

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Anne Pappas Phillips, Bridgeport

File No. 2014-068

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Respondent Jonathan Pelto failed to timely register a candidate committee for governor for the November 4, 2014 General Election and begin reporting the financial activity of his campaign. Additionally, the Complainant alleges that the Respondent failed to properly attribute electioneering communications on his Internet blog and accepted impermissible business entity contributions there from.¹

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

1. The focus of the Complainant's allegations here is an Internet blog published and maintained by the Respondent, entitled "Wait, What?"
2. The Complainant here alleges that "for many months" the costs to maintain the Respondent's blog at www.jonathanpelto.com and any donations to said blog constituted "expenditures" and "contributions" under General Statutes §§ 9-601b and 9-601a made with the intent to bring about the Respondent's candidacy for governor in 2014, triggering the Respondent's candidacy and all the attendant registration and filing responsibilities of a candidate under Chapter 155 of Title 9 of the General Statutes.
3. The Complainant alleges that the Respondent failed to timely form a candidate committee or begin reporting the expenditures and contributions related to his alleged candidacy, in violation of General Statutes §§ 9-602, 9-604, and 9-608.
4. Additionally, the Complainant alleges that the blog is a business and any use of the blog to promote a candidacy constitutes an impermissible contribution from a business entity in violation of General Statutes § 9-613.

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

5. Additionally, the Complainant alleges that the Respondent failed to properly attribute the source of payment for the blog, in violation of General Statutes § 9-621.

Law

6. General Statutes § 9-601 (11) reads, in pertinent part:

(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 chapter 157, 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, other than for a party committee, made expenditures or given such individual's consent to any other person, other than a party committee, 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. . . .

7. General Statutes § 9-601a reads, in pertinent part:

(a) As used in this chapter and chapter 157, "contribution" means:

(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party; . . .

8. General Statutes § 9-601b reads, in pertinent part:

(a) As used in this chapter and chapter 157, the term "expenditure" means:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking 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 the success or defeat of any political party;

(2) Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a

paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail;

9. General Statutes § 9-602 reads, in pertinent part:

(a) Except with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, 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,

10. General Statutes § 9-604 reads, in pertinent part:

(a) Each candidate for a particular public office or the position of town committee member shall form a single candidate committee for which he shall designate a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603. . . .

(b) The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: . . . (2) the candidate finances the candidate's campaign entirely from personal funds and does not solicit or receive contributions, provided if said candidate personally makes an expenditure or expenditures in excess of one thousand dollars to, or for the benefit of, said candidate's campaign for nomination at a primary or election to an office or position, said candidate 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; (3) the candidate does not receive or expend funds in excess of one thousand dollars;

11. General Statutes § 9-608 reads, in pertinent part:

(a) Filing dates. (1) Each treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603,

...

(c) Content of statements. (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: (A) An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution; (B) an itemized accounting of each expenditure, . . .

12. General Statutes § 9-613 reads, in pertinent part:

(a) No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party, except as provided in subsection (b) of this section. No business entity shall establish more than one political committee. A political committee shall be deemed to have been established by a business entity if the initial disbursement or contribution to the committee is made under subsection (b) of this section or by an officer, director, owner, limited or general partner or holder of stock constituting five per cent or more of the total outstanding stock of any class of the business entity

13. General Statutes § 9-621 reads:

(a) 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, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based,

written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee unless such communication bears upon its face as a disclaimer (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its treasurer; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, 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. . . .

14. Turning to the allegations, that the Respondent's blog triggered a candidacy, the Commission notes by way of background that investigation here revealed that the blog in question—entitled "Wait, What?" and published at the URL <http://www.jonathanpelto.com>—was created and published originally in 2011.
15. The Respondent is the sole owner of the blog, through a single-member limited liability corporation, "Wait, What, LLC."
16. The blog is largely a forum in which the Respondent discusses policy issues affecting Connecticut.
17. On or about May 28, 2014, the Respondent filed an Exploratory Committee Registration (SEEC Form 4) with the SEEC forming "Pelto 2014" indicating his intention to explore for only statewide offices.
18. On or about June 23, 2014 the Respondent filed a Candidate Committee Registration (SEEC Form 1) with the SEEC declaring his candidacy and his intention to transition "Pelto 2014" from an exploratory committee to a candidate committee.
19. From May 28, 2014, certain posts on the Respondent's blog began to contain the attribution, "Paid for by Pelto 2014, Ted Strelez, Treasurer, Christine Ladd, Deputy Treasurer, Approved by Jonathan Pelto."

20. From June 23, 2014 forward a general attribution was added to the home page of the website reading, "To the extent that this site benefits Pelto 2014, any costs will be paid for by Pelto 2014 and/or reported as required by Connecticut State Campaign Finance Law. Paid for by Pelto 2014, Ted Strelez, Treasurer, Christine Ladd, Deputy Treasurer, Approved by Jonathan Pelto."²
21. Prior to May 28, 2014, no blog posts contained an attribution pursuant to General Statutes § 9-621.
22. The Respondent estimates that the initial creation costs of the blog were approximately \$99. According to the Respondent, hosting the blog costs \$50 per year; he also pays a \$30 per month fee for a program that sends the blog to subscribers via e-mail.
23. After seeking the advice of Commission staff in the Compliance Unit, the Respondent estimated that the proper allocation of costs of the blog to his campaign was \$1.39 per day. The July 10, 2014 Campaign Finance Disclosure Statement of "Pelto 2014" reported an expenditure of \$55.60 towards the cost of the blog.
24. Turning to the Complainant's allegations, the Complainant acknowledges that the Respondent formed a committee and began attributing his website subsequent to May 28, 2014, but alleges, without pointing to specific instances, that the blog constituted an expenditure triggering the Respondent's candidacy.
25. In general, the definition of expenditure does not require that a person already be a candidate in order for monies spent to promote such person's candidacy to constitute an expenditure. Rather, it is spending money on promoting the nomination or election of any person that can trigger the need to register and disclose as a candidate, if the person whose nomination is being promoted is the one spending the money, either personally or by another with the consent, coordination, or consultation of such person (which spending constitutes a contribution on the person's behalf).
26. Whether a communication qualifies as an expenditure depends upon its content and whether that content meets the definition of expenditure. See *In the Matter of a Complaint by Benjamin Ancona, Newington*, File No. 2013-140; *In the Matter of a Complaint by Anthony Santino, Hamden*, File No. 2013-042.

² The Commission notes that the Respondent sought the advice of Commission staff in the Compliance Unit before forming his committee and utilizing the "Wait, What?" blog partially for campaign purposes after forming his exploratory committee. The above implementation by the Respondent was performed based on the advice.

27. The question then is whether the communication at issue, postings in an Internet blog, qualified as an expenditure. Connecticut's definition of expenditure requires something to be "made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person." Connecticut courts, and the Commission, have read this type of language to be informed and limited by relevant federal precedent regarding similar language in federal statutes. See e.g., *State v. Proto*, 203 Conn. 682, 699 (1987) (Connecticut's campaign finance law may be divined through recognized methods of statutory construction including consideration of commonly accepted meanings and federal case law interpreting similar statutes; using these methods court found Connecticut definitions of expenditure neither overbroad nor vague).
28. To the extent that the phrase "made to promote the success or defeat of any candidate seeking the nomination for election, or election" as contained in the definition of contribution and expenditure needs further elucidation, the United States Supreme Court has held that words such as "'promote,' 'oppose,' 'attack,' and 'support' 'provide[d] explicit standards for those who apply them' and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 170 n. 64 (2003). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 389 (D. Vt. 2012) (reading "for the purpose of . . . influencing an election . . . or affecting the outcome of an election" as simply, "supporting or opposing one or more candidates"). These standards, sometimes referred to as the "PASO test," are what we apply to case such as the instant matter.³
29. The Commission also has issued further guidance in other contexts as to factors considered in deciding whether something promotes, attacks, supports or opposes. In the context of endorsements, the Commission has looked to these indicia to determine if a publicity piece promotes an endorsing candidate: the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication. See Declaratory Ruling 2011-3. In the context of the spending of public funds by incumbent candidates, the Commission has looked to the timing of the release, and whether it appears to be one of a series of communications that collectively seem to advocate for the re-election of an incumbent as well as whether there is mention of the candidacy of the person running; the person's legislative record or policies; an exhortation to vote; or text identifying the record or accomplishments of the appearing candidate in a laudatory manner. See, e.g., *In the Matter of a Complaint by Robert Burke, Bethel*, File No. 2011-128.

³ The so-called "PASO test," was codified by the legislature recently in Public Act 13-180 of the 2013 Public Acts. See also 56 S. Proc., Pt. 15, 2013 Sess., P. 4736 (comments of Senator Musto "[I]t's intended to encompass the things that federal case law specifically allows, which is to promote, attack, support, or oppose candidates").

30. Turning to the facts at issue here, the Complainant here only vaguely alleges that the Respondent's blog postings prior to May 28, 2014 constituted an expenditure. She does not point to any particular instance within any particular communication that she alleges triggered the Respondent's candidacy. Indeed, the only blog posts that she includes with her Complaint were made subsequent to the Respondent's formation of the exploratory committee, after he sought the advice of the Compliance Unit and proceeded based on that advice. Without a more specific allegation, the Commission does not consider a full review of 3 years of blog postings to be warranted here. As such, the investigation reviewed a sampling of the blog posts made in the year 2014, prior to the formation of the exploratory committee.
31. Based on the Commission's sample review of posts on the "Wait, What?" blog prior to May 28, 2014, the Commission cannot conclude that such communications rose to the level of expenditures. The Respondent is critical of the policies of Governor Malloy in many of his posts. But, criticism of a sitting governor, alone, is not enough to trigger an expenditure. Without more, the evidence is insufficient here to conclude that the Respondent became a candidate under General Statutes § 9-601 prior to May 28, 2014.
32. Moreover, as all of the allegations in the Complaint here flow forth from the allegation that a candidacy was triggered, the remainder of the Complaint should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 16th day of December, 2014 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission