

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Pasquale Salemi,
East Hartford

File No. 2010-091

FINDINGS AND CONCLUSIONS

The Complainant, Pasquale Salemi of East Hartford, Connecticut, filed this complaint with the Commission pursuant to General Statutes § 9-7b. The Complaint was administratively consolidated under the same docket number with a similar complaint filed by Christopher Healy of Wethersfield, Connecticut. In short, the Complainants allege that television advertisements produced and aired by the Lamont for Governor Committee, preceding the 2010 Democratic primary, included a visual appearance by Mary Glassman, a candidate for Lieutenant Governor, without an attribution referencing Ms. Glassman or her campaign committee as required by General Statutes § 9-621, governing attributions for political communications. Because of Ms. Glassman's appearance in the advertisements, the Complainants also allege that Glassman's campaign committee did not appropriately pay for and report the pro rata share of the expense allocated for her appearance in the advertisements as governed by § 9-616 (a).

After an investigation of the matter, the Commission makes the following findings and conclusions:

1. At all times relevant hereto, Ned Lamont was candidate for Governor and was financing his campaign using the Lamont for Governor Committee (the "Lamont Committee").
2. At all times relevant hereto, Mary Glassman was running for Lieutenant Governor and was financing her campaign using the Glassman for Lieutenant Governor Committee (the "Glassman Committee").
3. At all times relevant hereto, neither candidate had been nominated by a party as candidates for election to the offices of Governor or Lieutenant Governor.
4. At all times relevant hereto, while the candidates were running separate candidate committees, Mr. Lamont and Ms. Glassman had made public statements regarding their intention to run on the same ticket as Governor and Lieutenant Governor respectively. Specifically, on May 3, 2010, Lamont and Glassman held a press conference announcing that they would be running mates.

5. The Lamont Committee made expenditures for two television advertisements, which began airing preceding Glassman's statement of intent to abide and application to join the CEP (the "advertisements"). The advertisements promoted Mr. Lamont as a candidate for Governor, discussed Mr. Lamont's record, policies and plans for office, displayed images of Mr. Lamont and were narrated by Mr. Lamont. The advertisements included written messages promoting Mr. Lamont and his policies.
6. The advertisements also contained images of Ms. Glassman, which lasted for a total of approximately 2.4 seconds and 2.6 seconds in the separate advertisements. Ms. Glassman was never identified by name or as a candidate either by text or audio. The advertisements did not mention or promote her record or policies. Ms. Glassman appearance in the advertisements was in addition to other unidentified individuals.
7. The advertisements contained an attribution stating, "Paid for by Lamont for Governor. Elvira Albert, Treasurer. Approved by Ned Lamont" in the manner and form prescribed for attributions for printed political advertisements, pursuant to General Statutes § 9-621 (a). The advertisements also contained Ned Lamont's personal audio message in the manner and form prescribed for television attributions pursuant to General Statutes § 9-621 (b) (1). The advertisements did not include any attribution, by text or audio, referencing Ms. Glassman or the Glassman Committee.
8. Counsel for Mr. Lamont and the Lamont Committee states that the advertisements were produced without coordination with the Glassman Committee and were initially aired without Ms. Glassman's knowledge.
9. As representatives of the Glassman Committee, Chebon Marshall, Campaign Manager and Farah Chanel Hage-Sleiman, Deputy Campaign Manager/Compliance Officer, have provided a written statement representing that the advertisements were exclusively produced and aired by the Lamont Committee, and that the Glassman Committee initially learned about the airing of the commercials after they appeared on television or as the subject of the instant complaints. Such representatives further claim the advertisements were developed without input at any level from the Glassman Committee and were developed by Lamont Committee consultants with Lamont's candidacy in mind.
10. These representatives of the Glassman Committee also report that: Ms. Glassman participated in a video shoot with Mr. Lamont at the invitation of the Lamont campaign and Ms. Glassman believed that the video shoot was part of an effort by

the Lamont Campaign and the Glassman Campaign to produce footage for later use. The footage was to be potentially used in a possible future combined advertising campaign. The advertisements at issue here as they appear in their concept, development, creation, placement and broadcast were under the exclusive direction of the Lamont Campaign and their consultants.

11. Such representatives of the Glassman Committee further report that: On the day of filming, over a period of less than two hours in two locations in New Haven, Connecticut, Ms. Glassman was on the set only as a part of group shots, was never filmed alone or solely with the other candidate. All the footage in which Glassman appears was intended, created and set up to feature Mr. Lamont without any regard to whether Glassman would participate in the filming or not. Additional scenes were filmed involving only Mr. Lamont and extras without Ms. Glassman's participation within the two hour period she was on the set. According to the production house, the single day of filming produced approximately eight hours of footage. Ms. Glassman appeared in approximately 5% or 24 to 25 minutes of that day's footage. The costs incurred on the one day of shooting totaled \$6,937.10.
12. Shortly after the airing of the advertisements, and based on the advice of Commission staff, due to the novel nature of Ms. Glassman and Mr. Lamont's joint candidacy and the specific concerns regarding the integrity of the Citizens Election Program grant process, the Glassman Committee voluntarily and promptly amended their July 10th campaign disclosure report on July 20, 2010 to reflect a pro rata apportionment of the cost of the advertisements. The specific basis for this voluntary apportionment was reviewed by Commission staff during this period and approved as a permissible and reasonable calculation in consideration of Ms. Glassman's participation in the filming and the stated intention of the candidates to serve as running mates in the general election.
13. Review of the Glassman Committee's financial records, conducted by the Commission's Campaign Disclosure and Audit Unit, has confirmed that the Glassman Committee voluntarily paid the agreed upon pro rata portion of the cost of the advertisements to the relevant vendors. Specifically, such payments were made to the Campaign Group, a vendor, in the amounts of \$346.85 for production costs and footage, \$1,625.00 for a media buy and \$2,404.99 for a separate media buy.
14. General Statutes § 9-621 (a) provides, in relevant part:

No individual shall make or incur any expenditure with the consent of, in coordination with 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 ...which promotes the success or defeat of any candidate's campaign for nomination at a primary or election ... unless such communication bears upon its face (1) the words "paid for by" and the following: ... (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer;... and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate[.]

15. General Statutes § 9-621 (b) (1) provides:

No candidate or candidate committee or exploratory committee established by a candidate shall make or incur any expenditure for television advertising or Internet video advertising, which promotes the success of such 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 (A) at the end of such advertising there appears simultaneously, for a period of not less than four seconds, (i) a clearly identifiable photographic or similar image of the candidate making such expenditure, (ii) a clearly readable printed statement identifying such candidate, and indicating that such candidate has approved the advertising, and (iii) a simultaneous, personal audio message, in the following form: "I am (candidate's name) and I approved this message", and (B) the candidate's name and image appear in, and the candidate's voice is contained in, the narrative of the advertising, before the end of such advertising[.]

16. General Statutes § 9-601b, defines "expenditure" to include:

(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;

(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of a primary or an election, other than 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....

General Statutes § 9-601a (a) defines “contribution” to include: “(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, 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;” ... [and] (4) an expenditure that is not an independent expenditure.

17. General Statutes § 9-616 (a) provides, in relevant part:

A candidate committee shall not make contributions to, or for the benefit of ... another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted...

18. General Statutes § 9-610 (b) provides, in relevant part: “A candidate committee may pay its pro rata share of the expenses of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates...”

19. As recently reconfirmed in Declaratory Ruling 2011-03: *Candidate Committees and Joint Communications*, the Commission has not traditionally disputed a committee’s determination of its proportionate share of joint expenditures unless the Commission finds that allocation to be clearly erroneous. See *Complaint by Joseph P. Secola*, Brookfield, File No. 1997-294.

20. A candidate's mere appearance in an advertisement that promotes the election of *another* candidate running for office does not lead to the *per se* conclusion that the communication was made for the purpose of influencing the nomination of the first candidate. See Declaratory Ruling 2011-3; State Elections Enforcement Commission Advisory Opinion 1986-3; *Propriety of Appearance of Federal Candidate in Advertisement Endorsing Re-Election of Statewide Candidate*. See also *Complaint by Mary Oliver*, Hampton, File No. 2008-176, *Complaint by Carl J. Strand*, File No. 2008-150.
21. Based on the above referenced representations from Glassman Committee staff, Ms. Glassman herself was necessarily coordinating with the Lamont Committee to the extent necessary to make appearances in the commercials possible.
22. The Commission concludes that a reasonable viewer would not have been put on notice by simply watching the advertisements that, other than Mr. Lamont, one or more individuals appearing in the communication, such as Ms. Glassman, might be a candidate and, furthermore, that no individual, other than Mr. Lamont was identified by name.
23. The Commission concludes that the evidence contained in the advertisements alone is insufficient to find that the advertisement promoted the candidacy of Ms. Glassman. In making this conclusion, the Commission notes the absence of any reference to the appearing candidate's: (1) candidacy; (2) legislative record or policies; (3) exhortation to vote; and (4) any text or audio identifying the candidate by name or in any other manner. For the application of similar factors, see *Complaint by Carl J. Strand*, File No. 2008-150; *Complaint by Mary Oliver*, Hampton, File No. 2008-176, *Complaint of Devon Pfeifer, Fairfield*, File No. 2010-131.
24. The Lamont campaign determined, however, that Glassman's proportionate share of the commercials was zero because her appearance in the commercials was only visual with no additional information. For the reasons stated above, the Commission concludes that this determination was not clearly erroneous.
25. To the extent that the Lamont Committee coordinated with Ms. Glassman in making the expenditures, and those expenditures were, at least in part, made to promote her candidacy, the advertisements should have included "Approved by Mary Glassman" as part of the attribution. As noted above, subsequent to the facts underlying the

instant complaints, the Commission has offered instructive guidance for similar matters regarding joint communications through Declaratory Ruling 2011-03.

26. For the reasons stated above, including the fact that a proper allocation of the joint expenditure was made and the vendors were paid by the Glassman campaign for their proportional share, the Glassman campaign's prompt and voluntary compliance with advice by Commission staff, and the historic deference to campaigns in making pro rata allocations, the Commission declines to take further action.

ORDER

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

That the Commission take no further action.

Adopted this 25 day of July, 2012 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission