

SEP 20 2018

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by J.R. Romano  
Branford

File No. 2016-086

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between Dianna Kulmacz, Town of Higganum, State of Connecticut, hereinafter referred to as Respondent, 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. Tim Bowles formed a candidate committee to support his candidacy for the 18th state senate seat on April 7, 2016. Respondent Kulmacz was named as the treasurer for the Bowles candidate committee. The candidate committee participated in the Citizens' Election Program. The committee applied for and received a grant from the Citizens' Election Fund. Both Bowles and Kulmacz agreed to abide by the statutes and regulations governing use of any monies that the candidate committee received from the Citizens' Election Fund.
2. Complainant alleged that:

A recent mailer paid for by the Bowles 2016 Committee and approved by Candidate Bowles used monies received from the CEP to mail out an attack piece on Republican Presidential nominee Donald J. Trump. . . . Under the provisions of the CEP no federal candidates both in support or opposition can be mentioned in a communication using state monies. In addition, under federal law in a federal election which 2016 is considered only federal monies can be used[.] . . . I allege that this is a violation of every provision of the CEP as well as the letter and spirit [of the law and program.]
3. On or about October 19, 2016, according to campaign finance records, the committee ordered a mailer that cost \$8,289.22, including postage and tax, which mentioned Bowles's opponent, Heather Somers, as well as the Republican presidential candidate in 2016, Donald Trump.
4. The double-sided mailers featured pictures of Trump and Somers on one-side, under the title "Con Artists We Can't Afford." The mailer then listed aspects about Trump and Somers, including that each "Made Bad Deals For Us" – Trump: "Didn't pay his bills," "Fined by the government" and Somers: "Didn't pay her bills," "Fined by the

government” – and that each “Sold Their Companies” – stating that each had “Pocketed millions & taxpayers lost millions.” Under the picture of Trump were the words “That’s ‘Smart’” and under the picture of Somers were the words “That’s ‘Routine.’” The bottom of the mailer recited an apparent quote from the September 8, 2016 edition of THE DAY newspaper stating that “Somers Flunks the Trump Test.” The opposite side of the mailer focused solely on Somers and mentioned neither Trump nor his candidacy.

5. In October 2014, the Commission issued Advisory Opinion 2014-04, in which it reiterated its guidance that to avoid making an impermissible expenditure from a CEP candidate committee for a communication that opposes a candidate other than the direct opponent of the relevant participating candidate, committees of candidates and political parties that can permissible make such expenditures to oppose the candidate featured in the communication must pay their proportionate share of the communication’s costs as a joint expenditure.
6. General Statutes § 9-601b provides in pertinent part:
  - (a) As used in this chapter and chapter 157, the term “expenditure” means:
    - (1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person 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; ...
7. General Statutes § 9-607 provides in pertinent part:
  - (g)(1) As used in this subsection, (A) “the lawful purposes of the committee” means:
    - (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, . . . .
    - (2) Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay the expenses of: (A) Advertising in electronic or print media; (B) any other form of printed advertising or communications including “thank you” advertising after the election; (C) campaign items, including, but not limited to, brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, . . . and (Z) any other necessary campaign or political expense.
8. General Statutes § 9-610 provides in pertinent part:
  - (b) *A candidate committee may pay or reimburse another candidate*

*committee for its pro rata share of the expenses of* operating a campaign headquarters and of preparing, *printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates*, including any shared expenses for which only the committee being paid or reimbursed was under a contractual obligation to pay.

Notwithstanding the provisions of subdivision (1) of subsection (a) of section 9-616, a candidate committee may reimburse a party committee for any expenditure such party committee has incurred for the benefit of such candidate committee.

[Emphasis added.]

9. General Statutes § 9-616, provides in pertinent part:

(a) 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.

10. General Statutes § 9-621, provides 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.

11. General Statutes § 9-706, provides in pertinent part:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, if a primary is required under chapter 153, and (A) said party endorses the candidate for the office that the candidate is seeking, (B) the candidate is seeking nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative and receives at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for the office the candidate is seeking, or (C) the candidate circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for (i) the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, pursuant to section 9-400, or (ii) the municipal office of state senator or state representative, pursuant to section 9-406, whichever is applicable. The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of

subsections (d) to (g), inclusive, of this section.

...

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

12. With the adoption of the Citizens' Election Program, however, the legislature instructed the Commission to draft regulations related to the types of expenditures that qualified candidate committees were permitted to make using their grant monies obtained from the Citizens' Election Fund.<sup>1</sup>
13. The Commission adopted regulations outlining those restrictions, specifically Section 9-706-1 of the Regulations of Connecticut State Agencies, which provides, in relevant part:
  - (a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.
14. The Commission adopted regulations that specified what expenditures are permissible for a qualified candidate committee as well those that are not permitted for candidate committees accepting Citizens' Election Fund monies. Section 9-706-2 of the Regulations of Connecticut State Agencies provides, in relevant part:
  - (a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:
    1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or internet;

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<sup>1</sup> See General Statutes § 9-706 (e) (directing State Elections Enforcement Commission to adopt regulations delineating restrictions on use of grant funds).

2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;

3. Postage and other commercial delivery services for political campaign advertising;

(b) . . . Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

. . .

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee; . . .

10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure; . . .

13. Independent expenditures to benefit another candidate;

14. Expenditures in violation of any federal, state or local law; . . .

15. Relying on the statutory and regulatory provisions cited above, Advisory Opinion 2014-04 specifically instructed and cautioned candidates and treasurers of qualified candidate committee about paying for negative communications that targeted candidates other than their opponents. The Commission directed that:

[W]hen a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is not ... [a] direct opponent of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated ...

[T]he candidate committee of a CEP participant may not attack candidates opposing other members of such candidate's party.

16. In the October 2016 mailings described above, the Bowles candidate committee sought to cast both his direct opponent Somers and Trump, the Republican nominee for the office of the president, as "Con Artists," who were more interested in benefiting themselves than working in the best interests of voters.
17. The Commission concludes that the costs of this mailer associated with its opposition to Trump, a Republican candidate on the November, 2016 general election ballot in a federal election contests, which were not allocated to a committee that could properly make such an expenditure opposing Trump, did not represent permissible expenditures for a qualified candidate committee using funds received from the Citizens' Election Fund.

18. Following the line of cases decided by the Commission related to communications in the 2014 election cycle that opposed Dannel Malloy, the Democratic nominee for the office of governor in 2014, any costs associated with the opposition to the candidacy of Donald Trump as the Republican presidential nominee should have been allocated to a committee that could have legally made such an expenditure, such as a federal candidate committee or the federal account of the Connecticut Democratic state party. The Bowles candidate committee, which was established by candidate Bowles to support his candidacy for the 18<sup>th</sup> state senate seat and which had received a grant from the Citizens' Election Fund, could not make the expenditure opposing Trump.
19. Respondent maintains that this expenditure was not made in conjunction with any other committee and was not intended to promote or oppose any candidate other than candidate Bowles and his opponent Somers. Respondent also states that the content of this mailer was not designed by her, but rather by a political consultant. She understands, however, that the liability for the impermissible expenditure that the mailer represents lies with her as treasurer for the committee.
20. 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 into after a full hearing and shall become final when adopted by the Commission.
21. 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.
22. 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 strictly with the requirements of General Statutes §§ 9-607, 9-616 and 9-706 as well as Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2.

The Respondent

For the State of Connecticut

By:



Dianna J. Kulmacz  
134 Brault Hill Road  
Higganum, CT 06441

By:

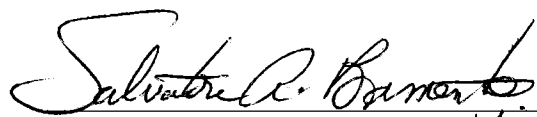


Michael J. Brandi, Esq.  
Executive Director and General Counsel and  
Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St., Suite 101  
Hartford, CT 06106

Dated: 9/16/18

Dated: 9/25/18

Adopted this 17<sup>th</sup> day of October, 2018 at Hartford, Connecticut by vote of the Commission.

  
Anthony J. Castagno, Chairman *Vice*  
By Order of the Commission  
