

Caitlin Clarkson Pereira

caitlinclarksonpereira@gmail.com

203-763-1593 / 310-998-7593

1375 South Pine Creek Road

Fairfield, CT 06824

October 19, 2018

Shannon Clark Kief

Legal Compliance Director

State of Connecticut State Elections Enforcement Commission

20 Trinity Street

Hartford, CT 06106-1628

Re: Petition for Declaratory Ruling in Response to “Opinion of Counsel 2018-05: Use of Public Funds to Offset Candidate’s Child Care Costs”

Dear Ms. Clark Kief,

I am petitioning the State Election Enforcement Commission (the “Commission”) for a declaratory ruling on the issues raised and the provisions of the General Statutes and Regulations for Connecticut State Agencies identified in the Opinion of Counsel 2018-05, dated August 9, 2018 (the “OC”).

By letter dated July 31, 2018 (the “Original Request”), I requested direction essentially as to whether I, as a candidate for state office, could use Citizens’ Election Program (the “CEP”) funds for reasonable child care costs incurred outside the ordinary course of conduct and specifically as a campaign-related expenditure. The OC incorrectly concluded that “CEP funds may not be used to pay for a candidate’s childcare costs.” In reaching its conclusion, the OC misapplied the facts to the law and ignored other relevant issues and precedent.

The Commission should issue a declaratory ruling allowing CEP funds to be used for reasonable, necessary child care costs incurred specifically for campaign-related activities for several reasons. First, the child care costs at issue exist solely because of the campaign and are incurred solely as a result of necessary participation in campaign-related activities, and as such are permissible expenses under existing law. Second, the OC, as it currently stands, disparately impacts women and will have the unintended result of preventing many women from running for elected office. Third, Connecticut has a long history of allowing such expenses to be paid from campaign funds, and both the FEC and multiple states have used persuasive arguments to reach the same conclusion. And fourth, allowing CEP funds to be used as requested reinforces the Commission’s statement that “running for elective office is one of the most important civic activities in which a citizen can engage,”¹ and will further the CEP’s stated goal of increasing meaningful citizen participation as candidates in state elections, especially by women.

¹ See Advisory Opinion No. 76-17.

1. Reasonable Child Care Costs are a Legitimate CEP Expenditure Under Applicable Law

In my Original Request to the Commission, I sought to use campaign funds only for child care expenses incurred in connection with specific campaign-related activities scheduled outside of my control and taking place during times when I would typically be my child's primary caregiver.² These are costs that exist solely because of my participation as a candidate in the political process and but for the campaign, would not exist. Not allowing these costs to be covered by CEP funds is a deterrent to parents of young children who might otherwise join the political process as candidates.

Allowance of CEP funds for reasonable child care expenses would satisfy the standard set in Regs., Conn. State Agencies § 9-706-1(a) which states that “[a]ll funds . . . shall be used only for campaign-related expenditures made to directly further the participating candidate’s . . . election to the office specified.” Participation in campaign-specific activities such as debates, panels, and town events often occur outside of typical business hours, and therefore leave candidates with young children three options: (a) bring the child to the event, which is impractical and likely renders the specific purpose of many various events impossible to achieve; (b) not attend the event, which is detrimental—and if continually repeated, perhaps fatal—to the campaign; or (c) fund child care out-of-pocket, which for some candidates is a significant and untenable cost and acts as a *de facto* bar to candidacy.

Regs., Conn. State Agencies § 9-706-1(b) provides guidance on expenses that may not be paid for using CEP funds. These include funds for personal use, as used in General Statutes § 9-607(g)(4), and personal support or expenses, even if used for campaign related purposes.

a. Reasonable Child Care Expenses Do Not Fall Under the Meaning of Personal Use as Used in General Statutes § 9-607(g)(4)

The General Statutes explain that “expenditures for ‘personal use’ include expenditures to defray normal living expenses for the candidate.”³ As mentioned above, my request is to use CEP funds for reasonable child care outside working hours while I attend campaign-specific activities. These specific events take place in the evenings and on the weekends when my daughter is not in school or daycare. These expenses would not be incurred were it not for my candidacy and therefore are not “personal use,” but are explicitly campaign-related.

b. Reasonable Child Care Expenses are Distinguishable from the Identified Personal Support or Expenses in Regs., Conn. State Agencies § 9-706-1(b)(2)⁴

The examples of a candidate's personal support or expenses in the Regulations include (a) items for personal appearance, clothing, or attire, (b) household day-to-day food items, supplies, or

² In the Original Request I clearly indicated I did not seek to use campaign funds for costs for child care during business hours, as such costs are regular household expenses which I pay as a necessity while at work.

³ General Statutes § 9-607(g)(4).

⁴ Before the CEP, the Commission adopted a liberal policy of interpreting permitted expenses. *See, e.g.*, Advisory Opinion No. 76-17; Advisory Opinion No. 80-10; Opinion of Counsel No. 87-2. It is worth noting that while the CEP imposed more stringent standards due to the nature of the funds (public funds vs. funds raised independently by the candidate), in order to qualify for the CEP program, candidates must fundraise a certain amount of money on their own (varying by the position sought), thus every CEP candidate will have raised at least some minimum amount of funds independent of any funds provided by the program.

merchandise, and (c) mortgage, rent, or utilities. It further qualifies these items, noting that these expenses cannot be paid with CEP funds even if used for campaign-related purposes. The OC adds additional items for comparison, including cell phone bills, car tires, and a flight to Amsterdam to attend a conference.

The obvious distinction between all of the above-mentioned costs and reasonable child care expenses outside business hours is that the former are either incurred irrespective of the campaign (e.g., clothing, mortgage, household food), or are incurred by the candidate by choice (e.g., car tires (due to the decision to drive across the state), cell phone bills (despite the availability of other campaign-funded phones), a flight to Amsterdam (an unnecessary, even if beneficial, trip).

By contrast, the child care costs I seek to use CEP funds for are neither being incurred irrespective of the campaign (as detailed above), nor are they being incurred by choice. The costs are necessitated only by my participation in the political process. Indeed, the Commission itself has compared child care costs to travel expenses, noting that “[i]f such care were not purchased, the candidate, presumably, would not be able to travel to attend whatever campaign functions were required, as surely as if the candidate could not purchase a ticket on public transportation, or could not purchase an automobile or gasoline for private transportation.”⁵ Additionally, unlike mortgage payments and clothing allowances, the use of a child care provider outside of normal business hours does not provide any long-term, personal benefit such as home equity or re-usable clothing.

I would not be able to participate in these events to further my election to the office of State Representative without securing child care for my daughter. Most often, I need to pay someone to watch my daughter during these critical campaign events. All child care expenses incurred to allow me to participate in these activities are made to “directly further” my election to office. Not attending these events would have a detrimental effect on my campaign and limit my ability to earn the necessary votes to be elected. As such, the Commission should allow these expenses to be paid from CEP funds.

2. Not Allowing CEP Funds to be Used for Reasonable Child Care Has a Discriminatory Effect on Women

Denying candidates the ability to use CEP funds for child care costs has a discriminatory effect against women. While the policy appears facially neutral, courts consistently find discrimination where a policy disparately impacts a protected group so disproportionately that discrimination can be inferred from that impact.⁶

Studies show that women spend more time on child care than their male counterparts.⁷ For example, one study found that “women who do live with a spouse or partner are . . . fifteen times more likely to shoulder (or to have shouldered) the majority of the childcare responsibilities. Overall, women spend approximately 50 percent more time each week than men on household work and childcare.”⁸ Because women shoulder the majority of child care responsibilities, in a

⁵ Advisory Opinion No. 76-23.

⁶ See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁷ Maria Cohut, *Women ‘Spend More Time on Housework, Childcare Than Men,’* Medical News Today (Oct. 10, 2017), available at: <https://www.medicalnewstoday.com/articles/319687.php>.

⁸ Jennifer L. Lawless, et al., *Why Are Women Still Not Running for Public Office?*, Issues in Governance Studies (May 2008), available at: https://www.brookings.edu/wp-content/uploads/2016/06/05_women_lawless_fox.pdf.

citizen legislature like Connecticut, women will be disproportionately impacted by not allowing reasonable child care costs as a legitimate CEP expenditure.

3. Allowing Reasonable Child Care Expenses as a Permissible Campaign Expense is in Line With the FEC, Multiple States, and Precedent in Connecticut

The 2018 election season has seen an unprecedented number of women seeking office. “Twenty-three women . . . will be running for seats in the Senate; 239 women . . . are contending for seats in the House; and 16 women . . . are a step away from being governor. Those are all new highs, as are the 3,379 women running for state legislative seats, surpassing the previous record by a whopping 730 candidates.”⁹ Women enter the political arena, and not only make direct contributions but also bring new perspectives and ways of looking at issues.

Because women are most often the primary caregiver, running for office often brings with it the challenge of arranging and paying for child care during irregular hours. Due to the growing number of women seeking office, the Federal Elections Commission (“FEC”), along with numerous state election commissions are being asked to consider whether campaign funds can be used to cover child care costs.

In May 2018, the FEC approved the use of campaign funds for child care expenditures by a candidate for Congress, Liuba Gretchen Shirley.¹⁰ The FEC concluded “that the child care expenses described in [her] request, to the extent that such expenses are incurred as a direct result of campaign activity, would not exist irrespective of [her] election campaign, and thus may be permissibly paid with campaign funds.”¹¹

The state election commissions in Arkansas,¹² Wisconsin,¹³ Texas,¹⁴ and Alabama¹⁵ have all issued similar rulings to the FEC, finding that child care expenses are a permissible campaign expenditure when they are specific to campaign activities and would not otherwise exist. Connecticut, well ahead of the curve, issued Advisory Opinion No. 76-23 in 1976, finding that child care costs were an allowable campaign expenditure. This opinion was issued before the Citizen Election Program was put into place, and is an historic ruling, anticipating the rulings arising at the federal level and in multiple states and predating them by over 40 years. At issue in each state and at the FEC is the exact circumstance at issue in my request.

⁹ Seth McLaughlin, Record Number of Women Running for Office in 2018 Midterms, *The Washington Times* (Sep. 17, 2018), available at: <https://www.washingtontimes.com/news/2018/sep/17/record-number-of-women-running-for-office-in-2018/>.

¹⁰ Jane C. Timm, *FEC Votes to Let Candidates Use Campaign Cash for Child Care*, NBC News (May 10, 2018), available at: <https://www.nbcnews.com/politics/elections/fec-votes-let-candidates-use-campaign-cash-child-care-n873046>.

¹¹ Federal Election Commission, Draft AO 2018-06 (Liuba for Congress) Draft A, available at: https://www.fec.gov/resources/cms-content/documents/mtgdoc_18-21-a.pdf.

¹² Allie Lynch, *Candidate Using Campaign Funds for Child Care Expenses*, 5 News Online (Jul. 31, 2018), available at: <https://5news.com/2018/07/31/candidate-using-campaign-funds-for-child-care-expenses/>.

¹³ Max Bayer, *Campaign Donations May be Used to Pay for Child Care, Ethics Commission Says*, Milwaukee Journal Sentinel (Jun. 21, 2018), available at: <https://www.jsonline.com/story/news/politics/2018/06/21/campaign-donations-may-used-pay-child-care-ethics-commission-says/720016002/>.

¹⁴ See Allie Lynch, *Candidate Using Campaign Funds for Child Care Expenses*, *supra*.

¹⁵ Anna Claire Vollers, *Candidates Now Allowed to Use Campaign Funds for Some Child Care Expenses*, AL.com (Jun. 8, 2018), available at: https://www.al.com/news/index.ssf/2018/06/candidates_now_allowed_to_use.html.

4. Allowing Reasonable Child Care Costs as an Accepted Campaign Expenditure Will Help Further the CEP's Goals and Address the Gender Gap in the Connecticut Legislature

Over half (51.2%) of Connecticut's residents are women.¹⁶ Despite this, only 27.3% of Connecticut lawmakers are women.¹⁷ The Connecticut legislature as currently constituted does not accurately reflect the population of Connecticut. Meaningful engagement from half of the state's population is missing. While there are many reasons behind this, there are steps that can be taken to correct the deficiency.

According to the CEP overview, “[i]ncreasing meaningful citizen participation” is one of the five program goals as established by the Connecticut Legislature.¹⁸ Denying child care costs as a valid CEP campaign expenditure discourages the active participation of women in the political system. To further CEP's goal and increase meaningful participation among women, reasonable child care costs associated with specific campaign activities should be an allowable campaign expenditure.

Conclusion

Ideally, the Connecticut legislature would pass legislation that specifically allows child care expenses directly related to campaign activities to be an allowable CEP expenditure. However, because the General Assembly did not adopt a complete list of permissible expenditures, it has empowered the Commission to interpret which expenditures are permissible and which are not. I urge you review the intent and application of the various laws and regulations at play, including Connecticut's history of allowing such expenditures. I further urge you to consider the general direction various states and the FEC are moving on this issue, and the message your declaratory ruling will deliver to women—both with respect to increasing diversity in the political process and minimizing the discriminatory effect of existing laws.

I look forward to your response. Thank you for your time in considering this important topic.

Sincerely,



Caitlin Clarkson Pereira

¹⁶ See <https://www.census.gov/quickfacts/ct>.

¹⁷ *Women in State Legislatures for 2018*, National Conference of State Legislatures (Jun. 28, 2018), available at: <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2018.aspx>.

¹⁸ State Elections Enforcement Commission, Citizens' Election Program Overview, available at: <https://www.ct.gov/seec/lib/seec/CEPOverview2018.pdf>.