



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

PROPOSED DECLARATORY RULING 2018-01: *Political Activity of Organized Groups*

At its special meeting on April 18, 2018, the State Elections Enforcement Commission (the “Commission”) voted to issue this Proposed Declaratory Ruling regarding if and when disclosure is required in relation to the political activities of certain groups of people acting together who are not required to form Connecticut political committees.¹ The Ruling provides general advice on the difference between independent and coordinated expenditures, the issuance of scorecards, endorsements, the use of social media and the other assistance on behalf of Connecticut candidates.

This Proposed Declaratory Ruling will address the application of Connecticut campaign finance laws, Chapters 155 and 157 of the General Statutes, to various ways for outside groups to engage in political activity, including:

- Independent Expenditures
- Membership Communications
- Questionnaires
- Scorecards
- Endorsements
- Volunteering; and
- Other Campaign Activities.

The advice provided is prospective and does not address whether past activities undertaken were or were not in compliance with Connecticut’s campaign finance laws.

Groups Not Required to Register Committees

Under Connecticut campaign finance law, only those groups of two or more people that are soliciting and receiving contributions in excess of \$1,000 earmarked for expenditures with respect to Connecticut elections are required to register committees. General Statutes § 9-602. *See* Advisory Opinion 2014-02: *Disclosure of Expenditures in*

¹ This opinion revisits questions addressed in Advisory Opinion 2008-01, which was withdrawn following the *Citizens United v. FEC*, 558 U.S. 310 (2010), decision, and also addresses questions raised in the March 12, 2018 petition from counsel Arnold F. Skretta, on behalf of Connecticut Compliance and Law Services LLC, concerning the subjects addressed herein. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter. General Statutes § 4-176 (c).

Campaign Finance Statements Pursuant to Public Act 13-180 for a full discussion of Connecticut's registration and disclosure requirements.

For any group making independent expenditures from its own funds on behalf of candidates in Connecticut elections, there are no registration requirements and incident-based reporting is required only after spending in excess of \$1,000 on independent expenditures. General Statutes § 9-601d. Such spenders might include for-profit corporations, labor unions, business and industry associations, PTAs, civic organizations, federal SuperPACs, as well as corporations exempt from taxation pursuant to Section 501(c) (4) of the Internal Revenue Code and 527 organizations formed for political activities but not raising money specifically for Connecticut elections. Certain informally organized groups of individuals and certain membership organizations or associations might also be included. The range of possible purposes and identities of such groups is limitless but all have been established for reasons other than raising money to spend on Connecticut elections.² (Again, those raising money for expenditures in excess of \$1,000 for Connecticut elections must register Connecticut political committees.)

This Ruling focuses on if and when disclosure is required with respect to the political activities of such incidental spenders that now wish to spend money out of their existing treasuries on state elections rather than raising new money specifically for such activity, and on newly formed groups that want to spend little or no money on elections. These groups are also known as *organized groups*, *outside spenders* or *incidental spenders* because the money they are spending is raised for other purposes than Connecticut elections and the election spending from the pre-existing treasury is incidental to the group's purpose.

Independent Expenditures

The determinative question is often whether an expenditure by an outside group is independent and, thus, permissible or if it falls within the definition of a contribution and is, therefore, prohibited. For this reason, understanding the difference between independent and coordinated expenditures is crucial when engaging in political spending.

The distinction between contributions and expenditures is critical in campaign finance law. Contributions to candidates, party committees and traditional political committees are limited in source and amount. Incidental spenders may not make direct contributions to candidates or party committees or traditional political committees; rather, they must register a traditional political committee that raises and spends money within the permissible source and amount limits in order to make contributions.

² Under Connecticut law, charitable groups organized under 501 (c) (3) of the Internal Revenue Code are treated differently from all other outside groups, in particular because none of the communications made while acting within the parameters of their 501 (c) (3) designation are considered expenditures. General Statutes § 9-601b (b) (13). This advice does not cover or supersede federal law or regulations, in particular the Internal Revenue Code, as it applies to certain groups, e.g. nonprofits. Questions about a group's tax status should be directed at the Internal Revenue Service or the Connecticut Department of Revenue Services.

Following the U.S. Supreme Court’s 2010 decision in *Citizens United*, however, outside groups may now make independent expenditures directly from their treasuries without first forming a political committee registered with the Commission. An independent expenditure is “an expenditure, as defined in General Statutes § 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.” General Statutes § 9-601c (a).

If an expenditure is made in coordination with a candidate or a committee then it is an in-kind contribution. The Supreme Court has spoken in the broadest terms about the degree of independence that is necessary for “independent expenditures” to be considered free of the legal constraints that would otherwise apply to in-kind contributions. Such expenditures must be “totally independent,” “wholly independent,” “truly independent,” and made “without any candidate’s approval (or wink or nod)” according to the Court.³

The statutes provide examples of when expenditures are presumed to *not* be independent, identifying specific instances where a committee, individual, or organized group that communicates with a candidate committee could cross the line between making an independent expenditure and making a coordinated expenditure. General Statutes § 9-601c (b). (A copy of the full definitions of *expenditure* in section 9-601b and *independent expenditure* in section 9-601c are attached hereto as **Appendix A.**)

Making coordinated expenditures with candidates in the clean elections program is especially problematic. CEP candidate committees may only receive monetary qualifying contributions and only from individuals. In joining the Program, participating candidates are required to forego all non-monetary “in-kind” contributions. Participating candidates who violate the Program requirements may be responsible for the return of all grant monies.

Generally speaking then, the only type of expenditure an outside group may make is an independent expenditure. There are, however, certain exceptions to the definitions of expenditure and contribution, some of which allow for coordinated political activity by incidental spenders, even for CEP candidates, and which are described later in this Ruling.

Are there any limits as to the amounts an incidental spender may spend independently of a candidate’s campaign?

No. As mentioned above, an organized group may make *unlimited independent expenditures* that support or oppose the candidacy for nomination or election of any

³*McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 221-22 (2003); *Fed. Election Comm’n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 442, 465 (2001); *Buckley v. Valeo*, 424 U.S. 1, 47 (1976).

individual or any party. General Statutes § 9-601d.⁴ Certain filing requirements apply, however, if the group spends or incurs over \$1,000 as more fully laid out in Advisory Opinion 2014-02.

Are there any possible fines or penalties for violations of the rules governing independent expenditures?

Yes. Whether a violation is found and a determination of the amount for any penalty would be based on the facts and circumstances of each case. The Commission, in assessing a civil penalty, would consider whether such violation was intentional or inadvertent as well as the person's good faith efforts to comply. General Statutes § 9-623; Regs., Conn. State Agencies § 9-7b-48.

Violations of Connecticut's statutes governing independent expenditures carry both potential civil and criminal sanctions. Failing to report independent expenditures may result in fines of up to \$20,000. General Statutes § 9-601d (i) (1). If any such failure is knowing and wilful, the person responsible for the failure to file may also be fined up to \$50,000 and the Commission may refer the matter to the Office of the Chief State's Attorney. General Statutes §§ 9-601d (i) (2), 9-623. Additionally, improper payments or contributions, including purportedly independent expenditures, may result in a civil penalty of "\$2,000 per offense or twice the amount of any improper payment or contribution . . ." General Statutes § 9-7b (a) (2) (D); *see also* General Statutes § 9-622 (13) (it is illegal act to make a coordinated expenditure for a candidate without the knowledge of said candidate.).

At what point must an organized group sever all communications with a candidate (or potential candidate) to maintain the independence of an expenditure?

An expenditure is either coordinated or independent and, if coordinated, it is subject to certain limits and other restrictions. In order to be free of the contribution limits under the law, an expenditure must be wholly and totally independent of a candidate or committee. In the simplest scenario, therefore, an organized group making an independent expenditure for a candidate will have never had any communication with the benefitting candidate whatsoever.

The Commission recognizes, however, that this is not always the case but that an organized group is capable of making an independent expenditure for a candidate despite

⁴ General Statutes § 9-601d provides, "(a) Any person, as defined in section 9-601, may, unless otherwise restricted or prohibited by law, including, but not limited to, any provision of this chapter or chapter 157, make unlimited independent expenditures, as defined in section 9-601c, and accept unlimited covered transfers, as defined in said section 9-601. Except as provided pursuant to this section, any such person who makes or obligates to make an independent expenditure or expenditures in excess of one thousand dollars, in the aggregate, shall file statements according to the same schedule and in the same manner as is required of a treasurer of a candidate committee pursuant to section 9-608." The term "person" includes, *inter alia*, all outside groups. General Statutes § 9-601 (10).

prior, limited communication between the two parties. It would not result in a finding of coordination if an incidental spender and a candidate engaged in discussions solely grounded in that spender's position on a legislative or policy matter, including urging the candidate or committee to adopt that spender's position, so long as there is no discussion between the spender and the candidate regarding the candidate or spender's campaign advertising, message, strategy, policy, polling, allocation of resources, fundraising, or campaign operations.

The timing of any communications with a candidate is only one factor in the analysis of whether an expenditure is independent or coordinated. The determination of whether an expenditure is truly independent relies on all of the facts in a given situation. The important fact is that a communication, no matter when it occurs, does not establish consent or coordination or serve as consultation between the parties regarding the expenditure or campaign strategy generally.

Nevertheless, the timing of the communication could be evidence of coordination that the Commission might consider in its determination as to whether an expenditure was independent or not in the event a complaint is filed alleging coordination. For example, it would be more indicative of coordination if the communication happened immediately preceding an expenditure, as opposed to months before. Determinations whether an expenditure is coordinated or independent are fact-specific.

Membership Communications

Because many incidental spenders are structured as membership entities or organizations, it is important to understand the longstanding safe harbor in the law for internal communications made to members of such groups by their leadership.

Specifically, General Statutes § 9-601b (b) (2) excludes from the definition of "expenditure" communications "made by any corporation, organization or association to its members, owners, stockholders, executive or administrative personnel, or their families." *See also* General Statutes § 9-601a (b) (2) ("'[C]ontribution' does not mean . . . [a]ny communication made by a corporation, organization or association to its *members*, owners, stockholders, executive or administrative personnel, or their families . . .").

This exception for internal communication allows outside spenders to communicate with its membership, if it has members, without that communication resulting in a contribution or expenditure. It even covers communications expressly advocating the election or defeat of a particular candidate, so long as the communication remains limited to the restricted class. It covers communications that may have been coordinated with the candidate or committee, again, so long as the communication remains limited to the restricted class.

A group with members might, for example, be a trade association, a cooperative, a corporation without capital stock or a local, national or international labor organization that is composed of members who have the authority to administer the organization

according to the organization's bylaws; has bylaws stating the qualifications for membership; makes its bylaws available to its members; expressly solicits persons to become members; expressly acknowledges new members by, for example, sending a membership card or including the member's name on a newsletter list; and is not raising money to make expenditures in Connecticut elections. *See e.g.* 11 C.F.R. 114.1 (e) (1); *see* FEC Advisory Opinions 2008-21 (CME Group, Inc.) and 2007-16 (American Kennel Club).

The Commission has adopted the definition of "member" as enunciated first by the Federal Election Commission ("FEC"). *See Complaint of Karen Murphy, Stamford*, File No. 2009-141 (A soccer league was found to be eligible for the membership exception). That definition specifies "members" to include:

[A]ll persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

- (1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- (2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

11 C.F.R. 100.134 (f).

This definition, which the Commission and its staff have applied in the past to organized groups, creates a general guideline for determining whether a group's membership structure satisfies the standards for a membership organization or association that can utilize the exceptions to the definitions of contribution and expenditure included in Connecticut's campaign finance laws. *See* General Statutes §§ 9-601a (b) (2), 9-601b (b) (2). The definition also serves to demonstrate what would *not* be considered a membership organization or association, for example, a loosely associated group of individuals, such as a Facebook group, or listserv, or any other email list subscription not associated with a group that meets some or all of the above criteria.

The breadth of the membership communication exception affords these types of groups great latitude in communicating with their members. A membership organization or association may rely on this exception to communicate in-house to the restricted group regarding political subjects, and even encourage them to support, volunteer on behalf of, or vote for or against selected candidates, regardless of prior coordination with that candidate, because the costs associated with the communications would not be considered expenditures. However, exceptions to the law are narrowly construed. *Commission on Human Rights and Opportunities v. Sullivan*, 285 Conn. 208, 222, 939 A.2d 541 (Jan. 22, 2008); *see also* SEEC Opinion of Counsel 2000-07: Voter Registration and Education (discussing limitation on intra-corporate communication exception to expenditures under General Statutes § 9-333b (b) (2) [*now* § 9-601b (b) (2)] and concluding that hanging materials expressly advocating on behalf of candidate on bulletin board in workplace exceeded the limits of the “in-house communications”).

The exception allows the group to coordinate with candidates for the limited purpose of the membership communication, but this carries with it some risks and liabilities. One risk is that if the coordinated communication goes beyond the restricted class of members and also goes to non-members, then it becomes an impermissible expenditure, and an impermissible in-kind contribution to the candidate. For example, if a candidate attends a membership organization’s meeting to speak directly to its members, but the general public is also invited, the cost of the event will be considered a coordinated expenditure, and thus a contribution, which candidates may not accept. Once the communication extends beyond the restricted class, the associated cost of the entire communication would be considered an expenditure for the purposes of the campaign finance laws. *See* Advisory Opinion 2014-02. Caution should therefore be exercised when planning on relying on the exception for membership communications.

Moreover, coordination between groups and candidates for these kinds of membership communications may prevent the group from making future independent expenditures on the candidate’s behalf. Such coordination may trigger a rebuttable presumption or be considered part of the totality of circumstances should a complaint be filed alleging that an “independent expenditure” was really coordinated.

Questionnaires and Interviews for the Purpose of Endorsements or Scorecards

What communication can take place between an incidental spender and a candidate that does not rise to the level of coordination? Questionnaires and interviews, if properly crafted, are one such way communication can take place.

An incidental spender may distribute questionnaires and interview candidates during the campaign season and at other times during the year to gather information about candidates for its endorsements or to formulate scorecards.

Caution is advised during this process to ensure that any expenditures that are later made by the group, for example to publicize its endorsements or scorecards, are not determined to be coordinated expenditures.

Such questions should be cabined to issues and policies and should not veer into campaign strategy. Questionnaires should not include questions aimed at determining campaign plans, projects and/or needs, because if expenditures are later made by the group based on the candidate's own plans, it would likely be deemed a contribution (i.e. a coordinated expenditure). If the content of a questionnaire includes such questions, that would be evidence of coordination or cooperation with the candidate should the organized group attempt to do an independent expenditure at a later point in time.

Similarly, if, for example, the conversation during an interview evolved to include discussion of the group's plans regarding the content, intended audience, timing, location and/or mode and frequency of communications regarding the endorsement, then later expenditures implementing those plans would likely fall within the definition of a coordinated expenditure and therefore constitute an impermissible contribution to the candidate.

Groups should therefore exercise caution when drafting questionnaires and interviewing candidates. Best practices might include (1) careful review of questionnaire content in light of the definition of independent expenditure; (2) beginning interviews by sharing with candidates the definitions of independent expenditure and contribution; (3) clearly expressing the intent at the beginning of an interview to avoid any conversation that would fall within those definitions; (4) training interviewers as to questions to be avoided; and/or (5) conducting interviews according to a predetermined set of questions and not deviating from it.

Scorecards

Some groups publish scorecards that rate candidates or legislators based on their voting records and legislative initiatives, and then distill this information down to scores to evaluate such candidates or legislators in regard to their performance on issues of concern to the groups. Any references to specific politicians are usually limited to their score or to a reporting, in the sections discussing particular bills, of the role they played with respect to that particular bill in the relevant legislative session.

To the extent these scores do not involve communication with the candidate there is little danger of published scorecards resulting in findings of coordination. To the extent that communication is required to determine score, outside groups should follow the advice set forth above regarding questionnaires and interviews.

Endorsements

Like with questionnaires, interviews and scorecards, as a typical election year activity, incidental spenders often endorse candidates for election. Endorsements might rely on assessments of candidates' past actions as well as their stated positions, among other criteria. Groups will often base their endorsements in part on the answers candidates give to voluntary questionnaires as well as from personal interviews or scorecards. Although

an actual endorsement may not involve any expenditures (and also may or may not be coordinated), any costs associated with the distribution of the endorsement may fall within the definition of an expenditure.

Distribution of Questionnaire, Interviews, Scorecards and Endorsements

Once this information (described above) has been gathered by organized groups after limited or no communication with the candidates, then the contents of the questionnaires, interviews, scorecards and endorsements might be distributed to the group's members, if applicable, and like-minded organizations, as well as media outlets or posted for general purposes on their websites.

The relevant question is whether, if ever, the distribution of such information would be considered to be an expenditure, either independent or coordinated (and thus a contribution), because it is only expenditures and contributions that are regulated. Spending money to distribute an endorsement would clearly be an expenditure as the endorsement promotes and supports the election of a certain candidate. Spending money to distribute the contents of a questionnaire or scorecard would be an expenditure depending on the content itself, and the timing and distribution method of the communication. Public Act 13-180 broadened the definition of expenditure to include communications made within 90 days of the vote that refer to one or more clearly identified candidates, and are broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or are sent by mail. General Statutes §§ 9-601b (a) (2) and 9-601b (b) (7). This would cover most distribution methods for questionnaires, interviews and scorecards, making them expenditures, if they are distributed to the general public (i.e. non-members) within ninety days before the election.

There is an additional exception applicable to incidental spenders, even those who are not eligible for the membership organization exception. The use of free social media that is created by volunteers is not considered a contribution to a committee, and so could be used to communicate, for example, the results of questionnaires and scorecards or endorsements to the general public. General Statutes § 9-601a (b) (18).⁵ This includes the

⁵ 9-601a (b) As used in this chapter and chapter 157, "contribution" does not mean: The value associated with the *de minimis* activity on behalf of a party committee, political committee, slate committee or candidate committee, including for activities including, but not limited to, (A) the creation of electronic or written communications or digital photos or video as part of an electronic file created on a voluntary basis without compensation, including, but not limited to, ***the creation and ongoing content development and delivery of social media on the Internet or telephone, including, but not limited to, the sending or receiving of electronic mail or messages***, (B) the posting or display of a candidate's name or group of candidates' names at a town fair, county fair, local festival or similar mass gathering by a party committee, (C) the use of personal property or a service that is customarily attendant to the occupancy of a residential dwelling, or the donation of an item or items of personal property that are customarily used for campaign purposes, by an individual, to a candidate committee, provided the cumulative fair market value of such use of

use of email and personal (non-commercial) email lists. Attribution still must be used on such communications. General Statutes § 9-621.

Thus, campaign finance law makes distinctions as to whether a communication is an expenditure based on audience; content, timing, and medium of communication; or the maker of the communication and method of distribution. For example:

- Information distributed only to the members of an organized membership group would not be considered an expenditure.
- If a communication referring to a clearly identified candidate was made more than ninety days before a primary or general election and was made for the purpose of influencing any legislative or administrative action, and did not promote, attack, support or oppose a candidate, then it also would not be considered an expenditure, and would not be considered a contribution or a coordinated expenditure.
- If, however, a group's scorecard was distributed to the general public—for example, if it were the subject of an advertisement in a newspaper within the ninety day timeframe and it referred to clearly identified candidates—then it would be considered to be an expenditure and subject to reporting and attribution requirements. See Advisory Opinion 2014-02 for details on this type of activity and reporting requirements.
- Information distributed by a volunteer via social media would not be considered a contribution but would require an attribution.

Questions on specific activity, as always, should be directed to SEEC legal staff for assistance.

May a group contact candidates to let them know of its decision to endorse?

Yes, an endorsing group may contact candidates to inform them that an endorsement has been made. As noted previously, care should be taken not to cross the line into coordinating campaign activities with an endorsee, since candidates cannot receive contributions from outside groups. Thus, for example, alerting candidates of the timing and location of a press conference so that they may attend or including them in the drafting of a press release to announce the endorsements could result in a determination that coordination had occurred.

May candidates in the clean elections program use a group's endorsement in their materials?

Yes, participating candidates, like any other candidate, may use a quote from the endorsement in their campaign material. The endorsement itself, as well as the use of language from a press release supporting that endorsement, absent any financial,

personal property or service or items of personal property does not exceed one hundred dollars in the aggregate for any single election or calendar year, as the case may be. . . . (emphasis added).

logistical, or administrative support, would not be a campaign contribution. Again, caution should be exercised with respect to coordination. Thus, for example, a participating candidate would have received an impermissible in-kind contribution if he or she distributed a glossy flyer designed or published by the incidental spender in order to announce its endorsements to the general public.

May an outside group solicit funds for the express purpose of making independent expenditures to support Connecticut candidates?

If an outside group solicits funds in excess of \$1,000 for the express purpose of making independent expenditures to support Connecticut candidates, then that group is required to form a political committee. General Statutes § 9-602 (a); Declaratory Ruling 2013-02. If that group only intends to make independent expenditures (and not make any contributions), then it has the option of forming an independent expenditure political committee in contrast to a traditional political committee, which is permitted to make contributions but may only accept limited contributions. An independent expenditure political committee is formed by filing a registration statement with the Commission and is then required to file periodic disclosure reports, as well as incidental reports. These requirements are discussed in detail in Advisory Opinion 2014-02.

As a corollary, a group that intends to make independent expenditures may honor a donor who does not want his or her donation used for election activities by setting up a segregated account to deposit such funds. The group may set up a separate bank account and transfer the donation to that account, thus segregating the “non-election activity” funds from other funds that might later be used to make independent expenditures or covered transfers from the group to an independent expenditure political committee. Such donors would then not need to be disclosed in any attribution associated with the independent expenditure. General Statutes § 9-601d (g).

May an outside group encourage supporters to work for the campaigns of endorsed candidates?

The answer to this question depends on whether the group is making or plans on making expenditures to support the candidates and the specific facts and circumstances.

To the extent that the group is not spending any money and the persons being steered to the campaign are volunteers, it may be permissible to encourage individuals to go and volunteer for a campaign. On the other hand, a group may not pay for campaign volunteers: a member cannot “volunteer” for a campaign while being paid by the outside group—that would be considered a coordinated expenditure (an in-kind contribution).

However, the answer becomes less clear when an expenditure is made to steer supporters to a campaign, for example if a mailer was sent by post to inform the group’s supporters about a specific campaign event and request volunteers for that event. If a complaint were filed against the group alleging that an impermissible coordinated expenditure had been made, there would be an investigation into whether there was coordination (clearly there

had been an expenditure, i.e. for the cost of printing the mailers, for postage). There is not a presumption of coordination under these facts, but questions would be raised about how the group knew of the event, whether the campaign asked for this help, etc.

An additional problem may be created if volunteers or staff work for both the group and a candidate's campaign. Not only does it create an avenue for communication and coordination between the group and the committee, but if the group makes subsequent expenditures to support the candidate, those expenditures may be presumed to be coordinated. General Statutes § 9-601c (b) (5), (7) and (9). For example, if a group sent volunteers to canvass for the campaign, and the campaign gave them a list of addresses and campaign materials to distribute, the volunteers—who are part of the outside group—would then be coordinating with the campaign. Their knowledge gained would be a part of the analysis and presumption of coordination if the group subsequently made an expenditure in support of the candidate. Unless the group could show some extraordinary set of facts that would rebut the presumptions of coordination, this latter expenditure would be impermissible.

May an outside group encourage supporters to canvass for the campaigns of endorsed candidates, independently of those campaigns, and distribute that campaigns' literature?

An incidental spender may encourage supporters to canvass for the campaigns of endorsed candidates, independently of those campaigns. The spender may distribute literature that it designs and pays for. If an expenditure is made by the group for the distribution of the campaign's own material, it is presumed to be a coordinated expenditure. General Statutes § 9-601c (b) (2). To the extent that the group is not spending any money, such as for the material's reproduction, this may be permissible, and if no other expenditures are involved.

May an outside group have a candidate forum?

Because the organization and holding of a candidate forum usually involves costs as well as coordination with candidates, the issue is whether the costs fall under the definition of *expenditure* under campaign finance law. Expenditure is defined in great detail in the General Statutes. Because the participation of candidates in a forum held by an outside group inevitably requires coordination, if any of the spending involved falls under the definition of "an expenditure" then it would be a coordinated expenditure (a contribution) and be impermissible.

At most times, the relevant applicable definition of expenditure is "any payment. . . or anything of value. . . made to promote the success or defeat of any candidate. . ." Using this definition, if the group having the multi-candidate forum does not promote one candidate over another, then, generally speaking, it would not be considered an expenditure to hold such an event. Much would depend on the surrounding facts, such as whether all candidates were included or certain ones excluded, and the basis for such determinations; whether the format was impartial to all participants; whether it was

promoted equally for all candidates; who else appeared and participated in the forum, etc. All of these factors would be germane to determining whether the forum promoted the success or defeat of any or all the participating candidates.

During the ninety days before an election or primary, the definition of expenditure also includes “any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail.” Because candidate forums will often include communications such as these that clearly identify the participating candidates, then, if they occur within the ninety days before a primary or election, they are automatically considered to be expenditures. Unless an exception applies,⁶ this would constitute an impermissible in-kind contribution.⁷

It is also important to remember that outside groups cannot coordinate with any committees, including town committees or political committees, without the respective expenditures becoming contributions to those committees, and outside groups cannot make such contributions.⁸ For example, if an outside group were to attempt to “partner” with a town committee to host a debate, any costs paid for by the outside group would be considered an impermissible contribution to the town committee.

May a group host phone-banking sessions out of any member’s home, with the caveat that attendance is optional, and members use their own phones?

To the extent that the group is not spending any money, people are using their own personal phones and not making or incurring any additional phone charges and the activity takes place at a person’s residence, this is permissible. General Statutes §§ 9-601a (b) (5), 9-601b (b) (6).

To the extent that the group *is* spending money to organize or underwrite the session, the question may be raised whether the activity was coordinated with the campaign, thus creating an impermissible coordinated expenditure. See the discussion above regarding recruiting volunteers. In particular, keep in mind that call-lists generally have a value and

⁶ It should be noted that such a coordinated expenditure for a communication would **not** be considered an impermissible contribution if the communication was made using volunteer created social media or email. General Statutes § 9-601a (b) (18). Similarly, if the communication only went to a restricted class of recipients the communication would **not** be considered an impermissible contribution. General Statutes § 9-601a (b) (2).

⁷ SEEC has proposed in past legislative sessions, as well as the current session, an exception to the “clearly identified candidate” prong for certain communications such as advertisements for debates and forums, but it has yet to pass into law. SEEC will continue to propose this legislative change.

⁸ Only committees and individuals may make contributions to other committees, with the exception of referendum and independent expenditure committees.

a provenance. If a complaint were filed against the group alleging that an impermissible coordinated expenditure had been made, the group would be asked, among other things, to demonstrate where the list came from and what its value is, if any.

May a group host a fundraiser for a candidate committee?

Groups may not make contributions to committees without first forming a political committee. Only committees and individuals may make contributions to other committees, with the exception of referendum and independent expenditure committees. Any expenditure for a fundraiser that a group held for a candidate made in coordination with that candidate would be considered a coordinated expenditure, i.e. a contribution, and would be impermissible. To the extent that the group is not spending any money (or more precisely, is not making any expenditures), it may be possible for the group (or more precisely, its members) to have such an event, if the costs for the event were exempted from the definition of expenditure and contribution. (See next question.)

May an outside group encourage their members to host a fundraiser for a candidate committee?

There is an exception to the definitions of expenditure and contribution for the hosting of house parties, which can either be fundraisers or meet-and-greets. General Statutes §§ 9-601a (b) (5), 9-601b (b) (6). If members of a group chose to have an event for a candidate at one of the member's residences, and the statutory house party exemption rules were observed, then the event would be permissible. The event could be coordinated with the candidate, who could attend. The candidate committee could provide the mailing list for invitations, or the member could use their personal mailing list (e.g. a Christmas card list) but the group's mailing list should not be used. General Statutes §§ 9-601b (d). Care must be taken to observe the statutory spending limits for such events.

Also, because this would involve coordination with the candidate, any later spending by the group would presumed to be a coordinated—and not an independent—expenditure. General Statutes § 9-601c (b) (6).

May an outside group talk to campaign staff or volunteers or the candidate about what resources they need?

This would be considered coordination which would only be okay if there was no expenditure attached to it. General Statutes § 9-601c (b) (7). Moreover, if they did this and later made an expenditure, it would not be considered independent.

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Adopted this __th day of June, 2018 at Hartford, Connecticut by a vote of the Commission.

Anthony J. Castagno, Chairman

Appendix A

General Statutes § 9-601b. “Expenditure” defined:

(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;

(2) Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail; or

(3) The transfer of funds by a committee to another committee.

(b) The term “expenditure” does not mean:

(1) A loan of money, made in the ordinary course of business, by a state or national bank;

(2) A communication made by any corporation, organization or association solely to its members, owners, stockholders, executive or administrative personnel, or their families;

(3) Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families;

(4) Uncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee, including any services provided for the benefit of nonparticipating and participating candidates under the Citizens' Election Program and any unreimbursed travel expenses made by an individual who volunteers the individual's personal services to any such committee. For purposes of this subdivision, an individual is a volunteer if such individual is not receiving compensation for such services regardless of whether such individual received compensation in the past or may receive compensation for similar services that may be performed in the future;

(5) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate;

(6) The use of real or personal property, a portion or all of the cost of invitations and the cost of food or beverages, voluntarily provided by an individual to a candidate, including a nonparticipating or participating candidate under the Citizens' Election Program, or to a

party, political or slate committee, in rendering voluntary personal services at the individual's residential premises or a community room in the individual's residence facility, to the extent that the cumulative value of the invitations, food or beverages provided by an individual on behalf of any candidate or committee does not exceed four hundred dollars with respect to any single event or does not exceed eight hundred dollars for any such event hosted by two or more individuals, provided at least one such individual owns or resides at the residential premises, and further provided the cumulative value of the invitations, food or beverages provided by an individual on behalf of any such candidate or committee does not exceed eight hundred dollars with respect to a calendar year or single election, as the case may be;

(7) A communication described in subdivision (2) of subsection (a) of this section that includes speech or expression made (A) prior to the ninety-day period preceding the date of a primary or an election at which the clearly identified candidate or candidates are seeking nomination to public office or position, that is made for the purpose of influencing any legislative or administrative action, as defined in section 1-91, or executive action, or (B) during a legislative session for the purpose of influencing legislative action;

(8) An organization expenditure by a party committee, legislative caucus committee or legislative leadership committee;

(9) A commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate;

(10) A communication containing an endorsement on behalf of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, from a candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, shall not be an expenditure attributable to the endorsing candidate, if the candidate making the endorsement is unopposed at the time of the communication;

(11) A communication that is sent by mail to addresses in the district for which a candidate being endorsed by another candidate pursuant to the provisions of this subdivision is seeking nomination or election to the office of state senator or state representative, containing an endorsement on behalf of such candidate for such nomination or election, from a candidate for the office of state senator or state representative, shall not be an expenditure attributable to the endorsing candidate, if the candidate making the endorsement is not seeking election to the office of state senator or state representative for a district that contains any geographical area shared by the district for the office to which the endorsed candidate is seeking nomination or election;

(12) Campaign training events provided to multiple individuals by a legislative caucus committee and any associated materials, provided the cumulative value of such events and materials does not exceed six thousand dollars in the aggregate for a calendar year;

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(13) A lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended;

(14) The use of offices, telephones, computers and similar equipment provided by a party committee, legislative caucus committee or legislative leadership committee that serve as headquarters for or are used by such party committee, legislative caucus committee or legislative leadership committee; or

(15) An expense or expenses incurred by a human being acting alone in an amount that is two hundred dollars or less, in the aggregate, that benefits a candidate for a single election.

(c) “Expense incurred but not paid” means any receipt of goods or services for which payment is required but not made or a written contract, promise or agreement to make an expenditure.

(d) The provisions of subdivision (6) of subsection (b) of this section concerning the cost of invitations shall not be construed as preventing the candidate or the party, political or slate committee from paying all or any portion of such costs, in which case such amount paid by such candidate or committee shall not count toward the calculation of the cumulative value of the invitations, food or beverages provided pursuant to said subdivision (6).

General Statutes § 9-601c - “Independent expenditure” defined:

(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, 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;

(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;

(5) An expenditure made by a person or an entity on or after January first in the year of an election in which a candidate is seeking public office that benefits such candidate when such person or entity has hired an individual as an employee or consultant and such individual was an employee of or consultant to such candidate's candidate committee or such candidate's opponent's candidate committee during any part of the eighteen-month period preceding such expenditure;

(6) An expenditure made by a person for fundraising activities (A) for a candidate, candidate committee, political committee or party committee, or a consultant or other agent

acting on behalf of a candidate, candidate committee, political committee or party committee, or (B) for the solicitation or receipt of contributions on behalf of a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, 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 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; and

(9) An expenditure made by a person or an entity for consultant or creative services, including, but not limited to, services related to communications strategy or design or campaign strategy or to engage a campaign-related vendor, to be used to promote or oppose a candidate's election to office if the provider of such services is or has provided consultant or creative services to such candidate, such candidate's candidate committee or an agent of such candidate committee, or to any opposing candidate's candidate committee or an agent of such candidate committee after January first of the year in which the expenditure occurs. For purposes of this subdivision, communications strategy or design does not include the costs of printing or costs for the use of a medium for the purpose of communications. For purposes of this subdivision, campaign-related vendor includes, but is not limited to, a vendor that provides the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.

(c) When the State Elections Enforcement Commission evaluates an expenditure to determine whether an expenditure by entity is an independent expenditure, the following shall not be presumed to constitute evidence of consent, coordination or consultation within the meaning of subsection (a) of this section: (1) Participation by a candidate or an agent of the candidate in an event sponsored by the entity, unless such event promotes the success of the candidate's candidacy or the defeat of the candidate's opponent, or unless the event is during the period that is forty-five days prior to the primary for which the candidate is seeking nomination for election or election to office; (2) membership of the candidate or

agent of the candidate in the entity, unless the candidate or agent of the candidate holds an executive or policymaking position within the entity after the candidate becomes a candidate; or (3) financial support for, or solicitation or fundraising on behalf of the entity by a candidate or an agent of the candidate, unless the entity has made or obligated to make independent expenditures in support of such candidate in the election or primary for which the candidate is a candidate.

(d) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, the commission shall consider, as an effective rebuttal to the presumptions provided in subsection (b) of this section, the establishment by the person making the expenditure of a firewall policy designed and implemented to prohibit the flow of information between (1) employees, consultants or other individuals providing services to the person paying for the expenditure, and (2) the candidate or agents of the candidate.