

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mayce Torres,

File No. 2019-115

FINDINGS AND CONCLUSIONS

The Complainant, Mayce Torres, brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent, Justin Elicker, violated campaign finance laws by blocking her from his Facebook page, while he was a mayoral candidate. The following are the Commission's Finding and Conclusions.

1. The Respondent, Justin Elicker, at all times relevant to this complaint way a mayoral candidate in the City of New Haven at the November 5, 2019 election.
2. Complainant alleged that Respondent as a 2019 New Haven mayoral candidate blocked her from his Facebook page and deleted public comments from his page in violation of her First Amendment rights.
3. Complainant, relying on *Loudon v. Loudon County Board of Supervisors et al*¹, alleged that "public officials cannot block social media users because of criticism." She argued that because Elicker was a candidate for public office his blocking and removing her comments from his Facebook page was a violation of her "freedom of speech."
4. In response to this complaint and investigation, Respondent provided a detailed response² and legal argument to Complainant's allegations, which is excerpted below:

I am presently a candidate for Mayor of New Haven. I have been a candidate since January 2019 when I formally filed the requisite paperwork with the New Haven City Clerk. My campaign committee is Friends of Justin Elicker, which is organized and registered pursuant to Connecticut law. ...

... Ms. Torres's posted content included profanity. Additionally, her comments

¹ *Davison v. Loudon County Board of Supervisors et al*, No. 1:16-cv-932 (E.D. Va. July 25, 2017).

² See response by Justin Elicker to: *Complaint by Mayce Torres*, New Haven, File No. 2019-115, (received by the Commission September 26, 2019).

included statements that could be interpreted as aggressive. These comments were directed towards myself as well as other local public figures. Based on these concerns, we decided it was appropriate to block Ms. Torres and hide her past posts from the campaign website.

Turning to Ms. Torres's complaint, I am well-aware that "the First Amendment restricts government regulation of private speech." Knight First Amendment Inst. at Columbia Univ. v. Trump, No. 18-1691 at 17 (2d Cir. July 9, 2019). Thus, for example, a government official who uses a Twitter account for official government purposes generally may not block users based on their viewpoints--such content regulation is illegal viewpoint discrimination under the First Amendment of the United States Constitution.

*However, the First Amendment "does not regulate purely private speech." Knight First Amendment Inst., No. 18-1691 at 17. Unlike the elected officials into whom they may (if they are fortunate enough to win) metamorphize, political parties and political candidates are private parties, not government or state actors. See, e.g., Federer v. Gephardt, 363 F.3d 754, 759 (8th Cir. 2004) (persons who "acted on behalf of ... a political candidate" were not state actors); Johnson v. Suffolk University, 2002 WL 31426734 at *1 (D. Mass. 2002) (state officer's actions "as a candidate" do not "confer state action status").*

This distinction is reflected in the case Ms. Torres cites, Davison v. Loudoun County Board of Supervisors, No. 1:16-cv-932 (E.D. Va. July 25, 2017) (doc. #132). In that case, the plaintiff proved that the defendant had acted under color of state law by maintaining an official, government facebook page, from which she banned the plaintiff. (Emphasis added.)

5. General Statutes § 9-7b, provides that the Commission shall have the following duties and powers:
 - (1) To make investigations on its own initiative or with respect to statements filed with the commission by the Secretary of the State, any town clerk or any registrar of voters or upon written complaint under oath by any individual, with respect to alleged violations of any provision of the general statutes relating to any election or referendum, any primary held pursuant to section 9-423, 9-425 or 9-464 or any primary held pursuant to a special act, ...

6. Further, General Statutes § 9-607, provides that the following are “permissible expenditures” when used to accomplish the lawful purposes of a candidate committee:
 - (2) Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) any other form of printed advertising or communications including “thank you” advertising after the election; ...
7. After investigation, the Commission finds that Respondent’s Facebook page was a permissible expenditure to further his candidacy that was properly attributed to his candidate committee and duly reported by that committee on its financial disclosure statements. The Commission further finds that the Facebook page in question was not a government website or otherwise funded at public cost.
8. For the forgoing reasons the Commission concludes that Complainant did not allege or provide facts that, assuming them to be true, would amount to a violation of Election Laws as required by General Statutes §9-7b. The Commission declines to engage in constitutional questions, or questions of federal law, that are not supported by the facts as alleged and not required for the exercise of its jurisdiction.
9. Accordingly, it is the determination of the Commission that this Complaint should be dismissed.

ORDER

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

That the Complaint be dismissed.

Adopted this 15 day of January, 2020 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Stephen T. Penny