

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Steven Sheinberg,
Fairfield

File No. 2020-046

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between Brian Farnen, Town of Fairfield, State of Connecticut, hereinafter referred to as "Respondent", and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Respondent was a candidate for State Representative for the 132nd General Assembly District at the November 3, 2020 election. Respondent participated in the Citizens' Election Program ("CEP").
2. Complainant alleged that Respondent "...failed to properly include a disclaimer at the end of several political advertisement videos, pursuant Connecticut General Statutes Sec. 9-621(b)(1)."
3. Complainant described the three following videos that are the subject this complaint:
 - (1) OPEN FOR BUSINESS :*"WE ARE OPEN FOR BUSINESS." The video opens with Representative Farnen speaking directly to the viewer, "Fairfielders, our local businesses need our support." The video then goes on to show various Fairfield business owners repeating versions of "on behalf of all of the (category of the business) in Fairfield."*
 - (2) FOURTH OF JULY VIDEO: *The July 4th video is a 48-second-long video montage of an event in Fairfield. The video does not clearly identify the individuals in the crowd; Representative does not dispute that he is part of the crowd and wearing a mask.*
 - (3) LEGISLATIVE UPDATE ON SPECIAL SESSION: *On July 23rd, Representative Farnen posted a video to his Facebook page. The video appears to have been recorded in his office at the Legislative Office Building during the 2020 July Special Session. In the video, Representative Farnen presents a partisan overview and explanation of the items on the special session agenda, as well as his position on those bills*

4. Respondent has no prior history with the Commission. There is no dispute that Respondent appears in each of the three videos.

5. General Statutes § 9-601b provides, in relevant part, as follows:

(a) As used in this chapter and chapter 157, *the term "expenditure" means:*

(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...

[Emphasis added.]

6. General Statutes § 9-621, provides in pertinent part:

(b)(1) *No candidate or candidate committee* or exploratory committee.

...

(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..., *(A) at the end of such advertising there appears simultaneously, for a period of not less than four seconds, (i) a clearly identifiable photographic or similar image of the candidate making such expenditure, (ii) a clearly readable printed statement identifying such candidate, and indicating that such candidate has approved the advertising, and (iii) a simultaneous, personal audio message, in the following form: "I am (candidate's name) and I approved this message", and (B) the candidate's name and image appear in, and the candidate's*

voice is contained in, the narrative of the advertising, before the end of such advertising; [Emphasis added.]

7. The Respondent agrees that the three videos that are subject of the Complaint did not have campaign disclaimers, however, disagrees that they are necessary. Respondent asserts:
 - a. Opinion of Counsel 2019-02 analysis supports the finding that the videos are permissible as they do not promote or support re-election. The videos in question were produced by volunteers; no money was spent on the production or promotion of the videos and they were organically distributed on social media;
 - b. All the Videos were made prior to the 90 days preceding the November 3, 2020 election;
 - c. The OPEN FOR BUSINESS video was exempted under CGS 9-601b (b)(13) A as a lawful communication by a charitable organization;
 - d. The LEGISLATIVE UPDATE video was squarely within CGS 9-601b (b)(7) exception: it was made during a legislative session for the purpose of influencing legislative action and informing the constituents in the district; and
 - e. Posting a link to the Videos on Facebook does not constitute an expense pursuant to a prior commission decision, 2017-049.
8. In the course of his CEP grant validation and upon the request of Commission staff, Respondent contacted the Fairfield Chamber of Commerce and requested that they unpin his video from its website; which was accomplished. Further, the Commission finds that Respondent in cooperation with Commission staff removed one of the videos from his social media page and committed to keeping his personal, campaign and state representative social media accounts separate moving forward.
9. The Commission finds that Respondent worked with an individual who contacted him and volunteered “about making a video for local businesses.” The Commission finds that Respondent and the individual developed plans for the resulting Chamber of Commerce video on or just prior to July 4th, 2020.
10. The Commission finds that the three videos that are the subject of the complaint were not produced or commissioned by the Farnen for Fairfield campaign committee. It also undisputed that each of the three videos were made prior to the 90-day period preceding the November 3, 2020 election.
11. Respondent, in response to this complaint and investigation indicated that: *“The Fairfield Chamber of Commerce had reached out to Farnen previously for help with paycheck protection, so he knew they were hurting and looking for help. Farnen said, “It was never about me.”*

12. The Commission finds that the Chamber of Commerce “We’re Open for Business” video was the first video that Respondent and the individual worked on together and had no prior relationship. This video was posted to social media by the Respondent and the Chamber of Commerce, according to Respondent, in an effort to assist small businesses in Fairfield as businesses were re-opening from the height of the COVID-19 mandatory shutdowns. Respondent indicated that “No [one] paid money to boost the video. No one spent a dime- it went online and people shared it.” The Commission finds no evidence to contradict Respondent’s assertions regarding the “We’re Open for Business Video.”
13. The Commission finds that the second video was of a July 4th barbecue picnic and was taken with by the same individual who made the “We’re Open for Business” video. At the event, Respondent admits that he spoke with this individual at the event and the individual indicated that he “had a small camera with him.” Respondent, when offered a copy of the video by the individual, responded: “Yeah, I’ll post it.”
14. The Commission finds that Respondent made a third video using his cellphone and on his own, which pertained to the July special legislative session. This video was made by the Respondent at the Legislative Office Building.
15. The Commission finds, after investigation, that Respondent while a candidate of the General Assembly, and a CEP participant, cooperated in the production and receipt of videos that incorporated his image and also included him speaking. The Commission further finds that the Respondent and his candidate committee did not pay for the production of these videos.
16. The Commission determines that each of the videos or social media platforms identified Respondent by name and there was not otherwise any likely confusion as to his connection with these communications. Nevertheless, there is no dispute that the three videos did not contain attributions as required by General Statutes § 9-621.
17. The Commission concludes that Respondent did not include an attribution on what Respondent deemed to be public service videos that were posted on social media at a time that Respondent was a candidate, as required by General Statutes § 9-621.
18. The Commission notes that Respondent fully cooperated with this complaint and investigation and upon learning of potential errors in receiving these videos in the course of the CEP grant validation process cooperated with staff to mitigate the problem and remove the videos from social media platforms upon which they appeared.

19. The Respondent admits all jurisdictional facts and concurs 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. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

20. 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 contest the validity of the Order entered into pursuant to this Agreement.

21. 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 either of the parties in any subsequent hearing, if the same becomes necessary.

ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with General Statutes § 9-621.

The Respondent

For the State of Connecticut

By: Brian Farnen

Brian Farnen
394 Rowland Road
Fairfield, Connecticut

Dated: 4-28-21

By: Michael J. Brandi

Michael J. Brandi, Esq.
Executive Director and General Counsel
And Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 5/5/2021

Adopted this 5th day of May, 2021 at Hartford, Connecticut by vote of the Commission.

Stephen T. Penny

Stephen T. Penny, Chairman
By Order of the Commission