

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Deeb, Manchester

File No. 2016-026

FINDINGS AND CONCLUSIONS

The Complainant alleges that the Manchester Democratic Town Committee produced and disseminated an electioneering communication during the 2016 Presidential Preference Primary and that such communication was not produced in accordance with the prescriptions in Title 9.¹

ALLEGATIONS

1. The allegations here concern an electioneering communication paid for by the Manchester Democratic Town Committee (“MDTC”) and distributed to registered voters unaffiliated with any political party ahead of the 2016 Presidential Preference Primary. The Complainant makes two distinct allegations regarding the electioneering communication. First, the Complainant alleges that because the communication speaks only to the Democratic Party Presidential Preference Primary, such communication impermissibly disenfranchises voters “by depriving them of the opportunity to participate in the Republican [Presidential Preference] primary by registering as a Republican.” Second, the Complainant alleges that the communication’s attribution, required per General Statutes § 9-621, is insufficient as it only uses the acronym “MDTC” rather than the full name of the committee.

¹ The following are the Commission’s findings and conclusions based on those portions of the Complainant’s statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

LAW

2. General Statutes § 9-363 reads, in pertinent part:

*Any person who, with intent to defraud any elector of his or her vote or cause any elector to lose his or her vote or any part thereof, gives in any way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, *misleading or incorrect instructions or advice or suggestions as to the manner of voting on any tabulator, the following of which or any part of which would cause any elector to lose his or her vote or any part thereof*, or would cause any elector to fail in whole or in part to register or record the same on the tabulator for the candidates of his or her choice, shall be guilty of a class D felony. (Emphasis added.)*

3. General Statutes § 9-621 reads, in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no 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 or promotes or opposes any political party or solicits funds to benefit any political party or committee *unless such communication bears upon its face as a disclaimer (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 treasurer; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words*

“approved by” and the following: (A) In the case of an individual, group or committee other than a candidate 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, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate. . . . (Emphasis added.)

4. Commission staff reviewed the communication at issue in the Complainant’s allegations. The communication appears in its look and feel to attempt to appear like an official document from a government entity. The document contains a seal in the top left corner which upon inspection reads “United States of America” with an American flag in the center. The top right corner of the document contains a barcode, over which is typed in plain, courier font “Voter Registration Status: Un-enrolled/Alert Status Level: High Priority.” The first line of the document reads: “We regret to inform you that as of April 11, 2016, you are ineligible to vote in the Presidential Primary” and goes on to inform the voter that his/her party enrollment status is “Un-enrolled.” (Emphasis in the original.) The letter goes on to state that “[w]ithout immediate corrective action you will be **INELIGIBLE** to vote in the April 26th Connecticut Presidential Primary for either Hillary Clinton (NY) or Bernie Sanders (VT).” (Emphasis in the original.) The document then goes on to (correctly) inform the voter on how to enroll in a party through the Office of the Registrars of Voters. The document is signed “Sincerely/Mike Pohl/MDTC Chairman.” Finally, in a smaller, but legible font at the bottom of the face of the document, the attribution reads “Paid for by MDTC, not endorsed by any candidate or candidate committee” along with disclaimer language asserting that the document is “privileged and confidential.”²

COUNT ONE: Distribution of Misleading Instructions

5. The Complainant alleged in what is here enumerated as Count One that the electioneering communication is a violation of General Statutes § 9-363 insofar as he alleges that it is intentionally misleading.
6. Specifically, the Complainant alleges that the statements within the communication “create the false impression that the only way an unaffiliated voter can participate in the

² The Complainant here also alleged, but provided no proof, that the return envelope of the electioneering communication utilizes name of a fictitious entity “Bureau of Voter Registration,” along with the return address of the “Vinci Group” a consultant used by the MDTC. Even assuming that the Commission had such proof, our analysis of this matter does not change.

Presidential [Preference] Primary is to register as a Democrat. This letter disenfranchises unaffiliated voters by depriving them of the opportunity to participate in the Republican primary by registering as a Republican.”

7. In reviewing whether a respondent has violated General Statutes § 9-363, the Commission would have to conclude that the evidence sufficiently establishes that
 - a. The Respondent circulated improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any tabulator;
 - b. Those instructions, advice or suggestions would cause that elector to lose his/her vote or any part thereof if followed; and
 - c. The Respondent circulated those instructions with the intent to defraud an elector of his vote or cause that elector to lose his vote.

See *In the Matter of a Complaint by Harry Lew, Southington*, File No. 2015-155 and *In the Matter of a Complaint by Edward Rosenblatt, Southington*, File No. 2015-178.

8. As in *Lew* and *Rosenblatt*, the MDTC clearly did attempt to imbue the communication with the air of more authority insofar as it utilizes a generic, but somewhat official-looking seal and formatting. However, considering the communication as a whole, the Commission finds that none of the content to which the Complainant refers, considered within the context of the entire document, would be likely to cause an elector to lose his/her vote or any part thereof.
9. While false content does not necessarily equate to a violation of § 9-363, it is compelling that the statements in this communication are all true. Assuming their data is correct, the voter was ineligible to vote in the Presidential Preference Primary. The voter could not vote for either Hillary Clinton or Bernie Sanders in the Presidential Preference Primary unless “corrective action” was taken. The closest it gets to a false statement is when it states that “[i]n order to vote on April 26th you must update your Connecticut voter registrant status to: Democrat.” However, in context, it is unclear that this is a demonstrably false statement.
10. Moreover, it is a common campaign practice for political parties to target unaffiliated voters to register with their party.
11. Also, the MDTC does identify itself, twice, in the document, as the sending authority—first in Chairman Mike Pohl’s signature line, which is the same font size as the other text in the document, and again in a smaller font attributing who paid for the communication.

12. Finally, the Commission notes that its investigation revealed that there was an additional flyer included with this communication that the Complainant did not include in the initial Complaint here. The flyer was a four-color glossy fold-out brochure featuring large photographs of Hillary Clinton and Bernie Sanders, as well as a full page review of each candidate's political policy positions.
13. Considering the aforesaid, the Commission concludes that is insufficient to conclude that it is more likely than not that the communication was distributed in violation of General Statutes § 9-363. Count One should be dismissed.

COUNT TWO: Improper Attribution

14. As noted above, the Communication included an attribution "Paid for by MDTC" on its face. This attribution was also included on the above-mentioned flyer not included with the instant Complaint.
15. The Complainant alleges that using "MDTC" instead of the full name of the Committee, does not meet the requirements of General Statutes § 9-621.
16. Consistent with our prior matters on this subject, as well as the Commission's longstanding advice, we disagree with the Complainant's assertion.
17. The "SEEC Form 2" filing, which all party committees are required to file when registering or amending their registrations, includes a section for both the name of the party committee, as well as an acronym for the committee name.
18. *In the Matter of a Complaint by David Haseltine, Mansfield*, File No. 2009-139 concerned identical allegations as those here. In *Haseltine*, the Commission noted that in prior matters, the Commission had previously held that a committee's acronym was insufficient to meet the requirements of § 9-621, but that since the Commission had taken over as the filing repository from the Secretary of the State in 2007 and redesigned the committee registrations (here, SEEC Form 2 for a party committee) to include an official acronym, the use of the acronym alone, was sufficient.³

³ "Registration Statements are available to the public upon request and via the Commission's website. As such, the Commission concludes that a party committee that has provided an original acronym on their registration statement may utilize that acronym for the purposes of complying with the attribution requirements of General Statutes § 9- 621 (a)." ¶ 14

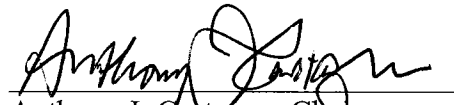
19. Here, the investigation revealed that the MDTC registered “MDTC” as its official acronym. As such, its use of the acronym, alone, in the “Paid for” attribution, was sufficient to meet the attribution requirements of General Statutes § 9-621. Count Two should be dismissed.

ORDER

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

Dismissed.

Adopted this 20th day of September, 2017 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission