

MAY 15 2019

ENFORCEMENT COMMISSION

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Timothy J. Daly,
North Haven

File No. 2017-040

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement, by and between David M. Walker (hereinafter "Respondent Walker"), of the City of Bridgeport, County of Fairfield, State of Connecticut and Michael J. Knight (hereinafter "Respondent Knight"), Town of North Haven, County of New Haven, State of Connecticut; and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that In the Matter of a July 5, 2017 Complaint by Timothy J. Daly:

1. General Statutes § 9-601 defines an exploratory committee as:

a committee established by a candidate for a single primary or election (A) to determine whether to seek nomination or election to (i) the General Assembly, (ii) a state office, as defined in subsection (e) of section 9-610, or (iii) any other public office, and (B) if applicable, to aid or promote such candidate's candidacy for nomination to the General Assembly or any such state office.

2. General Statutes § 9-601 defines a candidate committee as:

any committee designated by a single candidate, or established with the consent, authorization or cooperation of a candidate, for the purpose of a single primary or election and to aid or promote such candidate's candidacy alone for a particular public office or the position of town committee member, but does not mean a political committee or a party committee. For purposes of this chapter, "candidate committee" includes candidate committees for participating and nonparticipating candidates, unless the context of a provision clearly indicates otherwise.

3. General Statutes § 9-604 provides, in pertinent part:

Not later than fifteen days after a public declaration by the candidate of the candidate's intention to seek nomination or election to a particular public office, the candidate shall form a single candidate committee, except that in the case of a candidate establishing an exploratory committee for purposes including aiding or promoting the candidate's candidacy for nomination or election to the General Assembly or a state office, the

candidate shall form a single candidate committee not later than fifteen days after the date that the treasurer of such exploratory committee is required to file a notice of intent to dissolve the committee under subsection (f) of section 9-608.

4. An exploratory committee exists to allow a candidate to determine whether an individual would have a viable candidacy. It follows that the "legitimate activity of such a committee includes the promotion of one's nomination to the ballot." See Declaratory Ruling 2009-01. Once the candidate has actually decided to pursue election to a particular office, the underlying purpose of his or her activities is no longer exploration but rather election to office. See *In the Matter of a Complaint by Christopher Healy, Wethersfield*, File No. 2009-075 and DR 2009-01.
5. General Statutes § 9-608 requires that the treasurer of an exploratory committee shall file a notice of intent to dissolve the exploratory committee not later than fifteen days after the candidate's declaration of intent to seek nomination or election to a particular public office.
6. The Commission has further advised that:

As the Commission pointed out in the prior Declaratory Rulings, the distinction between an exploratory committee and a candidate committee grows more important in reference to public campaign financing. Under the Citizens' Election Program ("Program"), a candidate for the General Assembly or Statewide office must be mindful of when and how he or she dissolves the exploratory committees and forms a candidate committee. A candidate who chooses to participate in the voluntary Program agrees to abide by expenditure limits for his or her candidate committee. General Statutes § 9-702 (c). When an exploratory committee is dissolved and a candidate committee is formed, any surplus or deficit of the candidate's exploratory committee transfers to that candidate's candidate committee. General Statutes § 9-608 (1). Such surplus and deficit can have a significant impact on a candidate's ability to participate in the Program. See generally Declaratory Ruling 2007-02, Citizens' Election Program: Surplus and Deficit of Exploratory Committees. Moreover, expenditures made in the exploratory committee that fall outside the parameters of such committees for "testing the waters" and deciding whether to run, as opposed to actually running for election, may be attributed to the candidate committee, and similarly impact the candidate's ability to participate in the Program.

In the Matter of a Complaint by Christopher Healy, Wethersfield, File No. 2009-075

7. It is alleged that Respondent Knight, as treasurer of the *Dave Walker for CT* exploratory committee, failed to timely file an intent to dissolve such exploratory committee in violation of General Statutes § 9-608. As a consequence, it is further alleged that:

- a. Respondent Knight failed to timely and properly distribute the surplus funds of such exploratory committee in violation of General Statutes § 9-608.
 - b. Respondent Knight improperly solicited and/or accepted contributions to a committee other than a candidate committee in aid of the candidacy of David Walker in violation of General Statutes §§ 9-602 and 9-622.
 - c. Respondent Knight improperly made and/or incurred expenditures from a committee other than a candidate committee in aid of the candidacy of David Walker in violation of General Statutes §§ 9-602 and 9-622.
 - d. Respondent Walker failed to form a single candidate committee within fifteen days after the treasurer of the *Dave Walker for CT* exploratory committee was required to file a notice of intent to dissolve the committee in violation of General Statutes § 9-604.
 - e. Respondent Walker solicited contributions prohibited by various provisions of chapter 155 of the General Statutes including, but not limited to General Statutes § 9-602, in violation of General Statutes §§ 9-602, and 9-622.
8. On or about April 10, 2017, Respondent David M. Walker registered the *Dave Walker for CT* exploratory committee with the Commission.
 9. Respondent Michael J. Knight was the treasurer of *Dave Walker for CT* at all times during such committee's existence.
 10. On or about May 24, 2017, Respondent Walker made the following statements to a meeting of the Greenwich Republican Town Committee:
 - a. "Why am I running? Because I got recruited to run."
 - b. "I will qualify for voluntary public financing, probably by the end of this year."
 - c. "One of the reasons I'm in exploratory committee is that you have more flexibility in what you can do in exploratory committee."
 - d. "Once you convert to a candidate committee you have more restrictions on what you can do. So I'm not looking to convert quickly because of that fact. That's the way the law works."

11. At all times relevant hereto, Twitter was a social networking platform that allowed users to post text, as well as other media. Such posts, called “tweets,” are then available, with few exceptions, to all of Twitter’s users to view.
12. In addition to allowing users to post content, Twitter allows users to reply to other’s posts. When replying to other users on Twitter, users have the option of replying publicly, so that all other Twitter users can review their reply, or replying privately so that only the individual to which the user is replying can see the reply.
13. At all times relevant hereto, @CTDaveWalker was a Twitter account owned and controlled by Respondent Walker.
14. At all times relevant hereto, Squawk Box was a television program on the cable channel CNBC.
15. At all times relevant hereto, @SquawkCNBC was the official Twitter account of the Squawk Box television program on CNBC.
16. On or about June 1, 2017, Respondent Walker posted a tweet on Twitter from the @CTDaveWalker account which stated: “I’m scheduled to be on @SquawkCNBC tomorrow between 7-7:30 AM Eastern time. I’ll address the debt ceiling and selected fiscal matters. DW.” (“Tweet 1”).
17. On or about June 2, 2017, a Twitter user with the account name @ehwitlin posted a public reply to Tweet 1 which stated: “CT is a basket case- please help?” (“Tweet 2”).
18. On or about June 2, 2017, Respondent Walker posted a public reply to Tweet 2 which stated “I am pursuing the office of Governor of CT to turn around the state. Check out DavewalkerCT.com.” (“Tweet 3”).
19. According to Respondent Walker, this tweet was not intended as a public declaration that he had reached the personal decision to be a candidate for Governor vis a vis a further expression of his intent to aid or promote his candidacy for nomination to that state office.
20. At the time of the June 2, 2017 tweet, the DavewalkerCT.com website conspicuously conveyed the fact that Walker had an exploratory committee that was taking steps to qualify for the state’s voluntary public financing program.

21. At the time of the June 2, 2017 tweet, the DavewalkerCT.com website also proclaimed “My Finance Committee is confident that we will qualify for the voluntary Citizen’s Election Program (CEP) well in advance of May 2018.”
22. After it was brought to his attention that some might construe Tweet 3 as a public declaration of Walker’s decided intent to seek nomination to the Governor’s office, Respondent Walker asserts that he removed Tweet 3 from his personal Twitter feed with the intention of avoiding any such impression. Nevertheless, Tweet 3 was and remains, as of the date of this document, visible to any individual who reviews the @SquawkCNBC Twitter feed.
23. In response to a June 21, 2017 tweet from “Connecticut Dems” which referred to Respondent Walker as “Candidate David Walker,” Respondent Walker replied in part: “I am not a candidate. I have an Exploratory Committee.”
24. An invitation to a private fundraiser for Respondent Walker scheduled for June 21, 2017 stated: “[HOSTS] INVITE YOU TO A RECEPTION WITH POTENTIAL GUBERNATORIAL CANDIDATE DAVE WALKER.” On or about June 26, 2017, Respondent Walker posted a tweet on Twitter from the @CTDaveWalker account which stated: “If you care about fiscal responsibility, please make a modest contribution to my CT Gubernatorial effort at DaveWalkerCT.com. Thanks.” (“Tweet 4”).
25. Another invitation to a private fundraiser for Respondent Walker scheduled for June 27, 2017 also stated: “[hosts] cordially invite you to a reception with potential gubernatorial candidate Dave Walker.”
26. On or about June 27, 2017, Respondent Walker posted a tweet on Twitter from the @CTDaveWalker account which stated: “In my opinion, if I can qualify for voluntary public financing, I will be the next Governor of Connecticut.” (“Tweet 5”).
27. On July 4, 2017 Walker tweeted the following in response to a tweet from Tim Herbst - “Tim, I am not a candidate. I have an Exploratory Committee for Governor. Do you understand the difference?”
28. Another invitation to a private fundraiser for Respondent Walker was issued on or about July 3, 2017 for a July 11, 2017 event. The invite said “to join [the hosts] to meet / Former Comptroller General of the US / Dave Walker / for Governor of CT.” On previous occasions the Walker Exploratory Committee corrected drafts of similar invitations to reflect the exploratory nature of the campaign when an error was discovered; however this particular invite was not caught..

29. On July 10, 2017 the Walker Campaign made a public declaration that he had finally decided to run for the Governor's office and was therefore converting from an Exploratory Committee for Governor to a Campaign Committee for Governor. Once that public declaration was made via a formal and written public announcement, the Walker Committee logo, website, social media accounts, stationary, and my public messaging changed. Walker also posted the related announcement on my Twitter and Campaign Facebook accounts.
30. On or about July 10, 2017, Respondent Walker registered the *Dave Walker for Governor* candidate committee with the Commission.
31. On or about July 10, 2017, Respondent Knight distributed the surplus of *Dave Walker for CT* to *Dave Walker for Governor*.
32. On or about July 17, 2017, Respondent Knight filed a termination report with the Commission concerning *Dave Walker for CT*.
33. On or about July 24, 2017, Respondent Knight filed a Notice of Intent to Dissolve for *Dave Walker for CT* with the Commission.
34. Whether an individual has made a "declaration" of intent to seek a particular office is necessarily a "fact-specific" inquiry. In conducting such inquiry, the Commission considers whether a reasonable person would believe that the words or actions of the candidate, or those acting in coordination with the candidate, constituted a statement of intent to seek a specific office. *In the Matter of a Complaint by Christopher Healy, Wethersfield*, File No. 2009-075; Declaratory Ruling 2009-01.
35. Further, in determining whether a declaration has been made, the Commission considers whether a reasonable person would believe that the activity or activities in question indicate that the candidate is continuing to deliberate whether to run, or whether his or her actions are indicative that the candidate is actually seeking election to a specific public office.
36. The Commission will consider various factors, including the extent to which the declaration was public, in other words the breadth of the distribution; the nature of the declaration; the efforts made by the exploratory committee to avoid such public declarations before the candidate chose to form a candidate committee; other declarations, public announcements and actions during the exploratory committee

relating to the candidate's candidacy; and whether there has been a good faith attempt to avoid public declarations triggering the requirement. *Healy* and DR 2009-1.

37. The Commission finds that Respondent Knight solicited and accepted contributions into *Dave Walker for CT* exploratory committee from its inception up to and including July 9, 2017.
38. The Commission finds that Respondent Walker solicited and accepted contributions into *Dave Walker for Governor* candidate committee beginning on July 10, 2017.
39. The Commission finds that the June 2, 2017 tweet was a Public Declaration, as Defined by General Statutes § 9-604, of Respondent Walker's intention to seek nomination and/or election to a governor of the State of Connecticut and therefore the Respondents had 15 days, or until June 19, 2017¹, to file a notice of intent to dissolve the *Dave Walker for CT* exploratory committee in violation of General Statutes § 9-604.
40. The Commission concludes that as a consequence of Respondent Walker's purported public declaration in the June 2, 2017 tweet, Respondent Knight improperly solicited and/or accepted contributions to a committee other than a candidate committee in aid of the candidacy of David Walker in violation of General Statutes §§ 9-602 and 9-622.
41. The Commission concludes that as a further consequence of Respondent Walker's purported public declaration in the June 2, 2017 tweet, Respondent Knight failed to timely and properly distribute the surplus funds of *Dave Walker for CT* in violation of General Statutes § 9-608.
42. The Commission concludes that as a further consequence of Walker's purported public declaration in the June 2, 2017 tweet, Respondent Walker failed to form a single candidate committee within fifteen days after Respondent Knight was required to file a notice of intent to dissolve the committee in violation of General Statutes § 9-604.
43. Respondents Walker and Knight vehemently deny that the June 2, 2017 tweet constituted a public declaration that Walker had made the decision to be a candidate for Governor vis a vis an expression of his intent to aid or promote his candidacy for nomination to that state office, but acknowledge the determination of the Commission in order to resolve this matter.

¹ June 17, 2017 was the fifteenth day after Respondent Walker's purported public declaration of his intent to run for Governor of Connecticut. As that day was a Saturday, and because currently all such forms must be filed in person, Respondent had until the next business day, June 19, 2017 to file such document with the Commission.

44. Respondents Walker and Knight insist a final decision to run for the office of Governor was not made until just before the July 10, 2017 declarations and therefore also deny they failed to file a timely notice of intent to dissolve the *Dave Walker for CT* exploratory committee in violation of General Statutes § 9-604, but acknowledge the determination of the Commission in order to resolve this matter.
45. Respondents Walker and Knight therefore also deny Respondent Knight improperly solicited and/or accepted contributions to a committee other than a candidate committee in aid of the candidacy of David Walker in violation of General Statutes §§ 9-602 and 9-622, but acknowledge the determination of the Commission in order to resolve this matter.
46. Respondents Walker and Knight therefore also deny Respondent Knight failed to timely and properly distribute the surplus funds of Dave Walker for CT in violation of General Statutes § 9-608, but acknowledge the determination of the Commission in order to resolve this matter.
47. Respondents Walker and Knight therefore also deny Respondent Walker failed to form a single candidate committee within fifteen days after Respondent Knight was required to file a notice of intent to dissolve the committee in violation of General Statutes § 9-604, but acknowledge the determination of the Commission in order to resolve this matter.
48. During the pendency of this enforcement action Respondent Walker failed to secure the Republican nomination for Governor and fell short of receiving fifteen percent of the delegates necessary to secure the right to automatically qualify to primary for that office at the Republican state convention concluding Sunday, May 13, 2018. Shortly thereafter, Respondent Walker decided he would no longer pursue election to the governor's office and therefore would not pursue funds from the Citizen's Election Program.
49. The Respondents assert, *arguendo*, that a reasonable consideration of the facts and circumstances surrounding this complaint and investigation, as well as the Commission's own precedent in a dismissal in *Complaint by Robert Brown*, Waterford, File No. 2010-095, where Respondent Walker as a candidate, like the Respondent in *Brown*, received no financial benefit from the exploratory committee. Respondents maintain that consistency demands that the Commission should dismiss this matter with no payments by the Respondents as in its own decision in *Brown*.
50. Respondents stress that the Commission's apparent rationale for not imposing any payments by Respondents in *Brown* was the fact that there was no harm done or advantage gained, which is consistent with Respondents' circumstances in this instance,

where: (1) the Committee stayed within the \$100 contribution limits *as if* they were fundraising under the more restrictive rules of a candidate committee; and, (2) because no grant from the Citizens' Election Fund is being applied for, ancillary perceived harms to the Citizens' Election Program that served as a basis for this complaint are moot.

51. The Commission notes that, even if the Respondents did stay within the \$100 contribution limit, by remaining in exploratory committee longer than permissible, and continuing to raise and spend funds out of such committee longer than permissible, Respondents left themselves the option to not count such contributions as qualifying contributions and re-raise funds from the same individuals if strategy so dictated.
52. Whereas, the Commission pursuant to § 9-7b-48, Regulations of Connecticut State Agencies, provides that the Commission in its determination of the amount of the civil penalty, if any, 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.

Respondents argue the above four factors vitiate any action against them.

53. Whereas, the Respondents enter into this agreement solely for the purposes of avoiding future costs of litigation.

WHEREFORE, it is agreed by and between the Commission and the Respondents that:

- A. Respondent Walker will pay the amount of \$2,000.00 for purposes of full settlement of this matter.
- B. Respondent Knight will pay the amount of \$2,000.00 for purposes of full settlement of this matter.

- C. The Respondents, for their part, **strongly** disagree with the Commission's pursuit of penalties light of the balancing of circumstances pursuant to Regs. Conn. State Agencies, § 9-7b-48, and believe that requiring any payments by the Respondents under these facts is unwarranted. Nevertheless, Respondents make the payments as detailed herein solely to avoid the costs of further litigation.
- D. The parties concur that the instant Agreement does not constitute an admission of violations by the Respondents, but rather a voluntary conciliation agreement between the parties pertaining to this matter pursuant to General Statutes § 9-7b (a) (6).
- E. The parties agree that this stipulated agreement by the parties is a full and final settlement of this matter and is based on a voluntary conciliation agreement available to the parties pursuant to General Statutes § 9-7b (6).
- F. Respondents admit all stipulated jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
- G. The Respondents waive:
 - 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.
- H. 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 Respondents in any subsequent hearing, if the same becomes necessary.
- I. Upon the Respondents' compliance with the Order hereinafter stated, the Commission agrees this Agreement settles all matters between the Commission and the Respondents occurring prior to and including the date of this Agreement.

ORDER

IT IS STIPULATED THAT Respondent Walker will pay the amount of \$2,000.00 in full settlement of this matter.

IT IS FURTHER STIPULATED THAT Respondent Walker will henceforth strictly comply with General Statutes § 9-602, § 9-604 and § 9-622.

IT IS STIPULATED THAT Respondent Knight will pay the amount of \$2,000.00 in full settlement of this matter.


IT IS FURTHER ORDERED THAT Respondent Knight will henceforth strictly comply with General Statutes § 9-602, § 9-608 and § 9-622.

Respondent Walker:

David M. Walker
37 Beacon Street
Bridgeport, Connecticut


Dated: _____

For the State of Connecticut:

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

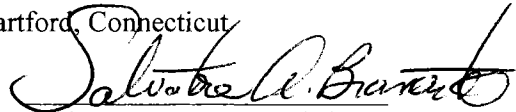
Dated: 4/22/19

Respondent Knight:

BY: 
Michael J. Knight
2180 Kings Hwy E, Unit 1
Fairfield, Connecticut

Dated: 4-15-19

Adopted this 15 day of May, 2019 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission
Salvatore A. Bramante Vice Chair