

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Harold Harris, *et al.*
Glastonbury

File No. 2012-169

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between the respondent, Winona Zimmerlin, and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainants Harold Harris and Mark Branse, both of Glastonbury, and Jai Persico of Lyme filed this Complaint pursuant to Connecticut General Statutes § 9-7b alleging that the Glastonbury Democratic Town Committee had improperly made contributions to candidate Thomas “Chip” Flanagan by sending a mailer encouraging electors to vote against his opponent in the General Assembly election.
2. The Commission named two individuals as respondents in the matter: Flanagan and Winona Zimmerlin, then treasurer of the Glastonbury Democratic Town Committee.
3. Respondent Flanagan was a Democratic Party candidate selected to run for the 31st General Assembly district seat in the House of Representatives in the 2012 election.¹
4. Respondent Flanagan’s opponent in that 2012 campaign was incumbent Prasad Srinivasan, a Republican.²
5. During the period relevant to this complaint, Respondent Zimmerlin served as treasurer of the Glastonbury Democratic Town Committee (“GDTC”).³
6. On or about November 2, 2012, the GDTC authorized an expenditure for a mailer that included an admonition to recipients to “Vote ‘No’ on Prasad Srinivasan.”⁴ The mailer

¹ See SEEC Form 1 – Registration by Candidate (*Flanagan for Glastonbury 2012*, May 22, 2012) (registering 2012 candidate committee for Thomas “Chip” Flanagan).

² See SEEC Form 1 – Registration by Candidate (*Prasad Srinivasan for State Rep.*, April 12, 2012) (registering 2012 candidate committee for Prasad Srinivasan).

³ See SEEC Form 2 – Party Committee Registration by (*Glastonbury Democratic Town Committee*, March 19, 2012) (amending registration to reflect appointment of Zimmerlin as GDTC treasurer).

⁴ See Mailer “Vote NO for Prasad Srinivasan,” (Glastonbury Democratic Town Committee, November 2012)

stated that Srinivasan had voted “to ban Jewish Citizens from displaying religious symbols on their front doors.”⁵ The mailer did not promote Flanagan as the Democratic Party’s alternative to the Republican Srinivasan; it simply encouraged voters to vote “no” on the Republican.⁶ The mailer included an attribution stating that it was paid for by the Glastonbury Democratic Town Committee. It did not include an attribution stating that the mailer was approved by a candidate.

7. The GDTC first reported the expenditure for the mailings targeting Srinivasan in a campaign finance report that Respondent Zimmerlin filed on December 26, 2012, designating it as an “Independent Expenditure Report.”⁷ The town committee did not report the expenditure as “incurred but not paid” at any time before the December 26 filing.⁸

8. General Statutes § 9-601 (25) defined an “organization expenditure,” as:

[A]n expenditure by a party committee, legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee for:

(A) The preparation, display or mailing of a party candidate listing. As used in this subparagraph, “party candidate listing” means any communication that meets the following criteria: (i) The communication lists the name or names of candidate for election to public office, (ii) the communication is distributed through public advertising such as broadcast stations, cable television, newspapers or similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery, (iii) the treatment of all candidates in the communication is substantially similar, and (iv) the content of the communication is limited to (I) for each such candidate, identifying information, including photographs, the office sought, the office currently held by the candidate, if any, the party enrollment of the candidate, a brief statement concerning the candidate’s positions, philosophy, goals, accomplishments or biography and the positions, philosophy, goals or accomplishments of the candidate’s party, (II) encouragement to vote for each

⁵ *Id.*

⁶ *Id.*

⁷ See SEEC Form 20 – Itemized Campaign Finance Disclosure Statement – Independent Expenditure Report (*Glastonbury Democratic Town Committee*, Dec. 26, 2012) (reflecting payment to Marketing Solutions LLC for \$1,715 on December 1, 2012 for “independent expenditure”).

⁸ See, e.g., General Statutes §§ 9-608 (c) (1) (B) and (C) (requiring treasurers to make itemized accountings of “each expenditure” and “each expense incurred but not paid,” respectively, on campaign finance statements).

such candidate, and (III) information concerning voting, including voting hours and locations;⁹

9. In the 2012 election cycle, “organization expenditures” under the “party candidate listings” subparagraph were limited to those that promoted the success of candidates.¹⁰

10. In 2013, however, the General Assembly amended the definition of “party candidate listing” to allow communications that not only promoted the success of candidates but also that promoted candidates’ defeat.¹¹ The changes to the definition of “party candidate listing” expanded it to include not only statements opposing the election of candidates but a broad range of communications.

11. The category of “organization expenditures,” a class of expenditures which can be made only by specific party and political committees for certain types of campaign-related items and services, was created by the General Assembly in 2005, when it adopted sweeping campaign finance reforms that resulted in, among other things, the establishment of the Citizens’ Election Program.¹² Funds spent for “organization expenditures” are not considered contributions to the candidate committee of the candidate or candidates that benefit from the expenditures and can be made to benefit participating and qualified candidate committees.¹³ Because of the singularity of organization expenditures and their omission from the definition of “contribution,” whether the expenditure was made independently or coordinated with a candidate will have no bearing on whether that expenditure would qualify as an “organization expenditure.”

12. As the 2013 floor debate concerning changes to the nature of “organization expenditure” reflected, allowing committees to make “negative” organization expenditures, which advocate the defeat of a candidate, would potentially change the tenor of those

⁹ See General Statutes §9-601 (25) (A) (2011).

¹⁰ *Id.*

¹¹ See Public Act 13-180. The legislation made significant changes to the content of “party candidate listings,” eliminating subparagraph (iv) of paragraph (A) and amending subparagraph (iii) to state:

(iii) the communication is made to promote the success or defeat of any candidate or slate of candidates 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, provided such communication is not a solicitation for or on behalf of a candidate committee . . .

General Statutes § 9-601 (25) (A) (iii) (2013) (reflecting changes made by Public Act 13-180).

¹² See Public Act 05-5.

¹³ General Statutes § 9-702 (b) limits a candidate committee participating in the Citizens’ Election Program to receiving only “qualifying contributions.” Once a candidate committee has qualified for a grant from the Citizens’ Election Fund, it may receive no contributions from any source. See General Statutes § 9-702

expenditures and allow the types of communication that gave rise to this complaint. The proponent of the bill that became Public 13-180 confirmed that the change to General Statutes § 9-601 (25) (A) would permit a party committee to make a negative communication, such as the one related to Prasad Srinivasan in this matter, and categorize it as an “organization expenditure.”¹⁴

13. General Statutes § 9-621 requires any “party candidate listing” made by a party committee to include the words “paid for by” and the name of the committee, as well as the words “approved by” and the name of the candidate when the communication is made “with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate’s agent”¹⁵
14. The GDTC omitted the approved-by-the-candidate attribution on the expenditure that promoted Srinivasan’s defeat.
15. The Commission’s investigation revealed nothing to show that Respondent Flanagan was consulted or knew about the anti-Srinivasan mailer before it was sent.
16. General Statutes §9-601(c) allowed certain expenditures to be categorized as “independent expenditures.” The General Statutes, however, include other scenarios that would create a rebuttable presumption that an expenditure was not “independent.” Among those scenarios would be an instance where the entity making the expenditure had information about the candidate’s “plans, projects, or needs” before it made the expenditure.¹⁶

¹⁴ See Transcript, House of Representatives, 488-489 (May 31, 2013).

¹⁵ See General Statutes § 9-621 (a) (1) (C) and (a) (2) (A) (outlining requirements for “party candidate listings” paid for by party committees). The statute outlines the attribution requirements for these party candidate listings related to candidate approval in the case of a committee “making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate’s agent[.]”

¹⁶ See General Statutes § 9-601c (a) (3) (describing situations that would create rebuttable presumption that expenditure was not independent). The definition of “independent expenditure” was amended in 2013 with Public Act 2013-180. In 2012, however, the definition read, in relevant part, as follows:

(a) As used in this chapter and chapter 157, the term “independent expenditure” means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

(b) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, there shall be a rebuttable presumption that the following expenditures are not independent expenditures:

(1) An expenditure made by a person in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (A) a candidate, candidate committee,

17. Here there was evidence that the GDTC was sufficiently aware of the needs of the candidate committee to create a rebuttable presumption that the expenditure was not independent of the candidate. Specifically, the investigation showed that the candidate was the endorsed candidate nominated to represent the party in the election and that the GDTC had paid for and reviewed polling on behalf of Flanagan related to his candidacy previously in the same election cycle.¹⁷ Under Connecticut's campaign finance statutes, party committees may make "organization expenditures" and in making those "organization expenditures" they may coordinate with candidates. The mailer that the GDTC made related to Respondent Flanagan's Republican opponent would fall squarely within the amended definition of "party candidate listing" and coordination with the candidate or candidate's agent would be permissible.
18. The expansion of the types of communications that committees could make as "organization expenditures" would include most of the communications that a committee could make under the definition of "independent expenditure."
19. This expenditure occurred at a transitional time in the history of Connecticut's campaign finance regulation, when the initial restrictions on types of "party candidate listings" that could exist under the organization expenditure umbrella were falling away in response to court rulings favoring more open speech by more actors.

political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(2) An expenditure made by a person for the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(3) An expenditure made by a person based on information about a candidate's, political committee's, or party committee's plans, projects or needs, provided by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, with the intent that such expenditure be made; . . .

General Statutes § 9-601c (2012).

¹⁷ GDTC also made an organization expenditure for polling on behalf of the candidate, which totaled \$508.66. See SEEC Form 20 – Itemized Campaign Finance Disclosure Statement (Glastonbury Democratic Town Committee, , 2012) (reflecting payment of \$1,017.32 on September 29, 2012 to Farina Consulting for polling to benefit equally senate candidate Stephen Cassano and state representative candidate Chip Flanagan.

20. Given that the General Assembly amended the definition of “organization expenditures” to encompass a broad range of campaign related activity, including, after 2012, mailers promoting the election or defeat of a candidate, the Commission must consider that the activity of the Glastonbury Democratic Town Committee was permitted under the amended law and that vigorous prosecution of the respondents would be unfair given the change to the statute approved by the General Assembly and signed into law by the Governor.
21. But the expenditure that the GDTC authorized here violated the statutory provisions that restricted “organization expenditures” to certain types of communications and that applied to the 2012 election cycle.
22. Because the expenditure from the GDTC was not a permissible organization expenditure as the statute existed at the time it was made, the expenditure would not qualify for the exemption from the definition of contribution afforded under General Statutes § 9-601 (25) to “organization expenditures.”¹⁸
23. Nor does the expenditure qualify as an independent expenditure under General Statutes § 9-601c, since it was made by the party committee that had knowledge of the needs of the candidate committee based on the inherently close relationship between the party and its endorsed candidates as well as the polling that the party committee had supplied to the candidate committee via an earlier organization expenditure.
24. Because the expenditure by the GDTC falls outside of the definitions of both¹⁹ “organization expenditure” and “independent expenditure,” this expenditure would be characterized as a contribution to the candidate committee.²⁰
25. General Statutes § 9-622 (13) provides that any person that makes an expenditure on behalf of a candidate that is not an independent expenditure without the knowledge of the candidate, shall be guilty of an illegal practice.²¹
26. As treasurer for the GDTC, Respondent Zimmerlin authorized the expenditure that targeted Srinivasan and would be guilty of an illegal practice under General Statutes § 9-622 (13).

¹⁸ See General Statutes § 9-601 (25), *supra*.

¹⁹ The form of the expenditure – a “negative” party candidate listing – took it outside the definition of “organization expenditure.” The Commission contends that the close affiliation between person making the expenditure – the party committee – and the candidate and candidate committee resulted in the expenditure not qualifying as “independent.” Respondent denies this contention.

²⁰ See General Statutes § 9-601a (a) (4) (including within definition of “contribution” “[a]n expenditure that is not an independent expenditure”).

²¹ See General Statutes § 9-622 (13).

Respondent Zimmerlin also failed to report the expenditure at the time that it was incurred, as required under General Statutes § 9-608 (c).

27. Finally, Respondent Zimmerlin failed to put the proper attribution on the party committee's mailer reflecting that it was approved by the candidate, as required under General Statutes § 9-621.
28. Respondent Zimmerlin disagrees with the Commission's conclusions but given the unique circumstances surrounding this case and the potential costs associated with continued litigation, she has agreed to settle this matter.
29. General Statutes § 9-622 (13), which imposes liability on persons who make non-independent expenditures without the knowledge of a candidate, states that "[n]o candidate shall be civilly or criminally liable with regard to any such expenditure."
30. Respondent Flanagan, whose candidate committee received the benefit of the expenditure made by the party committee, was not shown to have had any knowledge of the specific mailer targeting Srinivasan before the mailer was released.
31. The matter against Respondent Flanagan shall be dismissed in accordance with General Statutes § 9-622 (13).
32. Respondent Zimmerlin 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 into after a full hearing and shall become final when adopted by the Commission.
33. By entering into this agreement, Respondent Zimmerlin seeks simply to settle this matter.
34. Respondent Zimmerlin 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.
35. Upon Respondent Zimmerlin's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.
36. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn

and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.


ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth comply with the requirements of General Statutes §§ 9-601c, 9-607, 9-608 (c), and 9-621.

The Respondent

For the State of Connecticut


By:



Winona Zimmerlin
141 Three Mile Road
Glastonbury, CT 06033

Dated: 3/18/16

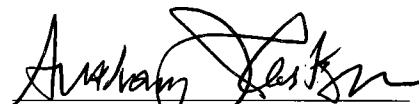
By:



Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT 06106

Dated: 3/20/16

Adopted this 13 day of April, 2016 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission

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ENFORCEMENT COMMISSION