

SEP 13 2016

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Mazurek,  
Wolcott

File No. 2014-170

AGREEMENT CONTAINING CONSENT ORDER

This Agreement by and between Scott M. Cleary, of the Town of Wolcott, County of New Haven, State of Connecticut (hereinafter "Respondent"), and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. **Representative Robert Sampson was a candidate for state representative from the 80<sup>th</sup> General Assembly District and Joseph Markley was a candidate for state senator from the 16<sup>th</sup> Senatorial District at the November 4, 2014 election. Representative Sampson registered the candidate committee "Sampson for CT" (hereinafter "Sampson Committee") and designated Respondent Cleary his treasurer.**
2. **Further, Mr. Markley registered the candidate committee "Joe Markley for State Senate 2014" (hereinafter "Markley Committee") and designated Barbara P. Roberts his treasurer.**
3. **The Sampson Committee and the Markley Committee applied for and received grants from the Citizens' Election Program (CEP). Allegations by Complainant pertaining to Joseph Markley and Barbara P. Roberts are treated under a separate document.**
4. **Complainant alleged that the Sampson Committee violated General Statutes § 9-601b, § 9-616, § 9-706, *et al*, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, by making expenditures as a CEP candidate for campaign literature that attacked Governor Malloy's record. *See* Advisory Opinion 2014-04, *Negative Communications Featuring Candidates for Different Offices* (pertaining to its application of General Statutes § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2).**
5. **More specifically, Complainant alleged that three joint communications of the Sampson Committee and Markley Committee that were distributed to multiple households in the 80<sup>th</sup> District "to bring about the defeat of Governor Malloy and promote the election of Tom Foley, the Republican candidate for Governor" violated Connecticut campaign finance law because Governor Malloy was not Representative Sampson's direct opponent. *See* General Statutes § 9-601b, § 9-616, § 9-706, *et al*; Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2; and Advisory Opinion 2014-04.**

6. **Additionally, Complainant alleged that three additional pieces of campaign literature solely attributed to the Sampson Committee violated General Statutes § 9-601b, § 9-616, § 9-706, et al, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2 because they contained negative references to Governor Malloy's record, who was not an opponent of Representative Sampson for election as state representative from the 80<sup>th</sup> General Assembly District. *See Id.***
7. **The Commission notes that Representative Sampson and Respondent Cleary have no prior cases with the Commission. Further, the Commission's Campaign Disclosure & Audit Unit examined the financial disclosure reports and supporting documentation provided by the Sampson Committee following its selection for review as part of the post-election random audit process for the 2014 election cycle and the Summary of Examination by the Campaign Disclosure & Audit Unit reflected no significant problems that would require additional investigation by the Commission's Enforcement Unit.**
8. **By way of background, the Commission at its October 17, 2014 regular monthly meeting voted to issue an Advisory Opinion to respond to requests for clarification regarding the ability of candidates in the CEP to make expenditures for communications that refer to – and oppose or feature in a negative light – other candidates who are not their direct opponents.**
9. **As a result, Advisory Opinion 2014-04 reiterated longstanding Commission advice that in order to avoid making an impermissible expenditure from a CEP candidate committee, committees of candidates and political parties must pay their proportionate share of the communication's costs as a joint expenditure. *See Advisory Opinion 2014-04.***
10. **General Statutes § 9-601b, provides 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;**
11. **General Statutes § 9-607, provides in pertinent part:  
(g) (1) As used in this subsection, (A) "the lawful purposes of the committee" means: (i) For a candidate committee or**

exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ...

(2) Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) any other form of printed advertising or communications including "thank you" advertising after the election; (C) campaign items, including, but not limited to, brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, ... and (Z) any other necessary campaign or political expense.

12. General Statutes § 9-610, provides in pertinent part:

(b) A candidate committee may pay or reimburse another candidate committee for its pro rata share of the expenses of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates, including any shared expenses for which only the committee being paid or reimbursed was under a contractual obligation to pay. Notwithstanding the provisions of subdivision (1) of subsection (a) of section 9-616, a candidate committee may reimburse a party committee for any expenditure such party committee has incurred for the benefit of such candidate committee.

13. General Statutes § 9-706, provides in pertinent part:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund

**under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, ... The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.**

...

**(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.**

**14. Regulations of Connecticut State Agencies § 9-706-1, provides:**

**(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.**

**(b) The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure. Contemporaneous detailed documentation shall mean documentation which was created at the time of the transaction demonstrating that the expenditure of the qualified candidate committee was a campaign-related expenditure made to directly further the participating candidate's nomination for**

**election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.**

**Contemporaneous detailed documentation shall include but not be limited to the documentation described in section 9-607(f) of the Connecticut General Statutes.**

**15. Regulations of Connecticut State Agencies § 9-706-2, provides in pertinent part:**

**(a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:**

- 1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or internet;**
- 2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;**
- 3. Postage and other commercial delivery services for political campaign advertising; ...**

**(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:**

- ...
- 8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;**

...

**10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure; ...**

**13. Independent expenditures to benefit another candidate;**

**14. Expenditures in violation of any federal, state or local law;**

**[Emphasis added.]**

16. **On October 17, 2014, the Commission issued Advisory Opinion 2014-04 instructing and cautioning candidates regarding negative communications that feature candidates *other than* their opponents or for different office. The Commission directed that:**

*[W]hen a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is not ... [a] direct opponent of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated. ... [T]he candidate committee of a CEP participant may not attack candidates opposing other members of such candidate's party.*

17. **The Commission finds that the six pieces of campaign literature contained attributions from the Sampson Committee pursuant to General Statutes § 9-621. Further, the Commission finds joint communications by the Sampson Committee and the Markley Committee contained attributions from each committee as required by § 9-621.**

18. **The six pieces of campaign literature are described and excerpted as follows:**

Exhibit One

In the form of a letter, this provides a joint disclaimer from the Markley Committee and the Sampson Committee. The campaign letter includes the following:

*Rob's motives are the very finest, which makes his opponent's baseless attacks on his record particularly offensive. Corky Mazurek has used our tax dollars to mail mean-spirited flyers, full of false and misleading accusations. Rob won't dignify the nonsense with a response, but I'd like to set the record straight on behalf of my friend.*

...

*There are too many false claims in Corky's flyers to set them all straight in this letter, but Rob has done the job at his website, Sampsonforct.com, where you'll find a point-by-point refutation of his opponent's false and desperate assertions.*

Exhibit Two

In the form of a double-sided postcard, this provides a joint disclaimer from the Markley Committee and the Sampson Committee. Complainant highlighted on this exhibit the following:

*Rob & Joe consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents.*

*Fought the Malloy Tax Cut: As members of the Appropriations Committee, Rob & Joe opposed our state's largest tax hike ever, and helped craft an alternative budget that didn't raise a single tax or cut any aid to our community or its seniors.*

*Rob & Joe have consistently fought Governor Malloy's agenda and have tried to restore Common Sense and fiscal responsibility in state government.*

Exhibit Three

In the form of a flyer, this provides a joint disclaimer from the Markley Committee and the Sampson Committee and includes their names and images. There are two images of candidate Markley with candidate Sampson, and four additional images of Sampson without Markley. Additionally, there are four, outsized Rob Sampson/State Representative logos with campaign slogans, where Markley does not have the equivalent. Complainant highlights the following:

*Rob has fought Governor Malloy's "Bad for Connecticut Agenda", opposing Huge Increases in Government Spending, the Highest Tax Increase in Connecticut History, the New Britain to Hartford Busway, the Repeal of the Death Penalty, and the Early Release of Violent Criminals.*

Exhibit Four

In the form of a double-sided postcard, the disclaimer is for the Sampson Committee only. It includes only candidate Sampson's name and image. Complainant on the post card highlights the following:

***Rob Sampson wants a New Direction and rejects Governor Malloy's policies!***

*It's time to change course and STOP Governor Malloy and the majority Democrat's dangerous agenda!*

**Exhibit Five**

Appears to be the form of a glossy flyer, and includes only candidate Sampson's name and image and is attributed to the Sampson Committee. Complainant highlights the following:  
*Rob Sampson has been a clear and consistent voice for Common Sense in Hartford, fighting Governor Malloy's destructive policies of wasteful spending and high taxes.*

**Exhibit Six**

In the form of a full page newspaper advertisement that includes only candidate Sampson's name and image and is attributed to the Sampson Committee. Complainant highlights the following:  
*I am also proud to have led the fight against the many bad policies put forth by Gov. Malloy and the Democrats in Hartford.*

19. **The Commission finds that Exhibit One above does not cast a non-opponent in a negative light or otherwise attack a candidate who is not a direct opponent and therefore does not trigger the application and analysis of General Statutes § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2 pursuant to the allegations of this complaint. The Commission therefore dismisses the allegation regarding Exhibit One and the Sampson Committee and Respondent Cleary.**
20. **The Commission finds that Exhibit Two through Exhibit Six above were expenditures by the Sampson Committee pursuant to Regs. Conn. State. Agencies § 9-706-1 that benefited the gubernatorial campaign of Thomas Foley and opposed the re-election of Governor Malloy. The Sampson Committee was limited by both statute and regulation to making expenditures of its funds for its own benefit. Therefore, these expenditures by the Sampson Committee was inconsistent with the advice of Advisory Opinion 2014-04 and contrary to the Commission's advice and directives therein. See Advisory Opinion 2014-04, § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.**
21. **Respondent should have, pursuant to General Statutes § 9-610 (b) and consistent with Advisory Opinion 2014-04, properly allocated a portion of the cost of the subject mailer with the Thomas Foley campaign because the communication opposed Governor Malloy, clearly identified him as a candidate, portrayed his policies in a negative light and**

**Governor Malloy was not a direct opponent of Respondent Sampson in his campaign for state representative from the 80<sup>th</sup> General Assembly District.**

22. After investigation, <sup>to date,</sup> it was determined that the final payments to the vendor by the Sampson Committee for production and dissemination by mail of Exhibit Two through Exhibit Six that are subject of this complaint were made twelve days *after* the publication of Advisory Opinion 2014-04. The investigation did not reveal any coordination between Respondent and Thomas Foley, his candidate committee or its agents or the Republican Party.
23. The Commission stresses that in addition to being prohibited from making contributions to benefit other candidates, candidate committees are prohibited from making independent expenditures for the benefit of another candidate because a candidate committee may only make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i), Advisory Opinion 2014-04.
24. Under these circumstances there is no allegation or facts discovered to show that Respondent coordinated the mailers at issue with Thomas Foley's candidate committee. However, the Commission cautions that such an expenditure is still prohibited by Connecticut's campaign finance laws, as an expenditure to attack a candidate that is not the candidate's opponent is, by definition, not an expenditure to promote the nomination or election of the candidate.
25. The Commission concludes, for the reasons detailed herein, that Respondent Cleary violated General Statutes § 9-607 (g), § 9-616, § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, by using CEP funds to support another candidate and to oppose, through negative references, a candidate committee other than a direct opponent of the Committee.
26. While the Commission notes that Advisory Opinion 2014-04 reiterated the Commission's longstanding advice regarding joint expenditures and the allocation of costs for the same, nevertheless it finds the levying of a civil penalty, under these narrow and specific circumstances, as unwarranted because (1) Respondent did correctly disclose and report the Sampson Committee's expenditures for the campaign literature in question and (2) the Commission reiteration and clarification pertaining to the rules for negative advertisements that included candidates other than opponents in Advisory Opinion 2014-004 was published within 12 days of the payments by the Sampson Committee to the vendor for the production and distribution of the campaign materials detailed herein.
27. The Commission stresses that had the Respondents arranged for organization expenditures to cover the costs of Exhibit Two through Exhibit Six that are subject of

**this complaint pursuant to General Statutes § 9-601b (b) (8), it would have been entirely permissible.**

- 28. Moreover, the Commission's intent in regulating such communications is *not* with regard to regulating speech pursuant to Advisory Opinion 2014-04, but rather, merely to verify the appropriate campaign finance funds for each communication is properly allocated to each committee benefited pursuant to General Statutes § 9-610. This goal is particularly urgent when, as in this instance, a candidate committee is participating in the CEP and therefore using public funds when engaging in *pro rata* expenditures for joint communications.**
- 29. The Respondent stresses that the inclusion of the governor was not meant to benefit or oppose and other candidate other than the legislative opponent in this instance. Therefore, the Respondent signs this agreement solely to avoid further costs of litigation regarding this matter. Further, signing this agreement and any and all admissions made by the Respondent is not binding in regards to any other matter pending before the Commission, not binding on any other party to such complaint, and may not be used as an admission in any other proceeding.**
- 30. Respondent admits all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.**
- 31. The Respondent waives:
  - 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.****
- 32. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent concerning this matter.**
- 33. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by either party in any subsequent hearing, if one becomes necessary.**

ORDER

IT IS HEREBY ORDERED THAT Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-607, § 9-616, § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

Respondent

For the State of Connecticut

By:

By:





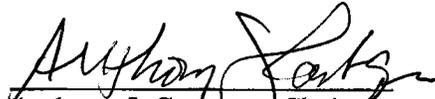
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Dated: 9/13/16

Dated: 10/3/16

Adopted this 12 day of OCT, 2016 at Hartford, Connecticut by vote of the Commission.

  
Anthony J. Castagno, Chairman  
By Order of the Commission