

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Michael Nicastro
Bristol

File No. 2016-088

FINDINGS AND CONCLUSIONS

Complainant Michael Nicastro of Bristol filed this complaint on October 28, 2016, per Connecticut General Statutes § 9-7b, alleging that the Senate Republican Campaign Committee had made an impermissible organization expenditure to oppose Nicastro's candidacy for the 31st district state senatorial seat. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. The Senate Republican Campaign Committee is a legislative leadership committee established by the leader of the Republican Party caucus in the Connecticut State Senate. From 2013 to 2017, Gregg Cogswell served as the political committee's treasurer, including in the period relevant to this complaint.
2. Complainant alleged that the Senate Republican Campaign Committee had paid for a mailer as an organization expenditure that targeted him by suggesting he was closely aligned with Governor Dan Malloy. Complainant stated the mailer, which supported his opponent Henri Martin, did not carry a disclaimer from Martin saying that he had approved the mailer and Martin claimed he had no knowledge of the mailer, which, complainant stated, made the mailer "illegal." Complainant also expressed his outrage at the content of the mailer.
3. The two-sided mailer featured photos of Malloy and Nicastro on the address side with "A VOTE FOR MIKE NICASTRO / IS A VOTE FOR DAN MALLOY." Above the recipient's address, the mailer stated "Paid for by Senate Republican Campaign Committee/Gregg Cogswell, Treasurer/204 Essex Court/Torrington, CT 06790." On the opposite side, the mailer featured a photo of Nicastro on the left and Malloy on the right. Across the top of the mailer were the words "GOVERNOR MALLOY AND MIKE NICASTRO'S/TAX HIKING, JOB KILLING POLICIES WILL/HURT FAMILIES/AND KILL JOBS." In the center of the mailer were the words, "Worst state budget in America/Highest tax burden/Worst for small business/And one of the worst places to raise a family." At the bottom of the mailer was the question "HOW WILL MIKE NICASTRO STAND UP TO THE/MALLOY MACHINE WHEN THEY FUNDED HIS CAMPAIGN?"

4. The mailer did not include a statement from the candidate, Henri Martin, that he approved the content of the organization expenditure. In news reports, Martin stated that he was not aware that the Senate Republican Campaign Committee had made an organization expenditure on his behalf.
5. The Senate Republican Campaign Committee reported an expenditure of \$9,979.52 on October 22, 2016, which it categorized as an organization expenditure to benefit Henri Martin.¹
6. General Statutes § 9-601 (25) (a) includes within the definition of “organization expenditure” an expenditure for the benefit of a candidate by a legislative leadership committee for a “party candidate listing,” which, in relevant part, is a communication that identifies candidates for office, is disseminated through direct mail, and promotes the defeat of a candidate.
7. General Statutes § 9-601b (b)(8) exempts “organization expenditure” paid for by a party, legislative leadership, or legislative caucus committee from the definition of “expenditure.” General Statutes § 9-621, provides in pertinent part:
 - (a) . . . 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: . . . (B) in the case of a committee other than a party committee, the name of the committee and its treasurer; . . . 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; . . .
8. General Statutes § 9-622 (13) states that an individual shall be guilty of an illegal practice if that individual “makes an expenditure, that is not an independent expenditure, for a candidate without the knowledge of such candidate.”

¹ Later, the committee amended its filings to reclassify the expenditure as an “independent expenditure.”

9. The Commission looks to indicia to give guidance in evaluating whether a communication is an organization expenditure on behalf of a certain candidate or if it requires the allocation of costs to be borne by the candidate's candidate committee or party committee. These are based on General Statutes §§ 9-601a, 9-601b, and 9-601c, Declaratory Ruling 2011-03, subsequent final decisions, revisions to the law in section 2 of Public Act 13-180, and Advisory Opinion 2014 -04, and, depending on the facts, may include:
- 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;
 - 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;
 - When the communication was created, produced, or distributed (i.e. is it produced or released shortly before a primary or election);
 - How widely the communication was distributed and whether the communication went to the candidate's voters;
 - Whether the candidate was unopposed at the time the communication was distributed;
 - 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
 - What role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication.
10. The mailer sent by the Senate Republican Campaign Committee identified candidate Mike Nicastro by name, was mailed to homes in the candidate's senatorial district less than a month before the November election, and promoted the defeat of Nicastro.
11. The Commission concludes that the mailer was a "party candidate listing" on behalf of Henri Martin, Nicastro's Republican opponent.
12. The mailer also attacked Dan Malloy, the incumbent governor of Connecticut in 2016. There was no election for governor in the 2016 election cycle.
13. The next election for governor would not be until 2018. At the time the communication was created, produced, and distributed, there were no candidate committees registered for Governor and only one exploratory committee for the 2018 cycle was registered. There is no indication that the candidate in exploratory committee, or any candidate for the 2018 cycle, played any role at all in the creation, production and/or dissemination of

the communication. The communication was delivered only to potential voters in the 2016 senatorial race and not to all potential voters in the 2018 statewide race. It does not appear to be one of a series of communications that collectively seem to advocate for the 2018 election. Malloy was not on the 2016 ballot.

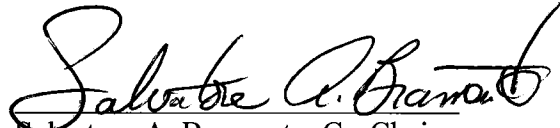
14. The Commission finds that this organization expenditure, released in October of 2016, was not on behalf of a statewide candidate in the 2018 election, given the timing of its release more than two-years before the next gubernatorial election.
15. As an organization expenditure, the mailer should have included the disclaimer that it was approved by the candidate that benefitted from the mailer. The mailer did not have that disclaimer from Henri Martin, the benefitted candidate here.
16. But the mailer was not an “illegal” mailer as the Complainant alleged. General Statutes § 9-622 makes it illegal to make an “expenditure that is not an independent expenditure” without the knowledge of the benefiting candidate. Under Connecticut campaign finance law, however, party committees and certain party-related political committees are permitted to make organization expenditures. These expenditures are exempted from the definitions of both expenditures and contributions, largely unlimited and may be either coordinated or independent. In this instance the Republican legislative leadership committee paid for an “organization expenditure” that opposed Complainant Nicastro. As an “organization expenditure,” the mailer was not an “expenditure.” Effecting the printing and dissemination of that negative mailer on behalf of a senatorial candidate by the legislative leadership caucus committee as an organization expenditure, even though it was done without the benefiting candidate’s knowledge, did not result in an illegal practice under General Statutes § 9-622 (13) since it was not an “expenditure.”
17. The Commission directs the respondents to include that disclaimer on future organization expenditures, as required under General Statutes § 9-621 but seeks to focus this Findings & Conclusions on instructing committees on the treatment of elected officials in off-year elections, so it will not seek a civil penalty in this matter.

ORDER

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

That the Commission will take no further action in this matter.

Adopted this 19th day of September, 2018 at Hartford, Connecticut.

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 distinct flourish at the end.

Salvatore A. Bramante, Co-Chairperson
By Order of the Commission