

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Jack Testani,
Fairfield

File No. 2020-048

FINDINGS AND CONCLUSIONS

Complainant, Jack Testani of Fairfield, filed this complaint on August 26, 2020, per General Statutes § 9-7b, alleging that then candidate Jennifer Leeper’s candidate committee “Jennifer Leeper 2020” (hereinafter “the Committee”) violated campaign finance laws by making an impermissible contribution to the federal candidate committee for U.S. Congressman Jim Himes, “Himes for Congress.” Specifically, Complainant alleged that the Committee posted on Facebook a campaign video, in which Leeper and Himes both appeared and spoke, which constituted an impermissible contribution. Additionally, Complainant asserts that this video post did not contain any attribution / disclaimer. After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. At all times relevant to this complaint, Jennifer Leeper (hereinafter “Respondent”), was a Citizens’ Election Program (“CEP”) participant and a candidate for member of the General Assembly from the 132nd District, encompassing Southport and part of Fairfield, at the November 6, 2020 election.
2. The Complainant alleges that the committee violated campaign finance laws by making an impermissible contribution to “Himes for Congress” by posting a video advertisement to Respondent’s Facebook page that prominently displays Himes, a candidate for Federal office at the November 6, 2020 election.
3. Further, Complainant alleged that the advertisement failed to include a disclaimer or attribution, as required by General Statutes § 9-621.
4. The Complainant asserts that in the paid video advertisement:

Congressman Himes discusses that he is looking forward to working with Jen to make sure that Connecticut and that Fairfield get their fair share of Federal funds Congressman Himes is the candidate in that video that is responsible for securing federal funds for Connecticut, not a potential state representative. . . . [A] candidate committee may only promote the candidate that established the candidate committee.
5. The Commission finds that Respondent cooperated fully with this investigation.

6. The Respondent, in response to this complaint and investigation, asserts that the video was strictly an endorsement of Respondent as a candidate for state representative, and that Congressman Himes' campaign did not benefit from the communication in a way that would trigger his need to pay for any portion of the video.

7. General Statutes § 9-607 (g), provides in pertinent part:

(g) Permissible expenditures. (1) As used in this subsection, (A) "the lawful purposes of the committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, . . .

8. General Statutes § 9-616, provides in pertinent part:

(a) A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, and (B) after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, an expenditure by a candidate committee established by either such candidate that benefits the candidate committee established by the other such candidate shall be permitted.

(b) A candidate committee shall not receive contributions from any national committee or from a committee of a candidate for federal or out-of-state office. (Emphasis added.)

9. General Statutes § 9-610, provides in pertinent part:

(b) A candidate committee may pay or reimburse another candidate committee for its pro rata share of the expenses of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or

candidates, including any shared expenses for which only the committee being paid or reimbursed was under a contractual obligation to pay. Notwithstanding the provisions of subdivision (1) of subsection (a) of section 9-616, a candidate committee may reimburse a party committee for any expenditure such party committee has incurred for the benefit of such candidate committee.

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

(a) As used in [chapter 155] 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;

11. General Statutes § 9-601b (a) (2), is further defined by 9-601b (b) which states in relevant part:

(b) The term “expenditure” does not mean: . . .

(7) A communication described in subdivision (2) of subsection (a) of this section that includes speech or expression made (A) prior to the ninety-day period preceding the date of a primary or an election at which the clearly identified candidate or candidates are seeking nomination to public office or position

12. General Statutes § 9-706 provides, in relevant part, as follows:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor,-

Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, ...The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section. . . .

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive. (Emphasis added.)

13. Regulations of Connecticut State Agencies § 9-706-1 provides, in relevant part, as follows:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements. (Emphasis added.)

14. Regulations of Connecticut State Agencies § 9-706-2 provides, in relevant part, as follows:

(a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign- related expenditures shall include but are not limited to expenditures for the following:

1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or Internet;

2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;

3. Postage and other commercial delivery services for political campaign advertising... .

(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following... .

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee... .

10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure... .

13. Independent expenditures to benefit another candidate;

14. Expenditures in violation of any federal, state or local law;

(Emphasis added.)

15. At all times relevant to the Complaint, Respondent was a CEP participant and received a grant from the Citizens' Election Fund. Respondent registered the candidate committee "Jennifer Leeper 2020" to serve as her funding vehicle for her campaign for State Representative from the 132nd General Assembly House district. The 132nd House district consists of a portion of Fairfield which is in Himes's geographical Congressional district,

however Himes' Congressional district, district four, consists of seventeen towns, one of which is Fairfield.

16. The Commission finds after investigation that Respondent's committee designed the advertisement through Andrew Gausepohl, a digital consultant. Jennifer Leeper 2020 paid for the video design and Facebook advertisement. Finally, the Commission finds that no portion of the cost of the video was shared with, or reimbursed by, the Himes federal campaign committee.
17. The Commission finds that the video communication posted to social media pertaining to Respondent and her run for State Representative plainly identified her by name, identified the office that she sought, and provided in great detail her personal testimony as to her plans as a candidate.
18. Additionally, the Commission finds that the communication is 55 seconds in length, during which Himes speaks for approximately 34 seconds. Himes introduces himself as Congressman Himes, and immediately proceeds to discuss and delineate Respondent's qualities and goals. Himes endorses Respondent's candidacy, while standing next to Respondent during the entirety of the video communication.
19. During the 34 seconds of Himes' speaking portion of the video advertisement states that Leeper understands what is needed in the coming years "to make sure that every one of our children gets the kind of education that they need and that they deserve. I'm really looking forward to working with Jen in the coming years to make sure that that happens and to make sure that Connecticut and Fairfield get their fair share of federal funds."
20. Turning to the threshold issue in this matter, both the General Statutes and prior decisions by the Commission make clear that a candidate committee may only promote the candidate that established the candidate committee. *See* General Statutes §§ 9-610 (b), 9-616, 9-607 (g) (1), 9-706 and Regs., Conn. State Agencies §§ 9-706-1 and 9-706-2; SEEC Declaratory Ruling 2011-03; *In the Matter of a Complaint by Peter von Braun*, File No. 2015-192B *In the Matter of a Complaint by Michael Pohl, Manchester*, File No. 2016-090; *In the Matter of a Complaint by Arthur W. Mocabee, Jr., Bristol*, File No. 2007-340; *Complaint of Lesa C. Peters, Woodbury*, File No. 2012-004.

21. The Commission, in Declaratory Ruling 2011-03, note 3, addressed the situation where a federal candidate, regulated by the Federal Elections Commission (“FEC”) and ineligible to participate in the Citizens’ Election Program, endorses a state or local candidate in a communication paid for in whole by that state or local candidate’s committee. The Commission opined in note 3, page four of Declaratory Ruling 2011-03, in relevant part:

The FEC has adopted a regulation creating a safe harbor for such an endorsement, which exempts it from treatment as a “coordinated communication” for which the federal committee must pay its proportionate share so long as the communication does not promote or support the endorsing federal candidate or attack or oppose the endorsing federal candidate’s opponent in the election. *See* 11 C.F.R. 109.21 (g). The Commission hereby adopts this safe harbor for any federal candidate endorsing a state or local candidate who is subject to Connecticut campaign finance law in a communication paid for by the state or local candidate.

22. In this instance the Commission finds that Himes’ appearance and speaking part in the video that is the subject of this Complaint and investigation fits within the “safe harbor” provided to federal candidates in 11 C.F.R 109.21 (g); and as adopted by the Commission in Declaratory Ruling 2011-03. The video plainly satisfies the permissive view of the federal safe harbor as adopted by Connecticut campaign finance law as to endorsements by a federal candidate of a state candidate when those endorsements do not otherwise promote or benefit the candidacy for federal office.
23. With respect to the Complainant’s last assertion that this video post did not contain any attribution/disclaimer, the Respondent disputes that the video advertisement was missing the proper attribution and states that the attribution was embedded in both the video and the Facebook post itself as evidenced by the screenshot that was attached to the Complaint.
24. General Statutes § 9-621 (a), provides, in relevant part:

(a) 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: . . . (B) in the case of a committee other than a party committee, the name of the committee and its treasurer; . . . and (2) the words "approved by" and the following: . . . (B) in the case of a candidate committee, the name of the candidate. (Emphasis added.)

25. General Statutes § 9-621 (b) (1) provides that in addition to § 9-621 (a), governing attributions for certain written, typed or other printed communication, or any web -based, written communication, "internet video advertisements" are subject to additional requirements:

(b) In addition to the requirements of subsection (a) of this section:
(1) No candidate or candidate committee or exploratory committee established by a candidate shall make or incur any expenditure for television advertising or Internet video advertising, which promotes the success of such candidate's campaign for nomination at a primary or election or the defeat of another candidate's campaign for nomination at a primary or election, unless, as a disclaimer, (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.)

26. The video advertisement posted on Facebook included the printed statement "Paid for by Jennifer Leeper 2020, Eric Newman, Treasurer, approved by Jennifer Leeper" embedded at

the bottom of the video for the last 7 seconds of the video, however this print was arguably illegible depending on the medium by which it is viewed. Also missing from the embedded video is the simultaneous personal audio message with the candidate's name stating "I approve this message". The Facebook post itself contained the disclaimer "Sponsored – Paid for by Jennifer Leeper 2020".

27. The Commission finds that based on the information provided in the communication in this instance, which plainly identified the candidate, there was little risk as to the source of this communication or that its origin was obscured.
28. The Commission concludes that pursuant to General Statutes § 9-621 (a), the campaign's Facebook post itself should have included not just the words "Paid for by" but also "approved by." This "approved by" language was missing from the social media post.
29. In prior matters, where the author of the communication is clear to the reasonable observer and there is no evidence of any attempt to deceive the public for a first time alleged violator, the commission has declined to take further action against the respondent who paid for the communication. *See, e.g., In the Matter of a Complaint by Curtis W. Dowling*, Andover, File No. 2015-028; *In the Matter of a Complaint by Pete Bass*, New Milford, File No. 2012-158 & 162; *In the Matter of a Complaint by Michael Gongler and Victor I. Harpley*, Cromwell, File No. 2009-126; *In the Matter of a Complaint by John D. Norris*, Southbury, File No. 2011- 108, *In the Matter of a Complaint by Arthur Scialabba*, Norwalk, File No. 2011-125, *In the Matter of a Complaint by Robert W. Prentice*, Wallingford, File No 2011-134; *In the Matter of a Complaint by Arthur Scialabba*, Norwalk, File No. 2012-011.
30. Here, the Commission finds that Respondent, as the individual issuing this communication was clear to the reasonable observer. Moreover, the Respondent lacks any prior history of violations with the Commission and has shown good faith in attempting to comply. Regs., Conn. State Agencies § 9-7b-48 (mitigating factors).
31. Considering the aforesaid, including but not limited to the absence of any evidence of any intent to deceive or mislead the public, the Commission declines to take any further action with regard to this allegation.

ORDER

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

That no further action is taken.

Adopted this 4th day of August, 2021 at Hartford, Connecticut.



Stephen Penny, Chairperson

By Order of the Commission