

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Bruce Suchinski

RESPONDENTS:

File No. 2014-143

Gregg Cogswell  
204 Essex Court  
Torrington, Connecticut

Michael Cronin  
47 Woodbridge Circle  
West Hartford, Connecticut

September 19, 2018

**Final Decision**

This matter was heard as a contested case on June 20, 2017 pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time appeared Attorneys William B. Smith and James M. Talbert-Slagle for the State of Connecticut, and Attorney Michael Cronin for the Respondents. Documentary and testimonial evidence was presented. This matter comes before the Commission from a complaint filed by the above named Complainant on October 29, 2014 (the "Complaint").

After careful consideration of the entire record, the following facts are found and conclusions of law are made:

1. Commissioner Michael J. Ajello was designated as the Hearing Officer for this matter by the State Elections Enforcement Commission (hereinafter "Commission").
2. The parties have stipulated to the following facts, which are not in dispute. Respondent Gregg Cogswell was, all relevant times, treasurer of the Senate Republican Campaign Committee ("SRCC"). The SRCC is a senate caucus committee registered with the Commission pursuant to General Statutes § 9-605 (e) (2).
3. Michael Cronin was, all relevant times, treasurer of the Senate Republican Leadership Committee ("SRLC"). The SRLC is a senate leadership committee registered with the Commission pursuant to General Statutes § 9-605 (e) (2).
4. During the 2014 election, Henri Martin was the Republican Party's candidate for state senator in the 31<sup>st</sup> District. He was opposed by Robert Michalik, the Democratic Party's candidate for the same office. Both candidates received public grants from the Citizens' Election Program.
5. Also during the 2014 election, Dannel Malloy, who was the sitting Governor, was the Democratic Party's candidate for Governor. Thomas Foley was the Republican Party's candidate for the same office. Both candidates received public grants from the Citizens' Election Program.

6. During the 2014 election, in October, the SRCC and the SRLC jointly paid for and distributed a mailer that identified both Robert Michalik and Governor Malloy. Pictures of both men appeared on the mailer.

7. The text of the Mailer was as follows:

*Robert Michalik Answers to Just 1 Man...  
...Governor Dan Malloy*

*Welcome to Connecticut – The Worst Place in America to Do Business*

*ROBERT MICHALIK is employed by Dan Malloy's administration, a political pick in the Department of Economic & Community Development.*

*And what a bang-up job he's been doing:*

- *Connecticut is ranked the worst place to find a job*
- *Worst place to raise a family*
- *Worst place to start a business*
- *Worst place to retire*

*Michalik Owes His Career to Dan Malloy.*

*HE AGREES WITH HIM.  
WORKS FOR HIM.  
ANSWERS TO HIM.*

*Do We Really Need Another  
Malloy Guy in Hartford?*

*SAY NO to ROBERT MICHALIK*

8. The Complaint alleged, in essence, that the Respondents violated General Statutes §§ 9-607 and 9-718 by making organization expenditures that benefitted the gubernatorial candidate Thomas Foley by opposing his opponent, Governor Malloy.

9. "Organization expenditures" are defined as follows:

"[A]n expenditure by a party committee, legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee for [inter alia]. . . The preparation, display or mailing or other distribution of a party candidate listing. As used in this subparagraph, "party candidate listing" means any communication that meets the following criteria: (i) *The communication lists the name or names of candidates for election to public office,* (ii) *the communication is distributed through public advertising such as broadcast stations, cable television, newspapers or similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the*

Internet or personal delivery, and (iii) *the communication is made to promote the success or defeat of any candidate* or slate of candidates 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, provided such communication is not a solicitation for or on behalf of a candidate committee. . .

(Emphasis added.)

10. General Statutes § 9-607 (g) provides, in relevant part, as follows:

Permissible expenditures. (1) As used in this subsection, (A) “the lawful purposes of the committee” means: . . . (ii) for a political committee, the promoting of a political party, including party building activities, the success or defeat of candidates for nomination and election to public office or position subject to the requirements of this chapter, or the success or defeat of referendum questions, provided a political committee formed for a single referendum question shall not promote the success or defeat of any candidate, and provided further a legislative leadership committee or a legislative caucus committee may expend funds to defray costs for conducting legislative or constituency-related business which are not reimbursed or paid by the state. . .

11. General Statutes § 9-718 provides, in relevant part, as follows:

(a) Notwithstanding any provision of the general statutes and except as provided in subsection (e) of this section, no town committee, legislative caucus committee or legislative leadership committee shall make an organization expenditure for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state senator in an amount that exceeds ten thousand dollars for the general election campaign.

12. Finally, General Statutes § 9-601b (a) provides, in relevant, part as follows:

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. . . .

(b) *The term “expenditure” does not mean:*

(8) *An organization expenditure by a party committee, legislative caucus committee or legislative leadership committee:*

(Emphasis added.)

13. The Complainant and the State argue that, when read together—and in conjunction with the statutory prohibitions on executive branch state contractor contributions to select committees, while there being no prohibition on such contributions to leadership and caucus committees—the statutes prohibit such committees as the SRLC and the SRCC from making expenditures or organization expenditures, on behalf of or in opposition to statewide candidates. The purview of leadership and caucus committees, they argue, is legislative races only.

14. The Commission has consistently advised that legislative leadership and caucus political committees may only make expenditures and organization expenditures to benefit General Assembly candidates.<sup>1</sup>

15. During the hearing, the Respondents conceded that, in fact, legislative leadership and caucus political committees may only make expenditures to benefit General Assembly candidates and may not make expenditures to benefit or oppose statewide candidates.

16. The Commission agrees that legislative leadership and caucus political committees may only make expenditures and organization expenditures to benefit General Assembly candidates and may not make expenditures or organization expenditures to benefit or oppose statewide candidates.

17. In this case, the mailer was reported by both the SRLC and the SRCC as an organization expenditure.

18. Although the word “expenditure” is used in both terms, organization expenditures are not defined as a type of expenditure. They are specifically exempted

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<sup>1</sup> See Declaratory Ruling 2011-01: Communications on Behalf of Candidates by Party Committees, Legislative Leadership Committees, and Legislative Caucus Committees (State Elections Enforcement Commission, Jan. 26, 2011) at 4 (“Legislative leadership and legislative caucus committees may only make organization expenditures on behalf of General Assembly candidates - not statewide, Judge of Probate, or municipal candidates - given the lawful purpose of these types of committees.”); Understanding the Connecticut Campaign Finance Laws: A Guide for Political Committees. (Connecticut State Elections Enforcement Commission), Hartford, Connecticut, January 2014 at 55; see also Revised Contribution Limits & Restrictions: Chart 1 —Individuals and Committees (State Elections Enforcement Commission, April 2017) (reflecting guidance that legislative leadership and caucus committees may not contribute to statewide candidate committees).

from the definition of expenditure. General Statutes § 9-601b (b) (8). See also *In the Matter of the Complaint of Matthew Knickerbocker, Bethel*, File No. 2008-132 (“Organization expenditures are specifically excluded from the definitions of ‘expenditure’ and ‘contribution’ in General Statutes §§ 9-601a & 9-601 b, respectively.”) Either the mailer was an expenditure or an organization expenditure. The evidence and law supports the fact that it was intended to be and was an organization expenditure, i.e. it was an expenditure by legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee for a mailing which listed the name or names of candidates for election to public office, was distributed through direct mail and was made to promote the success or defeat of any candidate. General Statutes § 9-601 (25) (A). But see *In the Matter of the Complaint of Matthew Knickerbocker, Bethel*, File No. 2008-132 (Communication found not to be an organization expenditure because it did not fit the definition of an organization expenditure.)

19. As discussed, both expenditures *and* organization expenditures that promote or oppose statewide candidates are not permitted by committees such as the SRLC and the SRCC, however what constitutes an impermissible organization expenditure is not the same as what constitutes and impermissible expenditure.

20. Notably, expenditures made within 90 days of an election might be considered to be impermissible solely if they feature a “clearly identified candidate” when that candidate is not in the race of the committee paying for the communication. See General Statutes §§ 9-601b (a) (2) and 9-601b (b) (7); Advisory Opinion 2014-04. Additionally, an impermissible expenditure could be “anything value” made to “promote the success or defeat” of a candidate for whom the paying committee was not permitted to make an expenditure. General Statutes § 9-601b (a) (1). See also cases, e.g. File No. 2014-132, 2014-133, 2014-134, 2014-136, 2014-137, 2014-138, 2014-139, 2014-141, 2014-142, 2014-143, 2014-144, 2014-149, 2014-170, 2014-171.

21. For an organization expenditure to be impermissible, it would, for example, have to promote the success or defeat of a candidate for whom it was not permitted to make an organization expenditure or be over the amount allowed by statute. General Statutes §§ 9-601 (25) (A), 9-718 and footnote 1, *supra*.

22. The Respondents contend, in essence, that the mailer neither opposed gubernatorial candidate Malloy nor supported gubernatorial candidate Foley. It was meant, they argue, solely to oppose senate candidate Michalik.

23. In particular, the Respondents argue that this was a “unique situation” where candidate Michalik was “tied to Malloy by his job.” As the mailer itself shows, this is the pervasive theme of the mailer. It states that candidate Michalik was employed by Dan Malloy to be the head of the Department of Economic and Community Development. Then it implies that candidate Michalik, by doing a poor job at an agency responsible for economic development, was responsible for Connecticut being the “worst” place in “America” by several economic measures: worst place to find a job, raise a family, start a business or retire. This, the mailer suggests, is because, as the head of an executive branch agency and a gubernatorial appointee, he follows Governor

Malloy's orders, who is head of the executive branch, and therefore voters should not vote for candidate Michalik.

24. They further contend that making these aforementioned points would be impossible without mentioning Dan Malloy.

25. There is no dispute that the SRLC and the SRCC are permitted to make an organization expenditure to oppose candidate Michalik, a legislative candidate and that this mailing does so. It should also be noted that this organization expenditure was within the limits allowed for these types of political committees to spend on senate races (\$10,000 each). It also did not involve the expenditure of public funds by a CEP candidate.

26. It remains to be answered whether the organization expenditure impermissibly opposed candidate Malloy. Determining whether an organization expenditure has veered out of its permissible race is a novel question.

27. In the past, the Commission has used certain criteria to evaluate whether *expenditures* have crossed the threshold into *joint expenditures* for certain candidates. General Statutes §§ 9-601a, 9-601b, 9-601c; Declaratory Ruling 2011-03; Public Act 13-180; Advisory Opinion 2014 -04. See also, e.g., *In the Matter of a Complaint by Mary Oliver*, Hampton, File No. 2008-176. *In the Matter of a Complaint by Carl J. Strand*, File No. 2008- 150. By analogy, this previous guidance is useful.

28. The Commission has found that certain indicia should be used to make the determination as to whether an expenditure should be paid for jointly: 1) The extent of the candidate's appearance or identification in the communication, e.g., photographs, video, or audio clips, use of candidate's identifying logo or theme; 2) Whether the candidacy or party affiliation is identified; the record of the elected official is discussed; or a solicitation for votes, contributions or other support is made; 3) When the communication was created, produced, or distributed (i.e. is it produced or released shortly before a primary or election); 4) How widely the communication was distributed and whether the communication went to the candidate's voters; (5) Whether the candidate was unopposed at the time the communication was distributed; (6) Whether it appears to be one of a series of communications that collectively seem to advocate for the election or reelection of the candidate; and (7) What role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication. *In the Matter of a Complaint by Mary Oliver*, Hampton, File No. 2008-176. See *In the Matter of a Complaint by Carl J. Strand*, File No. 2008- 150 *Complaint of Pasquale Salemi*, File No. 2010-091. *Complaint of Devon Pfeifer*, File No. 2010-131.

29. When applying those indicia to this mailer, the results are mixed. Governor Malloy was mentioned (repeatedly) in the mailer and his face appeared, but he was not identified as a candidate, nor was there any exhortation to vote for (or against) him. The mailer was disseminated in the weeks before an election in which candidate Malloy was on the ballot. There was no evidence regarding its distribution range, although the cost of the mailer (approximately \$10,311.84, combined total) indicates that its circulation

was limited to one legislative district, and not the entire state. There is no specific mention of Governor Malloy's particular policies, other than the implication that they are being implemented faithfully through candidate Michalik, and that they are having an adverse effect on Connecticut's economic environment. There was no evidence presented that candidate Foley's campaign, or any other campaign or committee, played any part in the creation, production and/or dissemination of the communication. There was no evidence presented that this was part of a series of similar communications. The communication did not expressly solicit votes for or against any candidate besides Michalik.

30. The above listed indicia, however, were not intended to be exhaustive. Declaratory Ruling 2011-03 ("Several indicia will factor into the analysis of whether a share of the costs of a communication must be allocated to a particular candidate committee, *including but not limited to the following*. . .").

31. In this case, the message was that candidate Michalik was an instrument of Governor Malloy because he was appointed by Malloy to run an economic development agency and (allegedly) he unquestioningly followed the direction of his employer (Governor Malloy), and now, as a result, the State is in the economic doldrums. The Respondents' basic argument seems to be that you cannot call someone a puppet without saying who is pulling the strings.

32. To be clear, the employment relationship—significantly, for a cabinet position pertaining to economic development—is particular, specific and pertinent to the message opposing candidate Michalik, namely that he is responsible (by following his employer's policies) for a poor economic climate. In other words, candidate Michalik was vulnerable to the particular message because of his resume, where other candidates would not be. To be clear, this is not the same as a generalized connection linking the one candidate to the other, such as by party membership, or even particular policy preference or shared ideology, or a similar vote or pattern of voting (Mr. Michalik was not an incumbent legislator).

33. The Commission has determined that there are factual circumstances such that, when an expenditure is made that mentions a candidate in a different race, no proportional financial allocation has to take place by the committee making the expenditure and the other candidate's committee.<sup>2</sup> Declaratory Ruling 2011-03. When no allocation is required, the expenditure (or in this case, organization expenditure), which otherwise would be considered impermissible, is not impermissible, and no violation is found. "The Commission, in determining whether campaign materials are promotional, applies a case-by-case review of materials, which is specific and fact based. Further, where direct advocacy is absent a balancing of factors relating to the materials becomes necessary." *In the Matter of a Complaint by Mary Oliver*, Hampton, File No. 2008-176. See *In the Matter of a Complaint by Carl J. Strand*, File No. 2008-

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<sup>2</sup> For example, if an advertisement contains a group photograph with other candidates or endorsements from other candidates, it may not be considered a joint expenditure. Declaratory Ruling 2011-03.

150, and Opinion of Counsel 2008-19, Reference to Other Candidate in Campaign Communications.

34. In answering the question whether mentioning the Governor in this advertisement was necessary to make the point that the SRLC and the SRCC wanted to make, the answer is that it may have been.<sup>3</sup> But it certainly was not necessary to refer to the Governor seven times to make that point. By so doing, it strains credulity to argue that the advertisement was intended solely to be in opposition to candidate Michalik and that it was not intended to oppose candidate Malloy, as the Respondents have argued.

35. Nevertheless, as this is a novel issue and a unique set of facts, by utilizing the above indicia to evaluate an *organization expenditure* in which multiple candidates appear, and applying them to the particular circumstances here, it is the Commission's conclusion that the organization expenditure paid for by the SRLC and the SRCC was not impermissible, and that the reference to Governor Malloy was directly cogent and germane to the intended message, and inseparable from it.

36. It should be observed that had other factors been present and made a part of the record in this matter, such as evidence of a concerted, coordinated effort to target a candidate in another race by multiple leadership or caucus committees, or other factors been absent, like the employment relationship between Governor Malloy and Mr. Michalik, the result would, in all likelihood, have been different.

37. Based upon the Stipulation of Facts, evidence and testimony presented at the hearing, it is found that both Respondents did not make an organization expenditure to oppose Governor Malloy. As a result, the Commission declines to find a violation.

38. In consideration of the factors listed above, it is recommended that the complaint be dismissed.

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<sup>3</sup> It is not hard to think of alternative suggestions to avoid clearly identifying candidate Malloy, such as referring to his office only.



**ORDER**

IT IS HEREBY ORDERED THAT:

That the complaint is dismissed.

Adopted this 19<sup>th</sup> day of September, 2018.

A handwritten signature in black ink, reading "Salvatore A. Bramante". The signature is written in a cursive style with a large initial 'S' and a long horizontal stroke at the end.

Salvatore A. Bramante, Vice Chair

By Order of the Commission