STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Robert H. Kalechman, Simsbury — File No. 2010-138

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint with the Commission pursuant to General Statutes § 9-7b. The Complainant, then a candidate for the House of Representatives, 16th District, alleged he received a single letter from an opposing candidate, Ms. Linda Schofield, that lacked the attribution required by General Statutes § 9-621 (a).

After an investigation of the matter, the Commission makes the following findings and conclusions:

1. At all times relevant hereto, Linda Schofield ("Ms. Schofield") was a candidate for the House of Representatives, 16th District.

2. At all times relevant hereto, Robert H. Kalechman ("the Complainant") was a candidate for the House of Representatives, 16th District.

3. On or about August 20, 2010, Ms. Schofield sent an individual letter ("the letter") to the Complainant, through the United States Postal Service, responding to the Complainant's earlier letters regarding debates between the candidates for the House of Representatives, 16th District.

4. The letter states that, "One candidate cannot sponsor a debate, as debates are meant to be hosted by an impartial party .... Therefore I do not see that there has been a valid invitation to debate."

5. The letter invites Mr. Kalechman to, "make a commitment to a clean campaign, with none of the nasty and negative attacks that have characterized so many other recent contests."

6. The letter stated that Mr. Kalechman was, "already engaging in completely false attacks against [Ms. Schofield]."

7. The letter requests Mr. Kalechman, "desist from making patently-false statements ...."

8. The letter contained no attribution listing the source of funding of the communication.

9. The investigation has revealed no evidence suggesting the letter was received by anyone other than the Complainant or otherwise distributed by either Ms. Schofield or her campaign.

10. The Respondent stated to the Commission that the letter was not a communication that promoted the success or defeat of her campaign.

11. General Statutes § 9-621 (a), as amended by No. 10-187 of the 2010 Public Acts, provides in pertinent part:

> [N]o candidate or committee shall ***make or incur any expenditure*** including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601 ***for any written, typed or other printed communication***, or any web-based, written communication, ***which promotes the success or defeat of any candidate's campaign for nomination at a primary*** or election .... ***unless such communication bears upon its face (1) the words "paid for by" and the following:*** (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; or (C) in the case of a party committee, the name of the committee, and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate. . . .
> [Emphasis added.]

12. General Statutes § 9-601b provides, in relevant part, "[T]he term 'expenditure' means: .... anything of value, when made for the purpose of influencing the .... election, of any person ...."

13. The Supreme Court recently reaffirmed the Constitutionality of similar federal disclosure requirements. See, *Citizen's United v. Federal Elections Commission's 130 S. Ct. 876 (2010), at 916*:

> As a final point, Citizens United claims that, in any event, the disclosure requirements in § 201 must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U.S.C. § 441b's restrictions on independent expenditures to express advocacy and its functional equivalent. 551 U.S., at 469-476, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). Citizens United seeks to import a similar distinction into [the Bipartisan Campaign Reform Act's] disclosure requirements. We reject this contention.

> The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech. See, *e.g.*, *MCFL*, 479 U.S., at 262, 107 S.Ct. 616. In *Buckley*, the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. 424 U.S., at 75-76, 96 S.Ct. 612. In *McConnell*, three Justices who would have found § 441b to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements. 540 U.S., at 321, 124 S.Ct. 619 (opinion of KENNEDY, J., joined by Rehnquist, C.J., and SCALIA, J.). And the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. *United States v. Harriss*, 347 U.S. 612, 625, 74 S.Ct. 808, 98 L.Ed. 989 (1954) (Congress "has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose"). For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.

14. The Commission finds a letter sent from a candidate to an opposing candidate asking the recipient to commit to a clean campaign and desist from making patently-false statements regarding the issuing candidate is an expenditure, as defined by § 9-601b. Although the letter came as a response to a request to debate, the letter was printed and mailed to influence the election of the issuing candidate and to promote the candidate's success.

15. For the reasons stated above, the Commission finds the letter was a communication subject to the restrictions of § 9-621 (a), as it promoted the success of the candidate. Accordingly, the Commission concludes that the letter should have contained an attribution prescribed by § 9-621 (a).

16. Ms. Schofield has no record of any previous violation of the elections laws.

17. There is no allegation that other communications issued from Ms. Schofield's campaign lacked the proper attribution.

18. The Commission concludes the fair market value of the single letter and associated postage, under these specific facts, is nominal.

19. "In previous enforcement actions, the Commission has exercised its prosecutorial discretion and declined to take action where the value of the alleged violation is *de minimus.*" Opinion of Counsel 2010-29: *Attribution Requirements for Public Access and You Tube Airings and Committee Website* at 4. See, also: File No. 2009-133, *Complaint of Carole Dmytryshak, Salisbury* in which a § 9-621 matter was closed

without further action because of the nominal value of the expenditure, the fair market value of 50-75 sheets of paper; File No. 2009-084, *Complaint of Elizabeth-Ann Edgerton, Monroe* in which a § 9-621 matter was closed without further action because of the nominal value of the expenditure, a hyperlink and the volunteer labor to develop a webpage referred to as a "blogspot"; and File No. 2009-039, *Complaint of Arthur Scialabba, Norwalk*, in which a § 9-621 matter was closed without further action because of the nominal value of the expenditure involved in sending an email communication; See, also, File No. 2010-006, *Complaint of Donald Steinbrick, et al., Putnam*. In File No. 2010-006, the Commission, in finding a violation of § 9-601 (d) (1), concluded that a single email from an incumbent to a constituent was intended to "bring about [the incumbent's] reelection" and took no further action due to the *de minimus* value of the single email.

20. In consideration of the above findings, under these specific facts and circumstances, the Commission has determined to take no further action in this matter.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That no further action be taken.

Adopted this 26th day of January 2011 at Hartford, Connecticut

Stephen F. Cashman, Chairman
By Order of the Commission