

DEC 10 2010

ENFORCEMENT  
COMMISSION

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

in re Friends of Susan 2010, Inc.  
Commission Initiated, Hartford

File No. 2010-108

**AGREEMENT CONTAINING HENCEFORTH ORDER AND FORFEITURE  
FOR VIOLATIONS OF GENERAL STATUTES §§ 9-607 AND 9-608 AND  
REGULATIONS OF CONNECTICUT STATE AGENCIES § 9-607-1**

This Agreement, by and between the treasurer of Friends of Susan 2010, Inc. of the Town of West Hartford, County of Hartford, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and § 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Commission voted to open an investigation into the Friends of Susan 2010, Inc. regarding possible violations of General Statutes §§9-607 and 9-608 on August 11, 2010 in response to a August 1, 2010 news article that created some confusion in the regulated community regarding the activities and transactions from on or about May 19, 2010 to the present related to a candidate committee formed by Susan Bysiewicz to support her run for Attorney General, the Friends of Susan, 2010, Inc..
2. The Commission notes that the committee responded in a timely manner to all Commission requests for information and documentation and was very cooperative, professional and accommodating throughout the entire investigation process.
3. On May 18, 2010, the Connecticut Supreme Court ruled that Bysiewicz failed to satisfy the requirements of General Statutes § 3-124 to hold the Attorney General's office. Shortly thereafter, Bysiewicz announced that she would not be seeking any office in 2010.
4. The focus of the Commission initiated investigation was on the expenditures that were made by Friends of Susan 2010, Inc. after Bysiewicz announced on May 20, 2010 that she would not be seeking office in 2010. More specifically, the Commission investigation focused on the parameters for permissible use of a candidate committee's funds pursuant to General Statutes §§ 9-607 & 9-616; and the provisions of the law regarding the distribution of surplus pursuant to General Statutes § 9-608.

**Bysiewicz Candidacy for Another Office**

5. General Statutes § 9-607 (g) (1) (A) provides: "the lawful purposes of his committee" means: "(i) *For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee. . . .*" [Emphasis added.]
6. Between June 14 and June 30, 2010, the committee held a total of seven events throughout Connecticut.

7. The invitations to the seven events thanked people for their support, rather than asking them to vote for the candidate for another office or in 2012. A speech captured by a local publication in Litchfield which recorded a Bysiewicz speech at the “thank you” party at La Cupola on June 23, 2010 reflected no comment by Bysiewicz regarding future campaigns or a run for any other office besides the Attorney General.
8. The investigation did not reveal any indication that the events were campaign events on behalf of Bysiewicz for an office other than attorney general. Accordingly, the Commission concludes that the committee did not violate General Statutes § 9-607 in connection with the expenditures for the “thank you” parties.

### **Candidacy of Others**

9. General Statutes § 9-616 (a) provides in pertinent part: *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. In SEEC Advisory Opinion 2010-08: *Allocating Pro Rata Share for Joint Campaign Events*, the Commission addressed when one candidate committee will be deemed to be making a contribution for another candidate. It explained that it considers several indicia in determining whether a candidate is the beneficiary of a joint campaign event, including whether the candidate was featured on invitations to the event, whether the media was alerted to the candidate's presence, whether the candidate notified supporters that he or she would be there, whether the candidate's literature is distributed at the event, whether the candidate is fundraising at the event, the extent to which the event targets that candidate's voters or donors, and the extent to which the candidate is speaking at the event regarding his or her campaign.
11. About 20 members of the General Assembly were represented on the invitation cards as co-sponsors/hosts of the events. They were listed as part of the Host Committee because they were supporters of the Attorney General campaign. Some of the General Assembly members listed were candidates for re-election at the time.
12. These candidates were neither encouraged nor allowed to distribute campaign literature or solicit campaign contributions for their own campaigns at these events. To the best of the committee's knowledge, the 2010 candidates for General Assembly listed on the invitations did not solicit or campaign on their own behalf at any of the events in question.

13. In the instant case, some candidates were listed on the invitations, however, none of the other indicia were met and the Commission therefore concludes that these events were not joint campaign events meant to benefit candidates other than Bysiewicz.
14. The investigation did not reveal any indications that any other office for 2010 or for 2012 was mentioned in any speeches or in the candidate's literature and hand-outs distributed at the event and as such, the Commission concludes that the committee did not violate General Statutes § 9-616 in connection with the expenditures for the "thank you" parties.

### **Record Keeping**

15. General Statutes § 9-607(f) provides in pertinent part:

The campaign treasurer shall preserve all internal records of transactions required to be entered in reports filed pursuant to section 9-608 for four years from the date of the report in which the transactions were entered. Internal records required to be maintained in order for any permissible expenditure to be paid from committee funds include, but are not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure.

16. Regulations of Connecticut State Agencies § 9-607-1 provides:

(a) Pursuant to the requirements described in sections 9-607(f), 9-607(g), 9-706(e) of the Connecticut General Statutes, and any regulations adopted thereto, in order to substantiate any payment for services of campaign or committee staff, or campaign or committee services of attorneys, accountants, consultants, or other professional persons for campaign activities, the campaign treasurer shall maintain internal records, including but not limited to:

1. a written agreement, signed before any work or services for which payment in excess of \$100 is sought is performed, which sets forth (i) the nature and duration of the fee arrangement and (ii) a description of the scope of the work to be performed or services to be rendered; and
2. contemporaneous records and/or invoices created by the close of the reporting period but in no event later than the date of the primary or election to which the expenditure relates, which set forth the nature and detail of the work performed or services rendered.

17. In the instant case, the Bysiewicz exploratory committee had a written agreement with a consultant for \$7,000/month. The agreement provided that the consultant would "provide strategic fundraising services and advice to the Campaign and Candidate, during the term hereof, and Consultant hereby accepts such engagement." During February 2010, when Bysiewicz transitioned from exploratory to candidate committee, the Consultant lowered his fee to \$3,500 per month based on "his going rate for Attorney General races."

18. The committee does not have internal records in connection with the consultant reducing his fees for the Attorney General race. Moreover, the committee does not have internal records reflecting the change in duties for the consultant following the candidate's withdrawal from the race.
19. The Committee's documentation with respect to the consultant's modified contract does not meet the requirements of General Statutes § 9-607(f) and failed to comply with Regulations of Connecticut State Agencies § 9-607-1.

### **Expenditures After May 20, 2010**

20. A committee of a candidate who withdraws before the primary or election has two options regarding the timing of surplus distribution and termination as spelled out below.
21. General Statutes § 9-608 provides in pertinent part:

(e)(1) Notwithstanding any provisions of this chapter, in the event of a surplus the campaign treasurer of a candidate committee or of a political committee, other than a political committee formed for ongoing political activities or an exploratory committee, shall distribute or expend such surplus not later than ninety days after a primary which results in the defeat of the candidate, an election or referendum not held in November or by January thirty-first following an election or referendum held in November, in the following manner:

(A) Such committees may distribute their surplus to a party committee, or a political committee organized for ongoing political activities, return such surplus to all contributors to the committee on a prorated basis of contribution, distribute all or any part of such surplus to the Citizens' Election Fund established in section 9-701 or distribute such surplus to any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, provided (i) no candidate committee may distribute such surplus to a committee which has been established to finance future political campaigns of the candidate, (ii) a candidate committee which received moneys from the Citizens' Election Fund shall distribute such surplus to such fund, and (iii) a candidate committee for a nonparticipating candidate, as described in subsection (b) of section 9-703, may only distribute any such surplus to the Citizens' Election Fund or to a charitable organization;

(e)(2) Notwithstanding any provisions of this chapter, the campaign treasurer of the candidate committee of a candidate who has withdrawn from a primary or election may, prior to the primary or election, distribute its surplus to any organization which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or return such surplus to all

contributors to the committee on a prorated basis of contribution.

22. Although not explicitly provided for, we note that it would be absurd and unworkable to not also allow expenditures for reasonable wrap up costs such as but not limited to copying required documents, closing headquarters and completing and filing the final financial disclosure reports.
23. The expenditures during this period after May 20, 2010, total approximately \$45,800.
24. One part of the \$45,800 was an expenditure in the amount of \$7,300 for food, drink, entertainment and hall rental related to the seven thank-you events.
25. A second category of expenditure was a total of \$10,500 for printing and mailing thank-you notes and invitations to supporters and volunteers.
26. With regard to this thank-you effort, the committee notes that the total attendance at the “thank you” events was well over 100 people per event – with total attendance at all events over 800. The committee argues that given the large number of contributors, volunteers and convention delegates necessary to support a statewide campaign, this number of attendees is reasonable. The committee also notes that average cost was less than \$9.20 per person and that the food was simply pizza or sub sandwiches.
27. The third category of expenditure encompassed during the period after the withdrawal announcement was approximately \$18,000 for salaries for three employees
28. The committee notes that the activities of the employees consisted of the following: Two of the individuals continued as employees for a little more than one month after May 20, 2010 to assist with the thank you parties and were terminated immediately after the last thank you party. Thereafter the single remaining employee managed the complicated wind-up of the financial and reporting obligations. He also performed the substantial work of cooperating with the Commission’s investigation and responding to the Commission’s information requests. The committee has also noted that its treasurer during this entire period has rendered his services *pro bono* and was assisted by this staffer. The committee has also argued that unlike a normal campaign when the end date is known well in advance to be election day, this campaign ended unexpectedly and that the wind up was inherently more complicated.
29. The fourth and final category of expenditure encompassed during the period after the withdrawal announcement was approximately \$9,800 paid to the above mentioned out of state consultant. The committee has asserted that these Consultant expenses were reasonable and necessary because of the need to obtain counsel and guidance on two separate topics: first, the committee’s need to wind up a campaign literally in mid-stream and second, the thank-you effort. The committee asserts that each of these needs was reasonable and necessary, but were rendered much more complex by the unusual and historically unique circumstance of an overwhelming front-running candidate being involuntarily barred from the race in mid-stream by an 11<sup>th</sup> hour state

Supreme Court decision, all under intense press scrutiny. The committee has asserted that the Commission's current investigation itself highlights the uniquely difficult and unusual nature of this committee's wind-down effort.

30. The Commission has not previously opined in detail what might be considered "reasonable" expenditures in connection with a candidate committee where the candidate has withdrawn before a primary or election. Nevertheless, there are some strong indicators as to what the Commission will take into consideration in determining what the Commission considers reasonable.
31. In Advisory Opinion 76-18, the Commission defined the words "reasonable and necessary" to mean "demonstrably related" and "small" in connection with another campaign financing statute, now General Statutes § 9-613.
32. General Statutes § 9-608 (e) (1) (D) provides: "The campaign treasurer of the candidate committee of a candidate who is elected to office may, upon the authorization of such candidate, expend surplus campaign funds to pay for the cost of clerical, secretarial or other office expenses necessarily incurred by such candidate in preparation for taking office; except such surplus shall not be distributed for the personal benefit of any individual or to any organization." General Statutes § 9-607(g) (2) (V) further provides that an elected candidate may pay the expenses of ... (V) the inauguration of an elected candidate by that candidate's candidate committee."
33. The statute does not address staff salaries or parties for unelected candidates or for those who withdraw. There is an argument that because that the statute explicitly allows a winning candidate these activities means that it implicitly forbids other types of candidates to partake in these same activities. However, as far back as 2001, the Commission staff has advised through guidebooks that "Surplus funds may be used to pay expenditures for inaugural activities and a "thank you" party for campaign workers. [§ 9-333j(e), General Statutes]. Additionally in *Understanding Connecticut Campaign Finance Laws: A 2010 Guide for Statewide Office and General Assembly Candidates Not Participating in the Citizens' Election Program* (Connecticut State Elections Enforcement Commission, Hartford, Connecticut) July 2010, the Commission has indicated the same thing, citing [Conn. Gen. Stat. § 9-607(e)(2)]. The guides have not contemplated thank you parties and or thank you party related expenditures for a candidate that withdraws nor have they opined on what might be considered reasonable.
34. Regulations of Connecticut State Agencies § 9-706-2 (13) provides guidance for candidates that participate in the public financing program regarding permissible campaign expenditures, including but not limited to:

*No more than the following amounts for post-primary or post-election thank you notes or other advertising to thank campaign staff, contributors, volunteers, or supporters: \$7,500 for a candidate for the office of governor; \$3,500 for a candidate for the office of lieutenant governor, attorney general, state comptroller, secretary of state, or state treasurer; \$1,000 for a candidate for the office of state senator; \$500 for a candidate for the office of state*

*representative; \$750 for a special election candidate for the office of state senator; and \$250 for a special election candidate for the office of state representative. [Emphasis added.]*

35. Although the Regulation is not applicable to this specific case because Bysiewicz did not participate in the public financing program, it does provide some guidance as to what is considered reasonable.
36. The statutes and regulations do not draw bright line limitations with respect to the expenditures by a committee once the candidate has withdrawn and before it has distributed surplus. Due to the relatively rare circumstances faced by this committee, the Commission has not had an occasion to establish precedent regarding such expenditures by a committee cut suddenly short in mid-cycle., The Commission must therefore make a factual determination as to whether the expenditures made by the Committee were nominal and reasonable wrap up costs.
37. The Commission concludes that the aggregate amount spent by the Committee after the candidate's May 20 withdrawal from the race on the four categories of spending as laid out in paragraphs 23 through 29 was unreasonable and therefore violated General Statutes § 9-608. The committee maintains that the expenditures should be considered individually and that the spending in each category was reasonable. The committee believes that if any spending was unreasonable it was only the spending on the consultant as discussed in paragraph 29.

#### **Other Expense**

38. The October 12, 2010 filing for the committee raised another issue, namely, the use of committee funds to pay one vendor. The Commission has questioned whether these expenses are proper under General Statutes § 9-607 (g).
39. The committee believes that these were proper campaign expenses under Section 9-607(g), but recognizes that the Commission would need access to certain information to support such a determination and that such information is not available to the Commission.
40. The committee has now taken steps to resolve this matter, prior to the entry of this order. Specifically, the committee had issued three checks to the vendor before the committee became aware of the Commission's concern. The committee has sought and obtained a refund from this vendor for the one check that was negotiated, and the committee has reclaimed and voided the two checks that had been issued but not negotiated. Candidate Bysiewicz now has personally paid these expenses, which totaled approximately \$14,000, and will not be reimbursed by the committee. Conforming financial disclosure amendments have been made to past reports, and the committee has agreed to make all entries on future reports required to document the events.

41. In light of these remedial actions and commitments by the committee, no further action pertaining to this matter is required.

#### **Other Matters**

42. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondent neither admits nor denies the Commission's conclusions set forth in paragraphs 1-46, but is willing to accept the terms of this document in order to allow the Commission to conclude its investigation. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
43. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
44. The Respondent waives:
- a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
45. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.




**ORDER**


IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-607 and 9-608; and Regulations of Connecticut State Agencies § 9-607-1;

IT IS FURTHER ORDERED that the committee immediately cease and desist violating General Statutes §§ 9-607 and 9-608 and that the committee terminate immediately following the lawful disbursement of surplus.

**The Respondent:**

  
James Sullivan  
Treasurer, Friends of Susan, 2010, Inc.  
*Rocky Hill, CT*

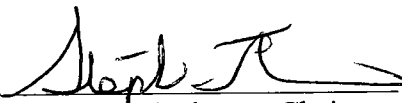
**For the State of Connecticut:**

BY:   
Shannon Clark Kief, Esq.  
Legal Program Director  
& Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St., Suite 101  
Hartford, CT

Dated: 12/10/10

Dated: 12-10-10

Adopted this 15 day of Dec. of 2010 at Hartford, Connecticut

  
Stephen F. Cashman, Chairman  
By Order of the Commission