

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

In the Matter of a Complaint by Gary M. Schaffrick  
City of Bristol

File No. 2015-135

**AGREEMENT CONTAINING A CONSENT ORDER**

This Agreement by and between the respondent, Brian Cohen of the Town of Chaplin, hereinafter referred to as "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. Complainant Gary M. Schaffrick filed this complaint on October 7, 2015, alleging that Respondent had made expenditures opposing candidates in an upcoming municipal election without including the proper disclaimers as required under General Statutes § 9-621.<sup>1</sup>
2. Complainant alleged that during a city council debate in Bristol on September 28, 2015, Respondent placed flyers on windshields of cars belonging to individuals that attended the debate. Those flyers included a photo of incumbent Bristol mayor Ken Cockayne, who was running for re-election in the November 2015 municipal elections, and intimated that Cockayne and other candidates had failed to make statements to satisfy the author of the flyer regarding their honesty and thus were not worthy of voters' support in the pending election.<sup>2</sup>
3. In his response to this complaint, Respondent acknowledged that on or about September 28, 2015, he had created the flyer in question. He also stated that, working alone, he produced approximately 25 copies of the flyers for a total cost of less than \$3.<sup>3</sup>
4. That flyer,<sup>4</sup> which asked Bristol municipal leaders and candidates to say whether they would lie to local police, stated among other things:

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<sup>1</sup> See Complaint of Gary M. Schaffrick, Bristol (State Elections Enforcement Comm'n, October 7, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> See Letter from Brian Cohen to Scott Branfuhr (Rec'd. June 28, 2016) (responding to investigator's questions about flyer prompting complaint).

<sup>4</sup> Complainant also included with his complaint two other documents that he attributed to Respondent: a flyer that Complainant stated had been "left all over City Hall" entitled "Stand Up and Sign the Petition" as well as a document titled "Take the Boys and Girls Club Challenge Test," which Respondent stated had been given to the mayor's office. Since the Complainant only alleged that the flyer left on the windshields of cars outside the City Council debate

If a person who is clamoring for your VOTE is unable to stand up and teach a child about how to interact with law enforcement, then we a (sic) people should NOT vote for such a person... Yes or No?

...

If a person who begs for your VOTE can't stand and answer, then such a person is unworthy of your VOTE ... Or your RESPECT.....<sup>5</sup>"

5. The bottom of the flyer featured two photographs. The first showed an individual holding a sign in front of his/her face, which read: "Mayor Cockayne and Candidates for City Council, PLEASE ANSWER, 'Would you lie to Bristol Police?' Thank you." To the left of that photograph was the caption, "Right ) Bristol People standing up, answering and then signing a petition to politely ask leaders to do the same ... The average person can answer, why not its leaders?" To the right of the "PLEASE ANSWER" sign photograph was one showing Cockayne with his right hand raised looking as if he were taking an oath. Running underneath both photographs was the caption: "Far Right, November 2013, Cockayne with one hand on the Bible and one hand raised ... stated to be Honest, Forthright and Transparent? Well how about it Mr. Mayor, would you LIE or NOT?<sup>6</sup>"
6. General Statutes § 9-621 requires attribution on any written communication that falls under the definition of "independent expenditure."<sup>7</sup> General Statutes § 9-601c defines "independent expenditures as, first, "an expenditure, as defined in section 9-601b . . . ."<sup>8</sup> General Statutes § 9-601b offers three definitions for "expenditure:"
  - (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;

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required the attribution, Complainant presumably believed the other documents did not require attribution and thus are not addressed in this consent order.

<sup>5</sup> Flyer "ARE YOU A BIG LEBOWSKI?" (Emphasis in original).

<sup>6</sup> *Id.*

<sup>7</sup> See General Statutes § 9-621 (h) (21) ("No person shall make or incur an independent expenditure for any written, type or other printed communication . . . unless such communication bears upon its face, as a disclaimer, the words 'Paid for by' and the name of such person and the following statement: 'This message was made independent of any candidate or political party.'")

<sup>8</sup> General Statutes § 9-601c (a) ("As used in this chapter and chapter 157, the term 'independent expenditure' means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.")

- (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; or
- (3) The transfer of funds by a committee to another committee.<sup>9</sup>

If a written document does not qualify as an “expenditure” under Chapter 155, then no attribution is required on the document.

7. Lawmakers also carved out some exemptions to the definition of “expenditure.” Chief among those for this case is one that allows a “human being acting alone” to spend a total of \$200 on an expense, or expenses, “that benefits a candidate for a single election<sup>10</sup>.” But in contrast to other places in the statute, this exemption permits only expenses that promote the candidacy of one candidate.<sup>11</sup> Expenses that work only to the detriment of a candidate without benefiting another candidate or disparage all candidates in a race may fall outside the ambit of this exemption.
8. Working alone, Respondent created the flyer that he distributed at the City Council debate on September 28, 2015, for a total cost of less than \$3. That flyer focused on the need for city leaders to confirm that they believed it was inappropriate to lie to police officers. The flyer did not specifically exhort electors not to vote for Cockayne or other candidates, but it did state that candidates who did not answer the question about whether they would lie to police officers were “unworthy of your VOTE ... Or your RESPECT . . .<sup>12</sup>”.
9. As cited above, lawmakers offered three definitions for expenditure. Working in reverse order, the third definition – “transfer or funds from one committee to another committee” – does not apply given that activity at question here involved neither funds nor committees.<sup>13</sup> The second definition – “any communication that . . . is broadcast by radio, television . . . or by satellite communication or via the Internet . . . or appears in a newspaper, magazine, or on a billboard, or is sent by mail” – fails because Respondent

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<sup>9</sup> General Statutes § 9-601b (a).

<sup>10</sup> General Statutes § 9-601b (b) (15) (allowing one human being to spend up to \$200 to benefit one candidate in one election).

<sup>11</sup> See, e.g., General Statutes § 9-601b (a) (1) (defining expenditures as “anything of value . . . made to **promote the success or defeat of any candidate**”) (Emphasis added).

<sup>12</sup> Flyer “ARE YOU A BIG LEBOWSKI?” (Attached) (Emphasis in original).

<sup>13</sup> See General Statutes § 9-601b (a) (3), *supra* at Fn. 6.

distributed his flyer by hand, which is not included on the list of forms of delivery that render something a “communication” and thus an “expenditure.”<sup>14</sup>

10. The first, and broadest, definition of “expenditure,” in subsection (1), appears to capture the activity in which Respondent engaged here. That definition, which states that “anything of value . . . made to promote the success or defeat of any candidate seeking . . . election” will constitute an expenditure, would include a flyer such as the one that Respondent created and distributed at the City Council debate in September 2015.<sup>15</sup>
11. Respondent placed the flyer, which advocated not voting for any candidate, who failed to answer the law-enforcement-honesty question, on the windshields of individuals attending a political event less than two months before the November municipal election. All candidates fell within the crosshairs of the flyer’s scope, but the incumbent mayor, Ken Cockayne, was clearly the principle target, identified in the flyer by both name and in a picture. While the flyer did not specifically state “do not vote for Mayor Cockayne,” the timing and tenor of the flyer was clear in its opposition to his re-election. The flyer would be considered an “expenditure” under Connecticut law.
12. The exemption from the definition of “expenditure” created by the legislature for those expenses of less than \$200 created by a human being acting alone to benefit a candidate in a single election would not remove this flyer from the definition of expenditure.<sup>16</sup> The flyer was created for less than \$200 and was created by a human being acting alone, but two other factors take it out of this safe harbor: the flyer did not (1) benefit (2) a candidate in a single election. The flyer spoke in opposition to all candidates who had failed to answer the questions posed by Respondent as the flyer’s author. Had the author chosen one candidate who had answered his questions and promoted that candidate as the only candidate that voters should support, the exemption under (b) (15) would likely apply. But Respondent opposed all candidates who did not answer his question, removing this flyer from the language in the exception, which extends only to expenses that benefit a candidate.
13. As an “independent expenditure” under General Statutes § 9-601c, Respondent was required to own his speech by placing an attribution on the flyer as required under General Statutes § 9-621 (h) (1).<sup>17</sup>

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<sup>14</sup> See General Statutes § 9-601b (a) (2), *supra* at Paragraph 6.

<sup>15</sup> General Statutes § 9-601b (a) (1), *supra* at Paragraph 6.

<sup>16</sup> See General Statutes § 9-601b (b) (15), *supra* at Paragraph 7.

<sup>17</sup> See General Statutes § 9-621 (h) (1), *supra* at Fn. 7.

14. General Statutes § 9-7b (a) (2) (D) authorizes the Commission to impose a civil penalty of as much as \$2,000 per violation of any provision of chapter 155 of the Connecticut General Statutes.<sup>18</sup>

15. The Commission has a list of factors it may consider to mitigate the amount of civil penalty that it seeks to impose. Per Regulation 9-7b-48:

In its determination of the amount of civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.<sup>19</sup>

16. In this case, Respondent's violation of the attribution statute was not serious. He has no prior history with the Commission and has already sought guidance on how to comply with Connecticut's campaign finance statutes in the future. Mitigation of the potential civil penalty imposed would be appropriate.

17. 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.

18. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them concerning this matter.

19. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

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<sup>18</sup> See General Statutes § 9-7b (a) (2) (permitting Commission to levy civil penalty not to exceed two thousand dollars against any person it finds to be "in violation of any provision of chapter 155 or 157").

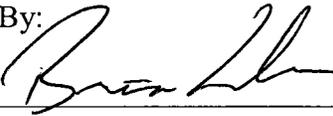
<sup>19</sup> Regulations, Conn. State Agencies, § 9-7b-48 (State Elections Enforcement Comm'n, 1998).

**ORDER**

IT IS HEREBY ORDERED THAT Respondent shall henceforth comply with the disclaimer requirements under General Statutes § 9-621.

The Respondent

For the State of Connecticut

By: 

By: 

Brian Cohen  
284 Willimantic Road  
Chaplin, CT 06235

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 06106

Dated: 7-15-16

Dated: 7/18/16

Adopted this 10 day of AUG 2016 at Hartford, Connecticut by vote of the Commission.

  
Anthony J. Castagno, Chairman  
By Order of the Commission