



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

DECLARATORY RULING 2013-01: **Administration of Independent Expenditure Disclosure Requirements** **Under Public Act 13-180**

At its regular meeting on September 18, 2013, the State Elections Enforcement Commission (the “Commission”) voted to initiate a declaratory ruling to clarify independent expenditure disclosure requirements created with the passage of Public Act 13-180, *An Act Concerning Disclosure of Independent Expenditures and Changes to Other Campaign Finance Laws and Election Laws*.

As a result of the United States Supreme Court’s decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Connecticut legislature passed Public Act 13-180 as an attempt to address the “influx of new money into our system, reset the playing field and make other improvements to our campaign finance laws.” 56 H.R. Proc., Pt. 25, 2013 Sess., p. 08404 (Remarks of Representative Ed Jutila). In particular, Public Act 13-180 aims to increase disclosure of independent expenditure activity so as to enable “the electorate to make informed decisions and give proper weight to different speakers and messages . . . [and] help to shine light on that money so that we know who is behind it and where it is coming from.” *Id.*

The new independent expenditure disclosure provisions created by Public Act 13-180 require greater disclosures depending on the expenditure’s proximity to the primary and general election dates. Because, however, the occurrence of a primary is determined by whether or not candidates qualify to be on the ballot, which is not known until the window to obtain ballot access closes, uncertainty is created as to whether, when, and what persons making independent expenditures must disclose. The purpose of this declaratory ruling is to advise persons when they are required to abide by these additional disclosures in light of this uncertainty.

New Provisions Established by Public Act 13-180

Section 8 (a) and (b) of Public Act 13-180 creates the following disclosure requirements:

- (a) Any person, as defined in section 9-601 of the general statutes, as amended by this act, may, unless otherwise restricted or prohibited by law, including, but not limited to, any provision of chapter 155 or 157 of the general statutes, make unlimited independent expenditures, as defined in section 9-601c of the general statutes, as amended by this act, and accept unlimited covered transfers, as defined in said section 9-601. Except as provided pursuant to this section, any such person who makes or obligates to make an independent expenditure or

expenditures in excess of one thousand dollars, in the aggregate, shall file statements according to the same schedule and in the same manner as is required of a treasurer of a candidate committee pursuant to section 9-608 of the general statutes, as amended by this act.

(b) Any person who makes or obligates to make an independent expenditure or expenditures in an election or primary for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, which exceed one thousand dollars, in the aggregate, during a primary campaign or a general election campaign . . . shall file such reports not later than twenty-four hours after (1) making any such payment, or (2) obligating to make any such payment, with respect to the primary or election.

Section 8 (f) (1) requires the following:

. . . [I]f a person who makes or obligates to make an independent expenditure (A) has **received a covered transfer¹ during the twelve-month period prior to a primary or election**, as applicable to the reported expenditure, for an office that a candidate described in subdivision (7) of subsection (c) of this section is seeking, **and (B) such independent expenditure is made or obligated to be made on or after the date that is one hundred eighty days prior to such primary or election, such person shall disclose the source and the amount of any such covered transfer such person received that is in an amount that is five thousand dollars or more, in the aggregate, during the twelve-month period prior to such primary or election**, as applicable to the reported expenditure.

(Emphasis added).

Section 9 (h) of Public Act 13-180 also modified the attribution requirements of independent expenditures made in the form of communications. General Statutes § 9-621 (h) (as amended by P.A. 13-180) now provides:

No person shall make or incur an independent expenditure for any written, typed or other printed communication, including on a billboard, or any web-based, written communication, unless such communication bears upon its face, as a disclaimer, the words “Paid for by” and the name of such person and the following statement: “This message was made independent of any candidate or political party.” **In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such**

¹ “Covered transfer” means any donation, transfer or payment of funds by a person to another person if the person receiving the donation, transfer or payment makes independent expenditures or transfers funds to another person who makes independent expenditures. General Statutes § 9-601 (29) (A) (as amended by P.A. 13-180).

communication shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site.

(Emphasis added). Public Act 13-180 also inserted this additional covered transfer disclosure with respect to independent expenditure communications for video, audio, and phone call communications when made during the ninety-day period prior to the primary. General Statutes § 9-621 (h) (2) through (4) (as amended by P.A. 13-180).

Ballot Access Deadlines and Timing of Primaries

For statewide office, General Assembly, and judge of probate candidates, the most common way that a person obtains ballot access is via the nominating conventions. General Statutes § 9-383 states that the dates of the nominating state and district conventions are determined by the respective state central committees but they must convene no earlier than 98 days and close no later than 77 days before the primary date.² Candidates who do not obtain a majority of the delegate votes at the convention but obtain at least 15% of the vote become automatically eligible for a primary challenge if they file the proper documentation with the town clerk or Secretary of the State's Office. See General Statutes § 9-400. Finally, candidates may file petition signatures to obtain ballot access for a primary. *Id.* General Statutes § 9-400 (a) provides that candidates must file the requisite petition signatures no later than the 63rd day before the primary.

Only once the deadline set out in General Statutes § 9-400 (a) has expired and “no candidacy for nomination by a political party to a state or district office has been filed by or on behalf of a person other than a party-endorsed candidate” and “no person other than a party-endorsed candidate has received at least fifteen per cent of the votes of the delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for a state or district office,” then it is established that there will be no primary. General Statutes § 9-416.

Thus, for example, during the 2014 election cycle, a primary contest could be established as late as June 10, 2014.³

For municipal elections, party endorsements must be made no earlier than the 56th day and no later than the 49th day prior to the primary date.⁴ See General Statutes

² For example, the earliest day that a nominating convention could be convened in 2014 is May 6, 2014 and the latest day that nominating conventions could close in 2014 is May 27, 2014.

³ The date of a primary for an office to be voted upon at a state election is set by statute as the second Tuesday in August. See General Statutes § 9-423. The primary date in 2014 will be August 12, 2014.

⁴ These dates differ if a candidate is running for a municipal office in an election that will be held on a state election date. See General Statutes § 9-391 (c).

§ 9-391 (a). Candidates who did not obtain the party endorsement have until the 34th day before the primary date to file petition signatures. *See* General Statutes §§ 9-405 and 9-406. Only if by the 34th day, “no candidacy for nomination has been filed by or on behalf of a person other than the party-endorsed candidate,” then it is established that there will no primary. General Statutes § 9-417.

Analysis

The Commission aims to clarify what will be required from persons making independent expenditures when their activity engages the disclosure requirements outlined in sections 8 (f) (1) and 9 (h) of Public Act 13-180. To that end, the Commission has applied the basic tenets of statutory interpretation under Connecticut law.

General Statutes § 1-2z provides that:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

However, when the language of a statute is ambiguous, “[one should] also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” *State v. Acordia, Inc.*, 310 Conn. 1, 2013 WL 4419116 at *4 (2013) (internal quotations omitted).

Section 8 (f) (1) of Public Act 13-180 requires persons making independent expenditures who have received covered transfers of a certain aggregate amount to count backwards from the primary date in order to determine the level of disclosure that applies to them at the time that the expenditure is made. Similarly, Section 9 (h) requires persons making independent expenditures for certain types of communications to determine their level of disclosure based on how far the date of the expenditure is from the primary date. In these instances, however, the persons making the expenditures may not know whether such primary will take place at the time they make the expenditure. Such uncertainty surrounding whether or not a primary will be held creates ambiguity in the disclosure requirements of Sections 8 (f) (1) and 9 (h).

The legislative history of Public Act 13-180 indicates that the purpose of the Act, and specifically Sections 8 (f) (1) and 9 (h), is to increase the degree of disclosure surrounding independent expenditures. For example, in remarking on the bill before passage, one legislator stated:

[W]e should be making sure that people disclose, that entities disclose their speech . . . [b]ecause the citizens who are listening and the voters who are out there need to know and be able to judge the credibility based on who is speaking. And if we do not have adequate disclosure laws, then the citizenry of our State doesn't know who is speaking to them and cannot judge that credibility.

Disclosure is paramount. And we must continue to be working as rigorously and vigorously as we can to require people to stand up and own their speech.

56 S. Proc., Pt. 14, 2013 Sess., p. 04737 (Remarks of Senator Gail Slossberg).

Moreover, to interpret the additional disclosures set by Sections 8 (f) (1) and 9 (h) to only apply when a primary has been officially set, which could only occur as early as the 98th day before the primary and as late as the 63rd day before the primary with respect to statewide office, General Assembly, and judge of probate candidates, and only as early as the 56th day before the primary and as late as the 34th day before the primary with respect to candidates running in a municipal election, would render meaningless the requirements laid out by Section 8 (f) (1) that its additional disclosure applies for independent expenditures made as far back as 180 days before the primary and laid out by Section 9 that its additional disclosure applies for independent expenditures made as far back as 90 days.

Furthermore, an interpretation of Sections 8 (f) (1) and 9 (h) that permits persons making independent expenditures to do so with minimal disclosure until the moment that a primary contest is officially certified may in certain instances obliterate its stated purpose by limiting the requirement of increased disclosure to only the two months immediately preceding the opening of the polls.

Conclusion

In light of the legislature's aim to increase disclosure via the provisions in Sections 8 (f) (1) and 9 (h) of Public Act 13-180, persons making or obligating to make independent expenditures who otherwise meet the criteria outlined in Sections 8 (f) (1) and 9 (h) should provide disclosure as though a primary will be held on the date provided for by statute until the window to establish a primary contest has closed and the appropriate state or local officials have determined that no primary contest will take place.⁵

This constitutes a declaratory ruling pursuant to General Statutes § 4-176, and provides guidance about the disclosure requirements for independent expenditures. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been


⁵ The Commission has received further inquiries as to the application of Section 8 of Public Act 13-180 to independent expenditures made in municipal campaigns. Those queries will be addressed separately.

State Elections Enforcement Commission
Declaratory Ruling 2013-01

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 the disclosure requirements for a specific independent expenditure should be directed to the Commission staff.

Adopted this 20th day of November 2013, at Hartford, CT, by vote of the Commission.



Anthony J. Castagno, Chair
By Order of the Commission