

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Elissa Voccola  
City of Hartford

File No. 2014-095

**FINDINGS AND CONCLUSIONS**

Complainant Elissa Voccola brought this complaint pursuant to General Statutes § 9-7b, alleging that Dannel Malloy, the Democratic Party's candidate for governor in 2014, had impermissibly coordinated expenditures with the Democratic Governors' Association for expenditures to promote Malloy in the election. Complainant alleged that Malloy's position as a member of the DGA and an executive of that group rendered expenditures made by the DGA's political committee, Connecticut Forward, as coordinated. After investigating the allegations in the complaint, the Commission makes the following findings of fact and conclusions of law:

1. Complainant alleged that the Democratic Governors' Association<sup>1</sup> had failed to operate independently of the Malloy campaign during the 2014 election cycle. The complaint specifically addressed polling paid for by the DGA as well as other non-specified expenditures over which Malloy exercised some control.<sup>2</sup>

2. Complainant charged that:

There is a rebuttable presumption that such expenditures are not independent because, upon information and belief, the expenditures were made by the DGA in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with Governor Malloy and/or Dan Malloy for Connecticut and/or their agents or consultants. Conn. Gen. Stat. § 9-601 c (b) (1).

There is a rebuttable presumption that such expenditures are not independent because, upon information and belief, the expenditures were made by the DGA on

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<sup>1</sup> Although the Complainant named the Democratic Governors' Association as a Respondent, the Commission's investigation showed that the Democratic Governors' Association did not directly make any expenditures to support Dannel Malloy in the 2014 election cycle. Connecticut Forward, a political committee funded largely by the Democratic Governors' Association, did make expenditures to support Dannel Malloy.

<sup>2</sup> Affidavit of Complaint – Elissa Voccola (SEEC File No. 2014-095) (Rec'd August 13, 2014) (alleging that Democratic Governors' Association had impermissibly coordinated expenditures with Dannel Malloy candidate committee).

behalf of Governor Malloy who is serving or has served in an executive or policymaking position, including as a member, employee, fundraiser, consultant or other agent, of the DGA. Conn. Gen. Stat. § 9-601c (b) (4).

There is a rebuttable presumption that such expenditures are not independent because, upon information and belief, the expenditures were made by the DGA based on information about Governor Malloy's campaign plans, projects or needs, that was directly or indirectly provided by Governor Malloy and/or Dan Malloy for Connecticut and/or their agents or consultants with an express or tacit understanding that the DGA is considering making the expenditure. Conn. Gen. Stat. § 9-601c (b) (7).

There is a rebuttable presumption that such expenditures are not independent because, upon information and belief, the expenditures, including polling, contained communications that clearly identifies Governor Malloy and the DGA has informed Governor Malloy, his campaign, consultants or agents of the communication's contents, or of the intended audience, timing, location or mode or frequency of dissemination. Conn. Gen. Stat. § 9-601c (b) (8).

The expenditures DGA made by and through Connecticut Forward are in fact illegal coordinated expenditures and are not independent expenditures under Conn. Gen. Stat. § 9-601c.

...

Based on the DGA expenditures, Governor Malloy and/or Dan Malloy for Connecticut have committed "illegal practices" as described in Conn. Gen. Stat. § 9-622(5) by defraying costs of Governor Malloy's campaign, are subject to the penalties described in Conn. Gen. Stat. § 9-623.

3. With the sworn complaint, Complainant forwarded to the Commission copies of filings by Connecticut Forward as well as a copy of the federal civil action filed by the DGA against the State Elections Enforcement Commission regarding enforcement of the coordinated expenditure provisions codified at General Statutes § 9-601c.

4. The federal district court issued a partial decision regarding the DGA's complaint against the Commission in June 2014. In denying the DGA's request for an injunction in the federal civil action, the court noted that any prosecution of an entity for coordinating expenditures with a candidate committee would rely on evidence in addition to the associational activities outlined in the statutory provisions that created a rebuttable presumption of coordination.<sup>3</sup>
5. General Statutes § 9-601c lays out certain scenarios that would create a rebuttable presumption that an expenditure was not independent.<sup>4</sup> The statutory provision states, in relevant part:

(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, 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;

...

(4) An expenditure made by an individual who, in the same election cycle, is serving or has served as the campaign chairperson, treasurer or deputy treasurer of a candidate committee, political committee or party committee benefiting from such expenditure, or in any other executive or policymaking position, including as a member, employee, fundraiser, consultant or other agent, of a candidate committee, political committee or party committee;

...

(7) An expenditure made by a person based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by a

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<sup>3</sup> See *Democratic Governors Assoc. v. Brandi, et al*, 3:14-cv-00544-JCH, (D. Conn., 2014) (“These activities, at most, may be evidence suggestive of coordination; a finding of coordination can only be based on any such activity if additional evidence of coordination is also present.” “The SEEC, however, cannot base a finding of coordination on this associational activity alone.”)

<sup>4</sup> General Statutes § 9-601c (establishing criteria for rebuttable presumptions to determine whether expenditures were not independent).

candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of such candidate, candidate committee, political committee or party committee, to the person making the expenditure or such person's agent, with an express or tacit understanding that such person is considering making the expenditure;

(8) An expenditure made by a person for a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or such person's agent, has informed the candidate who benefits from the expenditure, that candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of the benefiting candidate or candidate committee, political committee, or party committee, concerning the communication's contents, or of the intended audience, timing, location or mode or frequency of dissemination. As used in this subdivision, a communication clearly identifies a candidate when that communication contains the name, nickname, initials, photograph or drawing of the candidate or an unambiguous reference to that candidate, which includes, but is not limited to, a reference that can only mean that candidate; . . .

6. In addition, Complainant alleged that the DGA had paid for items the costs of which should have been borne directly by the Malloy candidate committee, which would violate General Statutes § 9-622 (5). That section defines as an "illegal practice" when "any person . . . directly or indirectly, pays, gives, contributes or promises any money or other valuable thing to defray or towards defraying the cost or expenses of any campaign, primary, referendum or election to any person, [or] committee . . . other than to a treasurer . . . [.]"
7. The Commission docketed this complaint given that the facts alleged in the document, if proven by evidence gathered after a thorough investigation, could show that the Respondent DGA, through Connecticut Forward, may have collaborated with or used information gleaned from Malloy or an agent of the Malloy campaign to determine how best to allocate resources of the DGA to promote Malloy's candidacy and thereby violated General Statutes § 9-601c. In addition, if the facts showed that the DGA or Connecticut Forward had used its resources to pay for goods or services that should have been paid for directly by the Malloy candidate committee, then that could be an illegal practice under General Statutes § 9-622 (5). Conversely, the evidence could show that no violation of Connecticut's campaign finance statutes occurred, resulting in a dismissal of the charges against the DGA,

the Malloy candidate committee, and the other respondents. Key to the resolution of the matter either way, however, would be a thorough investigation of the facts in the case.

8. Subsequent to receiving Respondents' response to this complaint, Commission staff sought documents from Respondents including, but not limited to, information related to a firewall policy that the DGA purportedly created in 2014, communications from representatives of Connecticut Forward regarding solicitation for funds during the 2014 election cycle, and expenditures made by the DGA for polling expenses in Connecticut.
9. The Respondents, by letter dated April 10, 2015, noted that it would attempt to comply with the Commission's request for documents and information but stated that it was not willing to supply the documentation without more information justifying the requests, which they felt went beyond what was necessary to investigate the allegations in the complaint.<sup>5</sup>
10. Following up on this correspondence, Commission staff attempted to narrow the Commission's request to obtain certain information that would help move the investigation forward. That request, however, has also never been fulfilled by respondents, and the Commission has received no documents from the respondents to date.
11. Given the limited resources available to the Commission as well as the slim likelihood that further requests for information would be complied with absent protracted litigation, the Commission concludes that continued investigation into this matter at this juncture is not possible. Respondents are unlikely to provide any additional information to facilitate any meaningful investigation of the allegations raised in Ms. Voccola's complaint absent court order.
12. Based on the recalcitrance of respondents in participating in the Commission's investigation voluntarily as well as the absence of resources to engage in a protracted legal process to enforce a subpoena in a foreign jurisdiction, the Commission will take no further action on this matter and dismisses the case without prejudice.

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<sup>5</sup> See Letter from Jonathan S. Berkon to Charles Urso, April 10, 2015.

**ORDER**

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

That the Commission will take no further action on this matter and dismisses this action without prejudice, allowing the Commission to reopen this matter should an additional complaint alleging similar facts or conduct by these respondents be filed in the future that would warrant a reexamination of this matter.

Adopted this 18<sup>th</sup> day of April of 2018 at Hartford, Connecticut.

  
Anthony J. Castagno, Chairman  
By Order of the Commission