

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Richard Demko, Seymour

File No. 2018-059

FINDINGS AND CONCLUSIONS

The Complainant, Richard Demko, brought this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Mark Greenberg, J. Kenneth Nowell, Cooper Communications, LLC, and Tremont Public Advisors, LLC (“Respondents”)¹ violated Connecticut’s campaign finance laws by “conspiring to publish a campaign communication on behalf of Republican Comptroller candidate Mark Greenberg deceptively framed as the results of an independent poll.” The following are the Commission’s findings of fact and conclusions of law:

1. On April 18, 2017, Respondent Greenberg registered the *Mark for Comptroller* candidate committee with the Commission as the funding vehicle for his 2018 campaign for Comptroller of the State of Connecticut.
2. At all times relevant hereto, Respondent Nowell was the treasurer of *Mark for Comptroller*.
3. On or about August 15, 2017, *Mark for Comptroller* entered into a contract with Respondent Cooper Communications who agreed to provide the campaign with “professional services in the areas of communications and media relations, both self-directed and as directed by the Candidate or his primary Campaign Consultant [.]”
4. Subsequently, Respondent Cooper Communications retained the services of Respondent Tremont Public Advisors to conduct a poll on behalf of the Respondent Greenberg’s campaign.²
5. Between July 30, 2018 and August 2, 2018, Respondent Tremont Public Advisors conducted an online poll of registered Connecticut Republican voters concerning what candidate the participants favored in a primary for the offices of Lieutenant Governor, Treasurer, Attorney General, and Comptroller.
6. Those responding to the poll in question indicated that they favored Respondent Greenberg over the other listed candidate 55% to 45%.

¹ The Complaint also named the candidate committee *Mark for Comptroller* as a respondent. However, for campaign finance violations of the type alleged by the Complainant, it is the individuals, not the committee, that bear liability for the conduct.

² It should be noted that Respondent Nowell properly reported both the payments to Respondent Cooper Communications and the secondary payee Respondent Tremont Public Advisors.

7. The investigation revealed no evidence that the poll was designed to persuade voters through the conduct of the poll itself, a practice commonly referred to as “push polling.”
8. The results of the poll were then provided to Respondent Greenberg’s campaign through Respondent Cooper Communications.
9. The *Mark for Comptroller* campaign featured the results of the poll in an email to the campaign’s supporters.
10. In addition to providing the results of the poll to the campaign through Respondent Cooper Communications, Respondent Tremont Public Advisors also published the results of the poll on its website as a news item.
11. There was nothing in the language on the Tremont Public Advisors webpage that could be considered supportive of Respondent Greenberg’s campaign, other than the results of the poll itself.
12. The item on the website of Respondent Tremont Public Advisors featuring the poll results indicated that the poll was paid for by Respondent Cooper Communications, but included no information attributing the poll to the *Mark for Comptroller* campaign.
13. General Statutes § 9-621 (a) provides:

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.

14. As Respondent Tremont Public Advisors was a subcontractor of the *Mark for Comptroller* campaign, and as the campaign specifically contracted for the poll in question (through Respondent Cooper Communications), it is beyond question that the communication on the website of Respondent Tremont Public Advisors was coordinated with the campaign.
15. This is despite the fact that the investigation into this matter did not reveal any evidence that the item published on the website of Respondent Tremont Public Advisors was done at the direction of or in consultation with either Respondent Greenberg's campaign or its consultant Cooper Communications. In fact, Respondent Nowell denied that he had any knowledge of Respondent Tremont Public Advisors releasing the results of the poll.
16. At issue in this matter is whether the release of favorable polling data by a subcontractor of a committee, absent other language, would be considered an expenditure for a communication that "promotes the success or defeat of any candidate's campaign."

To the extent that the phrase "made for the purpose of influencing the nomination for election" as contained in the definition of contribution and expenditure needs further elucidation, the United States Supreme Court has held that words such as "'promote,' 'oppose,' 'attack,' and 'support' 'provide[d] explicit standards for those who apply them' and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 170 n. 64 (2003). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 389 (D. Vt. 2012) (reading "for the purpose of ... influencing an election ... or affecting the outcome of an election" as simply, "supporting or opposing one or more candidates"). These standards, sometimes referred to as the "PASO test," are what we apply to case such as the instant matter.

In the Matter of a Complaint by Benjamin Ancona, Newington, File No. 2013-140. See also, *In the Matter of a Complaint by Jeffrey S. Winter, New Milford*, File No. 2017-072.

17. In this case, while there was nothing specifically laudatory of Respondent Greenberg on the website of Respondent Tremont Public Advisors, the release polling data that was obtained pursuant to the request of a campaign, and showing the relevant candidate with a 10 point lead over the other listed candidate is, nevertheless, a communication favorable to such candidate.
18. Moreover, it stretches credulity to believe that if the results of the poll showed their client losing in the race, that Respondent Tremont Public Advisors would still publish the results of such a poll when it might hurt a client's campaign.

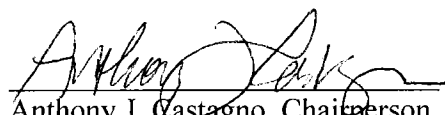
19. Nevertheless, because: (1) the Commission has not previously spoken on this specific issue; (2) the investigation revealed no evidence that the campaign was involved with or had knowledge of the release of the polling data of the website of Respondent Tremont Public Advisors; (3) the costs associated with the secondary payee polling was properly reported; and (4) this underlying violation was a relatively minor attribution issue, the Commission elects to take no further action on this matter.
20. The Commission does, however, caution the Respondents in this matter, and all campaigns and contractors thereof, that the Commission shall deem the release of favorable polling data by consultants and sub consultants of campaigns to be coordinated communications made to promote the success of a candidacy. As such, all communications will require an attribution and also be properly paid for and reported by the relevant campaign.

ORDER

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

That the Commission take no further action with regard to this Complaint.

Adopted this 17 day of April, 2019 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission