

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Lynn Taborsak, Danbury

File No. 2007-406

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that Michael Calandrino and Joe Cavo along with Elise Marciano violated campaign finance laws in connection with Mr. Calandrino and Mr. Cavo's Republican candidacies for the Danbury Common Council in the Third Ward. More specifically, Complainant alleges Mr. Calandrino and Mr. Cavo benefited from an illegal contribution in connection with a flyer allegedly disseminated by Elise Marciano's group, U.S. Citizens for Immigration Law Enforcement. Complainant also alleges that the flyer did not have the proper attribution and that the U.S. Citizens for Immigration Law Enforcement group failed to register as a political committee.

After an investigation of the complaint, the following Findings and Conclusions are made:

1. Complainant was a Democratic candidate for the Common Council in Danbury's Third Ward in the November 6, 2007 Danbury municipal election.
2. Mr. Calandrino and Mr. Cavo were both Republican candidates for the Common Council in Danbury's Third Ward in the November 6, 2007 Danbury municipal election.
3. Ms. Marciano is the President of the of the Danbury Chapter of U.S. Citizens for Immigration Law Enforcement.
4. Ms. Marciano mailed a flyer to the residents of Danbury's Third Ward. The header across the top of the flyer read, "Illegal Alien News," and indicated that it was paid for by Elise Marciano. The flyer highlighted some of the Complainant's political positions regarding local Danbury issues that Ms. Marciano disagreed with. The flyer encouraged voters to vote for Mr. Calandrino and Mr. Cavo, because they were opposed to some of the political positions that the Complainant supported.
5. Ms. Marciano personally paid for the production and dissemination of the flyers, which included making the flyers, the purchase of envelopes for mailing the flyers and the cost of the postage for the flyers. These expenditures did not exceed one thousand dollars (\$1,000.00).
6. Ms. Marciano was solely responsible for the content of the flyer. Ms. Marciano did not discuss the flyer with Mr. Calandrino and Mr. Cavo, she did not consult with them and they did not participate in producing the flyer or disseminating the flyer. Mr. Calandrino and Mr. Cavo did not request,

suggest or direct Ms. Marciano to produce and disseminate the flyer. Ms. Marciano is not a resident of the Third Ward.

7. Mr. Calandrino and Mr. Cavo maintain that they did not disseminate the flyer produced by Ms. Marciano, and the Commission has not discovered any evidence to the contrary.
8. Ms. Marciano used the U.S. Citizens for Immigration Law Enforcement post office box number as the return address on the envelopes that she mailed the flyers. She did not use funds from the U.S. Citizens for Immigration Law Enforcement group to produce or disseminate the flyers.
9. General Statutes § 9-601(18) provides in pertinent part:

"Independent expenditure" means an expenditure that is made without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure.

10. General Statutes § 9-601(19) further provides as follows:

"Coordinated expenditure" means an expenditure made by a person:

(A) In cooperation, consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(B) 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 (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(C) Based on information about a candidate's plans, projects or needs, provided by (i) a candidate, candidate committee, political committee or party committee, or (ii) 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;

(D) Who, in the same election cycle, is serving or has served as the campaign chairperson, campaign 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 as a member, employee, fundraiser, consultant or other agent of a candidate, candidate committee, political committee or party committee;

(E) For fundraising activities (i) with or 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 (ii) 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;

(F) Based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by said candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party committee, to the person making the expenditure or said person's agent, with an express or tacit understanding that said person is considering making the expenditure; or

(G) For a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or said person's agent, has informed said candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party committee, concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination.

11. General Statutes § 9-612 (e)(1) provides in pertinent part:

Any individual acting alone may, independent of any candidate . . . may make unlimited expenditures to promote the success or defeat of any candidate's campaign for election Except as provided in subdivision (2) of this subsection, any individual who makes an independent expenditure or expenditures **in excess of one thousand dollars** to promote the success or defeat of any candidate's campaign for election . . . shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-608. [Emphasis added.]

12. General Statutes § 9-621 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,** . . . for any written, typed or other printed communication, . . . which promotes the success or defeat of any candidate's campaign for . . . election . . . 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; . . . 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 . . . the name of such individual . . . [Emphasis added.]

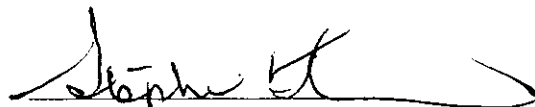
13. The Commission concludes that Ms. Marciano made independent expenditures in connection with the production and dissemination of the flyer. Ms. Marciano used her own personal funds in connection with the production and dissemination of the flyers, and that expenditure did not exceed one thousand dollars (\$1,000.00). Accordingly, Ms. Marciano did not violate General Statutes § 9-612 in connection with the flyer. Furthermore, Ms. Marciano was not required to comply with the attribution requirements set forth in General Statutes § 9-621 as she acted alone in producing and distributing the flyer and did not consult or coordinate with the named candidates.
14. It is worth noting that, Connecticut's attribution law was amended to comport with the United States Supreme Court's decision in McIntyre v. Ohio, 514 U.S. 334 (1995). In light of that decision, the Connecticut legislature excluded the attribution requirement on political literature that an individual composed, paid for and disseminated independently of any candidate.
15. The Commission further concludes that the Danbury Chapter of U.S. Citizens for Immigration Law Enforcement did not make expenditures in connection with the flyer that Ms. Marciano produced and disseminated. As a result, the Danbury Chapter of U.S. Citizens for Immigration Law Enforcement did not need to register as a political committee pursuant to General Statutes § 9-605.
16. The Commission also concludes that Mr. Calandrino and Mr. Cavo did not violate any campaign finance laws in connection with Ms. Marciano's independent production and dissemination of the flyer.
17. Finally, the Commission does not have jurisdiction to address the complainant's allegation that Mr. Calandrino and Mr. Cavo defaced her lawn sign on a supporter's property. As such, that claim is dismissed.

ORDER

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

The complaint is hereby dismissed.

Adopted this 13th day of February, 2008 at Hartford, Connecticut.



Stephen F. Cashman, Chairman
By Order of the Commission