UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH GANIM and JOE GANIM 2018 Plaintiffs,	NO: 3:17CV1303(MPS)
vs.	November 29, 2017
MICHAEL J. BRANDI and GEORGE JEPSEN, Defendants.	RULING

450 Main Street
Hartford, Connecticut

B E F O R E:
THE HONORABLE MICHAEL P. SHEA, U.S.D.J.

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Proceedings recorded by mechanical stenography, transcript produced by computer.

THE COURT: All right, folks. I will have a ruling for you now.

First, I want to thank counsel for being so well prepared on especially the cases. It's always helpful to me when counsel are able to discuss the relevant law in detail like you both did and I appreciate that.

Second, the ruling is going to go against the plaintiffs and I'm going to explain why. I do want to preface it, though, by saying a couple of things. First, nothing in my ruling is intended to diminish the value in having someone who was convicted of a crime rehabilitate themselves by running for office, by getting a job. That's a very difficult thing to do, I know from experience in other cases. And so nothing I say is meant to diminish my appreciation for the challenges faced by someone like Mr. Ganim. And I certainly congratulation him on his recent electoral success, but ultimately that's -- and this would be part of the theme of the ruling -- that's not up to me to decide. That's in my view largely a policy matter, unless it violates constitutional precepts.

Before I start, I'm also just going to point out that I'm not going to address any issues under the ex post facto clause or about the retroactivity of the statute. Those issues have not been presented in the complaint, nor have they been briefed, and so they're not before me.

The plaintiffs in this case, candidate Joseph Ganim and exploratory committee Joe Ganim 2018, seek to enjoin enforcement of an amendment to Connecticut's -- sorry about that. Let me start again.

The plaintiffs in this case, candidate Joseph Ganim and exploratory committee Joe Ganim 2018, seek to enforce -- seek to enjoin enforcement of an amendment to Connecticut's Public Financing Campaign Program. The amendment, which was adopted in 2013, prohibits a candidate from receiving public funding for a campaign for state office if he or she has ever been convicted of a felony related to his or her public office. For ease of reference as I go through the ruling, I'm going to refer in most cases to both of the plaintiffs as simply Mr. Ganim, and I'm going to refer to the amendment that's being challenged as the 2013 Amendment.

Mr. Ganim claims that the 2013 Amendment violates the First Amendment to the U.S. Constitution by impermissibly burdening his right to engage in political speech. He also claims that it violates the 14th Amendment's Equal Protection Clause by denying him the ability to receive public financing through the Citizens Election Program which is the Public Campaign Financing Program I referred to. He also contends that the 2013 Amendment violates his right to equal political opportunity, in violation of both the First and 14th

amendments. Finally, he argues that the 2013 Amendment violates his right to due process by failing to provide for a hearing or appeal process through which he could show that he has reformed and could thereby reinstate his ability to receive funding from the CEP, the Citizens Election Program or the Public Campaign Financing Program.

The parties have filed cross-motions for summary judgment. After hearing argument today on the issues involved and after reviewing all of the briefs, those filed at docket numbers 23 through 28, as well as the complaint, I agree with the Defendants and I, therefore, deny the Plaintiffs' motion for summary judgment and grant the Defendants' motion for summary judgment.

I'm going to begin with the facts. The parties, and Mr. Ganim in particular, have stressed in their briefs and during an earlier meeting that time is of the essence, because the need for candidates to prepare for the 2018 election is already upon us. Mr. Ganim's lawyers have urged me to decide this matter promptly and I've endeavored to do so, while at the same time carefully considering the parties' arguments and the relevant legal principles. For the sake of brevity today, I'm going to assume the parties' familiarity with the facts set forth in the Joint Stipulation of Facts filed at Docket Number 21, which I incorporate in its entirety by reference in this ruling. I will highlight now

only the following undisputed facts which are taken from the Stipulation, just for the purposes of explaining my decision.

Connecticut's Citizen Election Program, which I will call the CEP, is a voluntary, public campaign financing program enacted in 2005 in response to several corruption scandals. The CEP provides public funding for candidates to campaign for certain public offices. The State Elections Enforcement Commission, which I will call the SEEC, is the state agency responsible for overseeing the CEP. The defendant Michael Brandi is the Executive Director of the SEEC. The other Defendant, George Jepsen, is the Attorney General of Connecticut. He is in charge with enforcing the orders of the SEEC.

The goals of the CEP include preventing corruption and the appearance of corruption; allowing candidates to compete without reliance on special interest money; giving statewide officers and legislators the ability to make decisions free of the influence of, or the appearance that they have been influenced by, donations from special interests; restoring public confidence in the electoral and legislative processes; increasing meaningful citizen participation; and providing the public with useful and timely disclosure of campaign finance information. In the two election cycles for statewide office since the CEP went into effect, the 2010 and 2014 cycles, all candidates who

ultimately won the general election for statewide office participated in the CEP.

Individuals considering a run for statewide office must register with the SEEC within ten days of soliciting or receiving contributions or making expenditures, by registering either a candidate committee or an exploratory committee. To participate in the CEP, candidates for Governor must raise $250,000 in qualifying contributions of between $5 and $100 from at least 2,500 individual contributors, only 10 percent of which may be from outside of Connecticut. If a candidate chooses to participate in the CEP, he or she may solicit and receive qualifying contributions of $5 to $100 in either an exploratory committee or a candidate committee under Connecticut General Statute Section 9-704(a)(1)(B)(i).

If a participating CEP candidate for Governor attains access to the ballot for the August 2018 primarily in one of the ways permitted by state law, his or her candidate committee may apply for a primary grant in the amount of $1,250,000, adjusted however by the consumer price index. If a participating CEP candidate wins a major party primary for Governor, his or her candidate committee may receive a general election grant in the amount of $6,000,000, again adjusted by the consumer price index. A CEP participating candidate who is defeated in the August primary is barred

from receiving any additional funds from the CEP for his or her campaign even if he or she seeks to attain ballot access for the general election as an unaffiliated petitioning candidate. A candidate who does not participate in the CEP and who is defeated in the primary is not restricted from fundraising as an unaffiliated petitioning candidate.

In addition to raising the required qualifying contributions, a candidate who wishes to apply for CEP funding must timely file an Affidavit of Intent to Abide by Expenditure Limits and Other Citizen Election Program Requirements. Participating CEP candidates must agree to comply with certain requirements and restrictions that do not apply to non-participating candidates. For example, with respect to contribution limits, a participating candidate may receive individual contributions of up to $100 and may not keep more than a combined $250,000 in individual contributions. A major party participating candidate who receives a CEP grant may not raise additional contributions beyond the $250,000 in qualifying contributions raised to qualify for the grant. By contrast, a non-participating candidate may receive contributions from individuals of up to $3,500 for each of the primary and the general elections for a total limit of $7,000. Further, there is no cap on the number of contributions that a non-participating candidate may receive. For a participating gubernatorial candidate,

only ten percent of contributions may be from out-of-state donors, while there is no limit on the number or percentage of out-of-state donors that may contribute to non-participating candidates. Participating candidates may not receive any contributions from Political Committees, Town Committees, or the State Central Committee. While non-participating candidates may receive up to $5,000, $7,500, and $50,000, respectfully, from each of these entities for both the primary and general election. Participating candidates may obtain loans of up to only $1,000 in the aggregate from a financial institution, and the loans must be fully repaid before the candidate submits a grant application. A non-participating candidate, by contrast, may receive unlimited amounts of loans from financial institutions in the ordinary course of business, and also from themselves. Again, participating gubernatorial candidates may not contribute more than $20,000 of their own money, and any amount they do contribute is deducted from their initial CEP grant. Non-participating candidates are not subject to that rule and may contribute unlimited personal funds to their campaigns.

With respect to expenditure limits, before the party convention, participating candidates may spend only the qualifying contributions they receive, up to the $250,000 limit, plus up to $20,000 in personal funds. If a primary is

held, during the primary period participating candidates may spend only the amount described in the previous sentence plus the primary grant, and may not spend any additional amounts unless and until they qualify for and receive a general election grant. Participating candidates may spend only the amounts just described, plus the general election grant received during the general election period. Non-participating candidates, however, may raise and spend unlimited amounts before the convention, during the primary period, and during the general election.

CEP participating candidates are also restricted in how they spend CEP funds. For example, participating candidates who have received grants may not make payments to extended family members or entities in which the candidate or his or her extended family members have a five percent or greater ownership interest. Non-participating candidates are limited in paying only themselves, their spouse, or dependant children for campaign services. Participating candidates are also restricted from using CEP funds for gifts, attending events, and meals for campaign personnel where the cost of these items is more than certain amounts. If a participating candidate who received funds fails to repay those funds left over after permissible expenditures are paid, he or she is subject to penalties for larceny.

Finally, CEP participating candidates must comply

with certain documentation requirements. For example, expenditures must be accompanied by contemporaneous documentation indicating that the expenditure was made directly to further the candidate's nomination or election.

The parties in this case agree that the CEP has allowed candidates to spend less time raising private contributions and "dialing for dollars" from wealthy special interests. They also agree that the CEP has allowed politicians in this state to spend more time with their constituents and has made them more accountable to those constituents. The CEP has broadened the donor base to be more reflective of the state's diverse population and opened up the electoral process to allow more people to run for office by reducing the cost of entry.

The SEEC has stated regarding the CEP, "The election of constitutional officers through the Citizens' Election Program represents a new beginning in Connecticut where political leaders in both the legislative and executive branch can make decisions free from the appearance of undue influence from special interests. As state leaders continue to struggle with difficult decisions on the future of Connecticut, the people of Connecticut know that their leaders are beholden to no one but them."

In 2013, Connecticut enacted -- I should say the Connecticut General Assembly enacted Public Act 13-180, which

is the 2013 Amendment. The 2013 Amendment was passed in response to a scandal in which a candidate who had received an SEEC grant in 2012, despite having pled guilty in 2005 to corruption and campaign finance felonies, was again arrested in 2013 for illegal campaign practices. As amended by Public ACT 13-180, Section 9-706 (A)(5) reads as follows:

> No candidate may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Elections Program if such candidate has been convicted of or pled guilty or nolo contendere to, in a court of competent jurisdiction, any (A) criminal offense under this title unless at least eight years have elapsed from the date of the conviction or plea or the completion of any sentence, whichever date is later, without a subsequent conviction of or plea to another such offense, or (B) a felony related to the individual's public office, other than an offense under this title in accordance with subparagraph (A) of this subdivision. There is no statutory mechanism by which an individual excluded from the CEP under this provision may challenge that exclusion.

The statute further provides and in further part of the 2013 Amendment says the application for CEP funding shall include a written certification that:

> The candidate has never been convicted of or pled guilty or nolo contendere to, in a court of competent

jurisdiction, a felony related to the individual's public office, other than a criminal offense under Title 9 of the General Statutes, that is, an election related offense.

I will refer to these two provisions together as the 2013 Amendment, and these two provisions are the target of Mr. Ganim's claims in this case.

Mr. Ganim is a resident of Connecticut and a registered Democrat. He was first elected Mayor of Bridgeport in 1991 and served five terms in office over the course of 11 years. In 2003, Mr. Ganim was convicted of federal felonies related to his public office. The parties' factual stipulation cites a decision of the U.S. Court of Appeals for the Second Circuit that affirmed Mr. Ganim's convictions. According to the description of facts in that decision, Mr. Ganim's convictions arose from a series of pay-to-play and kickback schemes by which he received gifts in exchange for steering city business. The district court sentenced Mr. Ganim to nine years in prison, followed by a three-year term of supervised release.

Mr. Ganim was released from prison in 2010, at which point his period of supervised release began. He completed his term of supervised release in 2013. He later restored his voting rights and re-registered to vote in 2015, thereby renewing his status as an elector of the State of Connecticut, which is prerequisite to running for Governor.

After his release from prison, Mr. Ganim ran for Mayor of Bridgeport again, and was reelected for the sixth time, defeating the incumbent mayor. Mr. Ganim has not used public campaign financing in any of his runs for mayor.

Mr. Ganim currently is considering running for Governor of Connecticut in 2018 and he has established the "Joe Ganim 2018" exploratory committee for that purpose. Mr. Ganim wishes to fund his potential campaign for Governor through the Citizens Election Program.

It is undisputed that Mr. Ganim does not have the financial resources to self-fund a campaign in the amount that a major party candidate could receive for the November 2018 general election under the CEP. Mr. Ganim believes that the resistance he has met in attempting to obtain political support and endorsements from state and local political figures is due to the uncertainty of whether he will be able to participate in the CEP.

On April 7th of this year, Mr. Ganim petitioned the SEEC for a declaratory ruling that he is eligible to apply for financing under the CEP. On June 21st, the SEEC issued a written ruling, in which it found that Mr. Ganim is not eligible to apply for such a grant due to his prior felony convictions.

Currently, Mr. Ganim is soliciting contributions of $100 or less through his exploratory committee with the

intention of using them towards the $250,000 he must raise to qualify for CEP funding. That amount is less than the amount he could seek if he did not participate in the CEP.

I'll now summarize the Plaintiffs' legal claims. The Plaintiffs have raised the following claims:

First, that the 2013 Amendment violates Mr. Ganim's First Amendment right to free speech;

Second, that it violates his right to equal protection of the laws under the 14th Amendment;

Third, that it violates his right to equal political opportunity, as guaranteed by the free speech clause of the First Amendment and the equal protection clause of the 14th Amendment; and

Fourth, that it violates his right to due process under the 14th Amendment.

In their complaint, the Plaintiffs have requested that the Court declare the challenged sections of the statute to be unconstitutional; that the Court preliminarily and permanently enjoin the Defendants from enforcing those challenged sections of the statute; that the Court require the Defendants to allow the Plaintiffs to participate in the CEP; and that the Court award the Plaintiffs' reasonable attorneys' fees and expenses.

As I said, the parties have cross-moved for summary judgment in this case. Summary judgment is appropriate only

if the moving party shows that there is no genuine issue as to any material fact and the moving party's entitled to judgment as a matter of law. In making the determination as to whether to grant summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. On summary judgment the Court must construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the moving party. The moving party bears the burden of demonstrating that no genuine issue of material fact exists. If the moving party carries that burden, the opposing party must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact. In this case, both sides have moved for summary judgment, and while each disputes a few of the other's characterizations of the facts or inferences that could be drawn from the facts, neither contends that there is a genuine issue for trial. Indeed, as I said, the parties have submitted a lengthy stipulation of facts on which I have relied, and they have identified no material facts in dispute.

Turning to the First Amendment claim.

Mr. Ganim first argues that the 2013 Amendment violates the First Amendment by impermissibly burdening his right to free political speech. He brings both a facial challenge and an as-applied challenge. With respect to his

as-applied challenge, Mr. Ganim argues that while another candidate may be wealthy enough to self-fund a campaign, he is not, making his exclusion from the CEP likely determinative of his ability to run for Governor, or at least run successfully. I find that Mr. Ganim's First Amendment claim fails, however, because I find that the challenged eligibility criterion for participation in the CEP, specifically not having been convicted of a felony related to public office, does not restrict speech.

It is well-established that raising and spending money to support a political campaign constitutes speech protected by the First Amendment. The Supreme Court has repeatedly recognized that "the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." That's a quote from the *Arizona Free Enterprise* case. Laws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. Thus, the key question here is whether the 2013 Amendment actually burdens political speech.

In a line of cases beginning with the Supreme Court's decision in *Buckley v. Valeo*, a 1976 decision, the Supreme Court has invalidated government-imposed restrictions on campaign expenditures as violating the First Amendment.

The Second Circuit has held that strict scrutiny applies to restraints on expenditures while limits on contributions are more leniently reviewed because they pose only indirect constraints on speech and associational rights. Contribution limitations are impermissible as long as the Government demonstrates -- excuse me, I misspoke. Contribution limitations are permissible as long as the Government demonstrates that the limits are closely drawn to match a sufficiently important interest.

Mr. Ganim argues that the 2013 Amendment to the CEP has the effect of subsidizing some candidates over others and thereby burdening the speech of those not subsidized. He invokes the Supreme Court's decision in *Davis v. Federal Election Commission* from 2008 and *Arizona Free Enterprise Club's Freedom Club v. Bennett* from 2011 to support his argument. Specifically, he argues that the 2013 Amendment elevates certain candidates above others and thereby imposes burdens on the non-favored candidates. I disagree, because I find that the 2013 Amendment does not burden or penalize First Amendment protected activity.

In the *Davis* case, the Supreme Court held that the so-called "Millionaire's Amendment," a provision of the Federal Bipartisan Campaign Reform Act that allowed certain candidates to increase their individual contributions when their self-financing opponents expended personal funds above

a certain threshold, violated the First Amendment. The Court in *Davis* held that the scheme "impermissibly burdened Davis's First Amendment right to spend his own money for campaign speech." That's from page 738. Relying on its earlier decision in *Buckley*, rejecting a cap on candidates expenditure of personal funds to finance campaign speech, and its recognition that a candidate has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election, the Court held in *Davis* that the Millionaire's Amendment imposed an unprecedented penalty on any candidate who robustly exercises that First Amendment right, by allowing his opponent to benefit from increased contribution limits.

In the *Bennett* case, the Supreme Court struck down the matching funds component of Arizona's voluntary public financing system, which provided publicly financed candidates with additional equalizing funds in response to the spending of privately financed candidates and independent expenditure groups' spending in support of privately financed candidates. The Court held that the scheme in that case substantially burdened political speech without serving the state's compelling interest in preventing public corruption. Specifically, the Court held that the matching provision imposed a penalty on the speech, that is, the campaign spending of privately financed candidates by triggering the

direct and automatic release of public money to publicly financed candidates whenever the privately financed candidates exceeded certain spending thresholds.

Mr. Ganim's reliance on *Davis* and *Bennett* is misplaced, as those cases held unconstitutional specific features of public financing regimes that triggered advantages for an opposing candidate in response to speech by a particular candidate, and thereby burdened the exercise of that speech. The Second Circuit has already enjoined the enforcement of a similar matching funds or trigger provision in the CEP after concluding that under *Davis* that provision of the CEP violated the First Amendment. That was the *Green Party* case, 616 F.3d 213. But that provision is no longer part of the CEP and is not at issue in this lawsuit. Although he's excluded from the CEP because his felony convictions make him ineligible to participate, Mr. Ganim cannot point to any provision in the existing law that triggers an increase in funding, increased contribution limits, or other advantages to his opponents as a result of his expenditure of campaign funds or as a result of any other activity by him. Mr. Ganim also has not demonstrated that the CEP limits his right to make unlimited personal expenditures, or penalizes him for his decision to spend his own money on his campaign - or for that matter, for any decision in how he conducts his campaign. In *Davis*, the

Supreme Court acknowledged the key distinction between campaign financing schemes that impact a candidate's right to make unlimited personal expenditures and those that do not: "In *Buckley* a candidate, by foregoing public financing, could retain the unfettered right to make unlimited personal expenditures. Here, the Millionaire's Amendment does not provide any way in which a candidate can exercise that right without abridgement. That's from pages 739 to 740 of *Davis*. The CEP scheme here works like the scheme in the *Buckley* case, not like the scheme in the *Davis* case. The CEP itself imposes limits on participating candidates' total expenditures, while non-participating candidates, including Mr. Ganim, are left free to spend their personal funds without limit. Indeed, the Second Circuit noted this in the *Green Party* case. The Court said there, 616 F.3d at 226, "Putting aside the CEP's trigger provisions, which we address below in Counts Two and Three, the CEP does not impose a penalty on a candidate who spends his or her own money on a campaign, for in every race candidates can decline to participate in the CEP. Because the CEP includes no features that penalize Mr. Ganim for raising or spending money or otherwise engaging in free speech, the *Davis* and *Bennett* cases do nothing to help his First Amendment claim.

The 2013 Amendment is also not a contribution limit. While Mr. Ganim suggests that he is meeting resistance from

potential donors because of uncertainty as to whether he will be allowed to participate in the CEP, and thus that his exclusion from the CEP may be weakening his ability to obtain contributions, the exclusion itself does not limit his right to obtain any amount of contributions. As I already discussed, if he were permitted to participate in the CEP, Mr. Ganim would be limited in his ability to receive contributions. As a non-participating candidate, however, he has more freedom to seek and receive contributions. The practical reality, if it be so, that his exclusion from the CEP might make it difficult to obtain contributions because of the program's alleged approval among Connecticut voters does not transform Mr. Ganim's exclusion from the program into a contribution limit. Counsel have cited no authority for the notion that public perceptions about the sources of funds used to finance a campaign may rise to the level of contribution limits established by law.

The 2013 -- give me one second.

The 2013 Amendment does not restrict Mr. Ganim from running for office, from getting on the ballot, or from persuading voters to elect him, all of which the state likely could have done without violating the Constitution and all of which would have restricted his political rights in ways the 2013 Amendment does not. Thus, for example, even if the Amendment were to restrict Mr. Ganim from running for office,

it likely still would not violate the First Amindment. For example, in the *Parker v. Lyons* case, 757 F.3d 701, the 7th Circuit held that an Illinois statute that barred individuals convicted of certain felonies from holding certain public offices did not violate the First Amendment. Further, as the Connecticut Constitution requires gubernatorial candidates to be electors or voters of the state, the state could constitutionally bar Mr. Ganim from running for office indirectly by, if it chose to do so, continuing to deprive him of the right to vote as a felon. For example, in the *Richardson v. Ramirez* case, the United States Supreme Court upheld a California law disenfranchising felons who had completed their sentences and their periods of parole from voting. And the Court rejected a 14th Amendment challenge to that law, noting that felon disenfranchisement is expressly contemplated in Section 2 of the 14th Amendment. Here, of course, we're not talking about direct disenfranchisement. We're talking about the possibility or the state's ability to bar felons from running for office at all, which it hasn't done. But the point I'm making is simply that the state could have achieved the same result in a clearly constitutional manner simply by extending the felon ban on the right to vote in this case. If the state can constitutionally prevent all felons or at least felons convicted of public corruption offenses from running for

office, either directly or indirectly, in the manner I described, it is difficult to see why it cannot constitutionally exclude them, or at least those of them convicted of public corruption offenses, from participating in a voluntary public campaign financing system.

As I said during our discussion, in some First Amendment cases at least, for example, *Posadas de Puerto Rico Associates*, 478 U.S. at pages 345 to 346, the Court has concluded that the greater power includes the lesser power. While a greater power conferred upon a state does not always include a lesser power, generally speaking, the Court has found that the circumstances where it does not have generally involved independent constitutional violations resulting from the exercise of the lesser power. For example, in the *Republican Party of Minnesota v. White* case, which I discussed with the parties today, 536 U.S. 765, although the state could have barred judicial elections altogether if it was going to permit them, it did not allow the state to interfere with what judge candidates can say. In this case, however, Mr. Ganim has failed to identify any independent constitutional violation effectuated by the Amendment. For example, he has failed to show that the Amendment inhibits his political activity any more, or any differently, than would a provision banning public corruption felons from running for Governor altogether. Indeed, as I suggested, it

seems plain that the 2013 Amendment inhibits his political activity substantially less than any such provision would.

Finally, the state -- I should add that I'm not relying on this greater power/lesser power notion, but I do think it is worth noting.

Finally, the state does not violate the First Amendment by choosing to subsidize the campaigns of other candidates who do not have disqualifying felony convictions. A legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny. That's a quote from *Regan v. Taxation with Representation of Washington*, 461 U.S. at 549. In the *Regan* case, the Supreme Court upheld the Internal Revenue Service's decision not to grant tax exempt status to a lobbying organization, holding that the decision of Congress not to subsidize lobbying did not violate the First Amendment. The Court "again rejected the notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State." That's page 546. In addition, this is not a case in which the legislature "discriminated invidiously in its subsidies in such a way as to aim at the suppression of dangerous ideas," that's another quote from *Regan* at page 548, or otherwise a case in which the legislature engaged in viewpoint discrimination. Mr. Ganim has pointed to no evidence to suggest that the General

Assembly adopted the Amendment to suppress the viewpoints that persons convicted of felonies involving public office might express or even that all such persons would be likely to espouse similar views.

In any event, Mr. Ganim's argument that "whenever a state chooses to subsidize one candidate over another, it has substantially burdened the First Amendment rights of the non-subsidized candidate" is foreclosed by the *Buckley* case. In *Buckley*, the Court noted that "the Constitution does not require Congress to treat all declared candidates the same for public financing purposes." That's 424 U.S. at 97. Indeed, *Buckley* recognized that such a public financing program for political campaigns furthers, rather than violates, the First Amendment. "Although Congress shall make no law abridging the freedom of speech or of the press, a provision for public financing of presidential campaigns involved in that case is a congressional effort, not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." That's *Buckley*, 424 U.S. at pages 92 to 93. The fact that in this case the 2013 Amendment happens to prevent Mr. Ganim from benefiting as a candidate from the legislatures's "use of public money to facilitate and enlarge public discussion and participation in the electoral

process," to paraphrase *Buckley*, does not amount to a First Amendment violation because it does not restrict Mr. Ganim's speech. The 2013 Amendment does not prevent Mr. Ganim from running for office, communicating with voters, or raising and spending money in support of his campaign. In fact, he remains freer to do these things without the limits imposed by the CEP. Any practical effect the CEP might have of subsidizing certain candidates over Mr. Ganim does not run afoul of the First Amendment.

And to the extent that Mr. Ganim argues that through the Amendment the State itself is advocating for clean elections and against the election of individuals with felonies related to public office, for example, through the statements of the SEEC quoted in the Joint Stipulation of Fact, that is not a First Amendment argument. The State may engage in its own speech without implicating the First Amendment's free speech clause. The Supreme Court so said in *Pleasant Grove City v. Summum*, 555, United States Reports at page 467.

I note that in part of his brief Mr. Ganim also suggests that the 2017 Amendment infringes his right to free association, perhaps related to the notion that somehow it affects a limit on contributions. Because I've concluded that the 2013 Amendment does not create a limit on contributions, I need not address this argument further.

Turning now to the Equal Protection argument.

Mr. Ganim's claim that the Amendment violates the Equal Protection Clause of the 14th Amendment fails as well, as the 2013 Amendment is rationally related to legitimate state interests. The Equal Protection Clause of the 14th Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. That's a quote from *City of Cleburne*, 473 U.S. at page 439. A law that impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class is reviewed under the strict scrutiny standard. Conversely, a classification neither involving fundamental rights nor proceeding along suspect lines cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. That's a quote from *Armour*, 556 U.S. at page 680.

The 2013 Amendment does not impermissibly interfere with a fundamental right, nor does it involve a suspect classification. First, as I already discussed, the statute does not burden political speech, and the right to run for office using public funds is not a fundamental right. Indeed, even if the case involved a fundamental right in a general sense, that would not automatically trigger strict

scrutiny. As I noted during the argument, in the *Hayden* case the Second Circuit said, "We have clearly stated that although the right to vote is generally considered fundamental, in the absence of any allegation that a challenged classification was intended to discriminate on the basis of race or other suspect criteria, statutes that deny felons the right to vote are not subject to strict judicial scrutiny." Second, individuals convicted of felonies, regardless of whether those felonies are related to public office, are not a suspect class. That is well-established in the case law. *Zipkin* from the 2nd Circuit, 790 F.2d at page 818. The *Barletta* case relied on by the plaintiffs says the same thing, as does the *Parker* case from the 7th Circuit I mentioned earlier. Because statutes that deny felons the right to vote are not subject to strict judicial scrutiny, rational basis review applies to the Amendment's exclusion of individuals convicted of felonies related to public office from participating in the CEP. I note that *Regan*, the tax subsidy case I mentioned earlier, also speaks to this issue at page 548. There the Court said, "It is not the law that strict scrutiny applies whenever Congress subsidizes some speech but not all speech."

Under rational basis review, legislative classifications are accorded a strong presumption of validity and are constitutional if there is any reasonably conceivable

state of facts that could provide a rational basis for the classification. A statute that is to some extent both underinclusive and overinclusive, as the Plaintiffs have argued this statute is, passes muster under rational basis review. In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group. That's the *Romer* decision.

The statute here survives under rational basis review. The state identified several rationales for the Amendment: deterring public corruption; ensuring public confidence in how public funds are spent; protecting the public fisc by prohibiting individuals perceived to demonstrate a willingness to misuse public office from potentially misusing public funds again; and protecting the public fisc by preventing public funds from being used to finance the campaigns of individuals who do not have a realistic chance of winning a general election for statewide office. The State's purported rationales are legitimate state interests. Numerous cases, including the *Nixon* case, 528 U.S. 377, and the *Buckley* case have held that preventing corruption or the appearance of corruption are legitimate governmental interests as are, of course, things like protecting the public fisc and ensuring public confidence in how public funds are used.

Further, the 2013 Amendment is rationally related to these legitimate state interests. Mr. Ganim argues that the CEP's asymmetrical treatment of individuals convicted of felonies related to public office and individuals convicted of election related felonies is evidence that the statute is not rationally related to a legitimate state interest. Specifically, he argues that the CEP's exclusion of candidates convicted of offenses under Title 9 of the General Statutes, which are election related offenses, for eight years compared to the CEP's permanent ban on individuals convicted of felonies related to their public office, is irrational, as election related convictions are most more closely related to the state's concerns regarding public financing of elections than are felonies related to public office. He also points out that where a felony is related to both -- I'm sorry -- is related to both public office and is also a Title 9 election related crime, only the lesser penalty of an eight year ban applies which, in the Plaintiffs' estimation, suggests that the statute does not actually reflect the state's purported concern for felonies related to public office. While these are reasonable points to raise about the mechanisms the state has chosen to advance its legitimate interests, as are the other points counsel raised today and in its brief, for example, the point that the state interest might be better served if they allowed

public corruption felons to participate but subjected them to the tight restrictions that the CEP imposes, none of those points doom the statute under rational basis review.

It's well-settled that rational basis review allows legislatures to act incrementally and to pass laws that are over and underinclusive without violating the 14th Amendment. In the *Hayden* case, the 2nd Circuit held that New York's felon disenfranchisement statute did not violate the Equal Protection Clause, despite the fact that "those who have finished their prison terms, but are still on parole, are denied the right to vote while those with suspended sentences are not." The Court said "The Equal Protection Clause does not compel legislatures to prohibit all like evils, or none. A legislature may hit at an abuse which it has found, even though it has failed to strike at another." More specifically, felon disenfranchisement laws are constitutional under the 14th Amendment where those laws are not enacted with discriminatory intent. For example, in the *Ramirez* case the Court so found. Mr. Ganim has pointed to no evidence that the 2013 Amendment was adopted to discriminate on a suspect basis such as race. Therefore, even where there may remain some oddity in the law distinguishing among felons in a way that is arguably imperfect or even illogical, such a law may survive under rational basis review.

Finally, Judge Underhill's decision in the *Barletta*

case in which Mr. Ganim relies and which struck down a prohibition on the issuance of a precious metals license to persons convicted of a felony, does not help the equal protection claim in this case. *Barletta* is inapposite as the statute in that case applied to all felons, making it so broad that, in Judge Underhill's view, it was a status-based enactment divorced from any factual context from which the Court could discern a relationship to Legitimate state interests. The Court observed that the purported link between the classification and the state's interest in combatting fraud in the trade of precious metals was simply that "all felons are people who are likely to commit fraud, illegally compete, and threaten the safety of the community" even though many felons have absolutely nothing to do with those things. But the state's failure to draw any distinctions beyond the classification of felon, which rendered the statute in *Barletta* so grossly over and underinclusive, is not present here. Here, the Amendment is far more closely drawn to the state's purposes of preventing the misuse of public funds, maintaining the integrity of elections, and preventing the occurrence of public corruption by targeting only those that have been convicted of felonies related to public office and election related offenses.

I should add that under rational basis review, which I find applies here, the state is not in no way limited

for -- to locate the interests that support the statute to what was said at a legislative hearing. Under rational basis review, any conceivable rationale for the statute will suffice, even if it's post-hoc.

Unlike the statute at issue in *Barletta*, the amendment is not a blanket ban encompassing all felony convictions or felony convictions that have nothing to do with the state's interests. Instead, it is a targeted exclusion of those the state deems, based on their past criminal conduct, to present a greater risk of misusing public funds and, thus, those who are more likely to contribute to public cynicism about politics and government. The exclusion here is also far less restrictive than the ban in *Barletta*, as it does not prevent Mr. Ganim from working in a particular profession or a particular trade or from obtaining a particular license, or even from holding public office. In short, I find that the exclusion easily passes the rational basis test.

I now turn to the argument concerning Equal Political Opportunity.

Mr. Ganim argues that the 2013 Amendment violates his right to equal political opportunity. A public financing system may violate such a right if it "unfairly or unnecessarily burdens the political opportunity of any party or candidate." That's a quote from *Buckley*, 424 U.S. at

pages 95 through 96.

Mr. Ganim argues that the Amendment implicates such a right and urges me to apply the two-step review set forth in the *Buckley* case and applied by the U.S. Court of Appeals for the 2nd Circuit in *Green Party* to determine that the CEP unfairly or unnecessarily burdens his political opportunity. But that standard was articulated and applied in cases involving the question "whether a public financing system unconstitutionally discriminates against minor parties" in providing access to the ballot. That quote is from the *Green Party* case, 616 F.3d at 228. And *Buckley* makes clear that its use of the term "equal political opportunity" was based on cases that "dealt primarily with state laws requiring a candidate to satisfy certain requirements in order to have his name appear on the ballot." That's *Buckley*, 424 U.S. at 94. As *Buckley* noted, ballot access criteria were "direct burdens not only on the candidate's ability to run for office but also on the voter's ability to voice preferences regarding representative government and contemporary issues, while the denial of public financing to some candidates is not restrictive of voters' rights and less restrictive of candidates." Same back page at *Buckley*, page 94. The exclusion Mr. Ganim challenges does not deny him access to the ballot; it only denies him access to taxpayer funds for his campaign. Thus, this case likely does not involve any

right to equal political opportunity and the two-step *Buckley* inquiry likely does not apply. Instead, as discussed in my analysis of the equal protection claim, rational basis review should apply here. *Buckley* itself applied the test arising from the ballot-access cases "in any event." In other words, *Buckley* did so without addressing whether that test should actually govern the much less restrictive public financing case. Applying the test, the *Buckley* Court concluded that the public finance program involved in that case was enacted in furtherance of sufficiently important governmental interests and did not unfairly or unnecessarily burden the political opportunity of any party or candidate.

Even assuming that this case does implicate a right to equal political opportunity and that the *Buckley* two-part test applies, I conclude that the challenged exclusion furthers sufficiently important governmental interests and does not unfairly or unnecessarily burden Mr. Ganim's political opportunity. The Second Circuit instructed in the *Green Party* case that courts applying the two-step inquiry must first examine whether the public financing system was enacted in furtherance of sufficiently important governmental interests. The court must then determine whether the system burdens the political opportunity of any party or candidate in a way that is unfair or unnecessary.

As the Court set out at pages 228 to 229 of its

decision, "If the public financing system fares favorably under that two-pronged test, the inquiry is over - the system does not violate the Constitution. If, however, the public financing system fails under *Buckley*'s version of the exacting scrutiny standard, that is, if the system furthers insufficiently important governmental interests, or if the system does, in fact, burden the political opportunity of a party or candidate in a way that is unless or unfair, then the court must proceed to a second step of the inquiry. The court must determine whether a less searching standard applies. If the court determines that a less searching standard applies, the court should then evaluate the public financing system under that less searching standard."

I note, of course, that in the *Green Party* case the Second Circuit held that the CEP itself was enacted to further a sufficiently important governmental interest, but more to the point here, the state's interest in preventing its public financing system from being used in a way that might foster, permit, or create the perception of fostering or permitting public corruption, is sufficiently important as well. And that is the interest or one of the interests the state has identified in connection with the 2013 Amendment, and that seems also implicit in the adoption of that Amendment.

In answering whether a system -- I also note that

Buckley itself recognized that an interest in combating public corruption was sufficiently important for purposes of the first part of the test.

Turning then to whether a system -- whether the system burdens political opportunity in a way that is unfair or unnecessary, I note that the Second Circuit in the *Green Party* case drew from *Buckley*'s analysis four principles by what -- as to what the *Buckley* Court meant by the terms "unfair" and "unnecessary." First, a public financing system may establish qualification criteria that condition public funds on a showing of significant public support. Second, a court must defer to a legislature's choice of criteria so long as those criteria are drawn from the permissible range. Third, the central question is whether the plaintiffs have shown that the system had operated to reduce their strength below that attained without any public financing, that is, before the public financing system was in place. Finally, a court should avoid speculative reasoning and instead focus on the evidence, if any, of the system's practical effects.

I note that these criteria are, frankly, a poor fit for this particular case for reasons that will become apparent in a moment. Nonetheless, because I'm going to try to apply the *Buckley* standard here, and to the extent they apply, I find that it is clear that the 2013 Amendment does not unfairly or unnecessarily burden Mr. Ganim's political

opportunity.

As someone who several years ago engaged in corruption while in public office, Mr. Ganim is not unfairly or unnecessarily burdened by a provision that seeks to prevent public funds from being used in a way that might foster, permit, or create the perception of fostering or permitting public corruption. While Mr. Ganim alleges that he has met resistance in raising funds for his gubernatorial race, or at least he suggests that in his brief, he has not put forth evidence that he would have fared better if the CEP did not exist.

I note in this connection that as I read the *Green Party* case, the relevant comparison would be between the level of support that Mr. Ganim has now and the level of support he would have in the absence of the Citizens Election Program. It would not be between the level of support he has now and the level of support he might have had years ago, for example, before he was convicted of public corruption felonies. To adopt that comparison would be to ignore what I think is a likely circumstance, which is that at least some voters might be less likely to support him because of those offenses. In any event, Mr. Ganim has not introduced any evidence showing what his level of support would be in the absence of the Citizens Election Program. I will be frank and say that I don't see how he could possibly meet that

test, which is one reason I said that I don't think the test is a good fit for this case. The reason the test works in the connection of minority politicial -- or minor political parties is, of course, that every year or every four years minor political parties run and have a track record. Mr. Ganim has not run for statewide office before as a convicted felon and so there's no basis for comparison. And so I don't see how he could possibly even attempt to meet this test but, nonetheless, that is the test as I read it, the comparison between what his level of support is now and what his level of support would be if the program did not exist. That's what the Second Circuit said.

In any event, as I say, there's really no evidence here that the CEP program has weakened Mr. Ganim's support beyond what it would be in the absence of the program. And, therefore, he doesn't satisfy his -- his claim doesn't satisfy the tests set forth in *Buckley* and *Green Party*.

And so for all those reasons, I find that the Equal Political Opportunity claim fails.

I'm now going to turn to the last claim which is the procedural due process claim.

Mr. Ganim argues that the Amendment deprives him of procedural due process under the 14th Amendment because he has no mechanism of challenging his exclusion from the Citizens Election Program. The procedural component of the

due process clause provides that certain substantive rights - life, liberty, and property - cannot be deprived except under constitutionally adequate procedures. A court considering a procedural due process claim must consider (1) whether the plaintiff possessed a liberty or property interest protected by some understanding of the law, whether it be state law or some other source; and if so, what process was due before the plaintiff could be deprived of that interest.

Mr. Ganim does not have a property interest in CEP funding. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must instead have a legitimate claim of entitlement to it. This is not a case in which Mr. Ganim received CEP funding and then the state took it away. Nor does Mr. Ganim have a property interest in becoming Governor. And participation in the CEP is voluntary and not a precondition to participating in or, for that matter, winning the gubernatorial race. Mr. Ganim does not have an entitled to, and therefore has no property interest in the CEP funding.

Similarly, he does not have a liberty interest in CEP funding. As I already discussed, the 2013 Amendment does not deprive him of his liberty interest in free political speech, free association, or equal political opportunity. Even if he had a protected interest in CEP funding, there is no evidence that he was deprived of procedural protections to

which he was due. He argues that he is entitled to a procedure, such as a hearing or appeal process, to prove that he is reformed and should not be permanently barred from receiving CEP funding. It is well-established that due process does not require the opportunity to prove a fact that is not material to the statutory scheme. That's what the Supreme Court said in the *Doe* case, 538 U.S. at pages 7 through 8. And here that statutory scheme does not turn on whether a person who has committed a felony related to public office has reformed. In the *Doe v. Cuomo* case, the Second Circuit rejected a similar procedural due process claim brought by an individual who was required by state law to register as a sex offender because of his convictions. As the plaintiff did not challenge the procedure by which the state legislated, the procedure by which the state convicted him, or the procedure by which he was categorized as a low-risk offender, and did not contend that he was not convicted of a relevant offense. That case is 755 F.3d, the relevant page is 113.

Similarly, Mr. Ganim does not contest that he was convicted of offenses that make him ineligible for CEP funding. He does not challenge the procedure by which Connecticut enacted the CEP, or the procedure by which he was convicted. He also does not challenge the SEEC's procedure for determining his ineligibility, which, in this case,

involved a written ruling explaining the reasons for which the SEEC rejected his application for CEP funding. The fact he seeks to prove, which is his personal fitness to utilize public funds in campaign notwithstanding his convictions, is not relevant to the state's established scheme for determining whether he is eligible for CEP funding. The General Assembly has decided that a conviction for a felony related to public office is proof enough of unfitness to receive public funding for a campaign. If Mr. Ganim "happens to fall within the subset" of candidates who have been convicted of those felonies but will not misuse public funds in the future, it is the consequence of imperfectly tailored legislative line-drawing. That's a quote from the *Doe* case, 755 F.3d at page 113, and it does not provide grounds for a procedural due process challenge. Further, because I have concluded or because, as noted, the Amendment is not constitutionality suspect in distinguishing between people who have been convicted of public corruption felonies and those who have not, the Amendment survives rational basis review.

So I'm sorry for keeping you all so long. I did want to provide my reasons. That's my ruling.

I'm going to grant the Defendant's motion for summary judgment and deny the Plaintiffs'.

Thank you very much. We'll be in recess.

C E R T I F I C A T E

I, Martha C. Marshall, RMR, CRR, hereby certify that the foregoing pages are a complete and accurate transcription of my original stenotype notes taken in the matter of GANIM V BRANDI, which was held before the Honorable Michael P. Shea, U.S.D.J, at 450 Main Street, Hartford, Connecticut, on November 29, 2017.

_/s/Martha C. Marshall_____
Martha C. Marshall, RMR,CRR
Official Court Reporter