



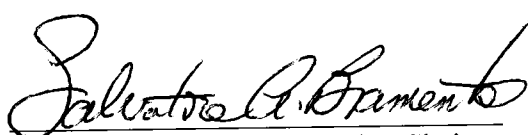
STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

***Resolution and Order Setting Forth Specified Proceedings
for Petition for Declaratory Ruling Requested on Behalf of Joseph P.
Ganim Regarding Applicability of General Statutes § 9-706 (a) (5)***

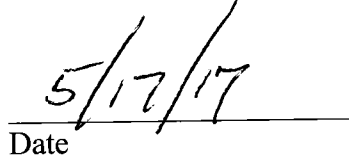
Pursuant to General Statutes § 4-176 (e) and Connecticut Agency Regulations § 9-7b-65 (c), it is hereby resolved and ordered that the following proceedings are set regarding the Petition for a Declaratory Ruling for Hon. Joseph P. Ganim Regarding Applicability of General Statutes § 9-706 (a) (5), received by the Commission on April 7, 2017, from attorney Arnold Skretta:

- (1) The Commission votes to approve for comment the Proposed Declaratory Ruling 2017-01 (Applicability of General Statutes § 9-706 (a) (5) to Candidates Convicted of Certain Felonies Who Seek Public Funds through the Citizens' Election Program);
- (2) The Commission directs staff to post the Proposed Declaratory Ruling on the SEEC website, and to circulate the Proposed Declaratory Ruling via email to the list on file of all persons who have requested notice of declaratory rulings, with a comment period to close 5:00 p.m. on Thursday, June 15, 2017, with consideration of any received comments at the Wednesday, June 21, 2017 Commission meeting.

The deadlines for the comment period set forth in this Resolution and Order supersede the deadlines set forth in the earlier Resolution and Order dated April 19, 2017.



Salvatore A. Bramante – Vice Chair
By Order of the Commission


Date



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

PROPOSED DECLARATORY RULING 2017-01:

Applicability of General Statutes § 9-706 (a) (5) to Candidates Convicted of Certain Felonies Who Seek Public Funds through the Citizens' Election Program

On April 7, 2017, the Commission received a petition for a declaratory ruling from Bridgeport Mayor Joseph P. Ganim (the "Petitioner"), through his counsel Arnold F. Skretta, concerning his ability to obtain a publicly funded grant through the Citizens' Election Program (the "CEP") despite General Statutes § 9-706 (a) (5), which provides that a candidate who has been convicted of a felony related to his public office may not apply for a CEP grant. At its regular meeting on April 19, 2017, the Commission voted to initiate a declaratory ruling proceeding responsive to this petition.

Background

The Petitioner was first elected mayor of Bridgeport in 1991 and served five terms in office until 2003, when he was convicted of racketeering and racketeering conspiracy, extortion, honest services mail fraud, bribery, conspiracy to commit bribery, and filing false income tax returns that arose out of his tenure as mayor. *See Petition for Declaratory Ruling for Hon. Joseph P. Ganim Regarding Applicability of Conn. Gen. Stat. § 9-706(a)(5) at 2; United States v. Ganim*, 510 F.3d 134, 136-7 (2d Cir. 2007). The Petitioner was sentenced to nine years in prison and was released in 2010 after six years. 510 F.3d at 141; *Petition for Declaratory Ruling at 2*. In 2015, he was reelected mayor of Bridgeport. *Petition for Declaratory Ruling at 2*.

In 2005, two years after the Petitioner's conviction, the Connecticut legislature took action to prevent corruption and the appearance of corruption in this state, enacting some of the strongest campaign finance laws in the country. Leading up to Connecticut's 2005 campaign finance reforms, the state had suffered repeated pay-to-play corruption scandals involving high ranking state and local elected officials using their public office to commit felonies:

- In 1999, the State Treasurer pled guilty to federal racketeering and money laundering charges stemming from a kick-back scheme involving state pension investments. In return for investing over \$500 million of the state's pension funds with certain financial institutions, the state's Treasurer had directed millions of dollars in "finder's fees" to be paid to various friends and associates, who then funneled part of the money back to his campaign fund. He was sentenced in federal court to a term of imprisonment of 51 months. In addition he paid a forfeiture sum of \$230,000. Many of the Treasurer's co-conspirators also either pled guilty or were convicted on counts arising out of the public official bribery scheme and received terms of imprisonment.

- In March 2003, a jury convicted a Bridgeport mayor (the Petitioner for this declaratory ruling) of sixteen counts of federal racketeering, extortion, bribery, mail fraud, and tax evasion arising from a scheme to award city contracts in exchange for illegal kickbacks from contractors. At least three contractors also pled guilty to their roles in that scheme, with one stating that he had agreed to raise funds for the mayor's anticipated run for governor in exchange for the mayor's support with a development project.
- On June 21, 2004, Connecticut's Governor resigned after being accused of improperly accepting tens of thousands of dollars in gifts and services from state contractors in return for facilitating the award of several state contracts. He subsequently pled guilty to federal criminal charges and was sentenced to a term of imprisonment of one year and a day. His chief of staff, his deputy chief of staff, and several state contractors also pled guilty to federal charges stemming from their roles in that corruption scandal.
- In 2005, a state senator pled guilty to federal bribery charges in connection with a kick-back scheme involving a non-profit organization. In return for \$5,000, he had agreed to assist a non-profit group in its quest to secure a \$100,000 grant from the state. He also pled guilty to federal mail fraud and tax evasion charges for diverting \$40,000 in campaign contributions to his personal use. The senator was ultimately sentenced to sixty months in federal prison and ordered to pay over \$13,000 in restitution.¹

These scandals received widespread press coverage, leading the media to dub the state "Corrupticut."² The public had lost confidence in their state officials. A 2004 poll revealed that 78% of likely Connecticut voters agreed that the way political campaigns were financed in Connecticut encouraged candidates to grant special favors and preferential treatment to their contributors.³ In a 2005 poll of likely Connecticut voters, 62% stated that elected officials in Connecticut are more concerned with the needs of those who pay for their campaigns than the needs of everyone. In that same poll, 82% of Connecticut voters agreed that it was necessary to limit the influence of money on politics.⁴

Connecticut responded to these repeated parades of corruption with comprehensive campaign finance reform legislation, Public Act 05-5, *An Act Concerning Comprehensive Campaign Finance Reform for State-wide Constitutional and General Assembly Offices*. Since its passage, Connecticut has consistently guarded and improved these core reforms.⁵

¹ See *Green Party of Conn. v. Garfield*, 590 F. Supp. 2d 288, 304-07 (D. Conn. 2008) ("Green Party I"), aff'd in part, rev'd in part, *Green Party of Conn. v. Garfield*, 616 F.3d 189 (2d Cir. 2010).

² *Green Party I*, 590 F. Supp. 2d at 306.

³ *Id.* at 307 (internal citations omitted.)

⁴ *Id.*

⁵ See e.g. Public Act 07-1, *An Act Concerning the State Contractor Contribution Ban and Gifts to State and Quasi-Public Agencies*; Public Act 10-1, *An Act Concerning Clean Elections*; Public Act 10-2, *An Act*

The cornerstone of the 2005 campaign finance reforms is the landmark Citizens' Election Program, a voluntary clean elections program which allows participants who meet strict program requirements and demonstrate an adequate level of public support to forego special interest and large dollar contributions in favor of a grant from the Citizens' Election Fund. Applicants must file multiple affidavits certifying to a number of items including that they have obeyed expenditure limits and will abide by all of the Program requirements. General Statutes §§ 9-703 (a), 9-706 (b).

Applicants must demonstrate public support by raising small donor contributions, a certain amount of which must come from people residing in the district. General Statutes § 9-704 (a). These contributions cannot be from state contractors and are subject to other limitations as well. General Statutes § 9-704 (c); *see also* General Statutes §§ 9-610 (e), 9-612 (e). Backup documentation to substantiate every contribution is collected by the campaign, and the contributions are disclosed by the campaign electronically. General Statutes § 9-704 (b); SEEC Declaratory Ruling 2007-03 (Citizens' Election Program: Qualifying Contributions); General Statutes § 9-675 (b). Commission staff then has a limited amount of time to review the application for public funds – five days for General Assembly and ten days for statewide campaigns. General Statutes § 9-706 (g).

While staff carefully reviews campaign finance filings and the certification cards associated with each contribution, campaign bank records and other back-up documentation are not reviewed as part of the grant application process. The process relies largely on the honesty in receiving and reporting contributions, and the paperwork handled by candidates and their treasurers. Public funds are released based on this review and the affidavits provided by the candidate and treasurer.

Since the inception of the Program, public funds have not been available to all candidates. A candidate who registers as a write-in candidate pursuant to General Statutes § 9-373a is not eligible to apply for a grant. *See* General Statutes § 9-706 (2) (a). A candidate who changes party status as a major party, minor party or petitioning candidate or becomes a candidate of a different party after filing the affidavit of intent to abide by the spending limits is not eligible to apply for public funds. General Statutes § 9-706 (a) 4). If a candidate's committee receives loans from any entity other than a financial institution or a loan exceeding one thousand dollars from a financial institution, or receives such a loan but does not repay it before applying for public funds, or if the candidate provides personal funds to the candidate committee exceeding the personal funds limit (which varies based on the office sought), the candidate is not eligible to receive public funds. General Statutes § 9-710; SEEC Declaratory Ruling 2007-1. In addition, a candidate is not eligible to receive public funds if the committee violates the voluntary expenditure limits. General Statutes §§ 9-702 (b), 9-711 (a).

Concerning the Citizens' Election Fund; Public Act 11-48, An Act Implementing Provisions of the Budget Concerning General Government; Public Act 13-180, An Act Concerning Disclosure of Independent Expenditures and Changes to Other Campaign Finance Laws and Election Laws.

The Program has been extremely successful. Currently, 89% of the sitting legislature has been elected under the clean elections program and 100% of the elected constitutional officers have run with clean funds since 2010. There have, however, been some problems. In one instance a participant in the Program, who had previously been convicted of violations of campaign finance and corruption law, was entrusted with clean elections funds in a subsequent election and this resulted in another conviction.

In September 2005, State Senator Ernest Newton II pled guilty to federal bribery charges relating to a kickback scheme, whereby Newton took a \$5,000 bribe and in return helped a non-profit group obtain a \$100,000 state grant, and also diverted \$40,000 in campaign contributions for his personal use. *See Green Party v. Garfield*, 590 F. Supp. 288, 306 (D. Conn. 2008) (citations omitted). In 2012, Newton applied for and received public funds in the amount of \$80,805 for his 2012 State Senate primary campaign. Shortly after the Newton committee received its public funds, a whistleblower contacted Commission staff, which resulted in staff investigators identifying five persons who alleged that, at Newton's personal request to help him obtain state funds, they had signed contributor certification forms certifying that they each made a one hundred dollar contribution to the Newton 2012 campaign when none of them had actually provided any money. This resulted in a referral to the Chief State's Attorney's office. *See State v. Newton*, AC 38815, Appendix A, Arrest Warrant (May 24, 2013); *State v. Newton*, HHD-CR13-0664484, Substitute Long Form Information, Counts Four, Five, Six, Seven, and Eight (Dec. 1. 2004) (Conn. Super.). Newton was subsequently arrested and tried, and a state court jury found him guilty in connection with three of these five alleged straw contributions, resulting in a six month prison sentence for these three violations. *See State v. Newton*, HHD-CR13-664484-T, Judgment (Conn. Super. March 13, 2015). An appeal to the Connecticut Appellate Court is pending.

Following the 2012 election cycle during which the wrongdoing occurred, the legislature enacted language in General Statutes § 9-706 (a) which states "no candidate may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program if such candidate has been convicted of . . . a felony related to the individual's public office." Candidates are now required to certify in their grant applications that they have not been convicted of a felony related to the individual's public office. General Statutes § 9-706 (b) (12).

Questions Presented

The Petitioner is interested in participating in the Citizens' Election Program in the event he should decide to run for statewide office and seeks the Commission's declaration that he may apply for a grant despite his past convictions and the passage of General Statutes § 9-706 (a) which provides that a candidate convicted of a felony related to public office may not apply for a grant from the CEP.

The Petitioner argues that he is entitled to apply for a grant because (1) General Statutes § 9-706 (a) (5) is illogical, punitive and serves no legitimate, rational public policy interest; (2) General Statutes § 9-706 (a) (5) was enacted in 2013 and cannot be retroactively

applied to his circumstances; and (3) protections provided by Article I, Section 9 and the first and fourteenth amendments of the U.S. Constitution, as well as Article First, Section 5 and Article XXI of the Connecticut Constitution would render the statute invalid on its face and as applied to him.

Legal Analysis

The Commission's analysis must begin and end with the statutory language it is tasked with interpreting and applying. The statute at issue, General Statutes § 9-706 (a) (5), provides:

Notwithstanding the provisions of this subsection, *no candidate may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election 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.*

(Emphasis added).

When performing statutory interpretation, as the Connecticut Supreme Court noted in 2008, “[the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [one must] seek to determine, in a reasoned manner, the meaning of the statutory language. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter” *Bloomfield v. United Electrical, Radio & Machine Workers of America, Connecticut Independent Police Union, Local 14*, 285 Conn. 278, 286-87, 939 A.2d 561 (2008) (internal quotation marks omitted).

As a starting point, it must be determined whether the statute applies to the Petitioner's circumstances: whether the Petitioner's prior convictions were, in fact, felonies, and, if they were, whether they were felonies related to his public office.

The offenses of which the Petitioner was convicted in 2003 range from Class C to Class E felonies under federal law. *See* 18 U.S.C. § 3559.⁶ Under Connecticut law, these offenses are considered felonies as well. *See* General Statutes § 53a-25 (“An offense for which a person may be sentenced to a term of imprisonment in excess of one year is a felony.”); General Statutes § 53a-24 (“The term ‘offense’ means any crime or violation which constitutes a breach of . . . federal law . . . for which a sentence to a term of imprisonment or to a fine, or both, may be imposed.”); *see also State v. Reynolds*, 264 Conn. 1, 76 (2003) (“[T]he legislature enlarged the definition of ‘felony’ in 1975 to include [federal and] out-of-state felonies . . .”).

In his request, the Petitioner concedes that the felonies of which he was convicted were related to the public office he served. *See Petition for Declaratory Ruling at 2*. Reviewing the facts as set forth in *United States v. Ganim*, 2006 U.S. Dist. LEXIS 26569 (D. Conn. May 5, 2006) and *United States v. Ganim*, 510 F.3d 134 (2d Cir. 2007), the Commission comes to a similar conclusion: The Petitioner’s convictions were for felonies related to his public office as mayor of Bridgeport.

The substance of the statute is plain and unambiguous with respect to those convicted for felonies related to public office: “[N]o candidate may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens’ Election Program if such candidate has been convicted of . . . a felony related to the individual’s public office.”

The Petitioner, however, contends that the statute should be interpreted to apply to only those felonies committed after June 18, 2013, the date on which the statutory language in question became effective. Specifically, he argues that because his 2003 conviction occurred ten years before the 2013 passage of General Statutes § 9-706 (a) (5), the statute should not be applied “retroactively” to allow consideration of his 2003 felony convictions.

In contending that the application of the statutory language to him was not the intended effect of the legislature, the Petitioner cites the Connecticut Supreme Court:

Whether to apply a statute retroactively or prospectively depends upon the intent of the legislature in enacting the statute. . . . In order to determine the legislative intent, we utilize well established rules of statutory construction. Our point of departure is General Statutes § 55-3, which states: “No provision of the general

⁶ 18 U.S.C. § 3559 provides that where an offense does not specify a letter grade, then the maximum term of imprisonment laid out by the respective statute determines the offense level – 25 years or more is a Class B felony, less than 25 years but ten or more years is a Class C felony, and less than five years but more than one year is a Class E felony. Extortion and honest mail services fraud carry with them a potential term of imprisonment of up to 20 years, which would be Class C felonies pursuant to 18 U.S.C. § 3559. 18 U.S.C. §§ 1341, 1346, 1951. Bribery carries a potential term of up to ten years and is therefore also a Class C felony. 18 U.S.C. § 666 (a) (1) (B). Conspiracy to commit bribery carries a potential term of up to five years which is a Class D felony, and filing false tax returns carries a potential of up to three years, a Class E felony. 18 U.S.C. § 371; 26 U.S.C. § 7206 (1). These were the maximum terms of imprisonment for these offenses and the letter grades for the respective terms of imprisonment, both in 2003 and in the present.

statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect.” The obligations referred to in [General Statutes § 55-3] are those of substantive law. . . . Thus, we have uniformly interpreted § 55-3 as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. . . . The rule is rooted in the notion that it would be unfair to impose a substantive amendment that changes the grounds upon which an action may be maintained on parties who have already transacted or who are already committed to litigation. . . . In civil cases, however, unless considerations of good sense and justice dictate otherwise, it is presumed that procedural statutes will be applied retrospectively. . . . Procedural statutes have been traditionally viewed as affecting remedies, not substantive rights, and therefore leave the preexisting scheme intact. . . . Although we have presumed that procedural or remedial statutes are intended to apply retroactively absent a clear expression of legislative intent to the contrary . . . a statute which, in form, provides but a change in remedy but actually brings about changes in substantive rights is not subject to retroactive application.

D'Eramo v. Smith, 273 Conn. 610 (2005) (internal citations and quotations omitted) (holding that statute passed after the plaintiff had been injured did not retroactively apply to change the plaintiff’s right to sue which had vested at the time of the injury); *see also Miano v. Thorne*, 218 Conn. 170, 175 (1991) (“While there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress” (internal quotation marks omitted)).

Citing *D'Eramo* for the proposition that “a statute which . . . brings about changes in substantive rights is not subject to retroactive application,” the Petitioner contends that receiving a grant from the Citizens’ Election Program is a “substantive benefit that virtually every other candidate enjoys” and that “it is a substantive roadblock to viability as a candidate when forced to compete against candidates that have been granted participation in the CEP.” *Petition for Declaratory Ruling* at 5 (citing *D'Eramo*, 273 Conn. at 621). He asserts that because a substantive benefit is involved, the 9-706 (a) (5) language must either contain an express clause such as “no candidate may apply . . . if such candidate has been convicted of . . . a felony, committed at any time on before or after the effective date of this statute, related to the individual's public office” or a strong legislative intent to this effect must be manifested in the legislative history. He states that such an intent for retroactive application is not expressed by the legislature and furthermore that the lack of discussion in the legislative history demonstrates that the real policy behind the statute is punitive, opening the statute to constitutional challenge if it is applied retroactively. Thus, the Petitioner argues that the Commission must interpret section 9-706 (a) (5) as though it reads “no candidate may apply . . . if such candidate has been convicted of . . . a felony that was committed after June 2013 related to the individual's public office.”

This argument fails, in the first instance, because the statute is not retroactive. Simply because a felony that occurred before a statute was passed is involved in applying that statute does not make any application of that new statute retroactive to the time of the felony. For example, when a statute requiring DNA testing for certain felons in custody was amended to apply to *all* felons in custody and was applied to a prisoner whose felony had occurred before the statute was amended, the court found that the relevant conduct in the retroactivity analysis – the attempt to take the test, rather than the underlying felony – occurred after the statute was passed and therefore retroactivity was not an issue. *State v. Banks*, 143 Conn. App. 485, 501–03 (2013), *aff'd*, 321 Conn. 821 (2016). Just as application of the DNA testing statute occurs when the test is done, application of sections 9-706 (a) (5) and 9-706 (b) (12) occur at the time of grant application. *See also Peck v. Jacquemin*, 196 Conn. 53 (1985) (concluding, in a negligence case stemming from a car accident, that statute forbidding settlement information to go to jury was not applied retroactively when applied to trial that took place after the effective date of the statute because the statute affected only circumstances that existed at the time of trial rather than those on the date of the accident).

This argument fails, in the second instance, because it does not involve the abrogation of a substantive right. While the possibility of someday receiving a grant may be a substantive benefit, it is not a substantive right belonging to all potential candidates. The CEP is a *voluntary* program. In order to participate in this voluntary program, an applicant must meet a long list of requirements, including obtaining ballot access, raising a certain amount of money in qualifying contributions and from a certain amount of people in the district for which the candidate is seeking election. An application is carefully reviewed by Commission staff and is voted on by the Commission before monies are awarded. In 2003 when he was convicted and before the Program existed, in 2007 when the Program began to run, in 2013 when the application process for the Program was changed to disallow felons with convictions related to holding public office, and today, the Petitioner has had neither the obligation to participate in the voluntary clean elections program nor any substantive right to do so.⁷ Under the Program, enforceable obligations and substantive rights occur with the Commission’s vote to approve a grant application pursuant to section 9-705 – not before.⁸

⁷ The voluntary CEP Program remains only one of several ways to finance a campaign for public office. Most obviously, there is the traditional method of fundraising, in which contributions (set at much higher limits than those in the CEP) can be raised from individuals, political and party committees and the candidate’s own funds. This method is available to the Petitioner, and in fact a candidate for governor utilized this method in 2010 and came within a few thousand votes of succeeding. Other candidates have entirely self-financed their campaigns for public office, although this method is admittedly available only to those with significant financial resources. Candidates concerned that the appearance of traditional fundraising mars their image to the public because of the perception of being “in the pocket” of special interests have joined the Program, abided by the Program rules and simply not applied for a grant—because their race was not competitive or they had philosophical objections to public funds being used in elections. There is nothing that prevents The Petitioner from doing the same. The Commission staff works with such candidates to make sure that they can obey the rules and raise additional qualifying contributions while remaining within the expenditure limits and abiding by all other Program rules.

⁸ The Commission agrees that an impermissible application of the law might occur under certain circumstances but those are not here. If, for example, the Petitioner applied for and received a special election grant in May 2013, and the Commission sought the return of those funds after General Statutes §

The retroactivity discussion is appropriate only where a vested right is being affected by a statutory change. *Massa v. Nastri*, 125 Conn. 144, 149-50 (1939). That is not the case here. Moreover, the Connecticut Supreme Court long ago explained that the retroactivity discussion does not apply to rights based entirely upon statute, which are not grounded in common law liability. *Id.* (vested rights of driver of car involved in an accident grounded in common law liability rather than entirely in statute and therefore could not be retroactively affected). Here, any substantive rights in the Program has certainly not vested. Moreover, those rights are purely statutory.

The Petitioner argues, however, that the Commission must interpret the statute otherwise to avoid constitutional problems. It is true that in choosing between two statutory constructions, one valid and one constitutionally precarious, the Commission should search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent. See *State v. Ross*, 269 Conn. 213 (2004) (internal quotation marks and citations omitted).

The Petitioner claims that the policy behind the statute is punitive and therefore, if applied to felonies committed in the past, violates the ex post facto clause of the U.S. Constitution because it is "aimed only at levying an additional, extra-criminal punishment on [him]." *Petition for Declaratory Ruling* at 5. To determine whether a retroactively imposed burden constitutes additional punishment, "the Supreme Court has focused upon the intent underlying the enactment of, or the end served by, the challenged sanction as the touchstone of the ex post facto analysis." *Doe v. Pataki*, 120 F.3d 1263, 1273 (2d Cir. 1997) (referencing *Hawker v. New York*, 170 U.S. 189 (1898)). More precisely, the Supreme Court has said, "The mark of an ex post facto law is the imposition of what can fairly be designated punishment for past acts. The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications or a profession." *DeVeau v. Braisted*, 363 U.S. 144 (1960) (upholding statute prohibiting unions from soliciting or collecting certain dues if any officer or agent of the union had been previously convicted of a felony).

The Commission concludes that it is neither the intent nor the aim of the law in question to additionally punish felons. There is no evidence to support the Petitioner's argument otherwise. The Petitioner argues that General Statutes § 9-706 (a) (5) serves no legitimate public policy interest and therefore should not be followed by the Commission. The Commission disagrees; the legislature had ample other reasons for passing the law.

9-706 (a) (5) became effective in June 2013 under the regulation which states that a grant payment is not a final determination of eligibility, it might agree that this was a retroactive application. See Conn. Regs. 9-706-3. There may have been a vested substantive right that sprang into place when the Commission voted to award the grant in May. But that is not what happened here. The Petitioner has not yet applied for a grant and comes into the election season as a felon convicted of crimes related to his public office clearly falling within the parameters of General Statutes § 9-706 (a) (5) and (b) (12).

General Statutes § 9-706 (a) (5) is part of the Citizens' Election Program. This clean elections program (as described at length, *supra*) was part of a campaign finance reform passed to “to combat actual and perceived corruption in state government.” *Green Party of Conn. v. Garfield*, 616 F.3d 213, 219 (2d Cir. 2010). “Government corruption breeds cynicism and mistrust of elected officials. It causes the public to disengage from the democratic process because . . . the public begins to think of politics as ‘only for the insiders.’ . . . Thus corruption has the potential to shred the delicate fabric of democracy by making the average citizen lose respect and trust in elected officials and give up any hope of participating in government through legitimate channels.” (citation omitted) *United States v. Ganim*, United States District Court, Docket No. 3:01CR263 (JBA), 2006 U.S. Dist. LEXIS 26569, 2006 WL 1210984,*5 (D. Conn. May 5, 2006) (misuse of high public office and repeated abuse of that office by trading government contracts and influence for personal remuneration, resulted in “extraordinary harm done to the political system of the [c]ity . . . and beyond”).

The specific statutory language in question here was passed by the legislature in Public Act 13-180. Although, as the Petitioner points out, the legislature itself did not comment on this specific provision of the bill when it was passed, the language of the bill was first introduced in a separate bill some months earlier, in House Bill 6633. That bill was the subject of a public hearing before the Government Administration and Elections Committee, held on March 18, 2013. During that public hearing the policy behind the proposal was discussed by Secretary of the State Denise Merrill, Michael Brandi, the executive director and general counsel for the Commission (which made the original legislative proposal) and others, both for and against the bill.⁹ The public policy reasons put forth were, essentially, the protection of the public fisc, by preventing bad actors from accessing the public funds provided by the CEP, and the protection of the integrity of the CEP itself.

The plethora of statutes and constitutional provisions that are in place across the country that restrict felons from holding office make it clear that the public, through their legislatures, feel that political corruption impacts an individual's fitness to serve office.¹⁰

⁹ Secretary Merrill testified that the bill was “a sensible approach that balances the public's benefit of limiting the influence of special interest with our obligation to safeguard public funds.” Mr. Brandi testified about a prominent instance of a candidate who had been convicted of violations of campaign finance and corruption law, was entrusted with public funds in a subsequent election, and then was arrested again for campaign finance violations. The bill, Brandi said, “will help ensure the integrity of the Citizens' Election Fund by preventing future theft and misuse.”

¹⁰ More than half of the fifty states place prohibitions on felons holding office – most where the underlying offense relates to public corruption, though some regardless of the type of offense. See, e.g., Ala. Code § 36-2-1 (2017) (“The following persons shall be ineligible to and disqualified from holding office . . . Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary”); Cal. Elec. Code § 20 (2017) (“A person shall not be considered a candidate for, and is not eligible to be elected to, any state or local elective office if the person has been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes.”); Colo. Const. Art. XII § 4 (“No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall

See *Commonwealth ex re. Baldwin v. Richard*, 561 Pa. 489 (S. Ct. Pa. 2000) (“The purpose of removing one from public office [who has been convicted of an infamous crime] is not to punish the officer. Instead, it is to assure the requisite good character of those individuals whom our citizens look to for governance.”); *State ex rel. Wier v. Peterson*, 369 A.2d 1076 (S. Ct. Del. 1976) (“In our view, [the statute prohibiting felons from serving office] is essentially a character provision, mandating that all candidates for State office possess high moral qualities. It is not a provision designed to punish an offender. While conviction of an infamous crime does not imply that an offender is incapable of functioning as a respected and productive member of society, it is irreversible evidence that the offender does not possess the requisite character for public office.”). Although Connecticut does not follow the approach adopted in these other jurisdictions, it has, in passing General Statutes § 9-706 (a) (5), decided to start by not entrusting felons convicted of misuse of public office with public funds to obtain public office. As these other laws survive under the Constitution, so too may Connecticut’s provisions limiting clean elections funding.

Given the context of the Citizens’ Election Program, the legislature’s acute concern for the protection of the public fisc was—and is—understandable. The state’s recent history of corruption had called for radical measures to be taken, which culminated in the passage of Public Act 05-5 and the enactment of the CEP. The success of the CEP relied in no small part upon the public’s faith that public money would be safeguarded by the Commission: rules would be tightened for those who accepted clean elections funds, grants would be awarded only after scrupulous review, campaigns would be thoroughly audited, and enforcement would be rigorous against those who violated the strict rules.

Since the inception of the program, some candidates have not been allowed to participate or have participated under different rules. “[T]he ‘Constitution does not require the Government to finance the efforts of every nascent political group,’ for ‘[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike.’ . . . ‘[T]he Constitution does not require Congress to treat all declared candidates the same for public financing purposes . . . [as] there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other.’ . . . In other words, *Buckley* recognized that if the Constitution were to require the presidential-candidate financing system to fund every minor-party candidate, the

be eligible to the general assembly, or capable of holding any office of trust or profit in this state.”); Del. Const. Art. II § 21 (“No person who shall be convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, honor or profit under this State.”); Ga. Code Ann. § 45-2-1(3) (2017) (“The following persons are ineligible to hold any civil office . . . Any person finally convicted and sentenced for any felony involving moral turpitude under the laws of this or any other state when the offense is also a felony in this state, unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Paroles; . . .”); Kan. State. Ann. § 21-6001 (“Notwithstanding an expungement of the conviction . . . any person convicted of bribery under the provisions of this section shall be forever disqualified from holding public office . . .”); see also Denis J. O’Malley III, NOTE: Guns and Governance, 48 Conn. L. Rev. 1349 (2016).

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Constitution would provide the means for fly-by-night candidates to ‘raid the United States Treasury.’” *Green Party v. Garfield*, 616 F.3d 213, 231 (2d Cir. 2010) (quoting *Buckley v. Valeo*, 424 U.S. 1, 96-98 (1976)).

The Commission concludes that the legislature had many well-considered reasons for passing the law. There is no evidence to support the Petitioner’s argument that the intent was punitive. As such, the law will be applied as written, as the Commission believes it was intended, and the law prevents the Petitioner from applying for a grant under the Citizens’ Election Program.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

Adopted this __ day of _____, 2017, at Hartford, CT by vote of the Commission.

Anthony J. Castagno, Chair
By Order of the Commission