

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Wayne von Hardenberg  
Town of Wethersfield

File No. 2014-123

**FINDINGS AND CONCLUSIONS**

Complainant Wayne von Hardenberg brought this complaint pursuant to General Statutes § 9-7b, alleging that the Democratic Governors' Association paid for television advertisements that were improperly coordinated with the Democratic Party's candidate for governor in 2014, Dannel Malloy. After investigating the allegations in the complaint, the Commission makes the following findings of fact and conclusions of law:

1. Complainant alleged that the Democratic Governors' Association<sup>1</sup> had failed to operate independently of the Malloy campaign during the 2014 election cycle. The complaint specifically addressed advertisements that targeted Tom Foley and his business practices as a private individual.<sup>2</sup>

2. Complainant charged that:

These ads include the Republican candidate's actions over a two year period and from the previous campaign. It goes on to attack the business practices as represented by the DGA and the democratic candidate in a way that leads to the "express advocacy" for the democratic candidate . . . There are two ads by the DGA and Malloy which clearly contain the "express advocacy" for the Democratic incumbent where the final closing in the ads mention Foley as "Just another Republican who doesn't care about you."

Since the format and content are identical or nearly identical the co-ordination between the candidate and the DGA is a flagrant violation of the firewall which was to be in place in the DGA spending. The further statement that the ad is not run by

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<sup>1</sup> Although the Complainant named the Democratic Governors' Association as a respondent, the Commission's investigation showed that the Democratic Governors' Association did not directly make any expenditures to support Dannel Malloy in the 2014 election cycle. Connecticut Forward, a political committee funded largely by the Democratic Governors' Association, did make expenditures to support Dannel Malloy.

<sup>2</sup> Affidavit of Complaint – Wayne von Hardenberg, Wethersfield (SEEC File No. 2014-123) (Rec'd October 10, 2014) (alleging that Democratic Governors' Association had impermissibly coordinated expenditures with Dannel Malloy candidate committee).

any party or candidate in a clear outright misleading statement since there is no way a person hearing these ads could mistake them for supporting any [R]epublican.<sup>3</sup>

3. Complainant offered no specific evidence to support his allegations, but, if proven by facts gathered during an adequate investigation of the complaints, those allegations – that the DGA and the Malloy candidate committee worked collaboratively to create television advertisements to attack Republican Tom Foley – could result in violations of General Statutes § 9-601c.
4. General Statutes § 9-601 lays out certain scenarios that would create a rebuttable presumption that an expenditure was not independent.<sup>4</sup> That statutory provision reads, in relevant part:

(b) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, there shall be a rebuttable presumption that the following expenditures are not independent expenditures:

- (1) An expenditure made by a person in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;
- (2) An expenditure made by a person for the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;
- (3) An expenditure made by a person based on information about a candidate's, political committee's, or party committee's plans, projects or needs, provided by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee,

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<sup>3</sup> *Id.*

<sup>4</sup> *See* General Statutes § 9-601c (establishing criteria for rebuttable presumptions to determine whether expenditures were not independent). The statutory provision states, in relevant part:

political committee or party committee, with the intent that such expenditure be made;

...

(7) An expenditure made by a person based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by a candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of such candidate, candidate committee, political committee or party committee, to the person making the expenditure or such person's agent, with an express or tacit understanding that such person is considering making the expenditure;

(8) An expenditure made by a person for a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or such person's agent, has informed the candidate who benefits from the expenditure, that candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of the benefiting candidate or candidate committee, political committee, or party committee, concerning the communication's contents, or of the intended audience, timing, location or mode or frequency of dissemination. As used in this subdivision, a communication clearly identifies a candidate when that communication contains the name, nickname, initials, photograph or drawing of the candidate or an unambiguous reference to that candidate, which includes, but is not limited to, a reference that can only mean that candidate; and

(9) An expenditure made by a person or an entity for consultant or creative services, including, but not limited to, services related to communications strategy or design or campaign strategy or to engage a campaign-related vendor, to be used to promote or oppose a candidate's election to office if the provider of such services is or has provided consultant or creative services to such candidate, such candidate's candidate committee or an agent of such candidate committee, or to any opposing candidate's candidate committee or an agent of such candidate committee after January first of the year in which the expenditure occurs. For purposes of this subdivision, communications strategy or design does not include the costs of printing or costs for the use of a medium for the purpose of communications. For purposes of this subdivision, campaign-related vendor includes, but is not limited to, a vendor that provides the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.

5. Each of these provisions could be implicated by the conduct alleged by the Complainant. Only an investigation into the facts as alleged would determine which provision, if any, would apply to the circumstances.
6. In its response to the complaint, the DGA supplied a “strict firewall policy” that it purportedly had “implemented and maintained” to prevent coordination with the Malloy candidate committee.<sup>5</sup>
7. According to the documentation that the DGA supplied in response the complaint, its firewall policy created standards for individuals at the DGA who were characterized as either “independent-side personnel” or “coordinated-side personnel.”<sup>6</sup>
8. General Statutes § 9-601c allows entities to rebut a presumption that an expenditure is not independent by showing that the entity established a firewall policy. That provision states:

When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, the commission shall consider, as an effective rebuttal to the presumptions provided in subsection (b) of this section, the establishment by the person making the expenditure of a firewall policy designed and implemented to prohibit the flow of information between (1) employees, consultants or other individuals providing services to the person paying for the expenditure, and (2) the candidate or agents of the candidate.<sup>7</sup>

9. Given the similarity in the allegations of this case with the allegations SEEC File No. 2014-095, Complaint of Elissa Voccola, Commission staff proceeded to investigate those matters simultaneously.
10. As is described in the Findings & Conclusions regarding File No. 2014-095, the respondents were not willing to supply documents or communications related to the substance of this investigation.

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<sup>5</sup> Letter from Marc Elias, DGA Counsel, to James Talbert-Slagle, SEEC (Nov. 18, 2016) (responding to enquiries from Commission’s investigator regarding complainant’s allegations).

<sup>6</sup> Connecticut Firewall Policy, Democratic Governors Association/Jobs and Opportunity (outlining standards for maintaining separate personnel to work on 2014 Connecticut gubernatorial campaign).

<sup>7</sup> General Statutes § 9-601c (d) (creating protections for persons who create “firewall policies” to prevent flow of information between entity and candidate committees).

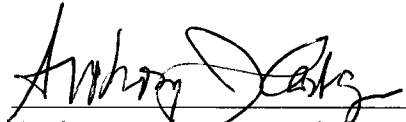
11. While the DGA's firewall policy purportedly existed to prevent impermissible communications between individuals who were in contact with the Malloy candidate committee and those who oversaw the administration of independent expenditures, the respondents did not provide information to show that the firewall policy was actually followed. The disposition of this case does not signify that the firewall created and allegedly implemented by the DGA in the case was sufficient to avoid violating General Statutes § 9-601c. Nor does it signify that the implementation of the firewall fell short of the requirements under General Statutes § 9-601c. The disposition simply shows that the Commission was unable to gather sufficient facts to make a determination as to the efficacy of the firewall policy and that it lacked the resources to continue investigating this matter at this time.
  
12. Without evidence to support the complainant's allegations that DGA and the Malloy campaign collaborated on their efforts to communicate with voters during the 2014 election cycle, the Commission will dismiss this matter without prejudice.

**ORDER**

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

That the Complaint be dismissed without prejudice, which will allow the Commission to reopen this case should another complaint be filed that alleges similar facts or conduct by these respondents to warrant a reexamination of this matter.

Adopted this 18<sup>th</sup> day of April of 2018 at Hartford, Connecticut.

  
Anthony J. Castagno, Chairman  
By Order of the Commission