

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Christopher Healy

File No. 2009-075

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, and alleges that Dan Malloy, exploratory candidate for Governor, failed to form a candidate committee within the time frame required following a public declaration of his candidacy for Governor, in violation of General Statutes § 9-604 (c), and Len Miller, treasurer of the Malloy for Connecticut exploratory committee, violated General States § 9-608 (f) by failing to dissolve the exploratory committee within fifteen days of the candidate's public declaration of his intent to seek Gubernatorial office. A distinct issue raised in the Complaint concerning a link on a blog on the Stamford Advocate website will be addressed in a separate document.

After the investigation of the Complainants' complaint, the Commission makes the following findings and conclusions:

1. Dannel Malloy formed an exploratory committee for statewide office excluding Treasurer, *Dan Malloy for Connecticut (CT)*, on February 3, 2009 by filing an Exploratory Committee Registration (SEEC Form 4) with the State Elections Enforcement Commission.
2. The Complainant alleged that "the content of Dan Malloy's website and the campaign activities it chronicles permit only one reasonable conclusion: Dan Malloy is running for Governor." Complainant specifically cites to a WXML radio interview on the website with quotes such as "We will stay within the process for a while longer;" "There is precious little doubt... and "Pretty good idea of what I am going to do." Complainant asserts "it may be impossible to determine precisely when Mr. Malloy became a candidate," but asserts that "it clearly occurred more than fifteen days ago." The complaint was filed on August 21, 2009.
3. The Commission has preserved the website substantially as it appeared on or about the date of the filing of the complaint, and the investigation reviewed whether a public declaration had been made on or before the filing of the complaint.
4. General Statutes § 9-601 provides in relevant part as follows:

As used in this chapter and sections 9-700 to 9-716, inclusive:

... (4) "**Candidate committee**" means any committee designated by a single candidate, or established with the consent, authorization or cooperation of a candidate, for the purpose of a single primary or election and to aid or promote such candidate's candidacy alone *for a particular public office* or the position of town committee member, but does not mean a political committee or a party committee.

(5) "**Exploratory committee**" means a committee established by a *candidate* for a single primary or election (A) *to determine whether to seek nomination or election to (i) the General Assembly, (ii) a state office*, as defined in subsection (e) of section 9-610, or (iii) any other public office, and (B) if applicable, to aid or promote said candidate's candidacy for nomination to the General Assembly or any such state office. . . .

(11) "**Candidate**" means *an individual who seeks nomination for election or election to public office* whether or not such individual is elected, and for the purposes of this chapter and sections 9-700 to 9-716, inclusive, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) solicited or received contributions, *made expenditures or given such individual's consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to any such office.* . . . [Emphasis added.]

5. General Statutes § 9-604 provides in relevant part as follows:

(c) . . . No candidate shall establish, agree to or assist in establishing, or give his consent or authorization to establishing a committee other than a single candidate committee to promote his candidacy for any public office except that *a candidate may establish an exploratory committee*. The candidate shall designate on the statement of organization for the exploratory committee the type of office to which the candidate is determining whether to seek nomination or election, as follows: (A) The General Assembly, (B) a state office, or (C) any other public office. The candidate may also certify on the statement of organization that the candidate will not be a candidate for the office of state representative. *Not later than fifteen days after a public declaration by the candidate of the candidate's intention to seek nomination or election to a particular public office, the candidate shall form a single candidate committee*, except that in the case of a candidate establishing an exploratory committee for purposes including aiding or promoting the candidate's candidacy for nomination or election to the General Assembly or a state office, the candidate shall form a single candidate committee not later than fifteen days after the date that the campaign treasurer of such exploratory committee is required to file a notice of intent to dissolve the committee under subsection (f) of section 9-608. As used in this subsection, "state office" has the same meaning as provided in subsection (e) of section 9-610. [Emphasis added.]

6. General Statutes § 9-608 (f) provides as follows in pertinent part:

(f) If an exploratory committee has been established by a candidate pursuant to subsection (c) of section 9-604, *the campaign treasurer of the committee shall file a notice of intent to dissolve it with the appropriate authority not later than fifteen days after the candidate's declaration of intent to seek nomination or election to a particular public office*, except that in the case of an exploratory committee established by a candidate for purposes that include aiding or promoting the

candidate's candidacy for nomination or election to the General Assembly or a state office, the campaign treasurer of the committee shall file such notice of intent to dissolve the committee not later than fifteen days after the earlier of: (1) The candidate's declaration of intent to seek nomination or election to a particular public office, (2) the candidate's endorsement at a convention, caucus or town committee meeting, or (3) the candidate's filing of a candidacy for nomination under section 9-400 or 9-405. The campaign treasurer shall also file a statement identifying all contributions received or expenditures made by the exploratory committee since the previous statement and the balance on hand or deficit, as the case may be. In the event of a surplus, the campaign treasurer shall, not later than the filing of the statement, distribute the surplus to the candidate committee established pursuant to said section, except that (A) in the case of a surplus of an exploratory committee established by a candidate who intends to be a participating candidate, as defined in section 9-703, in the Citizens' Election Program, the campaign treasurer may distribute to the candidate committee only that portion of such surplus that is attributable to contributions that meet the criteria for qualifying contributions for the candidate committee under section 9-704 and shall distribute the remainder of such surplus to the Citizens' Election Fund established in section 9-701 . . . [Emphasis added.]

7. This is an issue of first impression, and the first complaint raising the issue of an exploratory committee candidate's public declaration since the passage of *An Act Concerning Comprehensive Campaign Finance Reform*, Oct. 25, Spec. Session Public Act 05-5, legislation that created the Citizens' Election Fund and made numerous other significant reforms to state campaign finance law.
8. In an attempt to address the issue and provide guidance for its regulated community, the Commission has issued Declaratory Rulings addressing the issues presented by exploratory committees and their interaction with the Citizens' Election Program, particularly, Declaratory Ruling 2007-02, *Citizens' Election Program: Surplus and Deficit of Exploratory Committees*, and Declaratory Ruling 2009-1, *Public Declarations by Candidates in Exploratory Committee*.
9. In essence, a candidate who remains in an exploratory committee after triggering the need to dissolve and form a candidate committee runs the twofold risk of (1) violating the statutory requirements to timely dissolve the exploratory committee, and (2) making expenditures attributable to a candidate committee. If the expenditures deemed attributable to the candidate committee exceed the applicable expenditure limits for the Citizens' Election Program, a candidate could be ineligible for a grant, so proper application of the deadlines triggered by a public declaration become critical to determining eligibility for the Program.
10. Subsection (5) of § 9-601 defines an exploratory committee as one established (1) to determine whether to seek nomination or election to a public office and (2) to aid or promote the candidate's candidacy for nomination. This is in contrast to subsection (4) of § 9-601, which defines a candidate committee as one established to aid or promote a candidate's candidacy. An exploratory committee exists to allow a candidate to determine whether an individual would have a viable candidacy. Under Connecticut law, the legitimate activity of such a committee includes the promotion of one's nomination to

the ballot. Once the candidate has actually decided to pursue election to a particular office, the underlying purpose of his or her activities is no longer exploration but rather election to office. Declaratory Ruling 2009-1, *Public Declarations by Candidates in Exploratory Committee*, p.4.

11. As the Commission pointed out in the prior Declaratory Rulings, the distinction between an exploratory committee and a candidate committee grows more important in reference to public campaign financing. Under the Citizens' Election Program ("Program"), a candidate for the General Assembly or Statewide office must be mindful of when and how he or she dissolves the exploratory committees and forms a candidate committee. A candidate who chooses to participate in the voluntary Program agrees to abide by expenditure limits for his or her candidate committee. General Statutes § 9-702 (c). When an exploratory committee is dissolved and a candidate committee is formed, any surplus or deficit of the candidate's exploratory committee transfers to that candidate's candidate committee. General Statutes § 9-608 (f). Such surplus and deficit can have a significant impact on a candidate's ability to participate in the Program. See generally Declaratory Ruling 2007-02, *Citizens' Election Program: Surplus and Deficit of Exploratory Committees*. Moreover, expenditures made in the exploratory committee that fall outside the parameters of such committees for "testing the waters" and deciding whether to run, as opposed to actually running for election, may be attributed to the candidate committee, and similarly impact the candidate's ability to participate in the Program.
12. As an initial matter, we note that the expenditures related to the DanMalloy.com website were appropriate expenditures for an exploratory committee in that the website solicited qualifying contributions and invited feedback to the candidate regarding public response to his ideas and potential platform. Thus, the website expenditures alone would not negatively impact the candidate's ability to participate in the Program by affecting his candidate committee expenditure limit.
13. Turning to whether a public declaration was made here, the term "public declaration" means an announcement made to a wide audience within the state or relevant community that the candidate seeks nomination or election to a specific office. In order to constitute a "public declaration" of intent to seek a specific office, the candidate must meet both the "public" and the "declaration" prongs. Declaratory Ruling 2009-1, *Public Declarations by Candidates in Exploratory Committee*.
14. The term "public" refers to communications and actions directed to or intended for the general public, those people with whom it will be necessary for the candidate to communicate in order to win election to public office.
15. Whether an individual has made a "declaration" of intent to seek a particular office is necessarily a fact-specific inquiry. In conducting such inquiry, the Commission considers whether a reasonable person would believe that the words or actions of the candidate, or those acting in coordination with the candidate, constituted a statement of intent to seek such public office. More specifically, in determining whether a declaration has been made, the Commission considers whether a reasonable person would believe that the activity or activities in question indicate that the candidate is continuing to

deliberate whether to run, or whether his or her actions are indicative that the candidate is actually seeking election to a specific public office.

16. In determining whether a public declaration has been made, the Commission will consider various factors, including the extent to which the declaration was public, in other words the breadth of the distribution; the nature of the declaration; the efforts made by the exploratory committee to avoid such public declarations before the candidate chose to form a candidate committee; other declarations, public announcements and actions during the exploratory committee relating to the candidate's candidacy; and whether there has been a good faith attempt to avoid public declarations triggering the requirement. Declaratory Ruling 2009-1, *Public Declarations by Candidates in Exploratory Committee*.
17. In this case, the complaint focuses on the website published to the internet by the exploratory committee, danmalloy.com, and a broadcast interview that was re-published on the website. The website in question is available to the general public, without password protection, and accordingly, its contents are public within the meaning of General Statutes §§ 9-604(c) and 9-608(f). Consequently, the Commission next considers whether a declaration of intent to seek a specific office was made.
18. The danmalloy.com website is comprised of six main pages: 1) "Home;" 2) "About Dan;" 3) "Newsroom;" 4) "The Path;" 5) "Blog;" and 6) "Contact." The right side of the website contains a separate pane with additional information and appears on all six pages. First, the pane contains links to: A) "CONTRIBUTE;" B) "GET INVOLVED;" C) "STAY INFORMED;" and D) "TELL A FRIEND." Second, it contains links to become a "Friend on Facebook," "Watch on YouTube," "Follow on Twitter," and to review "Photos on Flickr." Finally, the pane contains "Updates from the Newsroom," as well as a survey question.
19. Mr. Malloy offers a welcome message citing "the beginning of this exciting journey to explore my potential candidacy and ways to turn around the great State of Connecticut"
20. The website also extends an invitation to the viewer to get involved in Malloy's exploratory campaign through links to "Volunteer," "Join," "Contribute," and "Share." Although they are not labeled exactly the same as the links that appear in the right hand pane mentioned above, they link to the same corresponding pages. The contribution link asks that viewers "mak[e] a contribution to Dan Malloy for Connecticut, the exploratory committee I formed to explore a run for Governor in 2010." The "Volunteer" and "Get Involved" links invite viewers to "to host a house party, make outreach calls, do mailers and other activities to help us spark a dialogue for Connecticut's future and explore a statewide run for office."
21. The invitation to share or tell a friend brings the viewer to a page asking them to send the following message to their friends: "It's been nearly twenty years since we elected a Democratic Governor in Connecticut, and the results are plain for all to see. Connecticut is in a crisis, and if we want to get out of it, we'll need a leader with vision for our state, and the courage to face our problems head on. To bring change to Hartford, we'll need an

experienced leader in the Governor's mansion, and a candidate with a plan to get us there. I think Dan Malloy is that leader, and as he explores a run for Governor, I hope you'll take a minute to browse his website, and join me in the fight for a better Connecticut."

22. The "About Dan" page provides an extended biography of Dannel Malloy, explaining his background and the reasons why he formed a "committee to explore a potential run for Governor."
23. The home page also seeks to obtain information from the viewer regarding Connecticut issues. It offers the option of participating in a broader 14 question survey. The survey indicates it was created so that the viewer "can share your ideas of how you think we can make our state a better place, starting today. Every day, more and more people believe it's time for new leadership in the Governor's Mansion, leadership that puts the interests of hardworking families before partisanship."
24. "The Path" page, which can be linked to through the homepage, displays a map documenting the appearances Mr. Malloy has made throughout the state. The vast majority of the visits were to democratic town committees (or local democratic fundraisers). Of the 166 entries, twenty include an edited video. These videos ran generally 3-7 minutes and covered potential topics of electorate concern from energy to transportation to education. None of the twenty presentations included any references to Mr. Malloy's campaign status.
25. The "Blog" page, a link also available at the top of the homepage, records sixteen blog entries Respondent Malloy pens to reflect his thoughts on topics of interest. The February 3, 2009 entry, which announced the formation of Mr. Malloy's exploratory campaign, includes a four minute video of his announcement wherein the fact that he is forming an exploratory committee is clearly stated and there is no declaration of his candidacy for Governor.
26. The website also contains a "Newsroom" page. This section contains statements by Respondent from a compilation of six sources of information relevant to the Malloy campaign: 1) "In The News;" 2) "In The Blogs;" 3) "Press Releases;" 4) "Media Room;" 5) "Dan's Blog;" and 6) "The Blog that Works."
27. The "In the News" part contains 11 articles from various newspapers across the State involving issues of concern or interest. There are no articles that reflect or announce Mr. Malloy's candidacy for Governor.
28. The "In the Blogs" portion contains 5 references to articles written by Connecticut based public blogs either critical of the current administration or providing status to Mr. Malloy's exploratory committee. None of these articles reflect or announce Mr. Malloy's candidacy for Governor.
29. The "Press Releases" portion includes 13 articles reflecting press releases initiated by the Malloy campaign. Each press release has language, in introducing the article, of the Malloy campaign considering a potential run for governor or exploring the possibility; none reflect or announce Mr. Malloy's candidacy for Governor.

30. The "Media Room" contains references to three media appearances occurring prior to the filing of the complaint, and one shortly after. The first, recorded on March 19, 2009 is appearance at a forum on "Reinventing Stamford" carried by SmartCity.com, a communications provider that interviewed Mr. Malloy and others on about issues facing the City of Stamford. Mr. Malloy's campaign status was not discussed during this broadcast.
31. The second is the WXLM interview, which was cited specifically in the complaint, as "permitting only one reasonable conclusion" that there had been a public declaration. The interview was conducted on July 26, 2009 and lasted approximately 20 minutes. WXLM is a Norwich based radio station. The WXLM interview includes the phrases outlined in the complaint.
32. The following is the portion of the WXLM transcript that concerns Malloy's campaign status:

Ray Hackett ("RH"): You are one of three candidates right now looking at a gubernatorial bid. Former speaker Jim Amman has declared his candidacy. You and Secretary of the State Susan Bysiewicz are in exploratory committees. We just heard in the news now that Gary LeBeau is thinking about putting an exploratory committee together and there's always the rumblings of whether Ned Lamont will or will not get into this race later on. When do you announce?

Dannel Malloy ("DM"): Uh you know that's a good question. At some point in the not too distant future sometime after the municipal elections but before February 1st, you know I'll get it down to that. And uhh you know we have a new process for funding campaigns which has a very rigorous requirement for how you raise money and this kind of exploratory process allows people to get out, meet people, talk to people, begin the process of raising money. We're going to do it within that process for a little while longer but uhh ya know. You know that I ran for governor once before I've been down this road. And uhh I'm going to do it. I'm going to uhh you know be in the exploratory, look forward to a rigorous campaign.

RH: But so there's no question about it; you are definitely going to be a candidate for governor.

DM: Well there's precious little doubt about it. I mean obviously at some point I'll go home and have that very important discussion, final discussion with my wife and we'll make a final decision. But I will point out to you that I didn't run for reelection as mayor of the city of Stamford and I'm the longest serving mayor in the history of the city of Stamford, 14 years. I decided not to do that so that I could be in this stage of what I'm doing. I think that's a pretty good indication of what I'm going to do in the long run. You know the state of Connecticut needs to change direction and the Hartford based politicians who buy into that system as it exists and some of them are Democrats and some of them are Republicans just don't get it. They don't understand that the people of Connecticut are way ahead of them. They know we have to change. The people of Connecticut have been suffering for a long time. Jodi Rell has presided as

Governor and Lieutenant Governor for a very long time. During each and every year, Connecticut has been at the very bottom of job creation in the state. In fact, since 1991 Connecticut ranks dead last for job growth of all 50 states. Listen if you think that's a great idea you should vote for republican, but if you think it's time to change you might want to start looking at a Dan Malloy.

33. Further in the WXLN interview, Dan Malloy makes the following additional comment: "I am the only person with an exploratory or running for Governor who actually tried 4 homicide cases..."
34. The third audio/video event captured in this section of the website is an interview conducted by a writer for a blog named "My Left Nutmeg" (<http://www.myleftnutmeg.com>) on August 17, 2009. A number of issues of state interest were discussed during this 14 minute interview. Mr. Malloy is pressed on his campaign status at about 13 ½ minutes into the interview: "So when are you announcing and can I be there?" Malloy responds, after reiterating his exploratory status and things he has done to prepare, "you actually know what I will be doing."
35. The fourth entry in the "Media room," posted on August 26, 2009 after the filing of the complaint, and entitled *Connecticut Must Help Those Who Help*, discusses Malloy's proposal for assisting non profit community providers, does not mention his candidacy except to say he is exploring a run for governor in 2010.
36. Finally, the top left hand corner of the "Home" page prominently features Mr. Malloy's July 31, 2009 appearance (approximately 7.5 minutes) on WFSB's "Face the State," a Hartford based television station. The video contains the following discussion related to his candidate status:

Dennis House ("DH"): Mayor Malloy is with us here today and you're still in that exploratory phase but no official announcement yet. When is that coming?

Dan Malloy ("DM"): Well you know it will come some time after the November election cycle is done. Probably sometime early in January probably the most appropriate time. But we're getting there. I'm cross crossing the state. I've been to 67 Democratic town committees across the state so far since January. I've out raised everybody. I think I've got more miles on the car than anybody else and you know I've done this once before and I know that the people of Connecticut want change and it's becoming more and more evident every single day as Hartford has been unable to produce a budget, as the Governor has had to shift her position yet again. People are finally getting it, it maybe be time for a change.

DH: So you're seeing green lights at this point, looks like you're gonna run.(?)

DM: Oh I'm seeing very green lights. There's so many green lights, you would think its Christmas.

37. The Commission finds that the candidate's statements available to the general public on the website were public, within the meaning of General Statutes §§ 9-604(c) and 9-

608(f). The WXLN, WFSB, and My Left Nutmeg interviews were, by virtue of their presence on the committee website, fully accessible to the general public as well. Independently, they also were available to a wide audience, as WXLN is a Southeastern Connecticut FM news/talk radio station, WFSB is a statewide television news station, and My Left Nutmeg has its own public website.

38. In order to trigger the necessity of dissolving an exploratory committee and forming a candidate committee, however, a statement must be both public and a declaration. In determining whether there has been such a “declaration” the Commission considers the nature of the statements. In determining whether a declaration has been made, the Commission considers whether a reasonable person would believe that the activity or activities in question indicate that the candidate is continuing to deliberate whether to run, or whether his or her actions are indicative that the candidate is actually seeking election to a specific public office. The Commission considers not only the nature of the declaration but also the context. While it cannot identify the subjective moment that a candidate decides to run for a particular office, the Commission can monitor external objective conduct that would signify to a member of the public that the candidate has reached this decision.
39. In Declaratory Ruling 2009-01, the Commission defined “declaration” as “announcement” and a “formal statement,” and defined “declare” as “to make clearly known; state or announce openly, formally,” based upon dictionary definitions, as there is no statutory definition.
40. The Malloy campaign maintains that it did not make a “declaration” as there was no formal statement and no definitive decision made by Dannel Malloy committing to run for a particular public office. The Malloy campaign maintains that a possible candidate must be able to assess and evaluate his candidacy by communicating his or her views, appraising the reaction of the electorate and assessing whether he or she can be a viable candidate. The campaign further maintains that the possible candidate must assess whether he or she can devote the necessary time to the rigors of a long campaign, and seek the advice and counsel of their family members, close friends and advisors prior to making a final decision on whether to run for a particular public office.
41. The Malloy campaign further maintains that in order to “test the waters” a possible candidate must be in the public arena to appropriately determine the viability of their possible candidacy, and responds that the complaint confuses Malloy being in the public arena by having a website dedicated to his potential candidacy as having itself triggered his actual candidacy. The Malloy campaign acknowledges the public component of Mr. Malloy’s potential candidacy, but maintains that the declaration component of public declaration has not been met.
42. A review of the danmalloy.com website, as it existed at the time of the complaint, reflects a product that promotes the aspirations of Mr. Malloy, identifies subject material to define his positions and provides a platform to solicit volunteers and contributions. All of the campaign’s prepared video presentations either reference the campaign’s exploratory status or avoid discussion of its status altogether. Every prepared message reviewed referred to the potential or exploratory nature of his candidacy.

43. However, Mr. Malloy participates in three interviews that provide a slightly different variation. During live appearances on WFSB, WXML and My Left Nutmeg (all three of which are still available through links contained on the committee website), Mr. Malloy is pushed by an interviewer to provide clarification of his campaign status.
44. There are several statements in the interviews cited above, that lean towards the suggestion that Dan Malloy intends to run for governor. The website otherwise carefully limits reference to Malloy's potential candidacy or to exploring a run for Governor in every reviewed instance, and the live media interviews are the only part of the entire website that even present a closer question.
45. Each of the arguably close phrases occurs in a live interview, where Dannel Malloy is being pressed by an interviewer to state when and whether he will declare his candidacy for Governor. His responses varyingly seek to avoid a commitment using responsive humor (green lights), state that a final decision has yet to be made with his family, when he expects to announce formally (sometime after November and before March 2010), or the evasive response of "you actually know what I am going to do." However, none is an unequivocal declaration, formal statement or announcement that Dannel Malloy has made a commitment to seek the specific office of governor, and each such assertion is followed by a more equivocal statement indicating that further discussion with his family is required, or a renewed reference to his exploratory status.
46. In determining whether a public declaration has been made, the Commission also considers efforts made by the exploratory committee to avoid such public declarations before the candidate chose to form a candidate committee, in accordance with Declaratory Ruling 2009-01. In addition, the Commission also considers other declarations, public announcements and actions during the exploratory committee relating to the candidate's candidacy.
47. The investigation did not reveal any other publicly disseminated Malloy speeches or appearances beyond those already included in the Malloy website reviewed above.
48. A review of postings (around the time of the alleged public declaration) from blogs that routinely address Connecticut politics revealed no indication that the Malloy campaign was viewed by these blog writers as anything other than exploring the possibility of running for Governor.
49. The complained of website, viewed in its entirety, establishes Mr. Malloy's exploratory status and in the same interviews wherein he makes statements which could possibly be interpreted by a reasonable person as an indication that he is indeed running for Governor, he also outlines a need to gauge public support and have discussions with family members before a final decision is made. In all three interviews he offers a time frame in which he anticipates making a final decision. Reviewing the statements singularly, without the full context of the interviews and the website on which they are preserved for the public, is inadequate. When the entire content of the interviews are reviewed in the form they are presented (audio and/or video), it is clear there are issues both professionally and personally that need to be addressed by Dan Malloy prior to a


final decision being made to commit to run for a particular public office. Accordingly, this count of the complaint is dismissed.

ORDER

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

The matter is dismissed as to Dan Malloy and Malloy for Connecticut with respect to the public declaration allegation.

Adopted this 17th day of February 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission