

CONNECTICUT APPELLATE COURT

AC 42005

JOE MARKLEY, ET AL V. STATE ELECTIONS ENFORCEMENT COMMISSION

APPELLANTS' APPENDIX,

PART I

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A. Docket Sheet



State of Connecticut Judicial Branch Superior Court Case Look-up



Superior Court Case Look-up
Civil/Family
Housing
Small Claims

HHB-CV18-6044479-S **MARKLEY, JOE Et Al v. STATE ELECTIONS ENFORCEMENT COMMISSION**
Prefix/Suffix: [none] Case Type: A90 File Date: 05/07/2018 Return Date: 05/29/2018

[Case Detail](#) | [Notices](#) | [History](#) | [Scheduled Court Dates](#) | [E-Services Login](#) | [Screen Section Help](#) ▶

Attorney/Firm Juris Number Look-up [↗](#)

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Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

Information Updated as of: 01/07/2019

Case Information

Case Type: A90 - Appeals - All other
Court Location: NEW BRITAIN JD
List Type: No List Type
Trial List Claim:
Last Action Date: 08/23/2018 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 08/02/2018
Disposition: JUDGMENT OF DISMISSAL
Judge or Magistrate: HON JOSEPH SHORTALL

Party & Appearance Information

Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number

Pending Foreclosure Sales [↗](#)

Understanding
Display of Case Information

Contact Us



Comments

Party	No Fee Party	Category
P-01 JOE MARKLEY Attorney: e MICHAEL JAMES CRONIN (410876) RM 3200 LOB 300 CAPITOL AVE. HARTFORD, CT 06106 Attorney: PHV DICKERSON ALLEN JOSEPH 6/5/18 (439690) INST FOR FREE SPEECH 124 S WEST ST STE 201 ALEXANDRIA, VA 22314	File Date: 05/07/2018 File Date: 06/04/2018	Plaintiff
P-02 ROB SAMPSON Attorney: e MICHAEL JAMES CRONIN (410876) RM 3200 LOB 300 CAPITOL AVE. HARTFORD, CT 06106 Attorney: PHV DICKERSON ALLEN JOSEPH 6/5/18 (439690) INST FOR FREE SPEECH 124 S WEST ST STE 201 ALEXANDRIA, VA 22314	File Date: 05/07/2018 File Date: 06/04/2018	Plaintiff
D-01 STATE ELECTIONS ENFORCEMENT COMMISSION Attorney: e MAURA BRIDGET MURPHY-OSBORNE (423915) AG-SPECIAL LIT 2ND FL 55 ELM ST PO BOX 120 HARTFORD, CT 061410120 Attorney: e MICHAEL KENNETH SKOLD (431228) AG-SPECIAL LIT 2ND FL 55 ELM ST PO BOX 120 HARTFORD, CT 061410120	File Date: 06/06/2018 File Date: 06/06/2018	Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an [e](#) in front of the docket number at the top of this page, then the file is electronic (paperless)

▪ Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).




• For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available

publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the Notices tab above and selecting the link.*

- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017 *

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status					
<u>Entry No</u>	<u>File Date</u>	<u>Filed By</u>	<u>Description</u>	<u>Arguable</u>	
	06/06/2018	D	APPEARANCE  Appearance		
	06/06/2018	D	APPEARANCE  Appearance		
	07/13/2018	P	APPEARANCE  Appearance		
100.30	05/07/2018	P	SUMMONS AND COMPLAINT 	No	
100.31	05/07/2018	P	RETURN OF SERVICE 	No	
101.00	05/22/2018	P	MOTION FOR PERMISSION TO APPEAR PRO HAC VICE PB 2-16  <i>RESULT: Order 6/4/2018 HON SHEILA HUDDLESTON</i>	No	
101.10	06/04/2018	C	ORDER  <i>RESULT: Order 6/4/2018 HON SHEILA HUDDLESTON</i>	No	
102.00	05/23/2018	P	MOTION FOR STAY  Please expedite ASAP as plaintiffs face imminent harm <i>RESULT: Order 5/24/2018 HON SHEILA HUDDLESTON</i>	No	
102.10	05/24/2018	C	ORDER  <i>RESULT: Order 5/24/2018 HON SHEILA HUDDLESTON</i>	No	
103.00	06/05/2018	P	MOTION FOR DEFAULT -FAILURE TO APPEAR PB 17-20 	No	
104.00	06/06/2018	P	WITHDRAWAL OF MOTION 	No	
105.00	06/29/2018	D	MOTION TO DISMISS PB 10-30  <i>RESULT: Order 8/2/2018 HON JOSEPH SHORTALL</i>	Yes	
105.01	08/02/2018	C	ORDER  <i>RESULT: Order 8/2/2018 HON JOSEPH SHORTALL</i>	No	
106.00	06/29/2018	D	MEMORANDUM IN SUPPORT OF MOTION  Memorandum of Law in Support of Defendant's Motion to Dismiss	No	
107.00	07/13/2018	P	OBJECTION TO MOTION  Objection to Motion to Dismiss 105.00 <i>RESULT: Order 8/2/2018 HON JOSEPH SHORTALL</i>	No	
107.01	08/02/2018	C	ORDER  <i>RESULT: Order 8/2/2018 HON JOSEPH SHORTALL</i>	No	
108.00	07/13/2018	P	MEMORANDUM IN OPPOSITION TO MOTION  Memorandum in Support of Objection to Motion to Dismiss 107.00	No	
109.00	07/16/2018	P	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE  Appearance filed on 07/13/2018 <i>RESULT: Granted 7/30/2018 HON JOSEPH SHORTALL</i>	Yes	
109.01	07/30/2018	C	ORDER  <i>RESULT: Granted 7/30/2018 HON JOSEPH SHORTALL</i>	No	
110.00	07/17/2018	P	NOTICE  Exhibit A to Entry No 109.00	No	
111.00	07/17/2018	C	NOTICE 	No	

112.00	07/18/2018	D	REPLY  Reply Brief in Further Support of Defendant's Motion to Dismiss	No
113.00	08/02/2018	C	MEMORANDUM OF DECISION 	No
114.00	08/02/2018	C	JUDGMENT OF DISMISSAL <i>RESULT: HON JOSEPH SHORTALL</i>	No
115.00	08/22/2018	P	APPEAL TO APPELLATE COURT 	No

Scheduled Court Dates as of 01/04/2019				
HHB-CV18-6044479-S - MARKLEY, JOE Et Al v. STATE ELECTIONS ENFORCEMENT COMMISSION				
#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the [civil](#) or [family](#) standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the [Civil/Family Case Look-Up](#) page and [Short Calendars By Juris Number](#) or [By Court Location](#).

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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B. Pleadings, Motions, Findings, and Opinions

1. Administrative Appeal from Final Decision of the State Elections Enforcement Commission

ADMINISTRATIVE APPEAL UNDER GENERAL STATUTES SECTION 4-183 — CITATION
(For use when service is made by a proper officer or indifferent person)

JD-CV-138 Rev. 10-15
 C.G.S. § 4-183; P.B. § 14-7A

STATE OF CONNECTICUT
SUPERIOR COURT
 www.jud.ct.gov



Instructions to Person Appealing Decision :

1. Type or print legibly; sign the form. The Judicial District you name in the Citation must be the Judicial District of New Britain or Judicial District that the person who has filed the Appeal resides in.
2. Attach the original Appeal to the original Citation form.
3. If you are a self-represented plaintiff, bring the Citation and Appeal to a clerk of court for the Judicial District you name in the Citation. The clerk will review the Citation and, if it is complete, will sign it.
4. Give the Citation and Appeal to a proper officer or indifferent person to be served on each defendant.
5. After service has been made by a proper officer or indifferent person, file the Citation and Appeal and the Officer's Return with the clerk of court for the Judicial District you name in the Citation.

ADA NOTICE

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

To Any Proper Officer or Indifferent Person:

By the authority of the State of Connecticut, you are commanded to serve, according to law, a copy of the Appeal and this Citation by personal service on the agency that made the decision that is being appealed at the address of the agency or, if allowed by law, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut. Also serve, according to law, a copy of the Appeal and this Citation on each party named as a defendant in this appeal, at the address provided on this form.

Name of case (Plaintiff v. Defendant)		Case type code (See reverse for codes)	
Joe Markley & Rob Sampson v. State Elections Enforcement Commission		Major: A-90 Minor:	
Judicial District	Address of Court	Telephone number of Court (with area code)	
New Britain	20 Franklin Sq, Rm 310, New Britain	860-515-5143	
Number of Plaintiffs: 2	Number of Defendants: 1	<input type="checkbox"/> Form JD-CV-2 attached for additional parties	
Parties	Name (Last, First, Middle Initial) and Address of Each party (Number; Street; P.O. Box; Town; State; Zip; Country, if not USA)		
First Plaintiff	Name: Joe Markley Address: 47 Elm Street, Plantsville, CT, 06479		P-01
Additional Plaintiff	Name: Rob Sampson Address: 276 Bound Line Rd. Wolcott, CT 06716		P-02
First Defendant	Name: State Elections Enforcement Commission Address: 20 Trinity Street, Hartford, CT 06106		D-01
Additional Defendant	Name: Address:		D-02
Additional Defendant	Name: Address:		D-03
Additional Defendant	Name: Address:		D-04

Notice To Defendant

1. The Plaintiff will file the attached Appeal of a final administrative decision. The Appeal attached to these papers states the claims that each Plaintiff is making.
2. To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address within thirty (30) days of service of this Citation and Appeal. You do not have to come to court on that date unless you receive a separate notice telling you to come to court.
3. If you do not file an "Appearance" in a timely manner, the Court is authorized to enter a sanction against you.
4. The "Appearance" form may be obtained at the Court address above or at www.jud.ct.gov under "Court Forms."
5. If you have questions about the Citation and the Appeal, you should talk to an attorney quickly. The Clerk of Court is not allowed to give advice on legal questions.

Signed (Sign and "x" proper box)	<input checked="" type="checkbox"/> Commissioner of the Superior Court	Name of person signing at left	Date
	<input type="checkbox"/> Assistant Clerk	Michael Cronin	05/07/2018

If this Citation is signed by a clerk:

- a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- d. The Clerk signing this Citation at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in anything contained in the Appeal, or the service of the Citation or Appeal.

For Court Use Only	
File Date	
I certify I have read and understand the above:	Docket number

Signed (Self-Represented Plaintiff)	Date	Docket number
-------------------------------------	------	---------------

RETURN DATE: MAY 29, 2018	:	SUPERIOR COURT
	:	
JOE MARKLEY & ROB SAMPSON	:	J.D. OF NEW BRITAIN
v.	:	
	:	AT NEW BRITAIN
STATE ELECTIONS ENFORCEMENT	:	
COMMISSION	:	MAY 7, 2018

ADMINISTRATIVE APPEAL FROM
FINAL DECISION OF THE STATE
ELECTIONS ENFORCEMENT COMMISSION

To the Superior Court of the Judicial District of New Britain come Joe Markley and Rob Sampson, appealing from the final decision of the State Elections Enforcement Commission, dated February 14, 2018, with a Motion to Reconsider denied March 23, 2018, in the matter of a Complaint by John Mazurek (File 2014-170) finding violations of certain campaign finance statutes and regulation, and complain and say:

I. INTRODUCTION AND PARTIES

1. Joe Markley was an unopposed candidate for State Senator from the 16th Senatorial District in the 2014 general election cycle.
2. Rob Sampson was a candidate for State Representative from the 80th district in the 2014 general election cycle.
3. The State Elections Enforcement Commission (“Commission” or “SEEC”) is a state agency and commission with offices located at 20 Trinity Street, Hartford. It is tasked with enforcing, *inter alia*, General Statutes §§ 9-601b, 9-607, 9-705, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.

II. FACTUAL AND LEGAL BACKGROUND

1. The campaign committees for Markley and Sampson applied for and received grants from the Citizens Election Program (CEP).
2. John Mazurek filed a complaint against Markley and Sampson with the Commission

on December 2, 2014.

3. The complaint alleged that three joint campaign communications of the Markley and Sampson committees were distributed to households in the 80th legislative district. Those communications named Governor Dannel Malloy, who was seeking re-election that year, and were alleged to have attacked his record.
4. The Sampson committee was alleged to have distributed two additional communications addressing Malloy and his record in a similar manner.
5. The expenses for the three joint communications were split evenly by the two committees. The Sampson committee paid for the two communications that applied solely to Sampson.
6. These communications allegedly violate CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.
7. CGS § 9-601b provides, in relevant part, that an “expenditure” is “[a]ny communication that...refers to one or more identified candidates.”
8. CGS § 9-607 provides, in relevant part, that a candidate committee’s “lawful purposes” are limited to “the promoting of the nomination or election of the candidate who established the committee”.
9. CGS § 9-616 provides, in relevant part, that a “candidate committee shall not make contributions to, or for the benefit of...another candidate committee except that ...a pro rata sharing of certain expenses in accordance with” Connecticut law “shall be permitted”.
10. CGS §9-706 provides, in relevant part, that the “Commission shall adopt regulations...on permissible expenditures...for qualified candidate committees receiving grants from the” CEP “fund”.
11. In accordance with CGS § 9-706, the Commission has promulgated two relevant regulations, §§ 9-706-1 and 9-706-2.
12. Regulations of Connecticut State Agencies §9-706-1 provides, in relevant part, as follows;
 - (a) All funds in the depository account of the participating candidate’s qualified candidate committee, including grants and other matching funds distributed from

the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by the Citizens' Election Fund requirements.

13. Regulations of Connecticut State Agencies §9-706-1 provides, in relevant part, that CEP "[p]articipating candidates and treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for...[c]ontributions, loans or expenditures to or for the benefit of another candidate, political party, or party committee."
14. The communications made by the Markley and Sampson committees allegedly ran afoul of these statutes and regulations because they mention Governor Dannel Malloy and the Governor's policies, and because their expenses were not share with one of Governor Malloy's opponents pursuant to CGS § 9-616.
15. These communications referenced Markley and Sampson's opposition to certain of Governor Malloy's policies.
16. In response to Mr. Mazurek's complaint, the SEEC held a hearing on August 31, 2017.
17. After the hearing, the Commission issued a final order on February 14, 2018, finding that the communications' references to Governor Malloy can only be read as campaigning against the Governor's re-election and, accordingly, a pro rata share of the communication must be paid for by a party committee or a candidate opposed to Governor Malloy.
18. The Commission pointed to its own advisory opinion, 2014-04, issued October 17, 2014, which it claimed "reiterated longstanding Commission advice that expenditures made by candidates for communications that featured candidates in other races need to be properly allocated among committees who can permissibly make such expenditures".
19. Taken together, CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2, and Advisory Opinion 2014-04 constitute a ban

against any mention of the name of a candidate that is not a direct opponent, including where that person seeks office to another branch of government.

20. Ultimately, the Commission ordered Sampson and Markley to pay a substantial fine for their violations. Sampson was ordered to pay a penalty of \$5,000 and Markley was ordered to pay a penalty of \$2,000. The fine constituted a levy of \$1,000 per improper “joint expenditure”.
21. Markley and Sampson were also ordered to “henceforth strictly comply with the requirements of CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.
22. Markley and Sampson sought reconsideration of this order, which the SEEC denied on March 23, 2018, at a special meeting held without notice to Markley, Sampson or their attorney.
- 23.

III – REASONS FOR THE APPEAL

1. Appellants deny that the communication was a joint expenditure to defeat Governor Malloy, and therefore deny that its costs must be shared within the meaning of CGS § 9-616.
2. Appellants assert that any prohibitions restricting any reference in a legislative campaign to a sitting governor or his policies violates the Separation of Powers clause of the Connecticut Constitution, which bestows upon the legislative branch a “separate magistracy” from the executive department. Conn Const. art II.
3. Appellants also claim that any restriction on the content of their political communications violate the First Amendment to the United States Constitution.
4. Appellants claim that voluntarily entering into the Citizens Election Program does not cause them to forfeit their right to exercise these constitutional rights, pursuant to the Doctrine of Unconstitutional Conditions.
5. Appellants claim that the Commission decision was arbitrary and capricious in its application of state election laws to chill free political speech
6. The state election laws allegedly violated are unconstitutionally vague and impermissible, as evidenced by the issuance of Advisory Opinion 2014-04.

IV AGGRIEVEMENT

1. Appellants Markley and Sampson have each been found to have violated state election laws, to the detriment of their reputations
2. Appellant Markley was fined \$2,000 for two such violations.
3. Appellant Sampson was fined \$5,000 for five such violations.
4. The Commission application of applicable laws and regulations is unconstitutional and will harm future candidates by restricting or chilling free political speech, and association.

V. AUTHORITY FOR APPEAL

1. This appeal is taken pursuant to the Uniform Administrative Procedure Act; Connecticut General Statute § 4-166 et seq.
2. Defendant Commission denied the Appellants Motion for Reconsideration of the decision on March 23, 2018, and this appeal is being filed and served within forty-five (45) days of that date, in accordance with CGS § 4-183(c).

PRAYER FOR RELIEF

WHEREFORE, Appellants Markley and Sampson pray that the Court

1. Sustain this appeal;
2. Declare the applicable statutes unconstitutional;
3. Overturn the finding of election law violation;
4. Rescind the fines assessed against the appellants.

Respectfully submitted,
JOE MARKLEY
ROB SAMPSON

BY: 

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Attorneys for the Plaintiffs/Appellants

*Application for admission *pro hac vice*
pending.

2. SEEC Motion to Dismiss

Docket No. HHB-CV18-6044479-S
 JOE MARKLEY AND
 ROB SAMPSON

Plaintiffs,

v.

STATE ELECTIONS ENFORCEMENT
 COMMISSION,

Defendant.

: SUPERIOR COURT
 :
 :
 : JUDICIAL DISTRICT
 :
 : OF NEW BRITAIN
 :
 : JUNE 29, 2018

MOTION TO DISMISS

The State Elections Enforcement Commission hereby submits this Motion to Dismiss the above captioned administrative appeal for lack of jurisdiction because Plaintiffs failed to file the appeal within the time required by General Statutes § 4-183(c)(2). The SEEC has this same date filed a Memorandum of Law with attached exhibits demonstrating why it is entitled to the requested relief.

Respectfully submitted,

 DEFENDANT, STATE ELECTIONS
 ENFORCEMENT COMMISSION

 GEORGE JEPSEN
 ATTORNEY GENERAL

BY: /s/ Michael K. Skold
 Michael K. Skold
 Assistant Attorney General
 Juris No. 431228
 Maura Murphy Osborne
 Assistant Attorney General
 Juris No. 423915
 55 Elm Street
 Hartford, CT 06141-0120
 Tel: (860) 808-5020
 Fax: (860) 808-5347
 Email: Michael.skold@ct.gov
 Email: Maura.murphyosborne@ct.gov

CERTIFICATION

I hereby certify that a copy of the foregoing was e-filed and mailed, first class postage prepaid, on this 29th day of June, 2018, to:

Michael James Cronin
Legislative Office Building
300 Capitol Ave, Room 3200
Hartford, CT
06106

Allen Joseph Dickerson
Institute for Free Speech
124 S. West St., Suite 201
Alexandria, VA
22314

/s/ Michael K. Skold
Michael K. Skold
Assistant Attorney General

3. Plaintiffs' Objection to Motion to Dismiss

DOCKET NO. CV18-6044479-S : SUPERIOR COURT
: J.D. OF NEW BRITAIN
JOE MARKLEY & ROB SAMPSON :
v. :
: AT NEW BRITAIN
STATE ELECTIONS ENFORCEMENT :
COMMISSION : JULY 12, 2018

OBJECTION TO MOTION TO DISMISS

Plaintiffs/Appellants Joe Markley and Rob Sampson hereby object to the Defendant State Elections Enforcement Commission's Motion to Dismiss, dated June 29, for lack of subject matter jurisdiction based upon timely filing of the appeal of the administrative decision within the time required by General Statutes § 4-183(c). The Plaintiffs have filed the attached Memorandum of Law, dated this same date, to clarify and support their objection.

Respectfully submitted,

Appellants:
JOE MARKLEY
ROB SAMPSON

BY: 

Michael Cronin
47 Woodridge Circle
West Hartford, CT 06107
Tel. 860-205-1383
Cronin47@yahoo.com

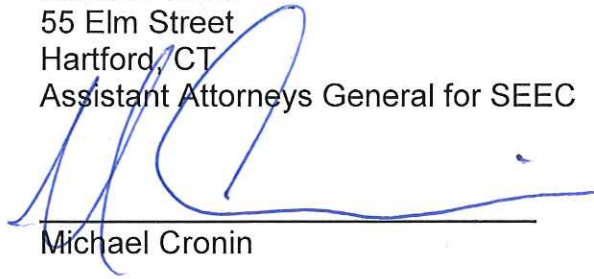
Allen Dickerson
Institute for Free Speech
124 S. West St., Suite 201
Alexandria, VA 22314
Attorneys for Plaintiffs/Appellant

A

CERTIFICATION

I hereby certify that a copy of this motion was e-mailed on this 12th day of July, 2018, to:

Maura Murphy Osborn
Michael Skold
55 Elm Street
Hartford, CT
Assistant Attorneys General for SEEC



Michael Cronin

07/12/2018

4. Memorandum of Decision Granting Motion to Dismiss

*Copy mailed to 015-JUL for
Ripnik/JONES to all other
parties. R. Smith, 8/2/18*

OFFICE OF THE CLERK
SUPERIOR COURT

2018 AUG 2 PM 3 55

JUDICIAL DISTRICT OF
NEW BRITAIN

DOCKET NO. HHB CV 18 6044479

JOE MARKLEY ET AL. : SUPERIOR COURT

v. : JUDICIAL DISTRICT OF NEW BRITAIN

STATE ELECTIONS
ENFORCEMENT COMMISSION : AUGUST 2, 2018

MEMORANDUM OF DECISION
ON MOTION TO DISMISS (#105)

Under the Uniform Administrative Procedures Act (UAPA) a party in a contested case may petition an administrative agency for reconsideration of an adverse final decision. General Statutes § 4-181a (a)(1). The agency "shall decide whether to reconsider the final decision" within twenty-five days of the filing of the petition. Id. "The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition." Id.

But, suppose the petition appears on the agency's meeting agendas and the agency takes action on the petition after the twenty-five days has run. Do the agency's actions breathe legal life into a petition that was already denied by operation of the statute? Do the agency's actions permit the court to conclude that the agency must have decided "whether to reconsider the final

decision" before the twenty-five days had run? Those are the questions raised by a motion to dismiss filed by the defendant State Elections Enforcement Commission (commission) in this case and the plaintiffs' objection to the motion.

I

On February 14, 2018 the commission issued a final decision on a complaint filed against the plaintiffs here, finding that the plaintiffs, a state Senator and a state Representative, had violated certain state statutes and regulations governing political campaign financing and imposing fines on them for their violations. The same day the plaintiffs filed a petition for reconsideration of its decision (petition), pursuant to § 4-181a (a) (1).

The petition appeared on the commission's agendas for meetings scheduled for March 14 and 21, 2018, meetings that were cancelled due to inclement weather. See Memorandum in Opposition to Motion (plaintiffs' memorandum), docket entry #108, 1 (July 13, 2018). On March 23, 2018 the commission met and denied plaintiffs' petition. Memorandum of Law in Support of Defendant's Motion to Dismiss, docket entry # 106, exhibit B (June 29, 2018). Notice of that action was mailed to the plaintiffs on March 28, 2018. Id.

General Statutes § 4-183 governs the time periods within which parties must appeal from an adverse administrative agency action. Subdivision (c)(2) of the statute addresses the situation where the petition to reconsider is denied because the agency fails to act within twenty-five days of its filing; in that case an appeal must be taken within forty-five days from the date when the twenty-five days expired. Subdivision (c)(3) deals with the situation where the agency decides to reconsider its final decision; in that case an appeal must be taken within forty-five days from the date when the agency mails its final decision after reconsideration.

Based on the commission's decision of March 23 denying their petition to reconsider, plaintiffs commenced this appeal on May 7, 2018, within the 45-day appeal period provided for in General Statutes *subsection(c)(3)* of § 4-183.

The commission claims, however, that the plaintiffs' appeal was untimely filed. It argues that, pursuant to § 4-181a (a)(1), it had only twenty-five days after plaintiffs filed their petition within which to decide whether to reconsider its final decision, that it had not made that decision by the twenty-fifth day, March 11, 2018, and that the effect of its failure to act was that the

plaintiffs' petition was denied on that twenty-fifth day "by operation of law." *Id.*, 1. Hence, the deadline for plaintiffs to file their appeal, pursuant to *subsection(c)(2)* of § 4-183, was forty-five days later, i.e., April 25, 2018. An appeal like the plaintiffs', filed on May 7, 2018, is untimely.

The commission maintains that the petition's appearance on its agendas for meetings scheduled on dates after the twenty-five day time limit had run and its action in denying the petition on March 23 could not revive a petition that had already been denied. To hold otherwise, it argues, would be to empower the commission to act in contradiction of its statutory authority. See *Department of Public Safety v. Freedom of Information Commission*, 103 Conn. App. 571, 584 (2007).

The commission has filed a motion to dismiss because failure to file and to serve an administrative appeal within the applicable statutory time limit deprives the court of subject matter jurisdiction over the appeal. See *Glastonbury Volunteer Ambulance Association, Inc. v. Freedom of Information Commission*, 227 Conn. 848, 854-57(1993).

II

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41 (2014). In deciding whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, and construe them in the manner most favorable to the pleader. The interpretation of pleadings is always a question of law for the court. See *Harborside Connecticut Ltd. Partnership v. Witte*, 170 Conn. App. 26, 34 (2016).

A motion to dismiss may be decided on the basis of the complaint alone, the allegations in the complaint supplemented by undisputed facts evidenced in the record, or by the complaint supplemented by undisputed facts and the court's resolution of

disputed facts after an evidentiary hearing. See *Conboy v. State*, 292 Conn. 642, 650-51 (2009).

In this case the court has considered the allegations set forth in the plaintiffs' complaint and the facts asserted in an affidavit submitted by the commission, which are not disputed by the plaintiffs.¹ "If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." *Conboy v. State*, 292 Conn. 642, 652 (2009).

III

The language of § 4-181a (a)(1) effecting a denial of the petition if not acted on by the commission within twenty-five days of its filing is mandatory: "The failure of the agency to make that determination [whether to reconsider its final decision] within twenty-five days of such filing *shall* constitute a denial

¹ On July 24, 2018, at oral argument on this motion, counsel for the plaintiffs did not dispute statements made in an affidavit of Michael J. Brandi, the commission's executive director and general counsel, submitted to the court as exhibit A to the commission's reply brief in support of its motion to dismiss. See docket entry #112.

of the petition." (Emphasis added.) Plaintiffs suggest no avenue by which the court can ignore that plain and unambiguous language by holding that later action by the commission revives a petition that has already been denied by operation of the statute. Furthermore, for the court to do so would introduce uncertainty into a statutory structure that was intended by the legislature to set clear deadlines and relatively short time limits for administrative agency action on reconsideration of their decisions. See *Zaneski-Nettleton v. State Dept. of Social Services*, Superior Court, Judicial District of New Britain, Docket No. CV 16 5018573, 16-17 (January 29, 2018).²

Nor can the court conclude from the appearance of the petition on the commission's agendas for March 14 and 21, 2018 or the commission's denial of the petition at its meeting on March 23, 2018 that the commission "decid[ed] whether to reconsider the final decision" of February 14, 2018 by March 11, 2018, within the twenty-five days that followed plaintiffs' filing of their petition. There is nothing in the record that would support such a conclusion.

² The court does wonder what procedural incentive an administrative agency has to take seriously petitions for it to reconsider a final decision when simple inaction on its part will result in denial of the petition.

Plaintiffs maintain, in effect, that the court should infer from the appearance of their petition on the commission's agendas and its denial by the commission on March 23 that the commission *must have* decided to reconsider its decision within the statutory 25-day period.³ This might have been a reasonable and logical conclusion for the court to draw if there were evidence in the record that plaintiffs' petition was placed on the agenda prior to March 11, 2018, of which there is none. Furthermore, there is direct evidence in the record, in the form of Mr. Brandi's affidavit⁴, that the commission did not decide to place plaintiffs' petition on its agenda at any time. According to Mr. Brandi, it appeared on the agenda as a result of his decision, as a member of the commission's staff, to place it there.

Section 4-181a(a)(1) requires that the "agency" decide whether to reconsider its final decision within twenty-five days. General Statutes § 4-166(1) defines "agency," for purposes of the

³ Plaintiffs' objection to the motion also refers to the commission's "publically taking the position that it would discuss and consider plaintiffs' objections to the decision" and promising "good faith proceedings." Plaintiffs' memorandum, *supra*, 2. There is nothing in the record supporting these allegations, assuming they are material to the court's decision on a question of statutory interpretation.

⁴ See footnote 1.

UAPA to mean "each state board, commission, department or officer authorized by law to make regulations or to determine contested cases" Thus, in this case it is the commission that must have decided whether to reconsider its final decision within twenty-five days, not a staff member like Mr. Brandi.

In the absence of any evidence to the contrary the court must conclude that the commission failed to decide whether to reconsider plaintiffs' petition within twenty-five days of its filing. Therefore, the petition was denied by operation of the statute, § 4-181a (a) (1), as of March 11, the twenty-fifth day after it was filed. Subsection (c) (2) of § 4-183 required that plaintiffs' appeal be filed by no later than April 25, 2018, the forty-fifth day after that denial. An appeal filed on May 7, 2018, as was this one, is too late.

IV

This appeal raises, *inter alia*, significant issues concerning the intersection between the free speech rights of political candidates and the regulation of campaign financing. See Summons & Complaint, docket entry #100.30. Because the time limits of § 4-183 (c) are jurisdictional requirements that have not been met, however, the appeal must be, and it hereby is, DISMISSED.

BY THE COURT



Joseph M. Shortall
Judge Trial Referee

C. Appeal Form

APPEAL **JOINT APPEAL** **CROSS APPEAL** **AMENDED APPEAL** **CORRECTED FORM**

JD-SC-33 Rev. 11-17
P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10, 72-3
C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34

To Supreme Court To Appellate Court

Name of case (State full name of case)

MARKLEY, JOE Et Al v. STATE ELECTIONS ENFORCEMENT COMMISSION

Type of appellate matter (if a writ of error, the writ and the signed marshal's return must be filed on the same business day as this form See Practice Book Section 72-3)

Appeal

Trial Court History	Tried to Court		Trial court location 20 FRANKLIN SQUARE New Britain CT 06051		
	Trial court judges being appealed Jospeh Shortall		List all trial court docket numbers, including location prefixes HHB-CV-18-6044479-S		
	All other trial court judges who were involved with the case		Judgment for (Where there are multiple parties, specify those for whom judgment was rendered)		
	Date of judgment(s) or decision(s) being appealed 08/02/2018		Date of issuance of notice on any order on any motion that would render judgment ineffective	Date for filing appeal extended to	
	Case type Civil		For Juvenile Cases <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Order of Temporary Custody		
	For Civil/Family Case Types, Major/Minor code: A90		<input type="checkbox"/> Other		

Appeal	Appeal filed by (Party name(s)) JOE MARKLEY Continued			
	From (the action that constitutes the appealable judgment or decision) The motion to dismiss was in error, in that the agency took action on a request to reconsider, such actio Continued			
	If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order			
	Statutory Basis for Appeal to Supreme Court			
	By (Signature of counsel of record) ▶ 410876	Telephone number 860-240-0013	Fax number	Juris number (If applicable) 410876

Appearance	Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8) MICHAEL JAMES CRONIN RM 3200 LOB 300 CAPITOL AVE. HARTFORD CT 06106		E-mail address cronin47@yahoo.com	
	"X" one if applicable <input checked="" type="checkbox"/> Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court. <input type="checkbox"/> Counsel or self-represented party who files this appeal is appearing in place of:		Name of counsel of record Juris number (If applicable)	

Certification	I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3. Date to be delivered 08/22/2018			
	If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, and telephone number of each counsel of record and the address where the copy was delivered.		If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered _____ Signed (Counsel of record) ▶ 410876	
				Date signed 08/22/2018

Required Documents	To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.			
	1. Preliminary Statement of the Issues 2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary 3. Docketing Statement		4. Statement for Preargument Conference (form JD-SC-28A) 5. Constitutionality Notice 6. Sealing Order form, if any	

<input checked="" type="checkbox"/> Entry Fee Paid <input type="checkbox"/> No Fees Required <input type="checkbox"/> Fees, Costs, and Security waived by Judge (enter Judge's name below)			<i>Court Use Only</i> Date and time filed
Judge	Date waived		

Appeal Form (continued)

CASE NAME:

MARKLEY, JOE Et Al v. STATE ELECTIONS ENFORCEMENT COMMISSION

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

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ROB SAMPSON

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ALL OTHER PARTIES AND APPEARANCES

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Juris: 423915 MAURA BRIDGET MURPHY-OSBORNE
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FILING PARTY CORRECTED INFORMATION

MICHAEL JAMES CRONIN 860-205-1383

Appeal Form (continued)

The action that constitutes the appealable judgment(s) or decision(s):

The motion to dismiss was in error, in that the agency took action on a request to reconsider, such action beginning the forty-five day administrative appeal period. In addition, the agency application of statutes was unconstitutional restriction on freedom of speech.

D. Docketing Statement

A.C. DOCKET NO. 42002	:	SUPERIOR COURT
	:	
JOE MARKLEY & ROB SAMPSON	:	J.D. OF NEW BRITAIN
v.	:	
	:	AT NEW BRITAIN
STATE ELECTIONS ENFORCEMENT	:	
COMMISSION	:	SEPTEMBER 4, 2018

APPELLANTS DOCKETING STATEMENT

Pursuant to section 63-4(a)(4) of the Rules of Appellate Procedure, the plaintiffs, Joe Markley and Rob Sampson, submit the following docketing statement:

(i) Parties to Appeal:

Plaintiffs:	Joe Markley
	Rob Sampson
Plaintiff's Counsel:	Michael Cronin
	47 Woodridge Circle
	West Hartford, CT 06107
	860-205-1383
	Cronin47@yahoo.com

Allen Joseph Dickerson
Inst. For Free Speech
124 S. West St, STE 201
Alexandria, VA 22314

Defendant	State Election Enforcement Commission
-----------	---------------------------------------

Counsel for Defendant	Maura Osborne-Murphy
	AG – Special Lit 2 nd Floor
	55 Elm Street, Hartford CT

Michael Skold
AG – Special Lit 2nd Floor
55 Elm Street, Hartford CT

- (ii) Substantially Similar Pending Appeals: No.
(iii) Whether There Were Exhibits in The Trial Court: No.

Respectfully submitted,

Appellants:
JOE MARKLEY
ROB SAMPSON

BY: 

Michael Cronin
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A

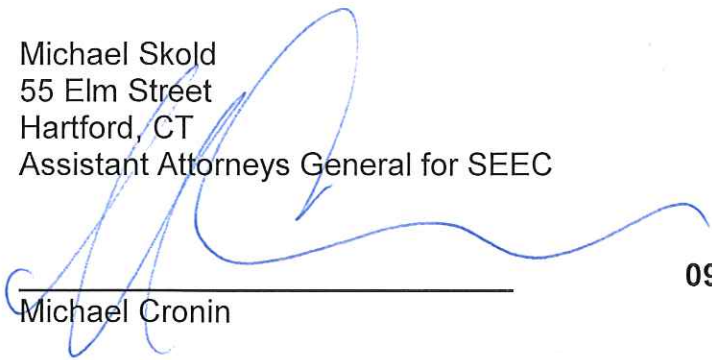
CERTIFICATION

I hereby certify that a copy of this motion was mailed on this 4th day of September, 2018,
to:

Maura Murphy Osborn

Page 2 of 3

Michael Skold
55 Elm Street
Hartford, CT
Assistant Attorneys General for SEEC

A large, stylized handwritten signature in blue ink, appearing to be 'Michael Cronin', is written over the printed name and extends across the page.

09/4/2018

Michael Cronin

PART II

A. United States Constitution

1. First Amendment to the United States Constitution

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

2. Fourteenth Amendment to the United States Constitution, Section 1

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

B. Connecticut General Statutes

1. Section 4-181a(a)

(a)

(1) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition.

(2) Within forty days of the personal delivery or mailing of the final decision, the agency, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(3) If the agency decides to reconsider a final decision, pursuant to subdivision (1) or (2) of this subsection, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which the agency decides to reconsider the final decision. If the agency fails to render such decision made after reconsideration within such ninety-day period, the original final decision shall remain the final decision in the contested case for purposes of any appeal under the provisions of section 4-183.

(4) Except as otherwise provided in subdivision (3) of this subsection, an agency decision made after reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by the agency from the determination of such issue in the original final decision.

2. Section 4-183(c)

(c) (1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3) of subsection (a) of section 4-181a if the agency decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, whichever is applicable and is later, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. Within that time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency that rendered the final decision shall not deprive the court

of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

3. Section 9-601a(a)

(a) As used in this chapter and chapter 157, “contribution” means:

(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;

(2) A written contract, promise or agreement to make a contribution for any such purpose;

(3) The payment by any person, other than a candidate or treasurer, of compensation for the personal services of any other person which are rendered without charge to a committee or candidate for any such purpose;

(4) An expenditure that is not an independent expenditure; or

(5) Funds received by a committee which are transferred from another committee or other source for any such purpose.

4. Section 9-601b(a)

(a) As used in this chapter and chapter 157, the term “expenditure” means:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;

(2) Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail; or

(3) The transfer of funds by a committee to another committee.

5. Section 9-607(g)

(g) Permissible expenditures.

(1) As used in this subsection, (A) “the lawful purposes of the committee” means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; (ii) for a political committee, the promoting of a political party, including party building activities, the success or defeat of candidates for nomination and election to public office or position subject to the requirements of this chapter, or the success or defeat of referendum questions, provided a political committee formed for a single referendum question shall not promote the success or defeat of any candidate, and provided further a legislative leadership committee or a legislative caucus committee may expend funds to defray costs for conducting legislative or constituency-related business which are not reimbursed or paid by the state; and (iii) for a party committee, the promoting of the party, party building activities, the candidates of the party and continuing operating costs of the party, and (B) “immediate family” means a spouse or dependent child of a candidate who resides in the candidate’s household.

6. Section 9-616(a)

(a) A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, and (B) after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, an expenditure by a candidate committee established by either such candidate that benefits the candidate committee established by the other such candidate shall be permitted.

7. Section 9-706

(a)

(1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, if a primary is required under chapter 153, and (A) said party endorses the candidate for the office that the candidate is seeking, (B) the candidate is seeking nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative and receives at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for the office the candidate is seeking, or (C) the candidate circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for (i) the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, pursuant to section 9-400, or (ii) the municipal office of state senator or state representative, pursuant to section 9-406, whichever is applicable. The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.

(b) The application shall include a written certification that:

...

(6) All moneys received from the Citizens' Election Fund will be deposited upon receipt into the depository account of the candidate committee;

(7) The treasurer of the candidate committee will expend all moneys received from the fund in accordance with the provisions of subsection (g) of section 9-607 and regulations adopted by the State Elections Enforcement Commission under subsection (e) of this section;

...

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

C. Regs. Conn. State Agencies

1. Section 9-706-1

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.

(b) The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure. Contemporaneous detailed documentation shall mean documentation which was created at the time of the transaction demonstrating that the expenditure of the qualified candidate committee was a campaign-related expenditure made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements. Contemporaneous detailed documentation shall include but not be limited to the documentation described in section 9-607(f) of the Connecticut General Statutes.

2. Section 9-706-2

(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurer 'of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

...

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;

...

10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure;

...

13. Independent expenditures to benefit another candidate;

14. Expenditures in violation of any federal, state or local law;

...

D. Declaratory Ruling 2011-03: Candidate Committees and Joint Communications



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

DECLARATORY RULING 2011-03: **Candidate Committees and Joint Communications**

At its regular meeting on January 26, 2011, the Commission initiated a declaratory ruling to memorialize guidance repeatedly requested throughout the 2008 and 2010 election cycles regarding candidate committees and joint communications. This Declaratory Ruling addresses when and how to allocate and report certain communications that reference or include more than one candidate.

Campaign finance law has long provided that a candidate committee may not make a contribution to another candidate committee. *See* General Statutes § 9-616 (a). In addition, a candidate committee may *only* make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i). These parameters are particularly important with respect to the Citizens' Election Program (the "CEP" or "Program"), which requires that a candidate demonstrate a threshold of public support before receiving public funds. A candidate who meets this threshold voluntarily limits campaign contributions, in-kind as well as monetary, to small dollar amounts from individuals and, furthermore, agrees that his or her campaign funds will be spent only to directly promote such candidate's own campaign. It is therefore particularly important for participating candidates to avoid spending public funds to promote another candidate who may not have made the requisite showing of public support, and to refrain from accepting in-kind contributions in the form of advertising from other candidates that might cause an expenditure limit violation.

This Declaratory Ruling advises campaigns and committees regarding the identification and allocation of joint expenditures for video, audio, and printed advertisements.

Issues Addressed and Brief Answers:

- 1. Whether a communication represents a joint expenditure requiring cost allocation between multiple committees**
 - To avoid making an impermissible contribution from one candidate committee to another, committees of candidates who appear or are identified in a communication should pay their proportionate share of the communication's costs as a joint expenditure.

- Several indicia will factor into the analysis of whether a share of the costs of a communication must be allocated to a particular candidate committee, including but not limited to the following: whether the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication.

2. How to allocate proportionate share of a joint communication

- Candidate committees must pay for their *proportionate* share of the costs of a joint communication. Treasurers should determine a reasonable proportionate share based on several factors including, but not limited to the following: whether the candidate's campaign message was incorporated into the communication; whether the candidate's identifying logo or theme was used in the communication; the extent of the candidate's appearance or identification in the communication, e.g., in photographs, video, or audio clips; and where the communication was distributed.
- Candidates do not always benefit equally from a joint communication, and accordingly, candidate committees will not always have to, nor would it always be permissible to, split the costs of a joint communication equally.
- If, after receiving a grant, a candidate committee of a candidate participating in the CEP receives the benefit of a joint communication and cannot pay its share of the costs directly to vendors, the committee should reimburse the expending committee for its reasonable proportionate share of the costs.¹
- The Commission recognizes that balancing these indicia is not an exact science. The more costly a communication, the more important the allocation and documentation supporting that allocation will become. Traditionally, the Commission has not disputed a committee's determination of its proportionate share of a joint expenditure unless the Commission found that allocation to be clearly erroneous.

¹ The CEP regulations prohibit a qualified candidate committee which has received grant funds from making a payment to any other committee, for any reason. Regs., Conn. State Agencies § 9-706-2 (b) (8). However, in these very narrow circumstances, in order to prevent an impermissible contribution from or to another committee, a CEP candidate may make such a payment, as described more fully in the body of this Declaratory Ruling.

Legal Analysis and Conclusions:

Whether a Communication Represents a Joint Expenditure Requiring Cost Allocation Between Multiple Committees

Connecticut campaign finance law prohibits a candidate committee from making a contribution to another candidate committee. *See* General Statutes § 9-616 (a). The term “contribution” is defined broadly in the General Statutes to include “anything of value, made for the purpose of influencing the nomination for election, or election, of any person.” General Statutes § 9-601a (a). The law does not distinguish between the provision of funds and the provision of non-monetary items – both constitute contributions under the law.

A candidate committee may only make expenditures to promote the nomination or election of the candidate who established the committee.² *See* General Statutes § 9-607 (g) (1) (A) (i); *see also In the Matter of a Complaint by Arthur W. Mocabee, Jr.*, Bristol, File No. 07-340 (finding violation of General Statutes §§ 9-616 and 9-621 where a candidate committee’s communication included biographies of other candidates). Like contributions, expenditures are broadly defined under Connecticut law. The provision that defines “expenditure” contains multiple definitions for the term. *See* General Statutes § 9-601b (a). Generally, it defines “expenditure” as anything of value that promotes the nomination or election of a candidate or candidates. *See* General Statutes § 9-601b (a) (1). It also provides a definition of “expenditure” that depends on the timing of an advertisement, Specifically, *every* advertisement referring to one or more clearly identified candidates that is broadcast by radio or television or appears in a newspaper, magazine or on a billboard during the ninety day period preceding a primary or election. *See* General Statutes § 9-601b (a) (2).

Where a candidate appears or is identified in a communication distributed to some or all of the electors residing within the geographical boundaries of the elective office that the candidate is seeking, the candidate generally obtains a benefit, even if the appearance is brief and the communication’s main focus is to promote another candidate. Because there is almost always a value and campaign benefit derived from even a brief appearance in a communication distributed to a candidate’s potential electors, the candidate committee choosing to include another candidate in its communications should work with the treasurer of the other candidate’s committee to ensure that each committee pays its proportionate share of the cost. Accordingly, if a candidate committee makes expenditures for a communication which benefits another candidate committee and the latter has not paid for its share of the communication, this results in an impermissible in-kind contribution from the expending candidate committee to the benefiting candidate

² Because a candidate committee may only make expenditures to promote the candidate who established the committee, it should not spend funds to promote any other candidate, unless it is reimbursed for the other candidate’s proportional share of the communication.

committee or an impermissible independent expenditure on behalf of the other candidate.³

Several indicia will factor into determining whether a share of the costs of a communication should be allocated to a particular candidate committee, including but not limited to the following: whether the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication.

Of course, in certain narrow circumstances, a candidate might choose to include another candidate who is also running for election in campaign materials without creating a joint expenditure. For example, when a candidate committee pays for an advertisement on behalf of its candidate and that advertisement includes an endorsement from someone who also happens to be a candidate at that time, there may still be no expenditure on behalf of the person who is making the endorsement if there is no mention of the endorser's candidacy, no mention of the endorser's record or experiences, and the communication is distributed to individuals outside of the endorser's district.

Similarly, another common scenario wherein a candidate committee creating a mailer on behalf of its candidate would not create a joint expenditure is when the committee pulls an old picture off of the internet (such as a group shot at a bill signing that happens to include its candidate as one of several legislators, incidentally also now candidates, in the background) and uses that old photograph as one of several in a mailer that otherwise features only its candidate's photos and platform and does not hold its candidate out as part of a ticket or team with the other legislators/candidates who happen to be included in one of the group photographs used in the mailer. *See e.g. In the Matter of a Complaint by Carl Strand, Cheshire*, File No. 2008-150 (Dec. 8, 2008) (finding no expenditure was made to promote two candidates who appeared in the background a small photograph that took up 1/25th of the backside of a mailer promoting one candidate (Candidate One), where the photograph was one of five photographs on the mailer's backside, and where the mailer featured numerous photographs of Candidate One, contained Candidate One's name in large bold typeface, highlighted Candidate One's legislative experience and accomplishments, and which did not identify the other two candidates, discuss their records or experience, solicit funds on their behalf, or request

³ This declaratory ruling addresses only the situation where a candidate subject to Connecticut campaign finance laws appears or is identified in a communication paid for by another such state or local candidate's committee. This ruling does not address the situation where a federal candidate, regulated by the Federal Elections Commission ("FEC") and ineligible to participate in the Citizens' Election Program, endorses a state or local candidate in a communication paid for in whole by that state or local candidate's committee. The FEC has adopted a regulation creating a safe harbor for such an endorsement, which exempts it from treatment as a "coordinated communication" for which the federal committee must pay its proportionate share so long as the communication does not promote or support the endorsing federal candidate or attack or oppose the endorsing federal candidate's opponent in the election. *See* 11 C.F.R. 109.21(g). The Commission hereby adopts this safe harbor for any federal candidate endorsing a state or local candidate who is subject to Connecticut campaign finance law in a communication paid for by the state or local candidate.

voters to vote for them); *see also* General Statutes § 9-601b (a) (2) (limiting the temporal element of the expenditure definition to mass advertisements such as newspaper, magazines, billboards, radio and television) and General Statutes § 9-601a (b) (18) (creating an exception to the definition of contribution for a *de minimis* campaign activity on behalf of a candidate committee).

Reasonable Allocation

Campaign finance law offers no bright-line rule to guide committees' calculation of proportional allocation; instead, it allows several candidates to allocate costs amongst their committees on a proportional basis. Given that candidates may not benefit equally from a joint communication, candidate committees need not (and in some circumstances should not) always divide the costs of a joint communication equally. The Commission has traditionally afforded great weight to the determinations made by candidate committees about allocating the proportionate costs of a communication between multiple committees. *See In the Matter of a Complaint by Joseph P. Secola*, Brookfield, File No. 97-294.

Generally speaking, expenditures for creating, producing, and distributing any such joint communication should be allocated based on measurable criteria, including but not limited to the amount of time or space devoted to each candidate, air time, area of distribution, consultant or staff time devoted by a particular committee, and consultant or staff time devoted to the underlying communication. Typically, the candidate committees stand in the best position to determine a reasonable allocation of costs, based on the intended purpose of the expenditure and any underlying services, including consultants, utilized to create the communication.

The many facets of advertising can add a level of nuance to the valuation and allocation determinations involved in joint communications. For instance, a candidate's television advertising incorporates not just visual and audio components but also more subtle messages delivered in the form of logos and captions, as well as advocacy on behalf of a candidate. Accordingly, additional factors to consider when determining the proportionate allocation include, but are not limited to, the amount of frames or other measurable visual space allocated to each candidate; the amount of the written or oral script in the advertisement devoted to each candidate (e.g. the amount of time that each candidate speaks in the communication, or is spoken about by another narrator); the degree to which each candidate is identified in the advertisement (e.g. by printed text on the screen, by spoken text or narration, by other graphics or campaign logo, or attribution); advocacy or encouragement to vote for each particular candidate (e.g. by direct appeal from the candidate or another narrator in the advertisement; by a visual or oral communication of the candidate's record, positions on issues, or campaign promises); and the geographic area where the communication is distributed amongst a candidate's potential electorate.

Consider the following example: one candidate (Candidate One) plans a television spot where another candidate (Candidate Two) announces her endorsement of

Candidate One. The focus of the advertisement would be the attributes of Candidate One, but the advertisement would also represent an expenditure on behalf of Candidate Two, since Candidate Two appears in the advertisement and would also know of the content of the advertisement and mode of distribution prior to its release. Candidate Two would also derive some benefit from the advertisement, especially when the advertisement reaches Candidate Two's constituents who may be persuaded to vote for that endorsing candidate given her obvious relationship with Candidate One.

In this instance, however, Candidate One would pay for the bulk of the advertising costs because he is the main focus of the advertisement. That candidate's logo and campaign themes are featured, and ultimately Candidate One controls the final tenor and content of the message. Candidate One may also determine where the advertisement appears and how often it airs.

But Candidate Two must also bear some share of the advertisement's cost. In this scenario, her proportionate share would be significantly less than Candidate One's share. Among the factors that might weigh in the calculation of the relative benefit are:

- *Visual Appearance* – To what extent did the candidate appear in the advertisement?
- *Name / Logo* – Did the advertisement include the candidate's name, campaign logo or text which clearly identifies the candidate and/or the fact that she is running for office?
- *Audio* – Did the candidate speak in the advertisement?
- *Message* – Did the candidate advocate for her own candidacy in the message or deliver her personal campaign message in the advertisement? Did any third party advocate on behalf of her candidacy?
- *Distribution* – To what extent was the advertisement distributed or targeted to electors who could vote for the candidate?

This calculus represents an example of how one could analyze a joint expenditure and determine the reasonable allocation of the costs between multiple candidates. The prior factors are by no means exhaustive and other factors or methods of calculating the proportionate allocation exist. Treasurers may contact Commission staff with any questions they may have regarding these calculations. **The Commission recognizes that balancing these indicia is not an exact science and encourages treasurers to carefully record the basis for their good-faith efforts to estimate the proportionate allocation of a communication's costs. The more costly a communication, the more important the allocation and documentation supporting that allocation will become.**

The candidate committees making a joint expenditure must be able to articulate a reasonable basis for the allocation, and each campaign treasurer must retain internal

records to substantiate all expenditures. *See* General Statutes § 9-607 (f); Advisory Opinion 2010-07: *Attribution Requirements for Joint Expenditures for Written, Typed, or Printed Communications, Television or Internet Video Advertising, and Radio or Internet Audio Advertising*. As stated above, traditionally, the Commission has not disputed a committee's determination of its proportionate share of a joint expenditure unless the Commission found that allocation to be clearly erroneous. *See In the Matter of a Complaint by Joseph P. Secola*, Brookfield, File No. 97-294. In some circumstances, where a communication predominately features one candidate and the second candidate appears only briefly, a cost allocation of five percent, or even one percent, to the second candidate might be reasonable if the committees can demonstrate reasonableness under the specific facts and circumstances. As with all such communications, in order to ensure proper disclosure to the public, the attribution must identify each committee making the joint expenditure. *See* General Statutes § 9-621.

Making Payments for Joint Expenditures

Once committees of candidates participating in the CEP receive grant funds, they may not make expenditures to other committees. Regs., Conn. State Agencies § 9-706-2 (b) (8). It is also impermissible after the receipt of a grant for grant recipients to make expenditures "in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure." Regs., Conn. State Agencies § 9-706-2 (b) (10). Ideally, after the receipt of a grant, a participating candidate committee should pay for its proportionate share of the costs of a joint communication by paying vendors directly.

The Commission has received many questions about what a committee should do if a mistake was made resulting in one committee paying the vendors in full for a joint expenditure. The Commission has determined that the tension between the two relevant provisions of the law must be resolved in favor of a participating candidate curing the receipt of an impermissible in-kind contribution and preserving compliance with the expenditure limits. Accordingly, the Commission advises that if, subsequent to receiving a grant, a participating candidate committee receives the benefit of a joint expenditure and cannot pay its share of the costs directly to vendors, the committee should reimburse the expending committee for its reasonable proportionate share of the costs. The Commission will of course consider the circumstances of the reimbursement and the necessity of such a cure in evaluating any potential violation of CEP requirements set forth in the regulations and any committee facing this scenario should keep detailed records concerning the need for the reimbursement and the steps taken to avoid breaching the Program's expenditure limits.

State Elections Enforcement Commission
Declaratory Ruling 2011-03

This constitutes a declaratory ruling pursuant to § 4-176, and provides guidance about candidate committees and joint communications. 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 § 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.

This declaratory ruling is only meant to provide general guidance and addresses only the issues raised. Questions about whether a specific communication constitutes a joint communication benefiting more than one candidate should be directed to the Commission staff.

Adopted this 18th day of May, 2011 at Hartford, CT by a vote of the Commission.


Stephen F. Cashman, Chairman

**E. Advisory Opinion 2014-04: Negative
Communications Featuring Candidates for
Different Offices**



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

ADVISORY OPINION 2014-04:

Negative Communications Featuring Candidates for Different Offices

At a regular meeting on October 17, 2014, the State Elections Enforcement Commission (the “Commission”) voted to issue an Advisory Opinion to respond to requests for clarification regarding the ability of candidates in the Citizens’ Election Program (“CEP”) to make expenditures for communications that refer to—and oppose or feature in a negative light—other candidates who are not their direct opponents.¹

As an initial matter, at its regular meeting on May 18, 2011, the Commission issued Declaratory Ruling 2011-03, which memorialized the Commission’s guidance regarding candidate committees and joint communications. That Declaratory Ruling addressed when and how to allocate and report certain communications that reference or include more than one candidate. The current request asks a similar question, but with a critical difference: here, the candidate proposed to be featured in the communication is not being promoted by the communication (but, rather, is being opposed) and is not a direct opponent of the candidate making the communication. An example would be a state senate candidate producing an ad that promoted such candidate but also disparaged a candidate for governor’s policies and performance, or an ad that claimed that if the challenging gubernatorial candidate won the election, the state would not perform well economically. The answer here is, essentially, the same as that provided in the 2011 Ruling, with additional guidance.²

Campaign finance law has long provided that a candidate committee may not make a contribution to another candidate committee. *See* General Statutes § 9-616 (a). In addition, a candidate committee may *only* make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i).

In addition to these provisions, the CEP requires that a candidate seeking public funds demonstrate a threshold of public support for that candidate’s candidacy from the candidate’s own constituents before receiving such funds. CEP regulations provide that participating candidates shall not spend funds for “[c]ontributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee. . . .”

¹ On August 16, 2016, a non-substantive typographical error in the original Advisory Opinion was corrected.

² Connecticut’s campaign finance law has changed since Declaratory Ruling 2011-03 was issued, but not in any way that would alter the ruling’s underlying conclusion, and in ways that actually strengthen the ruling. For example, in Public Act 13-180 the definition of expenditure was amended to become broader and more inclusive, and exceptions to the definition of expenditure were adopted that specifically exempt certain communications that contain endorsements of one candidate by another. *See* General Statutes §§ 9-601a (b) (22) & (23) (as amended by Public Act 13-180) & 9-601b (b) (10) & (11) (as amended by Public Act 13-180).

Regs. Conn. State Agencies § 9-706-2 (b) (8). Moreover, a CEP candidate voluntarily agrees that the committee's campaign funds will be spent only to "to *directly* further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements." Regs. Conn. State Agencies § 9-706-1 (a). Additionally, CEP candidates agree to voluntary limits on their own expenditures. General Statutes §§ 9-703 (a) & 9-711 (g) (1). It is therefore particularly important for participating candidates to avoid spending campaign funds to promote another candidate and to refrain from accepting in-kind contributions in the form of advertising from other candidates that might cause an expenditure limit violation.

An expenditure is defined, in relevant part, as "(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or *anything of value, when made to promote* the success or *defeat of any candidate* seeking . . . election. . . and (2) Any communication that (A) *refers to one or more clearly identified candidates. . . .*" General Statutes § 9-601b (a) (1) & (2) (as amended by Public Act 13-180) (emphasis added). The statute also provides a definition of "expenditure" that depends on the timing of a communication. Specifically, this includes any communication made during the ninety-day period preceding a primary or election referring to one or more clearly identified candidates that is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail. *See* General Statutes §§ 9-601 b (a) (2) & 9-601b (b) (7). There are also fifteen exceptions to the definition of expenditure. General Statutes § 9-601b (b) (as amended by Public Act 13-180). Unless such an exception applies, when a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is not a direct opponent of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated.

While the candidate committee of a CEP participant may not attack candidates opposing other members of such candidate's party, the state central committees, the town committees, and any candidates in the race directly opposing the candidate being attacked may all bear the portion of the cost allocated to the negative advertising. *See* General Statutes § 9-601 (25) (as amended by Public Act 13-180) (expanding the definition of organization expenditure to include negative as well as positive communications); *see also* General Statutes § 9-718. Legislative leadership and legislative caucus committees may also bear the cost of negative advertising against opponents in General Assembly races. *Id.*

For example, if participating state senate candidate Jones ran an ad disparaging participating gubernatorial candidate Smith, it would generally not be considered a permissible expenditure by Jones' candidate committee. If candidate Jones wishes to produce such an ad, it would be permissible if it were paid for jointly with a committee that could legally support candidate Smith's opponent or oppose candidate Smith. In this example, that could be the candidate committee of Smith's opponent, or alternatively

could be a state central committee, or any town committee – all of which may make organization expenditures opposing candidate Smith.

Of course, in narrow circumstances, a candidate might choose to include another candidate who is running for election in campaign materials without creating such a joint expenditure. For example, when a candidate committee pays for an advertisement that includes an attack on the opponent of someone else in the candidate's party, outside such candidate's own race, there may be no need for allocation if there is no mention of the candidacy or record of the candidate being attacked and the communication is distributed only to individuals outside of the attacked candidate's district. Such determinations will always be fact-specific. But to reiterate advice from Declaratory Ruling 2011-03, in order to avoid making an impermissible expenditure from a CEP candidate committee, committees of candidates and political parties must pay their proportionate share of the communication's costs as a joint expenditure.

Declaratory Ruling 2011-03 describes in detail when and how campaigns and committees must allocate joint expenditures for video, audio, and printed advertisements, and provides a list of indicia that will factor into the analysis of whether a share of the costs of a communication must be allocated to a particular candidate committee, including but not limited to the following: whether the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication. Those factors will be examined in any case in which more than one candidate is featured in a communication.

The Commission recognizes that candidates do not always benefit equally from a joint communication, and accordingly, candidate committees will not always have to split the costs of a joint communication equally, and balancing these indicia is not an exact science. Traditionally, the Commission has not disputed a committee's determination of its proportionate share of a joint expenditure unless the Commission found that allocation to be clearly erroneous.

This constitutes an Advisory Opinion pursuant to General Statutes § 9-7b (a) (14). This Advisory Opinion is only meant to provide general guidance and addresses only the issues raised. Additional questions about the specific requirements for disclosure of independent expenditures should be directed to the Commission staff.

Adopted this 17th day of October, 2014 at Hartford, Connecticut by a vote of the Commission.

[adopted by Commission vote October 17, 2014]
Anthony J. Castagno, Chair

F.Request for Advisory Opinion 2014-4, Emails, and Minutes

12:55P. A

Cronin, Michael

From: Arnold Skretta <askretta@ctdems.org>
Sent: Friday, October 03, 2014 1:02 PM
To: Kief, Shannon
Cc: Kevin Reynolds
Subject: Formal Request for an Advisory Opinion
Attachments: DSCC SEEC AO REQ 10.03.2014.pdf; Exhibit 1.pdf; Exhibit 1a.pdf; Exhibit 2.pdf; Exhibit 2a.pdf

Dear Attorney Kief:

On behalf of the Democratic State Central Committee, please see the attached Request for an Advisory Opinion.

This request comes after several candidates contacted me with questions regarding permissible expenditures under the Citizens' Election Program - specifically, whether a CEP-participating candidate may make expenditures on communications that oppose a non-opponent.

We respectfully request and would greatly appreciate an expedited review of this request, given the proximity of the elections on November 4th.

Please note - this is the first of several emails I will send you with attachments of sample mail pieces. These attachments are both exhibits to my request and additional examples for your review.

If you have additional questions, please email me directly or call me at (860) 560-1775. Thank you very much for your attention to this request.

Sincerely,

Arnold Skretta, Esq.
Director, Compliance & Law
Democratic State Central Committee
tel: (860) 560-1775

Cronin, Michael

B

From: Arnold Skretta <askretta@ctdems.org>
Sent: Friday, October 03, 2014 1:08 PM
To: Kief, Shannon
Cc: Kevin Reynolds
Subject: Formal Request for an Advisory Opinon (2 of 2)
Attachments: Exhibit 3.pdf; Exhibit 3a.pdf; image001 (8).jpg; image002 (3).jpg; image003.jpg; Nafis 2012 busway-1 - address removed.pdf; Nafis Malloy bus 2012 - address removed (1).pdf

Dear Attorney Kief:

This email is the second of two emails regarding the Democratic State Central Committee's Request for an Advisory Opinion.

Attached you will find Exhibit 3 (of 3 Exhibits cited in my Request) as well as additional samples that will hopefully be helpful to reference when considering our Request.

Again, please let me know if you have any questions. You may email me at this address or call me at (860) 560-1775.

Thank you very much in advance for your prompt attention to this Request.

Sincerely,

*Arnold Skretta, Esq.
Director, Compliance & Law
Democratic State Central Committee
tel: (860) 560-1775*

Cronin, Michael

From: Arnold Skretta <askretta@ctdems.org>
Sent: Tuesday, October 07, 2014 12:25 PM
To: Kief, Shannon
Cc: Kevin Reynolds; Brandi, Michael J
Subject: Re: Formal Request for an Advisory Opinion
Attachments: DSCC SEEC AO REQ 10.07.2014.pdf

Dear Attorney Kief:

Please see the attached amended request for an advisory opinion. I have removed the references to the exhibits to ensure this request/question is related to current and/or future proposed communications.

Please let me know if you have any questions. We greatly appreciate your expedited attention to this request.

Best regards,

Arnold Skretta, Esq.
Director, Compliance & Law
Democratic State Central Committee
tel: (860) 560-1775

On Mon, Oct 6, 2014 at 6:34 PM, Kief, Shannon <Shannon.Kief@ct.gov> wrote:

Dear Attorney Skretta:

I would like very much to discuss with you your recent request. There are some problems with the format that we would like to work with you to correct so that we may move forward as quickly as possible. Please contact me at your earliest convenience.

Thank you

Shannon Kief

Legal Program Director
State Elections Enforcement Commission

Office of Governmental Accountability
20 Trinity Street
Hartford, CT 06106-1628
www.ct.gov/seec
email: shannon.kief@ct.gov
phone: [860-256-2940](tel:860-256-2940)

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From: Arnold Skretta [mailto:askretta@ctdems.org]
Sent: Friday, October 03, 2014 1:02 PM
To: Kief, Shannon
Cc: Kevin Reynolds
Subject: Formal Request for an Advisory Opinion

Dear Attorney Kief:

On behalf of the Democratic State Central Committee, please see the attached Request for an Advisory Opinion.

This request comes after several candidates contacted me with questions regarding permissible expenditures under the Citizens' Election Program - specifically, whether a CEP-participating candidate may make expenditures on communications that oppose a non-opponent.

We respectfully request and would greatly appreciate an expedited review of this request, given the proximity of the elections on November 4th.

Please note - this is the first of several emails I will send you with attachments of sample mail pieces. These attachments are both exhibits to my request and additional examples for your review.

If you have additional questions, please email me directly or call me at (860) 560-1775. Thank you very much for your attention to this request.

Sincerely,

Arnold Skretta, Esq.

Director, Compliance & Law

Democratic State Central Committee

tel: (860) 560-1775



October 7, 2014

Shannon Kief
Legal Program Director
State Elections Enforcement Commission
20 Trinity Street
Hartford, CT 06106

RE: Advisory Opinion Request

Dear Attorney Kief:

I am writing on behalf of the Democratic State Central Committee to request an advisory opinion from the State Elections Enforcement Commission (SEEC) regarding the propriety of candidates participating in the Citizens' Election Program (CEP) making expenditures on communications that negatively refer to or otherwise oppose other candidates *who are not their direct opponent*. The threshold question presented is, may a CEP-participating candidate make expenditures on communications that oppose candidates who are not their direct opponent? Due to the impending November 4th elections and the tight timelines upon which candidates are currently making expenditures, we are requesting and would greatly appreciate expedited consideration of this request for an advisory opinion.

This question operates on the assumption that any candidate may make permissible expenditures on communications that oppose (or otherwise speak negatively about) their own opponent - regardless of whether or not they are a CEP-participating candidate - since such statements are essential to carrying out political speech and encourage public dialogue in the marketplace of ideas. However, because the CEP is a voluntary program and funded by taxpayer monies, it is unclear whether CEP-funded campaigns can expend public grant funds on communications that are not directly related to the CEP candidate's own contest and/or opponent. It would seem that permitting CEP-participating candidates to spend public funds on expenditures opposing non-opponents would defeat the purpose of the CEP program, and undermine the value of those races featuring candidates who sought to and did in fact qualify for public grant funding.

For example - to clarify the question - could a Green Party state Representative candidate make expenditures on communications containing comments opposing a Republican state Senate candidate running in their same or another district? As another example, could a Democratic state Senate candidate make expenditures on communications opposing a Republican gubernatorial candidate?

If the Commission determines that, as a threshold issue, CEP-participating candidates *cannot* make expenditures on communications opposing a non-opponent candidate, we seek guidance on

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CONTRIBUTIONS OR GIFTS TO THE CONNECTICUT DEMOCRATIC STATE CENTRAL COMMITTEE ARE NOT DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS
UNDER THE INTERNAL REVENUE CODE.

PAID FOR BY THE DEMOCRATIC STATE CENTRAL COMMITTEE.

what constitutes an expenditure opposing a non-opponent candidate. For the purposes of this request for an advisory opinion, we are focusing on mailings and other similar communications in which the candidate incurs a direct expense.

What constitutes statements opposing a non-opponent?

- Would a mailing featuring mostly positive persuasion about a CEP-participating state Representative candidate, and a statement saying “*We need someone who will stop rubber stamping Governor Dan Malloy's failed policies*” be considered a statement opposing a non-opponent candidate?
- Would a mailing by a state legislative candidate featuring both positive persuasion and a discussion of Governor Malloy’s “excessive borrowing and waste . . . out of control spending” etc., be considered making statements opposing a non-opponent candidate?
- Would a mailing from a CEP-participating state Representative candidate with one full side featuring Governor Malloy and saying “*Governor Malloy and his Hartford friends aren't working for you. Send them a message... choose the right state Representative*” be considered making an expenditure on statements opposing a non-opponent candidate?

In sum, we request that the State Elections Enforcement Commission first make a threshold determination of whether a CEP-participating candidate may make expenditures opposing non-opponent candidates, particularly on mailings and other similar public communications where the candidate incurs a tangible expense. If the State Elections Enforcement Commission determines that a CEP-participating candidate may not make such expenditures, then we request clarification regarding what types of statements would give rise to expenditures on communications opposing a non-opponent candidate.

Thank you very much for your prompt attention to this request. If you have any questions, please contact me at by phone at (860) 560-1775 or via email at askretta@ctdems.org.

Sincerely,



Arnold Skretta, Esq.
Director, Compliance & Law
Democratic State Central Committee



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

MINUTES
STATE ELECTIONS ENFORCEMENT COMMISSION
REGULAR MEETING
5th Floor Conference Room
October 17, 2014
4:00 P.M.

I. Call to Order

Commissioner Castagno was present via teleconference and called the meeting to order at 4:06 P.M. Commissioner Salvatore Bramante was present. Commissioners Stephen Penny and Michael Ajello were also present via teleconference. Agency staff was also present.

Commissioner Castagno added to the executive session of the agenda, Discussion of Draft Advisory Opinion 2014-04, Discussion of proposed request for Declaratory Ruling from Pullman & Comley LLC and Recommendation of Counsel: Necessary to Investigate Determination pursuant to General Statutes §9-7a, as amended by Public Act 11-48 §300. ✓

Commissioner Castagno also added to the agenda, section IIIa. Consideration of Matters discussed in Executive Session.

II. Executive Session per General Statutes §§ 1-200(6)(B) and (E), and 1-210(b)(1),(3),(4),(10) and General Statutes §9-7a, as amended by Public Act 11-48 §300 (Preliminary draft and agency consideration of enforcement action and exempt records relative thereto)

It was moved by Commissioner Penny and seconded by Commissioner Bramante at 4:08 P.M. to enter into executive session. So voted.

Staff member present were Kevin Ahern, Marianne Sadowski, Andrew Cascudo, Linda Waterman, Shannon Kief, Michael Brandi and Sheri-Lyn Lagueux.

It was moved by Commissioner Penny and seconded by Commissioner Bramante at 4:43 P.M. to return to public session. So voted.

Returning to public session the Commission took the following action:

1. Recommendation of Counsel Relative to Audit Validations

No action was taken.

III. Consideration of Application for Public Grants from the Citizens' Election Fund

1. "Luna 3rd District 2014," Victor Luna

It was moved by Commissioner Penny and seconded by Commissioner Bramante to deny the grant application for "Luna 3rd District 2014," Victor Luna. So voted by a vote of 4-0.

2. "Toni Walker 2014," Toni Walker

It was moved by Commissioner Penny and seconded by Commissioner Bramante to deny the grant application for "Toni Walker 2014," Toni Walker. So voted by a vote of 4-0.

III.a. Consideration of Matters discussed in Executive Session

1. Discussion of Draft Advisory Opinion 2014-04 ✓

Ms. Kief discussed that in response to the October 7, 2014 request of the DSCC for advice from the Commission SEEC respectfully request that the Commission adopt Advisory Opinion 2014-04 regarding negative communications featuring candidates for different offices, as amended according to discussions in executive session.

It was moved by Commissioner Penny and seconded by Commissioner Bramante to adopt the Draft Advisory Opinion 2014-04 as amended. So voted by a vote of 4-0.

2. Discussion of proposed request for Declaratory Ruling from Pullman & Comley LLC

Ms. Kief discussed the October 2, 2014 Pullman & Comley LLC petition for Declaratory Ruling. With respect to this issue we do not have a list of people who have asked to receive notice. We therefore ask that Commission direct the staff to issue notice to persons who have requested compliance advice from the staff within the last 12 months for questions related to this referendum provision that's the subject of the declaratory ruling and to give notice to the general public via a post on the SEEC website.

It was moved by Commissioner Penny and seconded by Commissioner Bramante to accept the Recommendation of Counsel regarding the request for Declaratory Ruling. So voted by a vote of 4-0

Ms. Kief requested that the Commission adopt a resolution and order setting forth specified proceedings pursuant to § 4-176 (e) and Connecticut Agency Regulations § 9-7b-65 (c) as follows: it is hereby resolved and ordered that the

following proceedings are set regarding the petition for a declaratory ruling from Pullman & Comley LLC, which was received by the Commission on October 2, 2014:

- (1) The Commission staff shall draft a proposed Declaratory Ruling for consideration by the Commission at its regular meeting scheduled for December 16, 2014.
- (2) If the Commission votes to approve the proposed Declaratory Ruling at this December 16, 2014 meeting, the Commission shall direct staff to post notice of the proposed Declaratory Ruling on the SEEC website and to send notice to all persons who were sent notice of the receipt of the petition, with a comment period to close at 11:59 p.m. two weeks prior to the regular Commission meeting in February 2015. If the Commission does not vote to approve the proposed draft at this time, the Commission shall set an alternative schedule and any further proceedings as necessary.

It was moved by Commissioner Penny and seconded by Commissioner Bramante to Commission adopt a resolution and order setting forth specified proceedings regarding the request for Declaratory Ruling. So voted by a vote of 4-0

3. Recommendation of Counsel: Necessary to Investigate Determination pursuant to General Statutes §9-7a, as amended by Public Act 11-48 §300


Mr. Ahern advised of a complaint by Jerry Labriola, Jr., the Chairman of the Connecticut Republican Party. The allegations concern an electioneering communication in support of Governor Malloy's candidacy for re-election. The allegation is that the mailer was paid for by funds from an impermissible source. The recommendation of counsel is to docket the matter and investigate.

It was moved by Commissioner Penny and Seconded by Commissioner Bramante to make a determination that it is necessary to investigate violations relating to one complaint. So voted by a vote 4-0.

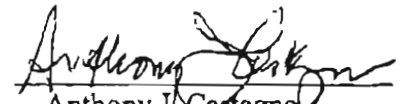
IV. Adjournment

It was moved by Commissioner Penny and seconded by Commissioner Bramante at 4:55 P.M. to adjourn the meeting. So voted. Unless otherwise indicated, all votes of the Commission were unanimous.

Respectfully Submitted,


Sheri-Lyn Lagueux
Clerk of the Commission

Adopted this 18th day of November, 2014 at Hartford, Connecticut.


Anthony J. Castagno
By Order of the Commission

The next regular scheduled meeting is November 18, 2014 at 9:00 A.M. in the 5th Floor Conference room.

G. Sampson Email to SEEC

Rep. Sampson, Rob

From: rob@sampsonforct.com
Sent: Saturday, January 03, 2015 5:21 PM
To: 'Branfuhr, Scott'
Cc: joe@joemarkley.com; 'scott.cleary1@gmail.com'; 'msampson627@yahoo.com'
Subject: RE: Complaint of John Mazurek, Wolcott, File No. 2014-170

Hi Scott,

Happy New Year! I have done my best to give you specific and pertinent answers to your questions. Please let me know if you need anything additional. I will try to be as helpful as I can.

Who designed each mailer and when?

Exhibit 1 is just a letter and it was written and mailed on October 30, 2014. It was written primarily by Senator Markley but I consulted and approved it.

Exhibit 2 is a direct mail piece that went to likely voters who are Southington residents in the 80th Assembly District (where Sen. Markley and I overlap). I designed it personally. This mailer design was completed on October 8, 2014 for submission to Accurate Mailing Services of Prospect, CT for printing and mailing. This mailing is virtually identical to a piece from the 2012 campaign.

Exhibit 3 is a tri-fold flyer handout that I used for my door knocking campaign. I designed it personally. This design was completed on September 22, 2014 and submitted for printing by Accurate Mailing Services of Prospect, CT. It was delivered and paid for on October 5, 2014.

Exhibit 4 is direct mail piece sent to a select number of voting households in the 80th district. I designed it personally. This mailer design was completed on September 24, 2014 and submitted to Accurate Mailing Services of Prospect, CT for printing and mailing. I sent it to them on October 14, 2014. It too, is virtually identical to a piece from my 2012 campaign.

Exhibit 5 is direct mail piece sent to a select number of voting households in the 80th district. I designed it personally. This mailer design was completed on October 20, 2014 and submitted to Accurate Mailing Services of Prospect, CT for printing and mailing the same day. ↓ AFTER

Exhibit 6 is a print ad that I submitted for publication in the Wolcott Community News prior to their deadline of 10-15-14. I designed it personally. It was supposed to be distributed on 11-01-14 but actually did not appear until after election day.

Note that despite the referenced advisory opinion 2011-04 being issued on October 17, 2014, I was not aware of it until after all of these items were produced and mailed. The one exception being Exhibit 1 which does not reference Governor Malloy but does reference my opponent. I sent only one additional direct mail piece after this date and it also did not reference Governor Malloy. The first I heard of this Advisory Opinion was from an email sent to me by Chris Fryxell, Executive Director of the House Republican Campaign Committee on October 20, 2014. I don't exactly when I read it but it was after that date and my reaction was that I felt that I had not violated the opinion. ↓

I would also restate that I do not believe any of these exhibits meet the test two-prong test for whether a portion of the cost of a communication must be allocated. The opinion reads in part "...when a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is no opponent direct opponent [sic] of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated (emphasis added)." The communications in question are directly related to the race for state representative, not the race for Governor, and so they do not fit the test created by the Advisory Opinion.

What was the role of you and/or your agent in the planning, creation, production and dissemination of the mailer?

Exhibits 1 and 2 were planned, created, produced and disseminated jointly by Senator Markley and myself. We also split the cost equally. Exhibit 1 was written primarily by Senator Markley but I consulted and approved the letter. Exhibit 2 was designed largely by me but Senator Markley consulted and approved it. Note that this direct mail piece is virtually identical (except for very minor changes in wording and images) to a joint mailer Senator Markley and I did in our 2012 campaigns. In cases where Senator Markley and I shared a mailer or an ad, we also communicated with SEEC to determine how to allocate the cost and make sure we followed the guidelines as closely as possible. Also, it's worth noting that we did the same type of ads and mailers in 2012 together and sought the same approval at that time.

Was there any coordination with any other committee and/or political organization in the planning, creation, production and dissemination of the mailers?

The only other committee or political organization that I had any contact with regarding any of these pieces was Senator Markley's campaign committee and in every case, we properly allocated the cost based on the shared nature of the piece based on our understanding as a result of communications with SEEC. Specifically - only what is referred to above and in Exhibit 3 which is a trifold campaign flyer distributed by my campaign. This trifold dedicates one panel to the joint activities of Senator Markley and myself so he approved the piece and he paid 1/3 of the cost of the production.

Who wrote or helped to write and edit the script in the mailers?

Only myself except for where indicated above when Senator Markley was involved in a joint piece. I did have members of my campaign take a look and give me feedback on occasion but no other political organization or committee was involved.

Did you use a consultant in the development of the mailers?

No. I designed them all myself on a very old version of adobe photoshop.

Did you receive/seek advice from anyone in the planning, creation, production and distribution of the aforementioned mailers? If so, who?

No, not other than what is describe above. I designed all of the mailers except where Senator Markley contributed. Exhibit 1 (the letter) was produced and distributed by Senator Markley's campaign. Exhibits 2-5 were direct mail pieces I designed and had printed and mailed by Accurate Mailing Services of Prospect, CT. Exhibit 6 is a print ad that I submitted for publication in the Wolcott Community News prior to their deadline of 10-15-14. It was supposed to be distributed on 11-01-14 but actually did not appear until after election day.

I hope this information is helpful and sufficient. As before, I am copying Senator Markley as well as my treasurer and deputy treasurer as the complaint and response are relevant to them.

Regards,

Rob Sampson
State Representative

860-508-1969 (mobile)

From: Branfuhr, Scott [mailto:Scott.Branfuhr@ct.gov]
Sent: Monday, December 29, 2014 4:01 PM
To: rob@sampsonforct.com
Subject: RE: Complaint of John Mazurek, Wolcott, File No. 2014-170

Dear State Representative Robert Sampson,

I acknowledge receipt of your emailed response. This information will be added to the case file for further review. Please answer the following questions:

Who designed each mailer and when?

What was the role of you and/or your agent in the planning, creation, production and dissemination of the mailer?

Was there any coordination with any other committee and/or political organization in the planning, creation, production and dissemination of the mailers?

Who wrote or helped to write and edit the script in the mailers?

Did you use a consultant in the development of the mailers?

Did you receive/seek advice from anyone in the planning, creation, production and distribution of the aforementioned mailers? If so, who?

Please respond via email by no later than Jan 9, 2015. Thank you.

Sincerely,

Scott Branfuhr
Legal Investigator
State Elections Enforcement Commission
18-20 Trinity Street, 3rd floor
Hartford, CT 06106-1628
Tel: (860) 256-2944
Fax: (860) 256-2981
E-mail: scott.branfuhr@ct.gov
Web: www.ct.gov/seec



Confidentiality Notice: The sender is a Law Enforcement agency responsible for the management of privileged information subject to certain State and Federal disclosure laws. The contents of this e-document may include such information. As either an intended or unintended recipient of such information you are warned that any disclosure or other unauthorized use of this document, information contained therein, or attachments may constitute a crime.

From: rob@sampsonforct.com [mailto:rob@sampsonforct.com]

Sent: Monday, December 29, 2014 11:06 AM

To: Branfuhr, Scott

Cc: joe@joemarkley.com; scott.cleary1@gmail.com; msampson627@yahoo.com

Subject: Complaint of John Mazurek, Wolcott, File No. 2014-170

Dear Mr. Branfuhr,

I received the formal notice that the SEEC has initiated an investigation into the above complaint.

I am attaching a PDF of my response which I am sending in today's mail to you. I did want to reach out to you and let you know that I am here and anxious to help resolve this complaint quickly and to be available to you for anything you might need in the form of documentation etc.

I am copying Senator Markley as well as my treasurer and deputy treasurer as the complaint and response are relevant to them.

Best,

Rob Sampson
State Representative
860-508-1969 (mobile)



This email has been checked for viruses by Avast antivirus software.

www.avast.com

H. Markley and Sampson Communications

Joe Markley

State Senator

47 Elm Street, Plantsville, Connecticut 06479

October 30, 2014

Dear Neighbor,

I returned to politics because I believe the principles which guide me—personal liberty, individual responsibility, genuine fiscal restraint, and limited, Constitutional government—are what the times demand. If you agree, I hope you will cast your vote for me on Tuesday, and for my brother in the cause, State Representative Rob Sampson.

I don't believe another pair of legislators in the state work together so well, both at the capitol and back home in Southington and Wolcott. Rob and I are united in our commitment to the founding principles of our great nation and state, and we share a deep affection for the communities we represent.

Rob's motives are the very finest, which makes his opponent's baseless attacks on his record particularly offensive. Corky Mazurek has used our tax dollars to mail mean-spirited flyers, full of false and misleading accusations. Rob won't dignify the nonsense with a response, but I'd like to set the record straight on behalf of my friend.

Corky states that Rob Sampson and I haven't brought state money back to our towns, but even he does not deny the fundamental and indisputable fact that total funding for Southington and Wolcott is higher since Rob and I have represented the district than ever before.

Corky says that Rob is ineffective because he introduced 58 bills, and none passed. Somehow Corky got his numbers wrong; the fact is, Rob cosponsored 58 bills that *became* law, and many concepts he promoted were incorporated into committee legislation. Rob understands the legislative process—that's why he was the only current representative made a committee leader in his first term.

Corky even asserts that Rob received an F from the Connecticut Education Association. You can call the CEA—they'll tell you that they don't give grades: Corky made that up.

There are too many false claims in Corky's flyers to set them all straight in this letter, but Rob has done the job at his website, Sampsonforct.com, where you'll find a point-by-point refutation of his opponent's false and desperate assertions.

Here's the bottom line: State Representative Rob Sampson will fight to hold the line on taxes and spending. Rob is forthright and unwavering, dedicated to his district and to the good of our state. I ask that you support Rob and the entire Republican team at the polls this Tuesday, November 4.

Sincerely,



Exhibit 1

Joe and Rob are who we need to turn Connecticut around!

Right for Southington! Right for Connecticut!

For Southington's Schools:

Rob & Joe succeeded in increasing state funding to benefit Southington students by over \$550,000.00.

For Southington's Seniors:

Rob & Joe fought and defeated the "sneaky utility tax" saving every ratepayer hard earned money on their electric bills.

For Southington's Veterans:

Rob & Joe helped pass legislation that increases the penalty for vandalizing war memorials and protects the awards and medals of veterans.

For Southington's Taxpayers:

Rob & Joe have consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents.

Fought the Busway Boondoggle:

Rob & Joe continue to lead opposition to this \$1,000 an Inch folly, the biggest waste of taxpayer dollars in state history.

Fought the Early Release of Violent Felons:

Over 20,000 convicts have been released since January 2012 before serving their full sentences, already resulting in multiple cold-blooded murders.

Rob & Joe are demanding the immediate halt to this ill-conceived program.

Fought the Malloy Tax Hike:

As members of the Appropriations Committee, Rob & Joe opposed our state's largest tax hike ever, and helped craft an alternative budget that didn't raise a single tax or cut any aid to our community or its seniors.

Fought for Common Sense at Our State Capitol:

Rob & Joe have consistently fought Governor Malloy's agenda and have tried to restore Common Sense and fiscal responsibility in state government.



Joe Markley
FOR STATE SENATOR



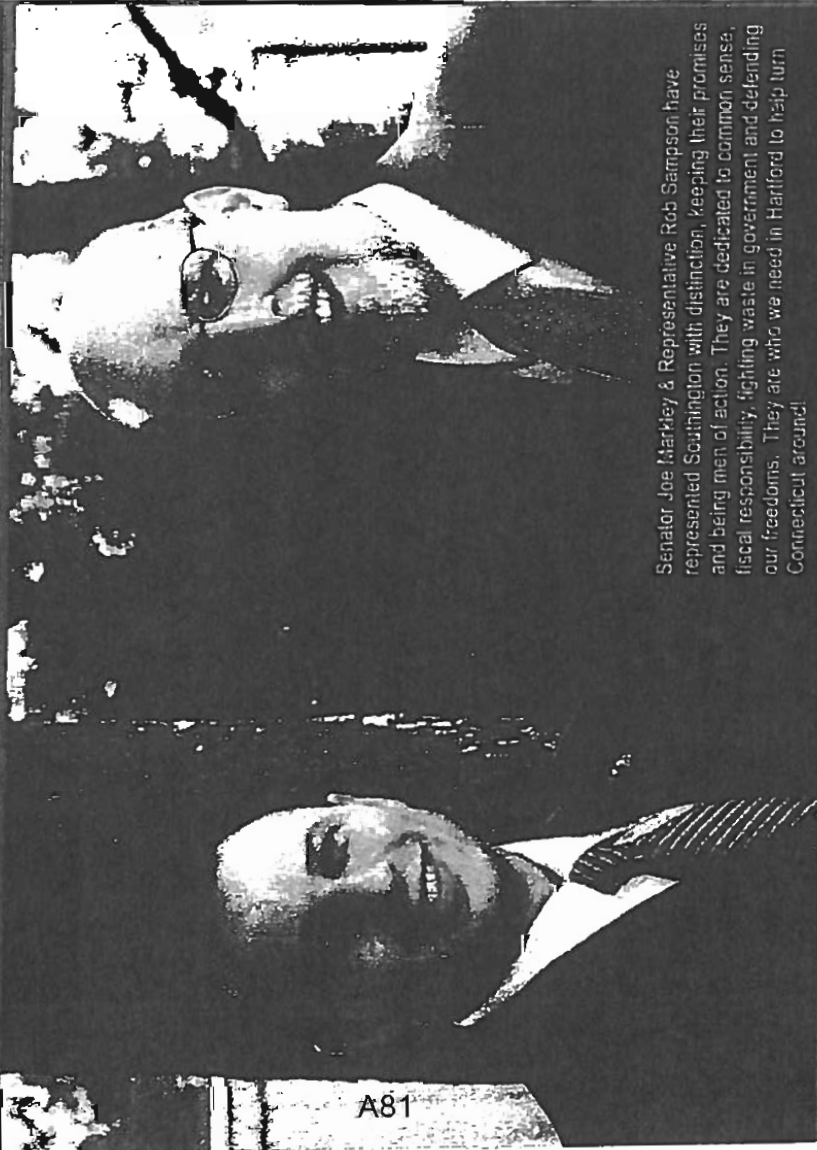
Southington's
Tax Fighting Team!

ROB SAMPSON
State Representative
COMMON SENSE LEADERSHIP

Exhibit 2

Handwritten initials "RS" in blue ink.

Senator Joe Markley & Representative Rob Sampson



Senator Joe Markley & Representative Rob Sampson have represented Southington with distinction, keeping their promises and being men of action. They are dedicated to common sense, fiscal responsibility, fighting waste in government and defending our freedoms. They are who we need in Hartford to help turn Connecticut around!

Southington's Tax-Fighting Team!

Joe Markley
FOR STATE SENATOR

47 Elm Street
Plainville, CT 06479
www.markleyforsenate.com
www.sampsonforct.com

PR3RT STD
US POSTAGE
PAID
Waterbury, CT
Permit No. 118

RS: 1435

THE FORGONE HOUSEHOLD
OR CURRENT RESIDENT
67 BRANDYWINE PL
SOUTHINGTON, CT 06489-4364

Exhibit 2



Paid for by Joe Markley for State Senate 2014, Barbara Roberts, Treasurer. Approved by Joe Markley
Paid for by Sampson for CT, Scott Cleary, Treasurer. Approved by Rob Sampson



Rob Sampson and Joe Markley

State Representative Rob Sampson & State Senator Joe Markley have served the Wolcott & Southington Community honorably.

Rob and Joe have led the fight against wasteful spending and have kept their promise "not to raise a single tax".

Rob and Joe have been key voices in opposing the New Britain to Hartford Busway - A \$600 million dollar misuse of taxpayer dollars that would be much better spent repairing Connecticut's ailing roads and bridges. Both were highly influential in forcing a reduction in our state's gas taxes. They continue to work to eliminate needless regulations and burdensome taxes and fees. Rather than accepting the job and business stifling proposals of Governor Malloy, Rob and Joe have pushed for less government and more freedom in an effort to get our economy moving again.

Rob and Joe have made sure that our communities receive their share of state aid. Education funding for Wolcott & Southington has increased by nearly \$1 million since Rob and Joe took office.

Rob Sampson and Joe Markley are who we need in Hartford fighting for our community and to keep Governor Malloy and the Majority Democrats in check. Re-Elect them both this Nov. 4th!



He has dedicated himself to restoring Connecticut to the beautiful and prosperous state that it should be by advocating for lower taxes, smaller government, and pro-growth business policies. He is also known as a staunch defender of American values and a defender of our constitutional freedoms.

His district includes the towns of Wolcott and Southington. He works as a Realtor and Insurance agent throughout central Connecticut and is serving his second term as our State Representative

At the Capitol, Rob serves as a member of the Appropriations and Environment Committees and is the Ranking Member of the Insurance & Real Estate Committee

Rob has been endorsed by:
National Federation of Independent Business
Connecticut Business & Industry Association
Connecticut Association of Realtors
The Family Institute of Connecticut
The National Rifle Association (A+ Rated)
Rob was named 2012 Legislator of the Year by CCDL (CT's largest Pro-2nd Amendment Organization)

Re-Elect Republican **ROB SAMPSON** State Representative COMMON SENSE LEADERSHIP

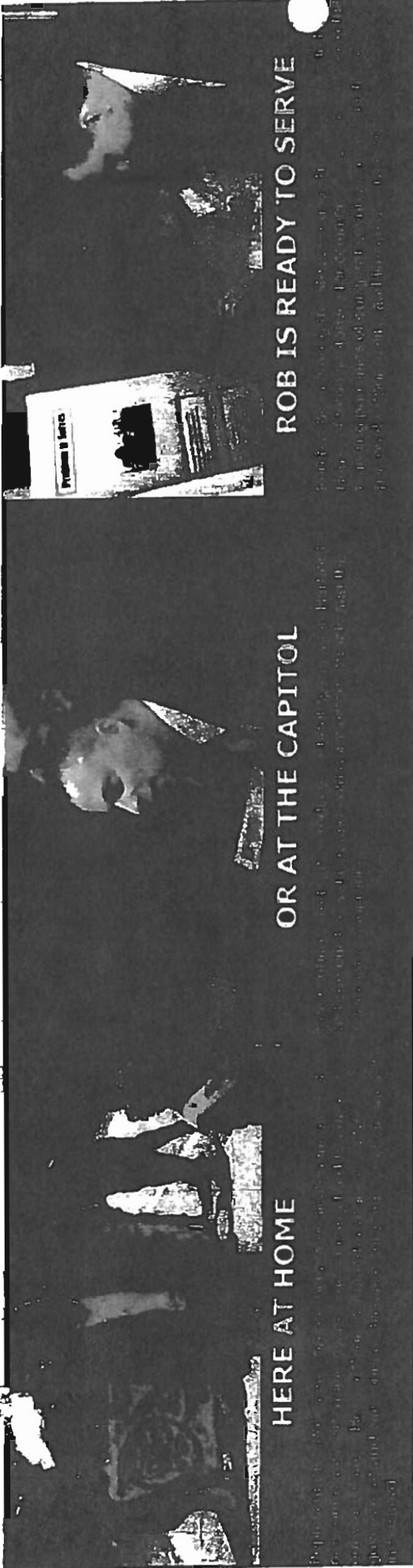
Re-Elect Republican **ROB SAMPSON** State Representative COMMON SENSE LEADERSHIP WOLCOTT & SOUTHINGTON



FISCAL CONSERVATIVE PROVEN LEADER PROMISES KEPT HONESTY & INTEGRITY Exhibit 3

203-879-3200

www.sampsonforct.com



HERE AT HOME

OR AT THE CAPITOL

ROB IS READY TO SERVE

Rob Sampson - A proven record of dedication and commitment to the principles our Great Nation was founded upon:

Individual Freedom, Personal Responsibility, Fiscal Conservatism, Common Sense, Local Control, and Limited Constitutional Government.

As our Representative, Rob has tirelessly worked to reduce wasteful state spending. He continues to oppose any and all tax increases that would hurt families, jobs, and seniors in our state.

Because it's businesses and not government that create jobs, Rob has worked to improve Connecticut's business climate by reducing burdensome regulations and promoting a strong free market economy.

Rob is widely recognized as the single most dedicated advocate of our 2nd Amendment freedoms in the Connecticut General Assembly.

As the Ranking Member of the Insurance & Real Estate Committee, Rob helps stop costly insurance mandates and is regarded as Connecticut's leading opponent of Obamacare.

Rob has fought Governor Malloy's "Bad for Connecticut Agenda", opposing Huge Increases in Government Spending, the Highest Tax Increase in Connecticut History, the New Britain to Hartford Busway, the Repeal of the Death Penalty, and the Early Release of Violent Criminals. *

ROB SAMPSON

State Representative

COMMON SENSE LEADERSHIP

DISTRICT 80 - WOLCOTT & SOUTHWINGTON

* Paid for by Sampson for CT, Scott Cleary, Treasurer. Approved by Rob Sampson for by Joe Markley for State Senate 2014. Barbara Roberts, Treasurer. Approved by Joe Markley

On November 4th
Re-Elect Republican

Exhibit 3

Exhibit 4

ROB SAMPSON
State Representative
COMMON SENSE LEADERSHIP

**Rob Sampson wants a New Direction and
* rejects Governor Malloy's policies!**



It's time to change course and STOP Governor Malloy and the majority Democrat's dangerous agenda!

They passed the LARGEST TAX HIKE in state history!

Rob has consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents!

They passed a law approving the EARLY RELEASE of violent felons!

Over 20,000 convicts have been released since 2012 before serving their full sentences, already resulting in the death of innocent men, women and children. Rob is calling for the immediate halt to this program.

They wasted \$600 MILLION on an un-needed BUSWAY!

Rob has led the opposition to this 9 mile - \$1,000 per inch folly, the biggest waste of federal and state taxpayer dollars in state history.

They passed a law granting DRIVERS LICENSES to illegal aliens!

The hard working taxpayers in our state cannot afford any more of a drain on our economy. We need to secure our borders and protect our citizens.

Businesses, as well as our friends and neighbors are leaving our state in droves! We need a new direction.

We need leaders like Rob who know how to say NO.

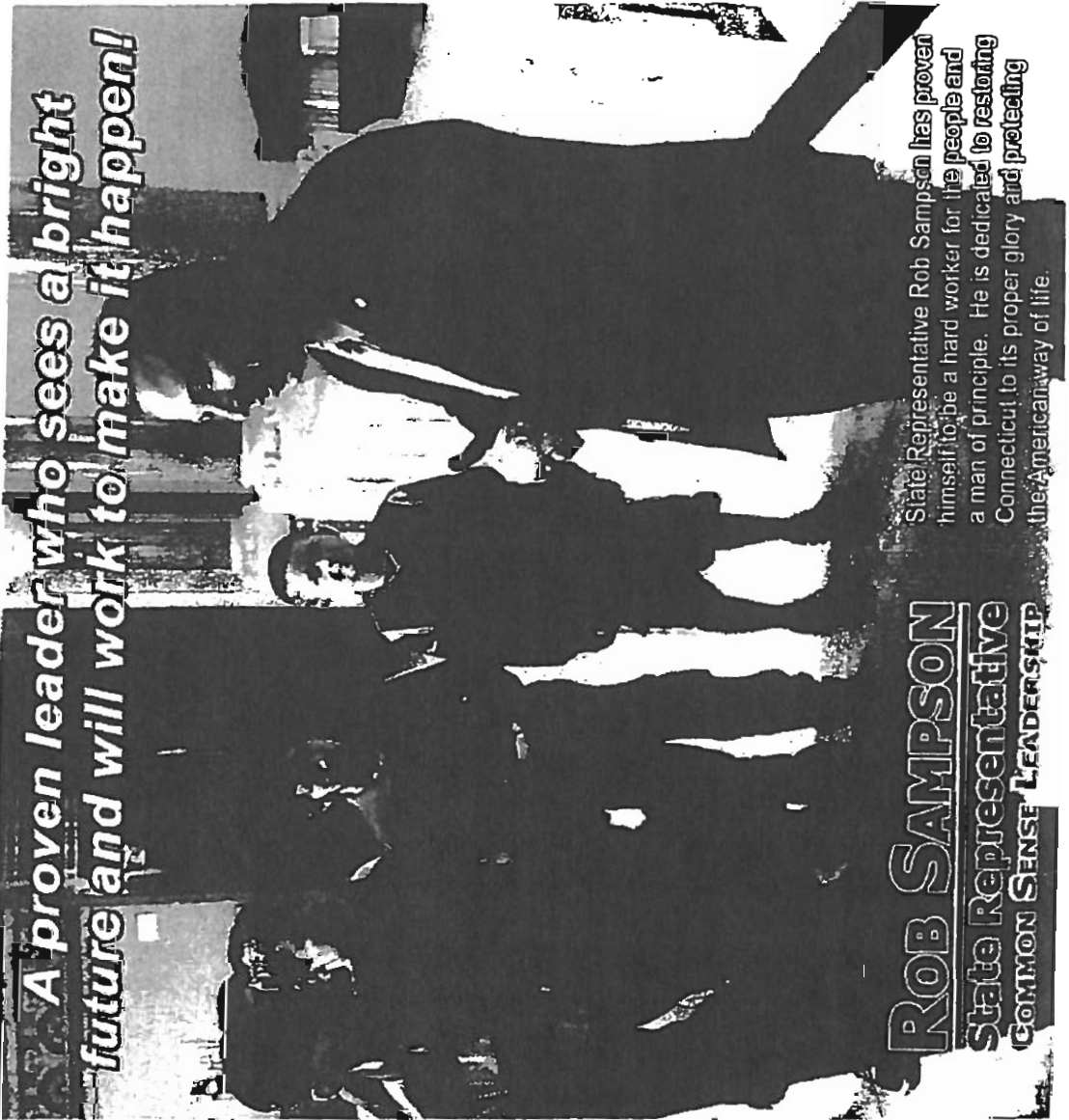
State Representative Rob Sampson is a leader who has made a name for himself at our State Capitol as a fearless advocate for the taxpayers of our community. He has shown a commitment to eliminating wasteful spending, cutting taxes, and defending our Constitution.



WWW.SAMPSONFORCT.COM

584 Wolcott Road
Wolcott, CT 06716
www.sampsonforct.com

PRRBT BY
US P06TAC
PAID
Wolcott, CT
Permit No.



A proven leader who sees a bright future and will work to make it happen!

ROB SAMPSON
State Representative
COMMON SENSE LEADERSHIP

State Representative Rob Sampson has proven himself to be a hard worker for the people and a man of principle. He is dedicated to restoring Connecticut to its proper glory and protecting the American way of life.

THE LUCAS/CRANNEY HOUSEHOLD
OR CURRENT RESIDENT
17 ALMA AVE
WOLCOTT, CT 06716-3301

Exhibit 4



Designed, printed, and mailed in Connecticut

A vote for Corky is a vote to continue the reckless policies that are ruining our state.

A vote for Rob is a vote for common sense, fiscal responsibility and a better future!

Rob Sampson has been a clear and consistent voice for common sense in Hartford, fighting Governor Malloy's destructive policies of wasteful spending and high taxes.

He has kept his promise not "to raise a single tax."

As a leader with a proven record of accomplishments, introducing and sponsoring bills to benefit our town, our seniors and our veterans. We are more people like him in our state government.

Exhibits

has been endorsed by:

- Federation of Independent Business
- Connecticut Business & Industry Association
- Connecticut Association of Realtors
- Connecticut Independent Party
- Connecticut Institute of Connecticut
- Connecticut Rifle Association (A+ Rating)
- Connecticut Citizen Defense League
- Connecticut Citizen of the Year 2012.

**On November 4th
Re-Elect Republican**

ROB SAMPSON

**State Representative
COMMON SENSE LEADER**

DISTRICT 80 - WOLCOTT & SOUTHINGTON

www.sampsonfd.com

Now the Truth Know the Record.

Here are just some of the facts on Corky Mazurek's record.

His last vote as our State Representative was to flip his own vote from no to yes and give an additional \$3 million dollars to Dan Malloy's campaign for Governor. -Public Act 10-1

He supported Governor Malloy's "largest tax increase in history" state budget in 2012 saying "The Democrats put forward a very good plan to mitigate the budget deficit."

http://youtu.be/_-if0hua-190

He supports Governor Malloy's corporate welfare programs including \$400M in taxpayer funds taken from our community and small businesses to give to UTC saying "Connecticut's economy is clearly the winner as a result of this legislation." - Southington Observer 8/1/14

In 2010, he voted to balance Connecticut's state budget by borrowing a billion dollars piling more debt onto taxpayers and our children. -Public Act 09-2

A vote for Corky is a vote to support reckless policies that are ruining our state.

for Rob is a vote for common sense, responsibility and a better future

been a clear and consistent voice for common sense in Governor Malloy's destructive policies of wasteful spending

Exhibit 5



RE-ELECT REPUBLICAN

ROB SAMPSON

State Representative

COMMON SENSE LEADERSHIP

Since being elected, I have done my best to represent you at the State Capitol in the most honest and thoughtful way.

I make my positions known and am an unmistakable voice for common sense and a return to the principles that have made America great.

My voice helps Wolcott receive its fair share of

Exhibit 6

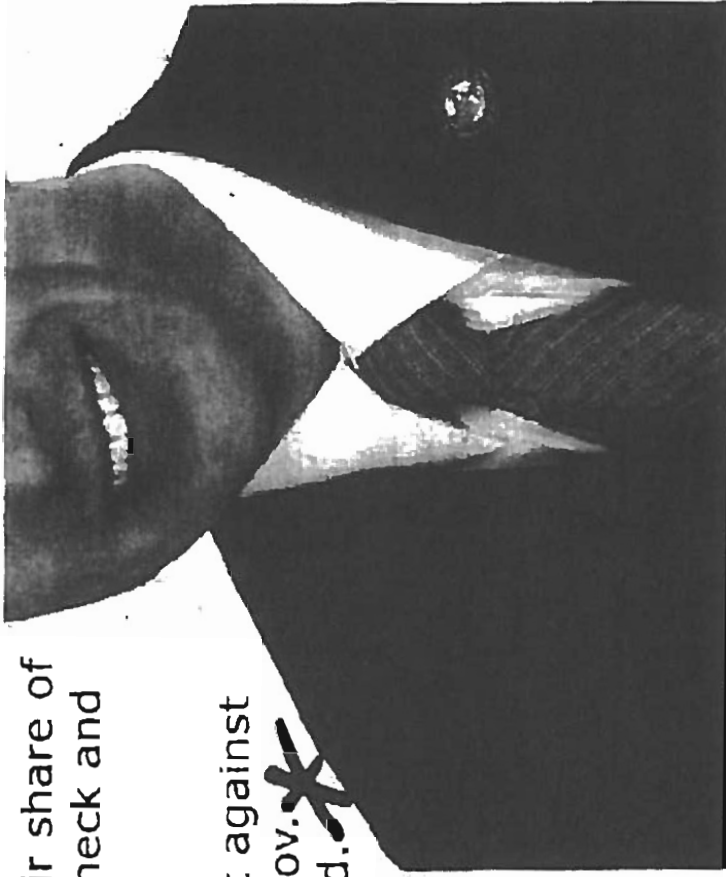


9

My voice helps Wolcott receive its fair share of state aid to keep property taxes in check and our schools at their peak.

I am also proud to have led the fight against the many bad policies put forth by Gov. ~~X~~ Malloy and the Democrats in Hartford.

Please vote for me this November so I can continue the work I have started: improving Connecticut's business climate, preserving our rights, honoring our veterans, and supporting our seniors.



Re-Elect Rob this November 4th!

Visit www.sampsonforct.com and [facebook.com/sampsonforct](https://www.facebook.com/sampsonforct) for more information, voting records and to follow Rob as he fights for us in Hartford.

Exhibit 6

Paid for by Sampson for CT & Scott Cleary, Treasurer. Approved by Rob Sampson

Advertising Information 203-879-3900
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I. SEEC Final Decision *In the Matter of a Complaint by John Mazurek, Wolcott*, File No. 2014-170 (Feb. 14, 2018)

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Mazurek, Wolcott

File No. 2014-170

RESPONDENTS:

Joseph C. Markley
47 Elm Street
Plantsville, Connecticut 06479

Barbara P. Roberts
375 Cooper Ridge Road
Southington, Connecticut

Robert C. Sampson
276 Bound Line Road
Wolcott, Connecticut 06716

February 14, 2018

Final Decision

This matter was heard as a contested case on August 31, 2017 pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time appeared Attorneys William B. Smith and James M. Talbert-Slagle for the State of Connecticut, and Attorney Michael Cronin for the Respondents. Documentary and testimonial evidence was presented. This matter comes before the Commission from a complaint filed by the above named Complainant on December 2, 2014 (the "Complaint").

After careful consideration of the entire record, the following facts are found and conclusions law are made:

1. Commissioner Michael J. Ajello was designated as the Hearing Officer for this matter by the State Elections Enforcement Commission (hereinafter "Commission").
2. Representative Robert Sampson was a candidate for state representative from the 80th General Assembly District at the November 4, 2014 election. Representative Sampson registered the candidate committee "Sampson for CT" (hereinafter "Sampson Committee").¹
3. Senator Joseph Markley was a candidate for state senator from the 16th Senatorial District at the November 4, 2014 election. Further, Mr. Markley registered the candidate committee "Joe Markley for State Senate 2014" (hereinafter "Markley Committee") and designated Barbara P. Roberts his treasurer.

¹ Respondent Sampson designated Scott M. Cleary as his treasurer. Mr. Cleary, who was a respondent of the Complaint, resolved this matter separately. See File No. 2014-170, September 13, 2016.

4. The Sampson Committee and the Markley Committee applied for and received grants from the Citizens' Election Program (CEP).²

5. The Complaint alleged that three joint communications of the Sampson Committee and Markley Committee were distributed to multiple households in the 80th District "naming and attacking Governor Malloy's record." Additionally, the Sampson Committee distributed two mailers and paid for one print advertisement that (it is alleged) similarly "attacked Governor Malloy's record." Such attacks of a gubernatorial candidate, the Complaint alleges, violated the proscriptions set forth in Advisory Opinion 2014-04 and campaign finance law generally.

6. There is no material dispute about the committee's activities vis-à-vis these expenditures. Evidence was presented that the Sampson Committee and the Markley Committee made such expenditures for these communications, and the amounts paid for each communication were admitted. The only question to be determined is how the law applies to these specific communications, which were all entered into evidence.

7. General Statutes § 9-601b provides, in relevant part, as follows:

(a) As used in this chapter and chapter 157, the term "expenditure" means:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;

(2) Any communication that (A) *refers to one or more clearly identified candidates*, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail. . . .

(Emphasis added.)

8. General Statutes § 9-607 provides, in relevant part, as follows:

(g) (1) As used in this subsection, (A) "the lawful purposes of the committee" means: (i) For a candidate or exploratory committee, *the promoting of the nomination or election of the candidate who established the committee*, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee

² The Markley Committee received \$56,814 from Citizens' Election Fund and the Sampson Committee received \$27,850 from Citizens' Election Fund.

established by either such candidate may also promote the election of the other such candidate; ...

(Emphasis added.)

9. General Statutes § 9-616 provides, in relevant part, as follows:

(a) A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, and (B) after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, an expenditure by a candidate committee established by either such candidate that benefits the candidate committee established by the other such candidate shall be permitted.

(Emphasis added.)

10. General Statutes § 9-706 provides, in relevant part, as follows:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, . . . The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

(Emphasis added.)

11. Regulations of Connecticut State Agencies § 9-706-1 provides, in relevant part, as follows:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.

(Emphasis added.)

12. Regulations of Connecticut State Agencies § 9-706-2 provides, in relevant part, as follows:

(a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign- related expenditures shall include but are not limited to expenditures for the following:

1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or internet;
2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;
3. Postage and other commercial delivery services for political campaign advertising. . . .

(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates *shall not spend funds in the participating candidate's depository account for the following. . . .*

8. *Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee. . . .*

10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure. . . .

13. Independent expenditures to benefit another candidate;
14. Expenditures in violation of any federal, state or local law;

(Emphasis added.)

13. The six pieces of campaign literature are described and excerpted as follows:

Exhibit One

In the form of a letter, this is a joint expenditure from the Markley Committee and the Sampson Committee. The campaign letter, on "Joe Markley" letterhead and signed by Mr. Markley, is essentially an endorsement of Mr. Sampson, it mentions his opponent (Corky Mazurek) extensively and also espouses Markley and Sampson's shared "principles", e.g. personal liberty, fiscal restraint etc. There is no mention of Governor Malloy.

Exhibit Two

In the form of a large-sized postcard, this is a joint expenditure from the Markley Committee and the Sampson Committee. The mailer cost \$941.48, allocated 1/2 to the Sampson Committee and 1/2 to the Markley Committee. On one side, the two candidates are pictured with the caption "Southington's Tax-Fighting Team!" On the reverse side the two are pictured again with a list of their accomplishments. Included in the list are the following sentences: "Rob and Joe have consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents." "Fought the Malloy Tax Hike: As members of the Appropriations Committee, Rob & Joe opposed our state's largest tax hike ever, and helped craft an alternative budget that didn't raise a single tax or cut any aid to our community or its seniors." "Rob & Joe have consistently fought Governor Malloy's agenda and have tried to restore Common Sense and fiscal responsibility in state government."

Exhibit Three

In the form of a tri-fold flyer, this is a joint expenditure from the Markley Committee and the Sampson Committee. The mailer cost \$2,619.85, allocated approximately 5/6 to the Sampson Committee and 1/6 to the Markley Committee. There are two images of candidate Markley with candidate Sampson, and four additional images of Sampson without Markley. Additionally, there are four, outsized Rob Sampson/State Representative logos with campaign slogans, where Markley does not have the equivalent. Included on the flyer are the following sentences: "Rob has fought Governor

Malloy's 'Bad for Connecticut Agenda', opposing Huge Increases in Government Spending, the Highest Tax Increase in Connecticut History, the New Britain to Hartford Busway, the Repeal of the Death Penalty, and the Early Release of Violent Criminals." "Rob continues to fight to reduce wasteful spending in Hartford, to keep our taxes down and hold our elected officials and the Governor accountable." "Rather than accept the job and business stifling proposals of Governor Malloy, Rob and Joe have pushed for less government and more freedom in the effort to get our economy moving again." "Rob Sampson and Joe Markley are who we need in Hartford fighting for our community and to keep Governor Malloy and the Majority Democrats in check."

Exhibit Four

In the form of an over-sized postcard, the communication is paid for by the Sampson Committee only. The mailer cost \$2,731.14. It includes candidate Sampson's name and image. Included on the postcard are the following sentences: "Rob Sampson wants a New Direction and rejects Governor Malloy's policies!" "It's time to change course and STOP Governor Malloy and the majority Democrat's dangerous agenda!" "Rob has consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents!"

Exhibit Five

In the form of an over-sized fold out, glossy postcard, the communication is paid for by the Sampson Committee only. The mailer cost \$3,025.21. It includes candidate Sampson's name and image, as well as that of his opponent Corky Mazurek. Included on the postcard are the following sentences: "Rob Sampson has been a clear and consistent voice for Common Sense in Hartford, fighting Governor Malloy's destructive policies of wasteful spending and high taxes." Referring to opponent Mazurek: "His last vote as our State representative was to flip his own vote from no to yes and give an additional \$3 million dollars to Dan Malloy's campaign for Governor." "He supported Governor's Malloy's 'largest tax increase in history' state budget in 2012 saying 'The Democrats put forth a very good plan to mitigate the budget deficit.'" "He supports Governor Malloy's corporate welfare programs including \$400M in taxpayer funds taken from our community and small businesses to give to UTC saying 'Connecticut's economy is clearly the winner as a result of this legislation.'"

Exhibit Six

In the form of a full page newspaper advertisement that includes candidate Sampson's name and image, the communication is paid

for by the Sampson Committee only. The advertisement cost \$805.90. Included in the ad is the following sentence: “I am also proud to have led the fight against the many bad policies put forth by Gov. Malloy and the Democrats in Hartford.

Analysis

14. On October 17, 2014, the Commission issued Advisory Opinion 2014-04 instructing and cautioning candidates regarding negative communications that feature candidates other than their opponents who are running for a different office. The Commission issued the Advisory Opinion to “respond to requests for clarification regarding the ability of candidates in the Citizens’ Election Program (“CEP”) to make expenditures for communications that refer to—and oppose or feature in a negative light—other candidates who are not their direct opponents.” The Advisory Opinion reiterated longstanding Commission advice that expenditures made by candidates for communications that featured candidates in other races need to be properly allocated among committees who can permissibly make such expenditures. See e.g. Declaratory Ruling 2011-03.

The Commission advised, in part, as follows:

Campaign finance law has long provided that a candidate committee may not make a contribution to another candidate committee. *See* General Statutes § 9-616 (a). In addition, a candidate committee may *only* make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i).

In addition to these provisions, the CEP requires that a candidate seeking public funds demonstrate a threshold of public support for that candidate’s candidacy from the candidate’s own constituents before receiving such funds. CEP regulations provide that participating candidates shall not spend funds for “[c]ontributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee. . . .” Regs. Conn. State Agencies § 9-706-2 (b) (8). Moreover, a CEP candidate voluntarily agrees that the committee’s campaign funds will be spent only to “to *directly* further the participating candidate’s nomination for election or election to the office specified in the participating candidate’s affidavit certifying the candidate’s intent to abide by Citizens’ Election Program requirements.” Regs. Conn. State Agencies § 9-706-1 (a). Additionally, CEP candidates agree to voluntary limits on their own expenditures. General Statutes §§ 9-703 (a) & 9-711 (g) (1). It is therefore particularly important for participating candidates to avoid spending campaign funds to promote another candidate and to refrain from accepting in-kind contributions in the form of advertising from other candidates that might cause an expenditure limit violation.

15. Because of the laws governing campaign finance, and in particular the laws and regulations that govern the public financing program and the expenditure of public funds, it is frequently necessary to determine when the content of a communication is an “expenditure” attributable another race.

16. An expenditure, by definition, relates to a candidate—it is either to oppose or to benefit such candidate—and as such, applying the law requires identifying to which candidate the expenditure relates, and by extension, which race they are in and for which office they are running.³

17. The standards for this determination are less stringent the further before an election the communication is made. For example, if the communication is made longer than 90 days before an election, then the communication must go beyond the mere mention of a candidate to be for their benefit. In such cases, the Commission applies various indicia to determine whether the communication promotes, attacks, supports or opposes the secondary candidate, and whether, in fact, some financial allocation is required. See e.g. Declaratory Ruling 2011-03. There are also fifteen exemptions from this definition of expenditure that must be applied. If any are present, then no allocation is required because it would not be considered an expenditure at all.

18. Within 90 days of an election, the legislature has provided a clean, bright-line rule that says when a clearly identified candidate is present in certain communications, then it is an expenditure to benefit (or oppose) the identified candidate. Even so, Advisory Opinion 2014-04 left room for certain factual scenarios where such an application might be inappropriate.⁴

19. CEP candidates have additional rules applied to them, as their publicly-provided campaign funds may be spent only to “to *directly* further the participating candidate’s nomination for election or election to the office specified in the participating candidate’s affidavit certifying the candidate’s intent to abide by Citizens’ Election Program requirements.”

20. In application, as the Advisory Opinion described in some detail, this means that when a candidate committee wishes to feature a candidate in another race, then they should find a

³ It is certainly true, as Respondents argue, that an expenditure that opposes a Democratic gubernatorial candidate would benefit not only the Republican gubernatorial candidate but all other gubernatorial candidates. It also may benefit various (non-Democratic) party committees as well. But contrary to their assertion that this fatally undermines the law’s application to the expenditures of legislative candidate committees (as described in Advisory Opinion 2014-04), it actually gives those committees far more options for the making of joint expenditures, making the law’s application, if anything, less problematic. The fact that an expenditure benefits more than one committee does not make it permissible when, as here, making an expenditure to benefit any one of those committees would be impermissible. A legislative candidate committee cannot make expenditures to benefit *any* gubernatorial candidate committee.

⁴ “Of course, in narrow circumstances, a candidate might choose to include another candidate who is running for election in campaign materials without creating such a joint expenditure. For example, when a candidate committee pays for an advertisement that includes an attack on the opponent of someone else in the candidate’s party, outside such candidate’s own race, there may be no need for allocation if there is no mention of the candidacy or record of the candidate being attacked and the communication is distributed only to individuals outside of the attacked candidate’s district. Such determinations will always be fact-specific.” Advisory Opinion 2014-04. None of these exceptions would apply in this case.

way to allocate that expenditure with another committee for which such expenditure would be permissible, i.e. make a joint expenditure. Candidate committees may make an unlimited number of joint expenditures, so long as they stay within overall expenditure limits.

21. Contrary to what was asserted by the Respondents, this would not require that, in order to make the expenditures in question, they make joint expenditures exclusively with the committee of the Republican opponent of Governor Malloy, Tom Foley (although that was certainly one viable option). Any party committee, which includes every town committee throughout the state including the five Republican town committees from the towns within the Respondents' districts, could have provided the funds to pay for the fraction of the cost of the mailers allocated to them. Upon questioning, Respondents admitted that no other committees were contacted about sharing such costs.

22. Respondents argue that these communications are solely concerned with their own races, and not the gubernatorial race. In essence, they argue that the communications do "directly further their election." In support of this they argue that their role is a check on the executive authority. To adopt this view, however, would permit legislative candidate committees to spend unlimited amounts of public money—money that was granted to them for their own races—on any executive race—and vice versa.⁵ As slippery slopes go, this one is particularly treacherous.⁶ This would make expenditure limits within the public financing program functionally meaningless. One of the conditions of receiving public funds is that expenditure limits be followed. The Respondents agreed to these terms.⁷

⁵ Election year 2014 already showed what appeared to be a trend in this direction. See File Nos. 2014-132, 2014-133, 2014-134, 2014-136, 2014-137, 2014-138, 2014-139, 2014-141, 2014-142, 2014-144, and 2014-149 (cases concerning the use of CEP funds to oppose candidates in races other than their own). These cases showed a pattern of strikingly similar efforts to make generalized attacks on Governor Malloy (to be distinguished from, e.g., *In the Matter of the Complaint of Bruce Suchinksy*, File No. 2014-143, in which two political committees opposed a Malloy appointee, who was a candidate in a legislative race, and, in doing so, identified Malloy). By Respondent Markley's own admission, his grant funds (\$56,814), awarded on October 10th, were not entirely necessary for his own campaign. Senator Markley: "I was in a strong position electorally in 2014, I wasn't so much in need of promoting myself as educating the voters on where I stood and to explain where I stand relative to Dan Malloy was the most. . . the most educational, most important piece of information I could provide. . . ." Respondent Markley faced a minor party opponent in 2014, with no major party opponent. As a result, he received a 60% of the full grant amount of \$94,690.

⁶ For example, if the candidates espoused federalism, could they attack or support candidates for the Presidency or the U.S. Congress? As legislators their primary duty is to vote on legislation—wouldn't it be fair game to oppose any other legislator in any race that voted differently than themselves? The inevitable result of this reasoning is to erase the boundaries on how a candidate committee may spend its funds.

⁷ Among the certifications that the Respondents made were the following: "I hereby affirm, certify, and state that I intend to participate in the Citizens' Election Program (the "Program") established by Chapter 157 of the Connecticut General Statutes and that I understand my obligation to abide by and will abide by the Program's requirements, including the expenditure limits, which are set forth in General Statutes § 9-702 (c). . . . I certify that my candidate committee will expend any moneys received from the Citizens' Election Fund in accordance with the provisions of General Statutes § 9-607 (g), as amended, and with the regulations adopted by the State Elections Enforcement Commission ("SEEC") under General Statutes § 9-706 (e). . . . I certify that I understand that I am

23. The Respondents did allocate their expenditures amongst their own committees for several of the communications (Exhibits 1, 2 and 3), demonstrating that they understood that one candidate committee could not make expenditures to benefit another. However, they neglected to allocate when a candidate for governor was featured.

24. Respondents seem to be reading in an exception to the law that is not there. General Statutes § 9-601b provides that, when made within 90 days of an election,⁸ an expenditure is “[a]ny communication that (A) refers to one or more clearly identified candidates, and (B) . . . is sent by mail. . . .” It does not say “unless that clearly identified candidate is an incumbent Governor.” This statute was last amended in Public Act 13-180, at which time the definition of expenditure was *expanded* to include “any communication” (as opposed to “any advertisement,” as it formerly read) and several communications mediums were added, including mail. At the same time, it was *constricted* by having several exceptions added which covered clearly identified candidates that were simply endorsing other candidates. Public Act 13-180 Sec. 3. The legislature could easily have placed in another exception for sitting governors, or other statewide officers, or for federal candidates, or legislative leadership, but it did not. Both Respondents were in the legislature when these changes were passed. The legislature is the proper body to amend the law, if it sees fit to do so.

25. Participating candidates must certify that all such rules will be followed when they subscribe to the Program and when they apply for their public grants.⁹ Respondents signed these certifications. The grants are awarded based on these certifications and on a showing that the candidates have, *inter alia*, received a threshold amount of support from within their districts by collecting small dollar contributions from residents of those districts. It is not extraordinary that the grant funds received based on those representations and in-district qualifying contributions must be spent on the race for which they were raised, and the laws and regulations followed as drafted.

26. Applying this analysis to the facts of this case, the Commission finds that Exhibit One above does not clearly identify a candidate in another race, or otherwise oppose a candidate who is not a direct opponent and therefore does not run afoul of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2 pursuant to the allegations of this Complaint. The Commission therefore dismisses the allegation regarding Exhibit One as to both Respondent committees.

27. The Commission finds that Exhibit Two through Exhibit Six above do clearly identify a candidate from another race (Governor Malloy) within 90 days of an election. General Statutes § 9-601b (a) (2). When mentioned, Governor (and candidate) Malloy was consistently identified with “bad” and “destructive policies,” “reckless” and “wasteful spending,” as responsible for removing “Common Sense and fiscal responsibility” from state government, as well as for the “largest tax increase in history,” among other dubious

required to comply with the requirements of the Program, including all Connecticut statutes, regulations and declaratory rulings.”

⁸ See General Statutes § 9-601b (b) (7), read in conjunction with General Statutes § 9-601b (a) (2).

⁹ The rules of the CEP are more stringent than campaign finance rules for nonparticipating candidates, but the application of General Statutes § 9-601b applies to all committees equally.

accomplishments. General Statutes § 9-601b (a) (1). In other words, they opposed Governor Malloy, who was a candidate. Whether measured by either definition of “expenditure,” such communications were covered.

28. As such, these expenditures—or at least that portion of them that concerned themselves with the gubernatorial race—were impermissible for a CEP candidate committee to make. General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State Agencies § 9-706-1 and § 9-706-2.

29. Candidates agree upon declaring that they will participate in the Citizens' Election Program that they will reimburse the Citizens' Election Fund for any impermissible expenditure made by their candidate committee.¹⁰ The candidate bears the sole liability to repay any impermissible payments made by his candidate committee.¹¹ The Commission has the authority to seek reimbursement from the candidate of the total amount of payments that his candidate committee made impermissibly.

30. Pursuant to General Statutes § 9-7b (a) (2) (D), the available penalty for most of the violations at issue is "two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater." The above penalty provision is in addition to, and not in lieu of, Commission's ability to order the return of any improper payment under General Statutes § 9-7b (3) (a).

31. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors: (1) the gravity of the act or omission; (2) the amount necessary to insure immediate and continued compliance; (3) the previous history of similar acts or omissions; and (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

32. Exhibit Two cost \$941.48, allocated 1/2 to the Sampson Committee and 1/2 to the Markley Committee. Exhibit Three cost \$2,619.85, allocated approximately 5/6 to the Sampson Committee and 1/6 to the Markley Committee. Exhibit Four cost \$2,731.14 (Sampson Committee only). Exhibit Five cost \$3,025.21 (Sampson Committee only). Exhibit Six cost \$805.90 (Sampson Committee only). By these figures, Respondent Markley's committee spent \$925.21 on expenditures that were, in part, impermissible. Respondent Sampson's committee spent \$9,198.37 on expenditures that were, in part, impermissible. That portion of each expenditure that could have been apportioned to another committee—the value of that part that opposed candidate Malloy—is normally left to the expending

¹⁰ See SEEC Form CEP 10 —Affidavit of Intent to Abide by Expenditure Limits and Other Citizens' Election Program Requirements (showing candidates' certification that they understood that he would be "personally liable and must repay to the Citizens' Election Fund any moneys that are not expended in accordance with the provisions of Conn. Gen. Stat. § 9-607 (g), as amended, and with any regulations adopted by the SEEC under Conn. Gen. Stat. § 9-706 (e).")

¹¹ General Statutes § 9-703 (a) (2) (requiring candidate to repay any funds that were not expended in accordance with General Statutes § 9-607 (g) and regulations adopted by Commission related to expenditures for qualified candidate committees).

committee to ascertain.¹² Here, no allocation was attempted by the committees, but the overall amount of money spent (or, more specifically, the money not properly allocated) serves as a guide for the gravity of the act.

33. Respondent Sampson is found to have five instances of impermissible expenditures and Respondent Markley two. General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

34. There was no evidence that either had a history of noncompliance with campaign finance law. Additionally, Respondents did correctly disclose and report their committees' expenditures for the campaign literature in question.

35. The Commission stresses that had the Respondents arranged for joint expenditures with proper allocation in order to cover the costs of Exhibit Two through Exhibit Six that are subject of this Complaint, the communications would have been entirely permissible. This principle—and the law—applies to all committees, participating or not. Committees have purposes, and are not allowed to spend beyond them.

36. Moreover, the Commission's authority in regulating such communications is *not* with regard to regulating speech, but rather, merely to verify the appropriate campaign funds for each communication are properly allocated to such committees as are allowed to make these expenditures. This goal, however, is particularly urgent when, as in this instance, the candidate committees are participating in the CEP and therefore using public funds for their campaigns.

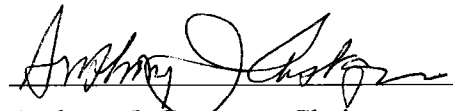
¹² “The Commission recognizes that balancing these indicia is not an exact science. The more costly a communication, the more important the allocation and documentation supporting that allocation will become. Traditionally, the Commission has not disputed a committee’s determination of its proportionate share of a joint expenditure unless the Commission found that allocation to be clearly erroneous.” Declaratory Ruling 2011-03.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent Markley shall pay a civil penalty in the amount of \$1,000 for each of two violations of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, for an aggregate civil penalty in the amount of \$2,000, payable to the State Elections Enforcement Commission, within 90 days of notice of this decision;
2. The Respondent Sampson shall pay a civil penalty in the amount of \$1,000 for each of five violations of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, for an aggregate civil penalty in the amount of \$5,000, payable to the State Elections Enforcement Commission, within 90 days of notice of this decision;
3. Respondent Roberts shall henceforth strictly comply with the requirements of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

Adopted this 14th day of February, 2018.



Anthony J. Castagno, Chairman

By Order of the Commission

J.Plaintiffs' Memorandum Objecting to Motion to Dismiss

DOCKET NO. CV18-6044479-S : SUPERIOR COURT
: :
JOE MARKLEY & ROB SAMPSON : J.D. OF NEW BRITAIN
v. : :
: :
STATE ELECTIONS ENFORCEMENT : AT NEW BRITAIN
COMMISSION : JULY 12, 2018

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OBJECTION TO MOTION
TO DISMISS**

The Plaintiffs Joe Markley and Rob Sampson do hereby object to the Defendant State Elections Enforcement Commission's Motion to Dismiss. The Plaintiffs filed a timely appeal of the administrative decision within the time frame required by General Statutes § 4-183(c) (2).

FACTUAL BACKGROUND

Plaintiffs requested that the SEEC reconsider their decision dated February 14, 2018, filing the request on the very day the decision was rendered. The Defendant placed the request on the agenda for their meeting of March 14, which was canceled due to inclement weather. The Defendant then placed the request on the agenda for their meeting of March 21, which was again cancelled due to inclement weather. The Defendant then placed the request on the agenda for a special meeting on March 23, without notice to the Plaintiffs or their counsel of record. At that meeting, Defendant denied the request to reconsider. Pursuant to General Statutes § 4-183(c)(2), the Plaintiffs had forty-five days from the denial of their request for reconsideration, issued March 23 to appeal the agency decision. They filed on the forth-fifth day.

ARGUMENT

“When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light.” *Conboy v. State*, 292 Conn. 642, 651 (2009). In addition, it is clear that the administrative appeal in this case is based upon § 4-183(c)(2), including the time period in which to bring that claim.

Defendants seek to dismiss Plaintiff's appeal based upon the failure of the SEEC to "make the determination" of reconsideration within twenty-five days of the filing, as provided for in §4-181a(a)(1).

It bears mention that, under the Defendant's theory, all actions taken after its asserted twenty-five day deadline were, legally, a farce. Despite notice to Plaintiffs delaying a decision, and despite publically taking the position that it would discuss and consider plaintiff's objections to the decision, it in fact had no intention of doing so. Instead, it lulled Plaintiffs with the promise of good faith proceedings while simultaneously running down the clock for any appeal from its final decision. Such an outcome is manifestly contrary to justice. Thankfully, it is not what the law demands.

Defendant's reliance on § 4-181a(a)(1) is faulty in three distinct ways.

First, § 4-181a(a)(1) begins, "*Unless otherwise provided by law...*", which very clearly contemplates that if other statutes set forth a different time frame, that other section overrides the baseline set out in § 4-181a(a)(1). Defendant's reliance on its own failure to act within twenty-five days of the request to reconsider ignores the fact that § 4-183(c)(2) *otherwise provides* a time frame for appeal from the Defendant's denial of reconsideration. And because the Defendant in fact took up, voted upon, and formally denied reconsideration, it is subsection (c)(2) which controls.

Second, if reliance on § 4-181a(a)(1) is the controlling factor, twenty-five days is the controlling time frame for the Defendant to "decide whether to reconsider" the decision – that is, to decide whether it will consider that option, not what the result of that reconsideration will be. As is common in all forms of litigation, reconsideration can lead to affirmation as well as reversal.

Under § 4-181a(a)(1), there is only a constructive dismissal where the agency "fail[s]...to make that determination". But that is not what happened here. Instead, the Defendant placed the request on an agenda for a meeting initially scheduled for March 14. Consequently, the Defendant had made the "determination" that it would take up the Plaintiff's request for reconsideration. Of course, it had not yet reached a final decision – which did not occur until March 23. But this affirmative action by the Defendant contradicts its attempt to claim that its inaction, in the middle of ongoing proceedings that continued past its now-asserted deadline, somehow constructively ended its reconsideration of its prior, preliminary ruling.

Finally, the appeal is properly brought under § 4-183(c)(2) and was served within the forty-five day time period required under that section. The affirmative action at the Defendant meeting on March 23 was the formal and official denial of the request for reconsideration. It was upon that decision that all administrative remedies were exhausted. *See* § 4-183(c)(2) applying the section only to parties who have exhausted administrative remedies. If the Defendant had voted at that meeting to reconsider its decision, the administrative proceedings would have continued. Under the Defendant claim in motion for dismissal, such an affirmative vote at that meeting would have been null and void as the request would already have been deemed denied. The meeting itself rendered moot any rationale for claiming the expiration of twenty-five days after submission for request for reconsideration effectively dismissed that request and triggered the time frame within which the administrative appeal should have been filed.

The courts have agreed. “In *Citizens Against Overhead Power Line Construction v. Connecticut Siting Council*, 139 Conn App 574 565(2012), we observed that § 4–183(c) “clearly lists four distinct scenarios and provides that a plaintiff shall appeal within whichever time frame is applicable and occurs latest.’ In the present case, a motion for reconsideration was filed by the plaintiff, and denied by the commission. Therefore, § 4–183(c)(2) was the applicable subdivision of the statute, and it provides that an appeal must be filed ‘within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a.’” *Emerick v. Freedom of Information Commission*, 156 Conn App 232, 238 (2015).

The Defendant’s affirmative consideration of a request for reconsideration at the meeting of March 23 was the final action by the commission, and the denial of the request at that time is the triggering event for timely filing of any appeal under § 4-183(c)(2). That time frame provided for forty-five days in which to file this appeal, a standard the Plaintiffs complied with.

In the current instance, where competing statutory time frames are not clear as to providing a bright line rule for dismissal, the allegations in the original complaint must be given deference, and the affirmative consideration by the defendant of the request for reconsideration becomes the dispositive act in initiating the period in which to file an appeal.

CONCLUSION

For the foregoing reasons, the Court must not dismiss this timely filed administrative appeal based upon lack of subject matter jurisdiction.

Appellants:
JOE MARKLEY
ROB SAMPSON

BY: 

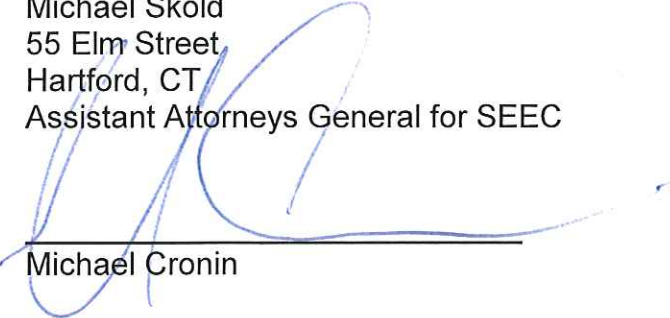
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CERTIFICATION

I hereby certify that a copy of this motion was e-mailed on this 12th day of July, 2018, to:

Maura Murphy Osborn
Michael Skold
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Assistant Attorneys General for SEEC


Michael Cronin

07/12/2018