

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
William Kimberly, Weston

File No. 2009-143

**FINDINGS AND CONCLUSIONS**

Complainant William Kimberly brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the group Weston for Fiscal Responsibility (“WFR”) violated General Statutes §§ 9-602 and 9-605 by attempting to influence the outcome of the 2009 municipal election in the town of Weston without registering as a political committee or filing a certification in accordance with General Statutes § 9-605.

After the investigation, the Commission makes the following findings and conclusions:

1. Complainant alleges that the WFR violated General Statutes §§ 9-602 and 9-605 by failing to register a political committee or file a certification within ten days after its organization. Complainant claims that the requirements under § 9-602 were triggered when WFR, through Respondents Nina Daniel and Harold Matthews, incurred costs to send an e-mail that was received by Republican candidates in the Town of Weston.
2. Respondent Daniel is a member of and the principal spokesperson for WFR. Respondent Matthews is a member of WFR.
3. WFR’s mission statement indicates that it was organized in 2009 during the 2009-10 budgeting process in the town of Weston. The mission statement avers that “WFR’s mission is to assemble a broader, more informed voice from our community, to work with our town’s leaders and organizations, and to raise awareness of the greater importance of fiscal responsibility in this prolonged downward trend in our economy. . . . WFR strives to encourage a greater level of discourse, information, evaluation, and input regarding municipal taxation and spending on services that contribute to or detract from the quality of life for all of our residents. . . .”
4. WFR conducted two election-related activities during the 2009 election season. First, WFR drafted a questionnaire addressing fiscal matters in the town of Weston and requested each of the candidates for the Boards of Selectmen and Education to answer the questions. The questions and answers were posted in full on the website for WFR.
5. Second, WFR organized a candidates’ forum in which all of the candidates for the aforementioned boards were invited to participate. The forum, moderated by a member of the town Board of Moderators, was held on October 22, 2009. Each of the candidates participating in the forum was asked the same questions, all of which were provided to the candidates prior to the forum.
6. According to the questionnaire, WFR pledges to be a non-partisan group whose primary focus is “protecting Weston’s tradition of outstanding municipal and educational services, while simultaneously containing costs in light of financial

difficulties impacting our nation, state and community.” The questionnaire contains five questions for the candidate, three of which are “yes or no” questions and two of which solicit narrative responses.

7. Respondent Daniel, a registered Republican, was tasked by the WFR Steering Committee with securing the Republican candidates’ participation in the aforementioned questionnaire and forum. WFR member Harvey Bellin, a registered Democrat and former Chair of the Weston Democratic Town Committee, was tasked with securing the Democratic candidates’ participation.
8. While the Democratic candidates all agreed to answer the questionnaire and participate in the forum, some of the Republican candidates were more reluctant. Ms. Daniel drafted the aforementioned e-mail and forwarded it to Mr. Matthews.
9. The e-mail from Ms. Daniel, included in Mr. Matthews’ forward, is addressed only to Mr. Matthews. The e-mail is addressed to “Dan” and appears on its face to have been intended for Mr. Gilbert, however there is no evidence that the e-mail was ever sent to Mr. Gilbert directly from Ms. Daniel. The seven page e-mail speaks to the WFR membership’s disappointment at an apparent decision by the Republican candidates to not respond to the questionnaire or to participate in the forum. The e-mail attempts to convince the Republicans to change their minds, answer the questionnaire and participate in a planned candidates’ forum held by WFR. In the second paragraph, Ms. Daniel suggests that if the Republicans do not participate in the forum, WFR would send a mass e-mail to its supporters indicating that the Republicans failed to “respond on time and fully.” Ms. Daniel goes on to suggest that WFR also publish an editorial to the same effect. In the fourth paragraph, Ms. Daniel attempts to extol the benefits for the Republicans of participating in the forum. She states that “[t]his could be a very friendly audience for Republicans . . . one you should not shun.” In the fifth paragraph, Ms. Daniel warns that “[i]t is not politically wise to ignore [WFR] whose message of cost containment without compromising school and town services is, I would hope, essentially the core message of the Republican platform.”
10. The e-mail addressed and sent to Mr. Gilbert, includes Ms. Daniel’s e-mail as a forward. Mr. Matthews’ e-mail reiterates the message of Ms. Daniel’s e-mail. Mr. Matthews states in the first paragraph that Ms. Daniel “is a REPUBLICAN and a supporter of your candidacy, and as a DEM for DAN, I felt in your best interest, I have taken the liberty of sharing her concern about the silence and the disconnect of the REPS.”
11. On or about September 29, 2009, Mr. Gilbert forwarded the e-mails above to an e-mail account in the name of the Complainant William Kimberly and his wife Lyn, who was a Republican candidate for Board of Education in the upcoming municipal election in Weston. The other recipients of the e-mail from Mr. Gilbert included other candidates in the upcoming municipal election including Britta Lerner, Republican candidate for Selectman and Sonya Stack, Republican candidate for Board of Education.

12. General Statutes § 9-602 (a) provides, in pertinent part:

(a) Except with respect to an individual acting on his own, no contributions may be made, solicited or received and no expenditures may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, *unless* (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds or (2) the candidate or, in the event of a referendum question, a group of individuals has filed a certification in accordance with the provisions of section 9-604 or 9-605, as the case may be. In the case of a political committee, the filing of the statement of organization by the chairman of such committee, in accordance with the provisions of section 9-605 shall constitute compliance with the provisions of this subsection. . . . (Emphasis added.)

13. General Statutes § 9-605 (a) provides, in pertinent part:

(a) The chairperson of each political committee shall designate a campaign treasurer and may designate a deputy campaign treasurer. The campaign treasurer and any deputy campaign treasurer so designated shall sign a statement accepting the designation. The chairperson of each political committee shall file a registration statement described in subsection (b) of this section along with the statement signed by the designated campaign treasurer and deputy campaign treasurer with the proper authority, within ten days after its organization,. . . . (Emphasis added.)

14. 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; . . . (Emphasis added.)

15. There is no evidence that WFR has ever filed any registrations or statements of organization with the Town Clerk of Weston or with the SEEC.

16. As such, if the costs incurred by WFR in association with the e-mails, the questionnaire or the forum were incurred for the purpose of influencing the

nomination for election, or election, of any person, those costs would constitute expenditures. In that event, it would be incumbent upon WFR to register a political committee in accordance with the provisions of General Statutes § 9-605 within ten days of making the expenditure. *See* General Statutes § 9-602 (a).

17. We now turn our attention to the e-mails sent by Ms. Daniels and Mr. Matthews. As a preliminary matter, the Commission has found in the past that the costs to create and send an e-mail can constitute expenditures, however de minimus. *See, e.g., Complaint by Charles Jaskiewicz*, SEEC File No. 2008-48.<sup>1</sup>
18. The determinative issue is whether the costs to create and/or send the e-mails at issue were incurred “for the purpose of influencing the nomination for election, or election, of any person.” “Intent . . . can be inferred from the factual circumstances surrounding the matter at issue.” *Nichols v. State Elections Enforcement Comm’n*, 2001 WL 1468891 (Conn. Super., 2001) (*Citing State v. Turner*, 252 Conn. 714, 748 (2000)). “As such, we first look to the actual content of the communication as the best measure of the communicator’s intent . . . .” *Complaint by Edward Calandro, et al.*, SEEC File No. 2007-349. (*Citing Complaint by Peter Torrano*, SEEC File No. 1999-214, *affirmed by Nichols, supra*).
19. The content of the e-mails do not evince any intent to influence the nomination for election, or election, of any person. Both Mr. Matthews’ e-mail, and the e-mail from Nina Daniel that he includes as a forward, appear to be pleas directed at the candidates themselves in order to persuade the candidates to participate in a forum hosted by WFR, and do not evince any effort to attempt to influence an elector to vote for or against any candidate and/or party. The e-mails suggest in various places that participating or not participating in the forum could have electoral consequences for the candidates and the e-mails even go so far as to warn that WFR might take measures to publicly take the Republicans to task for failing to participate in the forum. However, the former does not betray an intent that the e-mail itself influence the outcome of the election and the latter appears, at most, to be a threat to take some future act that is outside the scope of this Complaint.
20. Moreover, the Commission finds no extrinsic factual evidence that Ms. Daniel or any other member of WFR drafted or sent the e-mails with the purpose of influencing the nomination for election, or election, of any person. Ms. Daniel sent a draft to a fellow member, Mr. Matthews, who forwarded the draft off to only a single individual, Mr. Gilbert, who was one of the candidates. There is no other evidence that any member of WFR intended for the audience for this e-mail to reach beyond Mr. Gilbert to any elector who could have voted for or against Mr. Gilbert or any other candidate. The forwarding of the e-mail was done by Mr. Gilbert, the candidate, not by any member of WFR. There is no other evidence that indicates that the costs for the e-mails were incurred for the purpose of influencing the nomination for election, or election, of any person.

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<sup>1</sup> For the purposes of this decision, the Commission assumes that while the e-mails were written using free online e-mail accounts, those accounts were accessed through the Respondents’ own computers using Internet access paid for by the Respondents.

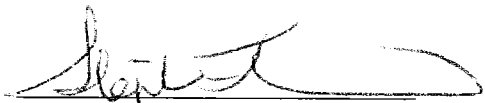
21. Turning our attention to the questionnaire, the same analysis applies as to the e-mails. The questionnaire was drafted and sent to the candidates and the answers to which were eventually published in full on WFR's website. The content of the questionnaire does not evince any intent to influence the nomination for election, or election, of any person. Each of the questions addresses fiscal matters in the town of Weston. While the questions portray a fiscally conservative point of view regarding Weston budget matters, none of the questions mentions any of the candidates and/or parties by name or by implication.
22. Moreover, the Commission finds no extrinsic factual evidence indicating that the costs for creating and/or sending the questionnaires or the costs of posting the answers on the website were incurred with the purpose of influencing the nomination for election, or election, of any person.
23. Finally, the Commission finds no evidence indicating that the costs for the forum were incurred with the purpose of influencing the nomination for election, or election, of any person. Rather, the WFR forum was intended and implemented as a non-partisan vehicle for all candidates to discuss fiscal matters.
24. After considering the aforesaid, the Commission finds that no expenditure was made necessitating WFR to comply with the provisions of General Statutes §§ 9-602 and 9-605 and as such, no violation of General Statutes §§ 9-602 or 9-605 occurred under the facts and circumstances of this case.

### ORDER

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

That the Complaint be dismissed.

Adopted this 20<sup>th</sup> day of January of 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman  
By Order of the Commission