

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Joyce Krinitsky and
Gregory Showers, Plymouth

File Nos.: 2017-070
2017-076
2017-084

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Peter Worhunsy (the "Respondent") and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

ALLEGATION

1. It is alleged that Respondent made independent expenditures in excess of one thousand dollars opposing Plymouth mayoral candidate David Merchant without properly reporting or attributing such expenditures.

FACTUAL BACKGROUND

2. At all times relevant hereto, David V. Merchant was the Mayor of the Town of Plymouth and a candidate for reelection to that office in the November 7, 2017 general election.
3. At all times relevant hereto, Patricia DeHuff was a candidate for Mayor of Plymouth in the November 7, 2017 general election.
4. At the beginning of her campaign, Patricia DeHuff selected the Citizens for Responsible Government political slate committee as the sole funding source for her 2017 campaign for Mayor of Plymouth.
5. At all times relevant hereto, Respondent Peter Worhunsy was an elector in the Town of Plymouth.
6. Sometime prior to September of 2017, Respondent Worhunsy determined that he did not support Mr. Merchant's handling of the Plymouth's affairs.
7. On or about September 27, 2017, Respondent Worhunsy placed an order with a printing company for 5000 mailers that he intended to mail to the residents of Plymouth ("Mailer 1").

8. The cost printing Mailer 1 was \$972.25.
9. Mailer 1 explicitly states: "IT'S TIME TO RETURN HONEST POLITICIANS TO TOWN HALL / VOTE NOVEMBER 7."
10. On or about October 16, 2017, Respondent Worhunsy placed an order with a printing company for 5000 mailers that he intended to mail to the residents of Plymouth ("Mailer 2").
11. The cost printing Mailer 2 was \$852.28.
12. Mailer 2 states, among other things: "MAYOR MERCHANT AND THE REPUBLICAN TOWN COUNCIL BORROWED ALMOST ONE MILLION DOLLARS TO REPAIR TODD HOLLOW ROAD – A STREET THAT ALMOST NO ONE USES."
13. On or about October 30, 2017, Respondent Worhunsy placed an order with a printing company for 5000 mailers that he intended to mail to the residents of Plymouth ("Mailer 3").
14. The invoice for Mailer 3 contains the following statement: "Must be in hand by 11/3."
15. The cost printing Mailer 3 was \$780.19.¹
16. Mailer 3 was titled "Illegal Activity of Merchant and Town Council – Part III" and included numerous allegations of improper and/or illegal activity on the part of David Merchant.
17. Mailers 1, 2, and 3, contained no language stating or suggesting who paid for such mailer or that it was made independent of a candidate, or that further information concerning such expenditure was available by contacting the Commission.
18. Between September 27, 2017 and November 7, 2017, Respondent Worhunsy mailed Mailers 1, 2, and 3 to residents of Plymouth.
19. In response to inquiries by a Commission investigator, both Patricia DeHuff and Respondent Worhunsy denied that Respondent DeHuff had any involvement in the

¹ In addition to Mailers 1, 2, and 3, the Complainants in these matters identified other mailers that they allege failed to include attributions in violation of General Statutes § 9-621 and for which financial disclosure statements were not properly filed pursuant to General Statutes §§ 9-601d or 9-608. After a thorough investigation of these allegations by Commission staff, it is the determination of the Commission that such other mailers were either not expenditures as defined by General Statutes § 9-601b or could not be definitively attributed to any identifiable respondent.

production or dissemination of the mailers. In fact, Respondent DeHuff provided the following statement to Legal Investigator Branfuhr:

Pete Worhunsy was known by those of us who made up the Citizens For Responsible Government (CFRG) slate committee. Pete came to CFRG headquarters one night. He said that he wanted to create, pay for and control the content of a flyer and all he wanted CFRG to do was for us to put our name on the flyer. We immediately and emphatically told him NO. When he tried to further convince us to do this, he was shown the door by one of the candidates.

The investigation revealed no evidence to contradict this assertion.

20. Respondent Worhunsy claims that he paid for Mailers 1, 2, and 3 out of his own personal accounts and he did not coordinate these expenditures with any third party. The investigation confirmed that the mailers were paid for by Mr. Worhunsy personally. The investigation revealed no evidence suggesting any third party was involved with the production or dissemination of the mailers.

21. As of February 15, 2019, Respondent Worhunsy has made no financial disclosure statement filings concerning Mailers 1, 2, and 3.

LAW

22. General Statutes § 9-601b (a) defines expenditure to be:

(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; or

(3) The transfer of funds by a committee to another committee.²

23. The Commission has further clarified this statute by noting:

² General Statutes § 9-601b (b) provides exceptions to the definition of expenditure, none of which apply in this case.

An expenditure, by definition, relates to a candidate—it is either to oppose or to benefit such candidate—and as such, applying the law requires identifying to which candidate the expenditure relates, and by extension, which race they are in and for which office they are running.

The standards for this determination are less stringent the further before an election the communication is made. For example, if the communication is made longer than 90 days before an election, then the communication must go beyond the mere mention of a candidate to be for their benefit. In such cases, the Commission applies various indicia to determine whether the communication promotes, attacks, supports or opposes the secondary candidate, and whether, in fact, some financial allocation is required. See e.g. Declaratory Ruling 2011- 03. There are also fifteen exemptions from this definition of expenditure that must be applied. If any are present, then no allocation is required because it would not be considered an expenditure at all.

Within 90 days of an election, the legislature has provided a clean, bright-line rule that says when a clearly identified candidate is present in certain communications, then it is an expenditure to benefit (or oppose) the identified candidate.

In the Matter of a Complaint by John Mazurek, Wokcott, File No. 2014-170 at 8.

24. An expenditure is considered an independent expenditure when it is made “made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.” General Statutes § 9-601c (a).
25. Pursuant to General Statutes § 9-601d, any person who “makes or obligates to make an independent expenditure or expenditures in excess of one thousand dollars, in the aggregate, shall file statements according to the same schedule and in the same manner as is required of a treasurer of a candidate committee pursuant to section 9-608.”
26. General Statutes § 9-608 requires treasurers of candidate committees to file financial disclosure statements detailing all expenditures made by such committee.
27. Furthermore, General Statutes § 9-621 (h) (1) provides:

No person shall make or incur an independent expenditure for any written, typed or other printed communication, including on a billboard, or any web-based, written 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.” In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication

shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site.

28. General Statutes § 9-7b (b) empowers the Commission "To levy a civil penalty not to exceed . . . (D) two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 155 or 157."

29. General Statutes § 9-601d (i) (1) further provides:

If a person fails to file a report in accordance with the provisions of this section for an independent expenditure or expenditures made or obligated to be made more than ninety days before the day of a primary or election, the person shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than ten thousand dollars. If a person fails to file a report required in accordance with the provisions of this section for an independent expenditure or expenditures made or obligated to be made ninety days or less before the day of a primary or election, such person shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than twenty thousand dollars.

DISCUSSION

30. Respondent Worhunsky, prior to September of 2017, decided that he would like to oppose David Merchant's candidacy for reelection as Mayor of Plymouth. When he attempted to coordinate his efforts with Mr. Merchant's opponent, Patricia DeHuff, she unequivocally refused to have any association with him or his efforts and neither accepted nor provided any information to Respondent Merchant.
31. With regard to Respondent Worhunsky, however, there is more than sufficient evidence to conclude that Mailers 1, 2, and 3 were expenditures made in opposition to candidate David Merchant.
32. Each mailer was mailed to potential voters within 90 days of the November 7, 2017 general election.
33. Each mailer clearly identified David Merchant by name and two by picture as well.

34. Mailer 1 explicitly states: "IT'S TIME TO RETURN HONEST POLITICIANS TO TOWN HALL / VOTE NOVEMBER 7."
35. Each mailer explicitly stated that the conduct of David Merchant and those in Plymouth Town Hall is illegal.
36. Finally, Respondent Worhunsy required that he receive Mailer 3 by November 3, 2017, presumably so that he could ensure that residents of Plymouth receive such mailers before the November 7, 2017 general election.
37. Therefore, the Commission concludes that Mailers 1, 2, and 3 were expenditures made by Respondent Worhunsy to oppose the candidacy of David Merchant.
38. Based upon the evidence, the Commission further concludes that such expenditures were made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.
39. The Commission further concludes that Respondent Worhunsy failed to include the proper attribution on Mailers 1, 2, and 3 in violation of General Statutes § 9-621.
40. The Commission further concludes that Respondent Worhunsy failed to properly report the expenditures for Mailers 1, 2, and 3 in violation of General Statutes § 9-601d.
41. Failing to properly attribute and report independent expenditures is a matter the Commission takes seriously. See *In the Matter of a Complaint by Edward R. Whitbread, Milford*, File No. 2012-156 (\$6,928.90 civil penalty for making \$59,289.00 in independent expenditures without proper attributions or reporting).
42. Moreover, the Commission has historically distinguished attribution cases where it is clear who the spender is on the face of the communication from those, like this case, where there is no way to discern who the spender is from the content of the communication. See *In the Matter of a Complaint by Michael Gongler and Victor L. Harpley, Cromwell*, File No. 2009-126; *In the Matter of a Complaint of John D. Norris, Southbury*, File No. 201.1-108; *In the Matter of a Complaint of Arthur Scialabba, Norwalk*, File 2011-125; *In the Matter of a Complaint of Robert W Prentice, Wallingford*, File No 2011 -134; *In the Matter of a Complaint of Arthur Scialabba, Norwalk*, File 2012-011; *In the Matter of a Complaints of Pete Bass, New Milford*, File 2012-158 & 162; *In the Matter of a Complaint of Michael J. Flint, Lakeville*, File No. 2013-135.
43. In this case the Respondent Worhunsy made \$2,604.75 in independent expenditures without any attribution or reporting.

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ENFORCEMENT COMMISSION

TERMS OF GENERAL APPLICATION

44. The Respondent admits to 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.
45. 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 to contest the validity of the Order entered into pursuant to this Agreement.
46. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
47. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

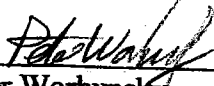
ORDER


It is hereby ordered that Respondent Peter Worhunsy shall henceforth strictly adhere to the requirements of General Statutes §§ 9-601d and 9-621.

It is further Ordered that Respondent Peter Worhunsy shall pay a civil penalty of ^{seven hundred fifty} ~~one thousand~~ dollars (\$750).

Respondent:

For the State of Connecticut:

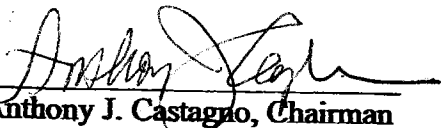
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By: 
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Executive Director and General Counsel and
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State Elections Enforcement Commission
20 Trinity St.
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Dated: 4/15/2019

Dated: 4/15/19

Adopted this 17 day of Apr, 2019 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

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ENFORCEMENT COMMISSION