranted, Your Honor,
20 but it would be precipitous and we think quite harmful to
21 many, including minor parties.

22 I think it's important to start by recognizing
23 the difficult and unique historical circumstances in which
24 this, in which the CEP was created. It was passed, as I
25 think we've all recognized, at a time when scandal and

1 corruption had badly damaged the public trust that forms
2 the foundation of our political system. And the CEP
3 together with the contribution and solicitation
4 restrictions that the court has already upheld, represent
5 the state's effort to repair that foundation.

6 And we were very gratified by the court's
7 recognition in upholding those restrictions that difficult
8 historic circumstances justified and we would say required
9 strong and unequivocal measures to restore public trust.
10 And what we have done, I think, for purposes of
11 convenience and it makes some sense because the legal
12 issues are to a degree distinct and the factual issues are
13 distinct, is to separate the bans and the CEP for purposes
14 of litigation.

15 But what I think is important to recognize, Your
16 Honor, is that and one I think very important respect, the
17 bans, or I should say restrictions, and the CEP are
18 really -- really can't be separated because they form two
19 necessary and interrelated parts of the State's effort to
20 restore public faith in our democracy.

21 On the one hand, we remove the sources of
22 campaign financing that the public had legitimate reasons
23 to distrust and, on the other hand, we replaced those
24 sources with a source of public campaign financing that
25 the, that the public had every reason to trust as clean.

1 So, to paraphrase one legislator, what we tried
2 to accomplish was to make legislators be a little bit
3 beholding to the many and not a lot beholding to the few
4 special interests or wealthy contributors.

5 So, we think the historical imperative for the
6 CEP and the vital purposes that it serves the citizens of
7 the State of Connecticut, are as clear as they are for the
8 CEP as they were for the restrictions that Your Honor has
9 already upheld.

10 Now, the question I think we confront here is
11 whether the plaintiffs have put forward sufficient
12 evidence of harm to their own interests to justify undoing
13 this historic and we think very important legislative
14 achievement. The answer, we obviously disagree on that
15 question, but we think the answer is clear under the
16 controlling law and the factual record that they have not.

17 And I'm not going to rehash in detail the harm
18 arguments, I think that was largely what all of today was
19 devoted to, but I do want to make a couple more general
20 points.

21 We, I think, have sailed past each other a
22 little bit on how specifically we would identify the harm.
23 We think it is a self diminishment in political
24 opportunity or political strength.

25 However, there has to be some element of harm,

1 whether that's the specific debt, but any constitutional
2 tort and any tort at all requires plaintiffs to
3 demonstrate some harm.

4 A couple things that I think we should make very
5 clear we believe did not suffice to demonstrate harm. We
6 don't think the denial of an enhancement in political
7 opportunity constitutes harm. We think the law is clear
8 on that.

9 We don't think that there is some right under
10 federal law not to face electoral competition. In fact,
11 it has a little bit of through-the-looking-glass quality
12 when we stand around having a lot of discussions about the
13 degree to which electoral competition has increased.

14 You know, we don't dispute that there's a right
15 not to have political opportunities that preexisted taken
16 away, but one of those opportunities is not a right to run
17 against only one major party candidate.

18 You know, another -- so I think that's an
19 assumption that we, we're confident the court will examine
20 carefully. Another assumption that I think basically
21 forms the foundation of the plaintiff's case, is that
22 increased expenditures in races in which they run in
23 constitute an actionable harm.

24 You know, we dispute the zero sum notion that
25 that represents. John Green disputes the zero sum notion

1 that that represents. We think the better way to assess
2 relative political strength before and after the CEP is by
3 looking at objective measures. And we think, for example,
4 vote totals is probably a very significant and important
5 measure of political strength. John Green agreed with
6 that.

7 I also want to just mention, when we were
8 talking about political opportunity, something that we
9 haven't discussed today and I think it's important not to
10 get lost in the mix, is that Connecticut is a friendly
11 state for minor parties and the CEP was not produced or
12 taken away any of the generous political opportunities
13 that minor parties enjoy in Connecticut.

14 They still have the same generous ballot access
15 rules now as they did before the CEP. They still have the
16 same generous petitioning period now as they did before
17 the CEP. They still have the same generous definition of
18 what a minor party is, and they still have the unusual
19 ability to cross endorse candidates as they did before the
20 CEP.

21 Now, I think one of the sort of important issues
22 that I'd like to bring to the court's attention is, you
23 know, sort of in the absence of an objective measure of
24 harm that the plaintiffs can point to, what we're really
25 left with are plaintiff's sort of theirs about how this

1 system may harm them in the future.

2 And I think, you know, what I would ask -- what
3 I would ask the court to do is not to credit the
4 plaintiffs who have chosen to sit out the system, to not
5 participate. They determined very early on that that
6 system could not be used to their advantage. And I think
7 at the very least we can expect, before you set aside a
8 program of this importance, that they at least attempt,
9 make a good faith attempt to participate.

10 What I would ask instead, Your Honor, is that
11 you credit the experience of the five minor party and
12 petitioning candidates who did qualify.

13 And I would ask you to credit John Green and the
14 Working Families Party who told you today that, you know
15 they are not uncritical supporters of the system. If it
16 was up to them, they would have designed it a little
17 differently, but they were very unequivocal and I think
18 the key point, they are better off today because of the
19 CEP than they were before.

20 I'd also ask you to credit the experience of the
21 21 minor party petitioning candidates who achieved enough
22 votes this time around to attempt to participate in the
23 system last time -- I'm sorry, next time.

24 Now, plaintiffs have asked the court to strike
25 this statute down on its face, and we think they are only

1 entitled to that extreme remedy if they can demonstrate
2 that it can't be applied Constitutionally under any
3 circumstances.

4 Now, there might be a slightly more lenient
5 standard on an over breadth case. Except perhaps at the
6 very margins of this case, this is not an over breadth
7 case. Now, what we would ask instead, Your Honor, and
8 what we think the law compells is that we look at the as
9 employed record and rule on this case as applied,
10 because -- for a few reasons, Your Honor.

11 Facial challenges, we think, are disfavored for
12 a couple reasons. One, as applied challenges form the
13 basic constitutional -- basic building blocks of
14 constitutional adjudication. They also demonstrate more
15 respect for the Democratic process.

16 Now, to quote Washington State Range, which we
17 have cited extensively in a couple briefs filed by the
18 State, "To set aside the statute on its face really is an
19 extraordinary and precipitous nullification of the will of
20 the people."

21 And, you know, one reason why courts ought to be
22 hesitant to do that is because states should have the
23 opportunity to get it right, to apply the program in a way
24 that avoids the harm that's suggested.

25 Now, we've seen here throughout the application

1 of this program in the 2008 election that in a number of
2 turns the SEEC has construed and applied this program to
3 the benefit of minor parties.

4 So, Your Honor, we would ask that you focus on
5 the as applied record, that you focus on the objective
6 indicators from the 2008 election. We think those
7 objective indicators are fairly clear that the system has
8 not harmed minor parties.

9 so, Your Honor, I think what we have here is,
10 or are plaintiff's really theories about how this case
11 will harm them. You know, the problem with that, Your
12 Honor, is this is not an academic exercise. You know,
13 there are real significant interests in people who will be
14 harmed if this system becomes unavailable. I think
15 primarily, Your Honor, the people of the State of
16 Connecticut whose confidence in government this system was
17 intended to restore, who can look to the CEP as the sort
18 of silver lining of the difficult period we had with the
19 Rowland scandals, they are entitled to have this system
20 remain in existence and operation.

21 I think we can look, Your Honor, to the citizens
22 of the state who may not have participated in the
23 political process before, both from a candidate
24 perspective and a contributor perspective. Never before,
25 Your Honor, have ordinary people, people of modest means

1 been able to say to themselves, my five-dollar
2 contribution means as much to my candidate as any other
3 contribution, and I think that is a tremendous benefit to
4 the people and I think we ought to respect that.

5 I also think that candidates would be harmed,
6 you know, we hear that candidates have enjoyed running
7 under the CEP in perhaps ways they didn't anticipate, that
8 in going out and gathering petition signatures and
9 qualifying contributions has brought them into closer
10 contact with their constituents or potential constituents
11 than they've ever been in before.

12 So, and finally, Your Honor, you know, the
13 elected representatives who came together had a difficult
14 time across party lines to put together a program that was
15 unprecedented, that but for their unique historical
16 circumstances they may never have been able to create. I
17 think their work, their efforts and their policy judgments
18 are entitled to respect, Your Honor.

19 And finally, Your Honor, you know, it is a minor
20 party or two minor parties that brought this case, but we
21 can't forget the other minor parties, the Working Families
22 Party, for example, who tells us that they will lose a
23 real political opportunity if this system becomes
24 unavailable.

25 So, Your Honor, I'm sure I'm going to, you know,

1 rue saying this but the court remains open to plaintiffs
2 if there comes a time they can demonstrate that this
3 system has been applied to their detriment. We think it
4 has not.

5 And, in the meantime, all we're asking for, Your
6 Honor, all we think the state deserves, is to continue to
7 let this system operate to serve the important interests
8 that we think it serves. Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. FEINBERG: Your Honor, may I be heard just a
11 couple more minutes?

12 THE COURT: Sure.

13 MR. FEINBERG: I'd like to address an issue on
14 behalf of the intervening defendants that, believe it or
15 not, we have not discussed in the past few days, or in
16 fact over the past many months, and that is the question
17 of remedy.

18 If the court comes to the conclusion that there
19 the some constitutional infirmity in this statute, I think
20 the court will be faced with some very difficult questions
21 of what the right remedy is for that constitutional
22 decision.

23 The Supreme Court in the New Hampshire abortion
24 case a couple years ago, Ayotte v. Planned Parenthood,
25 made it very clear that the court's obligation is to

1 construct the narrowest remedy possible that will remedy
2 the constitutional violation, without necessarily
3 throwing, excuse me, the whole statute. We briefed this
4 issue in our opposition to the Plaintiff's Summary
5 Judgment Motion. That's Document Number 260 at pages 87
6 through 89, and I would refer the court to that
7 discussion.

8 But let me give you an example. If, for
9 example, as some of the court's questions have indicated,
10 the court finds it Constitutionally problematic that the
11 minor parties are forced to go through the petitioning
12 process that major party candidates even in previously
13 uncontested districts are not, assuming that is
14 unconstitutional, the question is what's the remedy?

15 And one possibility would be for the court it
16 leave the statute in fact, and strike that provision --
17 strike that requirement from the statute in a way that
18 would say that the minor parties candidates do not have to
19 do the petitions, they simply have to collect the same
20 qualifying contributions that the major party candidates
21 do, or the court could come to a different decision about
22 that issue.

23 But there is a process of very careful analysis
24 of what is the right remedy for the particular
25 Constitutional violation that I think the court needs to

1 think carefully about. And towards that end, I guess I'd
2 like to ask the court --

3 THE COURT: Let me just inquire, is the statute
4 severable in that way?

5 MR. FEINBERG: Well, we contend that it may well
6 be, and it depends in part on what the constitutional
7 violation is that the court finds.

8 THE COURT: I have a vague recollection, and
9 this is very vague, that the statute provided almost the
10 opposite, that it was if any aspect of it was held
11 unconstitutional, that it was -- am I messing up here.

12 MR. FEINBERG: There is in the statute, I'd like
13 to direct the court's attention to Section 9-717 which
14 basically says that if the court enters an injunction
15 against the, against portions of the statute which, which
16 provides for the expenditures of CEP fund and if that
17 injunction lasts for a period of 168 hours, which is seven
18 days, then the whole statute comes crashing down. And
19 that includes, by the way, the provisions limiting
20 campaign contributions which the court has already held to
21 be constitutional. All of that would be wiped off the
22 books and we'd be back to the system that prevailed prior
23 to the enactment of this law.

24 And that's one of the reasons that I'm raising
25 this point for today, because we would urge the court not

1 to enter that injunction. First of all, the defendants
2 would be seeking a stay from this court before, before --
3 before the operation of the statute was enjoined and it
4 certainly intends to appeal, and we would hope that the
5 court would not simply enter an order but would give us an
6 opportunity to address the right remedy for the
7 constitutional violation the court has found, and the
8 question of severability, depending on what particular
9 constitutional violations there are.

10 Section 9-717 is on the books, yes. But that
11 doesn't mean the court doesn't still have to make a
12 decision as to any particular -- if any particular
13 provision of the statute is held to be unconstitutional,
14 whether that provision -- what the legislators' intent
15 would have been to, whether to leave the statute in effect
16 without that provision or whether that statute was -- that
17 provision was sufficiently central to the operation of the
18 statute that the legislative intent would be to have the
19 whole statute be unconstitutional.

20 And the general provisions of Connecticut law on
21 this subject say the court has to engage in that kind of
22 severability analysis, and that's also the same
23 constitutional principle that the, that the federal cases
24 and the Supreme Court decisions have indicated.

25 So, we would ask the court to give us an

1 opportunity to actually discuss the remedy issue and the
2 severability issue and come before the court, brief it if
3 necessary, at least have a conference to discuss it.

4 And we also would ask the court to stay its own
5 ruling before entering, before allowing that injunction to
6 go into effect so that the seven day period of the Section
7 9-717 doesn't automatically enter and trigger.

8 THE COURT: All right, thank you.

9 MR. LOPEZ: Your Honor, may I be heard or was it
10 your intention that we're closing -- okay.

11 THE COURT: Sure.

12 MR. LOPEZ: I think two minutes. And I do this
13 mostly for the benefit of my client because, you know, the
14 consistent theme in the defendants' submissions and I
15 think it came out today in summation or in argument, is
16 that my clients are somehow not serious political parties
17 and they are not serious candidates. That's just not
18 true. They have been in business in Connecticut for 10,
19 15 years, and they are in the game.

20 Your Honor, they weren't gaming this system for
21 the sake of this litigation. They weren't staying outside
22 the system. We know that, it's in the record, it's not
23 disputed, that it wasn't -- it didn't become apparent
24 until a declaratory ruling on July 17th that minor party
25 candidates who didn't qualify under the prior vote totals

1 could participate in the program. In fact, my client,
2 Mike DeRosa went to a training and he said can I
3 participate and he was told no. And then he actually went
4 to a deposition of Director Rotman and I posed the
5 question, can my client participate, and the answer was we
6 don't know, we'll get back to you. When -- the next time
7 we got a definitive answer was when the declaratory ruling
8 came down on July 17th.

9 Frankly, Mr. DeRosa couldn't realistically
10 qualify because in that, in that window, and I would
11 submit that from what we know about the WFP candidates no
12 other candidates could, no other minor party candidates
13 could.

14 Now, you know, we did hear from John Green. I
15 tell you that was a very nice presentation. He was a good
16 witness and it was a good direct. And --

17 THE COURT: He was led well.

18 (Laughter)

19 MR. LOPEZ: All right. I've never done a jury
20 trial, I'm not used to this.

21 THE COURT: No, I got that impression.

22 MR. LOPEZ: Right. And so I'm used to leading,
23 you know, that allowance in court.

24 THE COURT: No, no, I'm talking about -- I'm
25 giving Mr. Zinn Rowthorn a hard time.

1 MR. ZINN ROWTHORN: I was waiting for the
2 objection, Your Honor. It never came.

3 MR. FEINBERG: We were just trying to cut
4 through it quickly and efficiently, Your Honor.

5 MR. LOPEZ: But I think at the end of the day, I
6 think we all agree he would have liked a better system, he
7 thinks they are better off but, you know, I think at the
8 end of the day, from what I can tell, they've benefit
9 primarily, at least at this point, primarily by cross
10 endorsing Democratic candidates. The Democratic
11 candidates that they cross endorse get public financing;
12 in that sense, they benefit.

13 Now, they did ballot qualified two candidates
14 this time but their experience shows how very substantial
15 the burden is and it remains to be determined if they can
16 sustain that burden, but we would submit that, you know,
17 that it would have been more candid if he had recognized
18 that this is a very substance burden and a system that
19 didn't impose this burden would be a -- one that they --
20 would make them even better off.

21 Finally -- oh, I addressed Mr. DeRosa, and it's
22 been a pleasure working with you.

23 MR. DeROSA: It's been a pleasure work with you.

24 MR. LOPEZ: Look, this difference between an as
25 applied challenge and a facial challenge, it dissolves in

1 practical application in a case like this, Your Honor.
2 There is no difference. This statute violates plaintiff's
3 rights on its face because it confers communication
4 benefits on major party candidates that are unjustified.
5 And it violates the, it violates the rights --
6 Mr. DeRosa's, the Green Party's rights, as applied for the
7 very same reason. And I'm just not sure at the end of the
8 day, there's any sense in drawing distinction between
9 facial and as applied challenge, especially when the
10 relief is the same. An order that says it can't be
11 applied to the Green Party is going to result in the
12 statute falling just as an order that says the statute
13 can't be applied at all. Thank you, Your Honor.

14 THE COURT: And do you want to address Mr.
15 Feinberg's point?

16 MR. LOPEZ: You know, in our submissions, and
17 it's been a long time, I think we said we should submit
18 it -- it's putting the cart before the horse. We should
19 address it when, if and when an injunction issued.

20 MR. FEINBERG: You're agreeing that we should
21 separately address it? I think you're agreeing with our
22 position.

23 THE COURT: Well --

24 MR. LOPEZ: I just thought it was premature.

25 THE COURT: What would be the harm, assuming you

1 win one or more of your arguments, what would be the harm
2 either in not entering an injunction, simply entering a
3 declaratory judgment, which appears not -- somebody
4 correct me if I'm wrong -- appears not to trigger the
5 717 provisions, and/or an injunction needs to be entered
6 for some reason. Why shouldn't, given the date that is
7 the next time anybody's going to be getting geared up for
8 an election under the CEP is next year, monies aren't
9 going to be distributed, for example, presumably for at
10 least a year, why wouldn't any injunction reasonably be
11 stayed until it can be reviewed at the 2nd Circuit?

12 MR. LOPEZ: I think everyone's got an interest
13 in certainty. I just think if we're going to win, that
14 issue should be taken up at the Court of Appeals.

15 THE COURT: Why shouldn't, why shouldn't any
16 injunction issued by this court be stayed pending a ruling
17 by the 2nd Circuit?

18 MR. LOPEZ: Because I think that, unless you
19 have your own separate ground -- first of all, if you've
20 ruled that the statute's unconstitutional, then the public
21 has an interest in having that known so that the
22 candidates can respond, can plan around that and I imagine
23 the State has a strong interest in certainty, and even at
24 what you call this early stage. But I, my view is that
25 the considerations that you might consider for -- it would

1 be much harder for me, it seems to me, to overturn a stay
2 in the 2nd Circuit, seek to vacate your stay, than if you
3 issued it -- than if you didn't issue it.

4 I mean it's in our interest to have the burden
5 on the State going up to the 2nd Circuit because that
6 implies a judgment by you that it's important to, to
7 enjoin the enforcement now.

8 THE COURT: Why do your clients care? Assuming
9 the 2nd Circuit takes up the issue quickly and gets a
10 decision, say, in the next year, why do your clients care
11 whether any judgment of this court is stayed or not stayed
12 in the meantime? How are they going to be harmed?

13 MR. LOPEZ: Right. Your Honor, look, if we
14 can -- that assumes we can get a decision out of the
15 circuit. The last time I was in the circuit was on a
16 case, Randall v. Sorrell, went to the Supreme Court, it
17 was in the circuit for three years, and so that's where
18 I'm coming from.

19 THE COURT: The 2nd Circuit, I'm sure, is going
20 to get a motion to expedite, whoever loses this case.
21 Because, as you said, everybody has to know and we've got
22 an election coming up in 2010, so the 2nd Circuit's going
23 to be very aware of the need for a prompt decision. I
24 don't believe it's going take three years to get a ruling
25 out of the 2nd Circuit.

1 Look, if you don't want to address the stay
2 harm --

3 MR. LOPEZ: I just don't know the standard off
4 the top of my head and the question of how it -- I mean
5 you raise a completely legitimate point. Is my client any
6 worse off now if you stayed as opposed to having finality
7 eight months from now. I really haven't thought that
8 through. Your instincts may very well be right but I
9 think I should have an opportunity to address it.

10 THE COURT: All right. You know, I'll make an
11 off-hand comment here. That is, it wouldn't surprise me
12 at all if whatever the outcome of this case might be,
13 there wasn't further litigation -- excuse me, further
14 legislation that addresses this point, the points raised
15 in this case, that could well moot out any ruling by this
16 court or any decision by the 2nd Circuit. I mean
17 obviously the SEEC has shown itself willing to take up
18 issues to recommend improvements to the act. Hopefully
19 this litigation at a minimum has served to raise the
20 consciousness of how the act might be improved and
21 function.

22 MR. LOPEZ: Can I just consult with my client so
23 I can give you -- I'm not quite sure what to make of it.

24 THE COURT: Sure.

25 (Pause)

1 MR. LOPEZ: Your Honor, you know, I don't know
2 why this didn't occur to me, you know, we've had three --
3 I keep thinking this case is going to be mooted out. I
4 thought that was part of the way this case has been spread
5 out, I thought the legislature after they redrafted this,
6 I thought they would take the, they would at least --
7 they've had the benefit of your opinion on the motion to
8 dismiss and I thought maybe there could be some changes.

9 My clients point out if you issue a stay and
10 there's nothing really -- if you issue a stay, any kind of
11 effect would be diminished. If there was an injunction
12 that issued, I think under the rules it stays in place --

13 MR. FEINBERG: Seven days.

14 MR. LOPEZ: -- seven days. Not your -- I mean
15 under the, the CEP, if you enter an injunction and it
16 stays in effect for 7 or 14 days, I don't know what the
17 rule is, the whole law falls away, but if you -- but that
18 if you didn't enter a stay during that period, the
19 legislature right very well be motivated to make some
20 changes in the law that would moot out the case.

21 MR. ZINN ROWTHORN: Your Honor, that's really
22 expecting a lot, that it's going to change something of
23 this magnitude in seven days. I really --

24 THE COURT: Well, let me just, before we move on
25 to the next point, the technical -- my quick reading of

1 717 is that the act only falls if the expenditure of funds
2 from the CEP is enjoined.

3 MR. ZINN ROWTHORN: Yes. It's not a model of
4 clarity but that is -- the basic, the basic notion of
5 9-717. If Clean Election Funds are unavailable because of
6 injunction then previous sources of fundraising become
7 available again. So, in other words, if there's a -- and
8 that's why, that's why we would like to be heard on the
9 scope and nature of any order that you issue so that we
10 can be careful to avoid triggering that, Your Honor. But
11 yes, your understanding is as I described.

12 THE COURT: I don't want to cut you off. I
13 thought you were going to make a point.

14 MR. ZINN ROWTHORN: I thought I did.

15 (Laughter)

16 MR. ZINN ROWTHORN: I just had an offer to
17 agree.

18 MR. FEINBERG: The point was this, to expect the
19 legislature to fix this within the seven day period --

20 MR. ZINN ROWTHORN: Yes.

21 MR. FEINBERG: -- is unrealistic.

22 THE COURT: Fair enough, yes.

23 MR. ZINN ROWTHORN: That's what I was responding
24 to. That was the suggestion. If you stay, that will
25 somehow take away the legislators' motivation to fix it

1 before the 168 hours expires.

2 THE COURT: Well, okay. Again, let me raise the
3 prospect of the use of a declaratory judgment remedy
4 instead of an injunction. I didn't read anything in 717
5 that would be triggered by that. Has there been an
6 interpretation of 717?

7 MR. ZINN ROWTHORN: There hasn't. That's how I
8 refer to it. It refers to injunction. It doesn't make
9 any reference to a declaratory ruling, Your Honor.

10 THE COURT: All right. Further argument?

11 MR. LOPEZ: I'm just not sure where this is
12 going but I will tell you, Your Honor, that I would, I
13 think at the end of the day I think I would acquiesce and
14 stay. I think that's in the best interest of everyone.

15 THE COURT: All right. Let me just make sure
16 where we're going. My understanding is that the trial
17 record is closed with the exception of receipt, hopefully
18 by way of stipulation, or working out by stipulation
19 competing public records concerning registration data on a
20 district by district basis.

21 MR. FEINBERG: Your Honor, there were a couple
22 things yesterday. There were two of the charts in
23 plaintiff's submissions that we were directed to try to
24 work with them and agree to basically what the accurate
25 information was.

1 THE COURT: Correct, thank you.

2 MR. FEINBERG: I think it was Nikolaidis charts
3 5 and 6, but don't hold me to that.

4 THE COURT: All right, that is right.

5 MR. FEINBERG: And the court also asked some
6 questions about party affiliated funding sources and what
7 the statistics show.

8 THE COURT: Right.

9 MR. FEINBERG: And then, besides that, I think
10 the state has an opportunity to submit a brief on
11 standing.

12 THE COURT: Oh, yes. Both sides are going to
13 submit briefs on standing. I was going to say that next
14 but in terms of the factual record.

15 MR. FEINBERG: I think that's it.

16 THE COURT: Okay. Those are things we have
17 outstanding. We're going to get a brief from the State
18 and/or any other defendants that want to join in it or
19 submit their own within ten days on the standing question.
20 And we're going to get responses within seven days
21 thereafter.

22 Obviously I'm going to try and get this done as
23 quickly as possible but it's a big record and I've got a
24 busy March. My hope is to issue something sometime during
25 the month of April.

1 MS. YOUN: Your Honor, with regard to the
2 question about party spending that -- the data you had
3 requested, data you had requested there, there has been,
4 we have done a lot of study on that issue and there's a
5 lot of social science research there. Basically we are
6 worried that the court will read that data in the wrong
7 way in regarding the interpretation of that data and the
8 way in which party spending is deployed. We would ask to
9 submit a cover letter to the court just pointing the court
10 to any academic research on that issue.

11 THE COURT: That's fine.

12 MS. YOUN: All right.

13 THE COURT: Can you get those factual items in
14 within the next ten days? Is that realistic?

15 MS. YOUN: Yes.

16 THE COURT: Okay. All right. I want to thank
17 all of you for nice presentations and helpful
18 presentations, and especially for being cooperative in the
19 admission of the evidence. This process would have been
20 excruciating long if we had not had good cooperation and,
21 frankly, if we had not done this abbreviated procedure. I
22 think everybody got to make the points they wanted to
23 make, I hope so, and I think the record is nice and full.

24 I probably have told you before that I hope to
25 make a very complete set of findings, so that findings on

1 issues that any of you have raised hopefully will be made
2 so that you can easily make your arguments to the Court of
3 Appeals. There is no way frankly that I can make findings
4 on every issue that you're going to want to address, I'm
5 sure, because the record is just too big. And I may be
6 impeached if I submitted a thousand page decision for the
7 Court of Appeals.

8 So I'm going to do my best to touch all the
9 bases but in a concise way, and obviously the record is
10 there for all of you to make whatever arguments you want
11 to make, most specifically when you get up there.

12 So best of luck to everyone and we'll stand
13 adjourned.

14 (Whereupon the above matter was adjourned at 5:20
15 o'clock, p. m.)

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C E R T I F I C A T E

I, Susan E. Catucci, RMR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/ Susan E. Catucci

Susan E. Catucci, RMR
Official Court Reporter
915 Lafayette Boulevard
Bridgeport, Connecticut 06604
Tel: (917) 703-0761