

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by J.R. Romano
Branford

File No. 2016-087

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between Lynn Mehrtens, Town of Old Saybrook, State of Connecticut, 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. Norman Needleman formed a candidate committee to support his candidacy for the 33rd state senate seat on April 80, 2016. Respondent Mehrtens was named as the treasurer for the Needleman candidate committee. The candidate committee participated in the Citizens' Election Program. The committee applied for and received a grant from the Citizens' Election Fund. Both Needleman and Mehrtens agreed to abide by the statutes and regulations governing use of any monies that the candidate committee received from the Citizens' Election Fund.
2. Complainant alleged that:

A recent mailer paid for by the Elect Needleman for Senate 2016 Committee and approved by candidate Needleman used monies received from the Citizens' Election Program to mail out an attack piece on Republican Presidential Nominee, Donald J. Trump. . . . Under the provisions of CEP, no federal candidates either in support or opposition can be mentioned in a communication using state monies. In addition, under federal law in a federal election, which 2016 is considered, only federal monies can be used to advocate on behalf or against any federal candidate. . . . I allege that this is a violation of every provision of the CEP as well as the letter and spirit [of the law and program.]
3. On or about October 14, 2016, according to campaign finance records, the committee ordered a mailer that cost \$10,844.59, including postage and tax, targeting Art Linares, Needleman's opponent in the 2016 election.
4. The mail piece, which was mailed on or about October 24, 2016, also referenced Linares's support for Republican presidential candidate Donald Trump. One side of the double-sided mailer featured a photograph of Linares wearing a "Trump-Pence" campaign sticker and stating that Linares "Hide[s] endorsements you don't want to

admit having.” The opposite side stated that Linares “plays an active part in the Trump campaign.” It also quoted the THE DAY newspaper of October 4, 2016 as saying, “The most ludicrous endorsement I’ve heard for Trump this season came from state Sen. Art Linares.” The mailer did not show a picture of Trump or use his full name.

5. 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;

...

(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: . . .

(7) A communication described in subdivision (2) of subsection (a) of this section that includes speech or expression made (A) prior to the ninety-day period preceding the date of a primary or an election at which the clearly identified candidate or candidates are seeking nomination to public office or position, that is made for the purpose of influencing any legislative or administrative action, as defined in section 1-91, or executive action, or (B) during a legislative session for the purpose of influencing legislative action

6. 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 . . .

(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 or 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.

7. 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.*

[Emphasis added.]

8. General Statutes § 9-616, provides in pertinent part:

- (a) A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, and (B) 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, an expenditure by a candidate committee established by either such candidate that benefits the candidate committee established by the other such candidate shall be permitted.

9. General Statutes § 9-621, provides in pertinent part:

- (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.

10. 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, if a primary is required under chapter 153, and (A) said party endorses the candidate for the office that the candidate is seeking, (B) the candidate is seeking nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative and receives at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for the office the candidate is seeking, or (C) the candidate circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for (i) the office of Governor, Lieutenant Governor, Attorney

General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, pursuant to section 9-400, or (ii) the municipal office of state senator or state representative, pursuant to section 9-406, whichever is applicable. 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.

- 11. Regulations further elucidate Program restrictions, specifically Section 9-706-1 of the Regulations of Connecticut State Agencies, which provides, in relevant part:
 - (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.
- 12. The regulations also specify what expenditures are permissible for a qualified candidate committee as well those that are not permitted for candidate committees accepting Citizens' Election Fund monies. Section 9-706-2 of the Regulations of Connecticut State Agencies provides, in relevant 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) . . . 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; . . .

13. Relying on the statutory and regulatory provisions cited above, Advisory Opinion 2014-04 specifically instructed and cautioned candidates and treasurers of qualified candidate committee about paying for negative communications that targeted candidates other than their opponents. 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.

14. In the October 2016 mailings described above, the Needleman candidate committee made statements that disparaged Linares for his support of Trump. While the mailer did not show a picture of Trump or specifically direct voters not to cast their ballots for him, it did imply that by supporting him, Linares had made an error, which by extension opposes Trump's candidacy in general and amounts to a statement in opposition to Trump's candidacy.

15. In Connecticut, a communication is considered to promote or attack a candidate in a race when it meets certain content, manner and time criteria. The mailer here met that test with respect to two candidates in two races. Applying CEP regulations 9-706-1 (a) and 9-706-2 (b) in conjunction with the clearly identified test contained in General Statutes § 9-601b (a) (2) & (b) (7), the content (clearly identifying a candidate in the senate race and also a candidate in the presidential race), manner (in a communication

sent by mail) and timing (ninety days before the vote in each of the two races) means that the communication amounted to an expenditure by a CEP candidate that did not directly further only his own nomination to the specified office for which he was given the grant to run.

16. The Commission concludes that the costs of this mailer associated with its opposition to Trump, a Republican candidate on the November, 2016 general election ballot in a federal election contests, which were not allocated to a committee that could properly make such an expenditure opposing Trump, did not represent permissible expenditures for a qualified candidate committee using funds received from the Citizens' Election Fund.
17. Following the line of cases decided by the Commission related to communications in the 2014 election cycle that opposed Dannel Malloy, the Democratic nominee for the office of governor in 2014, any costs associated with the opposition to the candidacy of Donald Trump as the Republican presidential nominee should have been allocated to a committee that could have legally made such an expenditure, such as a federal candidate committee or the federal account of the Connecticut Democratic state party. The Needleman candidate committee, which was established by candidate Needleman to support his candidacy for the 33rd state senate seat and which had received a grant from the Citizens' Election Fund, could not make the expenditure opposing Trump.
18. Given that 2016 was the first election cycle where CEP candidates could have made an expenditure involving a presidential candidate following the adoption of Advisory Opinion 2014-04, the Commission declines to impose a civil penalty here.
19. Respondent admits all jurisdictional facts and agrees 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.
20. 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.
21. 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.

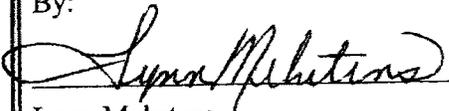
ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth comply strictly with the requirements of General Statutes §§ 9-607, 9-616 and 9-706 as well as Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2.

The Respondent

For the State of Connecticut

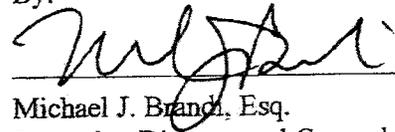
By:



Lynn Mehrtens
3 Salt Meadow Lane
Old Saybrook, CT 06475

Dated: 8/13/18

By:



Michael J. Brandt, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT 06106

Dated: 8/14/18

Adopted this 15 day of August, 2018 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission

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ENFORCEMENT COMMISSION