

JUN 23 2011

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT COMMISSION

In Re: the Democratic Governors Association

File No. 2011-008

**AGREEMENT CONTAINING HENCEFORTH ORDER
FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES §§ 9-612 (e) and 9-621 (h) (2)**

This Agreement, by and between Democratic Governors Association of the District of Columbia (the "Respondent") and the authorized representative of the State Elections Enforcement Commission (the "Commission") is entered into in accordance with section 9-7b-54 of the Regulations of Connecticut State Agencies and Connecticut General Statutes (the "General Statutes") § 4-177 (c). The Commission initiated the investigation concerning the failure to file independent expenditure statements (SEEC Form 26) based on video advertisements appearing in the Connecticut broadcast and cable media during the 2010 gubernatorial election. Such advertisements were paid for by the Respondent and made reference to the Republican gubernatorial candidate. In accordance herewith, the parties agree that:

1. At all times relevant hereto, the Respondent was an unincorporated tax-exempt organization under Section 527 of the Internal Revenue Code and an "entity" as defined in General Statutes § 9-601 (19).
2. The Respondent made payments, in the manner and amount described by the Respondent's SEEC Form 26 statement, filed on April 15, 2011, for video advertisements appearing in the Connecticut broadcast and cable media during the 2010 gubernatorial election. Such advertisements made reference to the Republican gubernatorial candidate
3. The Commission believes in good faith that such payments were independent expenditures, as defined in General Statutes § 9-601b (a), and that these independent expenditures were made for the purpose of influencing the election of Governor of Connecticut in 2010 and opposed the Republican gubernatorial candidate.
4. General Statutes § 9-601 (19) reads:

"Entity" means the following, whether organized in this or any other state: An organization, corporation, cooperative association, limited partnership, professional association, limited liability company, and limited liability partnership.

5. General Statutes § 9-601b (a) reads, in relevant part:

As used in [Chapter 155], the term "expenditure" means, in relevant part: (1) *Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made for the purpose of*

influencing the ... election, of any person ...;(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by ... television other than on a public access channel, ... 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 ...[Emphasis added.]

6. General Statutes § 9-601c (a), reads, in relevant part:

As used in [chapter 155] and chapter 157, the term "independent expenditure" means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

7. As required by Public Act No. 10-187, effective immediately on June 8, 2010, General Statutes § 9-612 (e), setting forth the requirements for independent expenditure reporting, reads, in relevant part:

(1) Any individual, entity or committee acting alone may make unlimited independent expenditures. Except as provided in subdivision (2) of this subsection, any such individual, entity or committee that makes or obligates to make an independent expenditure or expenditures in excess of one thousand dollars, in the aggregate, 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.

(2) Any individual, entity or committee that makes or obligates to make an independent expenditure or expenditures to promote the success or defeat of a candidate for the office of Governor, ... which exceeds one thousand dollars, in the aggregate, during a primary campaign or a general election campaign, as defined in section 9-700, on or after January 1, 2008, shall file a report of such independent expenditure to the State Elections Enforcement Commission. The report shall be in the same form as statements filed under section 9-608, except that such report shall be filed electronically. If the individual, entity or committee makes or obligates to make such independent expenditure or expenditures more than ninety days before the day of a primary or election, the individual, entity or committee shall file such report not later than forty-eight hours after such payment or obligation. If the individual, entity or committee makes or obligates to make such independent expenditure or expenditures ninety days or less before the day of a primary or election, the person shall file such report not later than twenty-four hours after such payment or obligation. The report shall be filed under penalty of false statement.

(3) The independent expenditure report shall (A) identify the candidate for whom the independent expenditure or expenditures is intended to promote the success or defeat, (B) affirm under penalty of false statement that the expenditure is an independent expenditure, and (C) provide any information that the State Elections Enforcement Commission requires to facilitate compliance with the provisions of [chapter 155] or chapter 157.

8. General Statutes § 9-621 (h) (2), setting forth the attribution requirements for independent expenditures for certain video advertisements, reads, in relevant part:

[N]o entity shall make or incur an independent expenditure for television advertising or Internet video advertising, that promotes the success or defeat of any candidate for nomination or election or promotes or opposes any political party or solicits funds to benefit any political party or committee, unless at the end of such advertising there appears simultaneously, for a period of not less than four seconds, (A) a clearly identifiable video, photographic or similar image of the entity's chief executive officer or equivalent, and (B) a personal audio message, in the following form: "I am (name of entity's chief executive officer or equivalent), (title) of (entity). This message was made independent of any candidate or political party, and I approved its content." In the case of an entity making or incurring such an independent expenditure, which entity is a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an incorporated tax-exempt political organization organized under Section 527 of said code, such advertising shall also include a written message in the following form: "The top five contributors to the organization responsible for this advertisement are" followed by a list of the five persons or entities making the largest contributions during the twelve-month period before the date of such advertisement.

9. The Commission, in consideration of the relative novelty of the amended statutes imposing the independent expenditure filing requirement at issue upon the Respondent and other entities making such independent expenditures during the 2010 election cycle, provided the Respondent with a twenty-one day warning period to comply with the filing requirement to avoid the imposition of civil penalties. The Respondent voluntarily complied within that warning period.
10. The Respondent believes in good faith that pursuant to the U.S. Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976) that to avoid invalidation under the First Amendment the statutory phrase "for the purpose of influencing the ... election, of any person" at General Statutes Sec. 9-601(a) can only apply to "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' or 'reject.'" *Buckley*, 424 U.S. at 44 n.52. The Respondent's advertising did not contain such express words of advocacy

of election or defeat, therefore, in good faith it did not believe that it was required to file SEEC Form 26 or a top five donors attribution on the face of the advertising.

11. The Respondent recognizes the Commission's good faith conclusion to the contrary, that express advocacy or its equivalent is not required to trigger the application of Connecticut's disclosure requirements. The Respondent recognizes the State's interest in disclosure.
12. The Commission concludes that General Statutes § 9-612 (e), required the respondent to file a SEEC Form 26, Independent Expenditure Statement from an Entity, in a timely manner and that it failed to file such report in a timely manner. The Commission concludes that, in regard to the expenditures for video advertisements as described in the Respondent's SEEC Form 26 filings of April 15, 2011, that General Statutes § 9-621 (h) (2) required the Respondent to provide a detailed attribution on the video advertisements including, but not limited to, the requirement to list the top five contributors to the Respondent's video advertisement.
13. The Respondent acknowledges, in consideration of the differing views of the Parties regarding the applicability of the statutes in question, that it may petition for a Declaratory Ruling from the Commission, under Section 9-7b-64 of the Regulations of Connecticut State Agencies, appealable to courts, or petition for regulation under Section 9-7b-61 of the Regulations of Connecticut State Agencies and is encouraged by the Commission to do so before making similar expenditures.
14. The Respondent acknowledges that it is presently aware of the Commission's conclusion that the video advertisements in question do not represent "issue advocacy" outside of the Commission's jurisdiction and that the Commission does not consider the good faith defense raised by the Respondent in this matter as a bar to the investigation and prosecution of similar future conduct by the Respondent or other persons, should the need arise.
15. The Commission acknowledges that, despite the violation of the attribution requirement set forth in General Statutes § 9-621 (h) (2), that the appearance of "Paid for by the Democratic Governors Association" in the video advertisement made the source of the sponsorship clear to the reasonable viewer and that the disclosure of the Respondent's contributors was subsequently achieved in the filings described above.
16. The Parties acknowledge that the Commission agrees to withhold from seeking civil penalties against the Respondent based upon: (1) the Respondent's voluntary compliance with the Commission's demand within the prescribed twenty-one day warning period as reflected in the Respondent's filings of April 15, 2011; (2) the clarity of the sponsorship of the video advertisements to the reasonable viewer; (3) the Commission's consideration of the relative novelty of the filing and detailed attribution requirements at the time of the Respondent's expenditures as required by Public Act No. 10-187, effective immediately on June 8, 2010; and (4) the absence of a record of prior violations of the election laws under the Commission's jurisdiction.
17. It is understood and agreed that this Agreement is limited to resolving the dispute over the timely filing of independent expenditure statements and the placement of proper

attributions on video advertising. The investigation and this Agreement do not examine or address the accuracy of the information reported in the SEEC Form 26 reports filed under penalty of false statement nor do they address attribution issues for expenditures not reported in such statements.

18. 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.
19. It is understood and agreed that this Agreement 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.
20. The Respondent waives: any further procedural steps; the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
21. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against it pertaining to this matter.

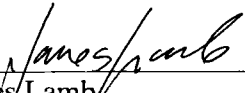
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ORDER

IT IS HEREBY ORDERED that Respondent will henceforth strictly comply with the requirements of Connecticut General Statutes §§ 9-612 (e), governing the reporting of independent expenditures, and 9-621(h), governing the placement of attributions on political communications.

For the Respondent:

For the State of Connecticut:

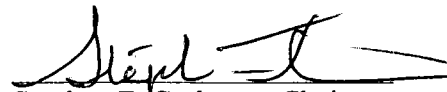
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Dated: 6.21.2011

Dated: 6/23/11

Adopted this 22nd day of June of 2011 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission