

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of Complaints by  
Kathleen Prudden and Elizabeth A. Rhoades, Stafford Springs

File No. 2007-405

**AGREEMENT CONTAINING CONSENT ORDER AND  
PAYMENT OF A CIVIL PENALTY  
FOR VIOLATION OF CONNECTICUT GENERAL STATUTES § 9-621(a)**

This agreement, by and between Michael Krol, of the Town of Stafford, County of Tolland, State of Connecticut (hereinafter referred to as the Respondent) and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Respondent is the Treasurer of the Stafford Democratic Town Committee ("Stafford DTC") and was at all times relevant to this Complaint.
2. The Complainants filed complaints against the Respondent alleging that the Stafford DTC: 1) made expenditures for the distribution of written communications in support of Democratic candidates for various municipal offices in Stafford, which failed to contain an attribution as required by Connecticut General Statutes § 9-621(a); 2) "illegally" placed campaign communications in newspaper containers of electors' homes; 3) distributed a November 2007 Stafford, Connecticut sample municipal ballot to voters before Election Day that highlighted only the Democratic candidates and that providing such a ballot to voters before election day was "illegal;" and 4) by distributing the abovementioned sample ballot, sent misleading voting instructions, all or any part of which would cause an elector to lose his 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 machine for the candidates of his choice.
3. Connecticut General Statutes § 9-621(a), provides in pertinent part,
  - a) No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and ***no candidate or committee shall make or incur any expenditure 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 solicits funds to benefit any political party or committee unless such communication bears upon its face (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 campaign treasurer; or (C) ***in the case of a***

party committee, the name of the committee, and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate. No candidate or candidate committee or exploratory committee established by a candidate shall make or incur any expenditure for a mailing to promote the success of said candidate's campaign for nomination at a primary or election or the defeat of another candidate's campaign for nomination at a primary or election, unless the mailing contains a photograph of the candidate conducting the mailing and said candidate's name in a font that is not less than the size of the font used for the narrative of the mailing. [Emphasis added.]

5. Connecticut General Statutes § 9-601b, provides in pertinent part:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term "**expenditure**" means:

(1) Any **purchase, payment**, distribution, loan, advance, deposit or gift of money or **anything of value, when made for the purpose of influencing 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 on behalf of any political party;

...

(b) The term "expenditure" does not mean:

(8) An **organization expenditure by a party committee**, legislative caucus committee or legislative leadership committee. [Emphasis added.]

6. Connecticut General Statutes § 9-601 defines "Organization Expenditure" as follows:

(25) "**Organization expenditure**" means an **expenditure** by a **party committee**, legislative caucus committee or legislative leadership committee **for the benefit of a candidate or candidate committee** for:

(A) **The preparation, display or mailing or other distribution of a party candidate listing**. As used in this subparagraph, "**party candidate listing**" means any communication that meets the following criteria: (i) **The communication lists the name or names of candidates for election to public office**, (ii) **the communication is distributed through** public advertising such as broadcast stations, cable television, newspapers or similar media, or through direct mail,

telephone, electronic mail, publicly accessible sites on the Internet or *personal delivery*, **(iii) the treatment of all candidates in the communication is substantially similar**, and **(iv) the content of the communication is limited to (I) for each such candidate, identifying information, including photographs, the office sought, the office currently held by the candidate, if any, the party enrollment of the candidate, a brief statement concerning the candidate's positions, philosophy, goals, accomplishments or biography and the positions, philosophy, goals or accomplishments of the candidate's party, (II) encouragement to vote for each such candidate, and (III) information concerning voting, including voting hours and locations; [Emphasis added.]**

...

7. Connecticut General Statutes § 9-363, provides in pertinent part:

Any person who, *with intent to defraud any elector of his vote or cause any elector to lose his 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 machine*, the following of which or any part of which would cause any elector to lose his 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 machine for the candidates of his choice, shall be fined not more than five hundred dollars or be imprisoned not more than five years or be both fined and imprisoned. [Emphasis added.]

8. A packet of communications was distributed by hand delivery to electors' homes in Stafford Springs. At certain homes, the packet was placed in newspaper boxes. The packet was produced and paid for by the Stafford DTC. The packet contained five (5) separate pieces held together variously with either a paper clip or a rubber band. One piece in the packet was a "door hanger," which was used to hang the entire packet on some doors. The packet contained the following communications:

- a. "Door hanger" 2-color card promoting Michael D. Waugh and Richard P. Dobson, Sr., candidates for First Selectman and Selectman respectively. The door hanger is 2-sided and contains the attribution "Paid for by the Stafford Democratic Town Committee, Michael Krol, Treasurer" (hereinafter "Door Hanger Piece")
- b. Full color 8.5" x 11" flyer folded 3-ways promoting Gene Julian and Nancy Ravetto, both candidates for the Planning and Zoning Commission. The flyer is 1-sided and contains the attribution "Paid for by the Stafford Democratic Town Committee, Michael P. Krol, Treasurer" (hereinafter "TPZ Piece")
- c. Black and white 8.5" x 11" flyer folded 3-ways promoting Mark Fontanella, Lisa Bradway and Julie Stafford, all candidates for Board of

Education. The flyer is 1-sided and does not contain any attribution. (hereinafter "BOE Piece")

- d. Full-color 8.5" x 11" "3 Easy Steps to Voting" flyer originally created by the Office of the Secretary of State, folded three ways. The flyer is a single-sided color photocopy of what was originally a two-sided document (the reverse side on the original is the Spanish language version), but has not been otherwise altered from its original condition as produced by the SOTS. This flyer does not promote the success or defeat of any candidate or ballot question. The flyer explains the process for voting using the new optical scan voting tabulator and accompanying paper ballot. (hereinafter "SOTS Piece")
- e. 8.5" x 11" full color print of a copy of a November 2007 Stafford, Connecticut sample municipal ballot. The sheet is two-sided and folded three ways and is marked with a "COPY" stamp in the top corner on one side. This ballot sample has been altered from the original ballot sample in three places:
  - i. The "Date of Election" box is highlighted in green.
  - ii. The phrase "Be sure to complete your vote on the reverse side of this ballot" is highlighted in pink.
  - iii. The entire horizontal line of Democratic candidates on both sides of the ballot is highlighted in blue.

The sample ballot does not contain an attribution indicating who paid for it.

- 9. There are no laws enforceable by the Commission concerning placing campaign communications in newspaper boxes. Accordingly, that allegation is dismissed.
- 10. A threshold question is whether the entire packet constitutes a single communication and whether each page within the packet was required to be compliant in its own right.
- 11. In the case In the Matter of James P. McGuire, File No. 97-252 the Commission considered two elements in determining whether multiple pages/pieces constituted a single communication or multiple individual communications. The first is whether the pieces were stapled together. The second was whether the pieces referenced each other and were delivered in the same container. In McGuire, two pieces were sent in the same envelope, unattached, but one piece referenced the other. The pieces were deemed to constitute a single communication for purposes of the attribution requirement.
- 12. With respect to the communication at issue, each piece of the packet was designed and/or created differently and none of the pieces referenced each other. These pieces were a disparate group of five assembled for delivery purposes. Moreover, although they were paper-clipped or rubber-banded together, neither means of grouping the pieces together sufficed in showing that they were meant to be permanently affixed together as a single communication. Although there was some indication that many of the documents were prepared by Democrats, and although two out of the five pieces contain the necessary "Paid for by" attribution, it was not sufficiently clear that each piece was paid for from the same source. Accordingly, each communication was required to be individually compliant with the applicable attribution requirement.

13. As for the Door Hanger Piece and the TPZ Piece, described above in Paragraph 8, each contained a "Paid for by" attribution, plus the name of the Treasurer, Michael Krol, which complied with the attribution requirement. Accordingly, these communications were compliant and the allegations with respect to the Door Hanger Piece and TPZ Piece are dismissed.
14. As for the BOE Piece, described above in Paragraph 8, this communication did not contain the "Paid for by" attribution; however since it was produced and paid for by the Stafford DTC, the "Organization Expenditure" analysis applies. The question is whether it constituted a "party candidate listing" as laid out in the definition of "Organization Expenditure" in Connecticut General Statutes § 9-601(25)(A), *supra*. Considering § 9-601(25)(A), this communication suffices as an "Organization Expenditure" by the party committee and therefore is not an "expenditure" as used in § 9-621 because:
  - a. The communication lists the names of three candidates for the Stafford Board of Education;
  - b. the communication was distributed by personal delivery;
  - c. the candidates are each treated with substantial similarity, as each candidate's name is in the same size font, each candidate has a picture and each candidate has biographical paragraph of substantially similar size; and
  - d. the content of the communication is limited to identifying information, a photo of the candidate, the office sought, the party enrollment of the candidates as well as a brief statement concerning the candidates' positions, philosophy, goals, accomplishments and biography. Finally, the communication contains an encouragement to vote for each candidate.
15. Since the BOE Piece constituted an "Organization Expenditure," it is exempted from the definition of "expenditure" and therefore did not require an attribution per Connecticut General Statutes § 9-621. Accordingly, the failure to include an attribution on this communication is not a violation and the allegations with respect to the BOE Piece are dismissed.
16. As for the SOTS Piece, described above in Paragraph 8, this communication did not promote the success or defeat of any candidate or ballot question and as such was not an "expenditure" per Connecticut General Statutes § 601b(a)(1). Accordingly, the failure to include an attribution on this communication is not a violation and the allegations with respect to the SOTS Piece are dismissed.
17. As for the altered November 2007 Stafford, Connecticut sample municipal ballot, it was legal for the Stafford DTC to distribute it before Election Day. There are a number of statutes that allow, and in some cases require, sample ballots to be made available and/or distributed to voters before Election Day.<sup>1</sup>

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<sup>1</sup> For instance, Connecticut General Statutes § 9-280 provides that the Secretary of State is to make available to each town for "general distribution," a certain number of sample ballots at least one week before the election. Indeed, number (1) in the Voter's Bill of Rights (C.G.S. § 9-236b) is a registered voter's right to "inspect a sample ballot before voting." Also, § 9-607(g) lists the distribution of sample ballots as a permissible campaign expense and § 9-601a(b)(8) exempts sample ballots from the chapter's legal definition of "contribution." (However, the Commission notes that a sample ballot is not included as an exemption from the definition of "expenditure" in § 9-601b(b)).

18. In the present case, however, although the sample ballot was legally photocopied and distributed, the sample ballot constituted an “expenditure” because the Stafford DTC altered the photocopy of the ballot from its original form to highlight only the Democratic candidates. The Stafford DTC highlighted the Democratic names over the other names on the ballot to draw the reader’s attention to those candidates at the exclusion of the others on the ballot. As such, this communication was made for the purpose of influencing the election of the Democratic candidates listed therein and constituted an “expenditure” per Connecticut General Statutes § 9-621b(a)(1).
19. Considering the five-part test laid out above in Connecticut General Statutes § 9-601(25)(A), the altered sample ballot for Stafford, CT was not exempted as an “Organization Expenditure” per §§ 9-601(25) & 9-601b(b)(8):
- a. The communication lists the names of all of the candidates, in each party for all of the town of Stafford in the 2007 municipal election;
  - b. the communication was distributed by personal delivery.
  - c. the candidates are not each treated with substantial similarity, as although each candidate’s name is in the same size font, the Democratic candidates have been highlighted to the exclusion of the Republican candidates. The communication fails this part of the 5-part test.
  - d. the content of the communication is limited to identifying information, the name of the candidate, the office sought, and the party enrollment of the candidate. However, the inclusion of the unhighlighted Republican names on the ballot was violative of this prong as well, as it discourages voting for some candidates in lieu of others *named* in the communication.
20. Accordingly, the Respondent violated Connecticut General Statutes § 9-621(a) by failing to include an attribution on the altered sample ballot stating that it was “paid for by the Stafford Democratic Town Committee.”
21. Finally, the altered sample ballot for Stafford, CT was not violative of Connecticut General Statutes § 9-363:
- a. First, § 9-363 has an “intent” requirement and there has been no evidence presented by the Complainants, and the Commission’s investigation did not reveal, that the Stafford DTC had any “intent to defraud any elector of his vote or cause any elector to lose his vote.”
  - b. Second, the “misleading instructions” must have been printed, written or circulated by the respondent, or caused thereto, and must have been “improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine, the following of which or any part of which would cause any elector to lose his 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 machine for the candidates of his choice.”
  - c. Here, the Stafford DTC presented a ballot in substantially the same form in which it would be presented to the voter. They left all of the names of each

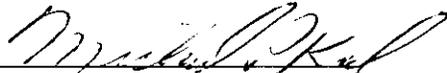
candidate on the ballot intact, even though some of those names were of non-Democratic candidates. The only alteration to the document was to highlight certain names to the exclusion of others. Although the altered sample ballot advocates the Democratic candidates by highlighting their names, there is nothing misleading about the ballot. Any reasonably prudent elector would not believe that s/he must vote for just the Democratic candidates based on this communication. The altered sample ballot did not rise to the level of being so misleading that it would cause any elector to lose his vote or any part thereof.

22. The 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 after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
23. It is understood and agreed that this agreement and order will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
24. The 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.
25. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

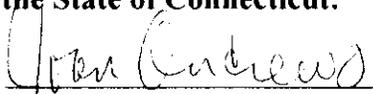
**ORDER**

IT IS HEREBY ORDERED that the Respondent shall pay a civil penalty of one hundred dollars (\$100.00) to the Commission on or before February 12, 2008 and that the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes § 9-621(a).

**The Respondent:**

  
Michael Krol  
106-1 West Stafford Rd.  
Stafford, Connecticut

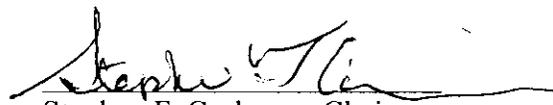
**For the State of Connecticut:**

BY:   
Joan M. Andrews, Esq.  
Director of Legal Affairs & Enforcement  
& Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St., Suite 101  
Hartford, CT

Dated: 02/05/08

Dated: 2/4/07

Adopted this 13<sup>th</sup> day of Feb. of 2008 at Hartford, Connecticut

  
Stephen F. Cashman, Chairman  
By Order of the Commission