

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George Zipparo, Redding

File No. 2013-093A

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between the Redding Board of Education, Dr. Jess Gaspar Chairperson of the Redding Board of Education, and Bernard A. Josefsberg, Superintendent of Schools for the Redding Board of Education, and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. At all times relevant hereto, the referendum question concerning the Redding Board of Education's annual budget was pending (the "referendum question").
2. Acting in concert, the Superintendent and the Chairperson of the Redding Board of Education authorized the expenditure of a total of \$1,480.12 in municipal funds for the production and distribution of a publication titled *Commitment to Academic Excellence, A Guide to the 2013-2014 Operating Budget Request for Redding Elementary School and John Read Middle School* (the "Explanatory Text").
3. The Explanatory Text notes that "Last year's budget request of 1.32% (or \$282,008) was supported and approved by Redding voters." The Explanatory Text also notes "Historically, this is the lowest budget proposal in over 10 years and the second lowest compared to other districts." A chart in the Explanatory Text demonstrates this comparison to other districts. Certain program goals are identified as "Highlights of continued educational excellence in Redding schools."
4. The Respondents acknowledge that the Explanatory Text was not issued in accordance with the procedure prescribed by General Statutes § 9-369b (a).
5. The Respondents dispute that the Explanatory Text contains advocacy prohibited by § 9-369b (a) and note the factual nature of the representations.
6. Connecticut General Statutes § 9-369b (a) provides, in relevant part:

Except as provided in subsection (b) of this section, any municipality may, by vote of its legislative body, authorize the preparation and printing of

concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral printed material. Thereafter, each such explanatory text shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such text shall not advocate either the approval or disapproval of the proposal or question. The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public distribution and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140. Except as provided in subsection (d) of this section, no expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question. Any municipality may, by vote of its legislative body and subject to the approval of its municipal attorney, authorize the preparation and printing of materials concerning any such proposal or question in addition to the explanatory text if such materials do not advocate the approval or disapproval of the proposal or question.

7. The Commission has previously determined that compliance with the procedural requirements of § 9-369b is the exclusive method by which a municipality may issue and fund explanatory texts concerning pending referendum question. See *Complaint of Valerie Friedman*, File No. 2002-160; *Complaint of Walther Grunder, et al*, File No. 1998-256; *Complaint of Barbara Stambo; et al*, File No. 1996-227; *Complaint of Donald Hassinger*, File No. 1994-104; *Complaint of G. Wilbur, et al*, File No. 1994-133.
8. The Commission has consistently concluded, "that communications that recommend or urge support of or opposition to a referendum question are subject to the restrictions found in Section 9-369b." *In the Matter of a Complaint by Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.

9. The Commission has historically concluded that communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make the ordinary reasonable person believe that a particular result is urged, constitute advocacy. *Complaint by Marie Egbert, Hebron*, File No. 2010-056 at ¶ 15. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *Id.*; see also *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).
10. The Commission has found that, “stated threats of program cuts and dire consequences of failing to approve the referendum, as well as statements of need and justification ... constitute implied advocacy.” *Complaint of Tina LaPorta, East Windsor*, File No. 2005-171, ¶ 7; see also *Complaint of Valerie Friedman, Washington*, File No. 2002-160, ¶ 4; *Complaint of Michael Doyle, New London*, File No. 2003-238, ¶ 4, 7.
11. Based on the above findings, the Commission concludes that the language in the Explanatory Text raises concerns regarding whether a public expenditure was made to advocate a position on a pending referendum in violation of § 9-369b (a), but declines to reach a specific conclusion in this regard in consideration of the execution of the instant Consent Order.
12. The Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
13. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
14. The Respondents waive:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
15. Upon the Respondents’ agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth the Redding Board of Education, Dr. Jess Gaspar Chairperson of the Redding Board of Education, and Bernard A. Josefsberg, Superintendent of the Redding Board of Education shall strictly comply with the requirements of Connecticut General Statutes § 9-369b (a).

The Respondents:

By their counsel: Anthony Shannon
Anthony Shannon
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103

For the State of Connecticut:

BY: Michael J. Brandi
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 12/16/13

Dated: 12/18/13

Adopted this 15th day of JAN, 2014 at Hartford, Connecticut by vote of the Commission.

Anthony J. Castagno
Anthony J. Castagno, Chairman
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

DEC 17 2013

ENFORCEMENT COMMISSION