

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Scott Valey, Berlin

File No. 2019-097

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Mark Holmes, Sabato Lomaglio (“Respondents”), 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:

Allegations

1. The complainant in this matter (“Complainant”) alleged that unknown individuals expended in excess of \$1,000 on independent expenditures opposing a local referendum that did not contain a proper attribution.
2. The Complainant further alleged that such individuals did not form a political committee or file financial disclosure statements.

Statement of the Law

3. General Statutes § 9-621 (c) requires certain groups and entities to include attributions on political advertising and provides:

No business entity, organization, association, committee, or group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any referendum question unless such communication bears upon its face, as a disclaimer, the words “paid for by” and the following: (1) In the case of a business entity, organization or association, the name of the business entity, organization or association and the name of its chief executive officer or equivalent, and in the case such communication is made during the ninety-day period immediately prior to the referendum, such communication shall also bear on its face the names of the five persons who made the five largest aggregate covered transfers to such business entity, organization or association during the twelve-month period immediately prior to such referendum. The communication shall also state that additional information about the business entity, organization or association making such communication may be found on the State Elections Enforcement Commission’s Internet web site; (2) in the case of a political committee, the name of the committee and the name of its treasurer; (3) in the case of a party committee, the name of the committee; or (4) in the case of such a group of two or more individuals, the name of the group and the name and address of its agent.

4. However, individuals, acting alone, are not required to include attributions on advocacy communications concerning referenda. See *In the Matter of a Complaint by Lynn Brewer*,

Winsted, File No. 2012-133 citing *McIntyre v. Ohio Elections Commission*, 541 U.S. 334 (1995); *In the Matter of a Complaint of Pamela Lang, Middlefield*, File No. 2006-168, *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380, *In the Matter of a Complaint of Amy Primorac, Monroe*, File No. 2009-064, *In the Matter of a Complaint by Old Saybrook Town Clerk Sarah Becker*, File No. 2001-191, *In the Matter of a Complaint of Tony Palermo, Westbrook*, File No. 2003-186, and *In the Matter of a Complaint of M Kirk Carr, Jr., Clinton*, File No. 2012-083.

5. General Statutes § 9-612 (d) further provides that:

Any individual may make unlimited contributions or expenditures to aid or promote the success or defeat of any referendum question, provided any individual who makes an expenditure or expenditures in excess of one thousand dollars to promote the success or defeat of any referendum question shall file statements according to the same schedule and in the same manner as is required of a treasurer of a political committee under section 9-608.

6. Pursuant to General Statutes § 9-602 (a), “Except with respect to an individual acting alone, or with respect of a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in aggregate,” only committees may make expenditures as defined by General Statutes § 9-601b. Specifically, General Statutes § 9-605 (d) provides:

(d) A group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall not be required to file as a political committee, make such designations in accordance with subsections (a) and (b) of this section or file statements pursuant to section 9-608, if the group does not receive or expend in excess of one thousand dollars for the entire campaign. If the group receives funds or makes or incurs expenditures exceeding one thousand dollars in the aggregate, the group shall complete the statement of organization and file as a political committee not later than three business days thereafter. The group shall provide the designated treasurer with all information required for completion of the statements for filing as required by section 9-608.

Statement of Facts

7. At all times relevant hereto, Respondent Holmes was a member of the Berlin Board of Finance.
8. At all times relevant hereto, Respondent Lomaglio was a member of the Berlin Board of Finance.
9. At all times relevant hereto, the Berlin Citizen was a news publication published in the Town of Berlin.
10. At all times relevant hereto, the Berlin Citizen was part of a larger news publication group known as the Record-Journal.

11. On or before April 15, 2019, Respondent Holmes ordered and paid for an advertisement to be placed in the newspaper the Berlin Citizen (hereinafter "Advertisement 1").
12. Advertisement 1 encouraged readers to vote "no" on an upcoming budget referendum and include the statement "On April 30 VOTE NO TOO LOW on both budgets."
13. Advertisement 1 contained no attribution and it was not evident on its face who had paid for such advertisement.
14. On or about April 18, 2019, Advertisement 1 was published in the Berlin Citizen.
15. The cost of Advertisement 1 was \$590.
16. On or about April 18, 2019, Respondent Holmes emailed an employee of the Record-Journal stating, "We are going to run the ad again next week – but we would like it to jump out a little more – maybe dark red for names and for seniors, police, etc. / Sam Lomaglio will be paying this one (copied on this email)."
17. On or about April 30, 2019, the Berlin Citizen ran an advertisement that was substantially similar to Advertisement 1 (hereinafter "Advertisement 2").
18. The invoice for Advertisement 2 bears Respondent Holmes's name.
19. Respondent Lomaglio paid \$590 to the Record-Journal for Advertisement 2.

Discussion

20. If two or more individuals join together for the purposes of making expenditures in excess of \$1,000 to support or oppose a referendum, such individuals are required to form a political committee pursuant to General Statutes § 9-602.
21. Moreover, any independent expenditures in support of a referendum by a group of two or more individuals must bear an attribution on its face pursuant to General Statutes § 9-621.
22. In this case, the investigation revealed no evidence suggesting that Respondent Lomaglio and Respondent Holmes had collaborated concerning Advertisement 1.
23. Respondent Lomaglio asserts that he unilaterally decided to design, place and pay for Advertisement 2.
24. Respondent Holmes asserts that Respondent Lomaglio independently decided to design, place and pay for Advertisement 2.
25. While Respondents maintain that they did not intend to coordinate their efforts concerning Advertisement 2, the Commission finds that the April 18, 2019 email from Respondent Holmes referenced above in Paragraph 16 of this Agreement and the invoice for Advertisement 2 referenced above in Paragraph 18 of this Agreement are sufficient evidence

to conclude that there were sufficient contacts between Respondent Lomaglio and Respondent Holmes concerning Advertisement 2 for it to be considered an expenditure made by two or more individuals.

26. Because the total cost of Advertisement 2 was less than \$1000, Respondent Lomaglio and Respondent Holmes were not required to form a political committee or file a financial disclosure statement concerning the expenditures for Advertisement 1 or Advertisement 2.
27. Moreover, because the evidence suggests that Advertisement 1 was not the result of “two or more individuals who have joined solely to promote the success or defeat of a referendum question”, but rather was an expenditure made by an individual acting alone, no attribution was required.
28. However, because there is evidence suggesting that the expenditure for Advertisement 2 was produced by a “group of two or more individuals who have joined solely to promote the success or defeat of a referendum question[.]” an attribution as detailed in General Statutes § 9-621 was required. No such attribution was included on Advertisement 2.

Terms of General Application

29. The Respondents admit 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.
30. 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 to contest the validity of the Order entered into pursuant to this Agreement.
31. Upon the Respondents’ agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
32. 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.

RECEIVED

JUL 15 2021

ORDER

STATE ELECTIONS
ENFORCEMENT COMMISSION

It is hereby ordered that the Respondents Holmes and Lomaglio shall henceforth strictly adhere to the requirements of General Statutes § 9-621.


It is further ordered that Respondent Holmes shall pay a civil penalty of \$200.

It is further ordered that Respondent Lomaglio shall pay a civil penalty of \$200.

Respondent Lomaglio:

For the State of Connecticut:

By: _____
Sabato Lomaglio

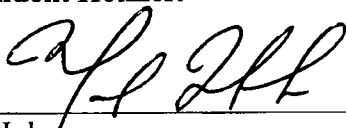
By:  _____
Michael J. Brandt
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

The Law Office of Kevin Reynolds, LLC
71 Sycamore Road
West Hartford, CT 06117
Attorney for Respondent Lomaglio

Dated: 7/15/2021

Dated: _____

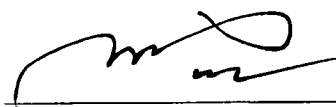
Respondent Holmes:

By:  _____
Mark Holmes

The Law Office of Kevin Reynolds, LLC
71 Sycamore Road
West Hartford, CT 06117
Attorney for Respondent Holmes

Dated: 7-12-21

Adopted this 3rd day of November, 2021 at Hartford, Connecticut by vote of the Commission.



Stephen T. Spang
By Order of the Commission

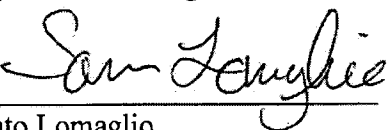
ORDER

It is hereby ordered that the Respondents Holmes and Lomaglio shall henceforth strictly adhere to the requirements of General Statutes § 9-621.

It is further ordered that Respondent Holmes shall pay a civil penalty of \$200.

It is further ordered that Respondent Lomaglio shall pay a civil penalty of \$200.

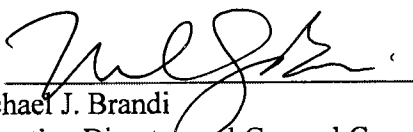
Respondent Lomaglio:

By: 
Sabato Lomaglio

The Law Office of Kevin Reynolds, LLC
71 Sycamore Road
West Hartford, CT 06117
Attorney for Respondent Lomaglio

Dated: 11-3-21

For the State of Connecticut:

By: 
Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

Dated: 11/3/2021


Respondent Holmes:

By: _____
Mark Holmes

The Law Office of Kevin Reynolds, LLC
71 Sycamore Road
West Hartford, CT 06117
Attorney for Respondent Holmes

Dated: _____

Adopted this 3rd day of November, 2021 at Hartford, Connecticut by vote of the Commission.


Steven T. Pappas
By Order of the Commission