

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Mazurek, Wolcott

RESPONDENTS:

File No. 2014-170

Joseph C. Markley
47 Elm Street
Plantsville, Connecticut 06479

Barbara P. Roberts
375 Cooper Ridge Road
Southington, Connecticut

Robert C. Sampson
276 Bound Line Road
Wolcott, Connecticut 06716

December 22, 2017

Proposed Final Decision

The undersigned Hearing Officer heard the above-captioned matter as a contested case on August 31, 2017 pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time appeared Attorneys William B. Smith and James M. Talbert-Slagle for the State of Connecticut, and Attorney Michael Cronin for the Respondents. Documentary and testimonial evidence was presented. This matter comes before the Commission from a complaint filed by the above named Complainant on December 2, 2014 (the "Complaint").

After careful consideration of the entire record, the following Proposed Final Decision was prepared by the Hearing Officer and is hereby submitted to the State Elections Enforcement Commission for its consideration:

1. Commissioner Michael J. Ajello was designated as the Hearing Officer for this matter by the State Elections Enforcement Commission (hereinafter "Commission").
2. Representative Robert Sampson was a candidate for state representative from the 80th General Assembly District at the November 4, 2014 election. Representative Sampson registered the candidate committee "Sampson for CT" (hereinafter "Sampson Committee").¹
3. Senator Joseph Markley was a candidate for state senator from the 16th Senatorial District at the November 4, 2014 election. Further, Mr. Markley registered the candidate committee "Joe Markley for State Senate 2014" (hereinafter "Markley Committee") and designated Barbara P. Roberts his treasurer.

¹ Respondent Sampson designated Scott M. Cleary as his treasurer. Mr. Cleary, who was a respondent of the Complaint, resolved this matter separately. See File No. 2014-170, September 13, 2016.

4. The Sampson Committee and the Markley Committee applied for and received grants from the Citizens' Election Program (CEP).²

5. The Complaint alleged that three joint communications of the Sampson Committee and Markley Committee were distributed to multiple households in the 80th District “naming and attacking Governor Malloy’s record.” Additionally, the Sampson Committee distributed two mailers and paid for one print advertisement that (it is alleged) similarly “attacked Governor Malloy’s record.” Such attacks of a gubernatorial candidate, the Complaint alleges, violated the proscriptions set forth in Advisory Opinion 2014-04 and campaign finance law generally. *Exhibit 2*.

6. There is no material dispute about the committee’s activities vis-à-vis these expenditures. Evidence was presented that the Sampson Committee and the Markley Committee made such expenditures for these communications, and the amounts paid for each communication were admitted. The only question to be determined is how the law applies to these specific communications, which were all entered into evidence.

7. 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.)

8. General Statutes § 9-607 provides, in relevant part, as follows:

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

² The Markley Committee received \$56,814 from Citizens’ Election Fund and the Sampson Committee received \$27,850 from Citizens’ Election Fund. Exhibits 21, 33 and 34.

established by either such candidate may also promote the election of the other such candidate; ...

(Emphasis added.)

9. General Statutes § 9-616 provides, in relevant part, as follows:

(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.

(Emphasis added.)

10. 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.)

11. 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.)

12. 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.)

13. The six pieces of campaign literature are described and excerpted as follows:

Exhibit One (State's Exhibit 4)

In the form of a letter, this is a joint expenditure from the Markley Committee and the Sampson Committee. The campaign letter, on "Joe Markley" letterhead and signed by Mr. Markley, is essentially an endorsement of Mr. Sampson, it mentions his opponent (Corky Mazurek) extensively and also espouses Markley and Sampson's shared "principles", e.g. personal liberty, fiscal restraint etc. There is no mention of Governor Malloy.

Exhibit Two (State's Exhibit 5)

In the form of a large-sized postcard, this is a joint expenditure from the Markley Committee and the Sampson Committee. The mailer cost \$941.48, allocated 1/2 to the Sampson Committee and 1/2 to the Markley Committee. On one side, the two candidates are pictured with the caption "Southington's Tax-Fighting Team!" On the reverse side the two are pictured again with a list of their accomplishments. Included in the list are the following sentences: "Rob and Joe have consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents." "Fought the Malloy Tax Hike: As members of the Appropriations Committee, Rob & Joe opposed our state's largest tax hike ever, and helped craft an alternative budget that didn't raise a single tax or cut any aid to our community or its seniors." "Rob & Joe have consistently fought Governor Malloy's agenda and have tried to restore Common Sense and fiscal responsibility in state government."

Exhibit Three (State's Exhibit 6)

In the form of a tri-fold flyer, this is a joint expenditure from the Markley Committee and the Sampson Committee. The mailer cost \$2,619.85, allocated approximately 5/6 to the Sampson Committee and 1/6 to the Markley Committee. There are two images of candidate Markley with candidate Sampson, and four additional images of Sampson without Markley. Additionally, there are four, outsized Rob Sampson/State Representative logos with campaign slogans, where Markley does not have the equivalent. Included on the flyer are the following sentences: "Rob has fought Governor

Malloy's 'Bad for Connecticut Agenda', opposing Huge Increases in Government Spending, the Highest Tax Increase in Connecticut History, the New Britain to Hartford Busway, the Repeal of the Death Penalty, and the Early Release of Violent Criminals." "Rob continues to fight to reduce wasteful spending in Hartford, to keep our taxes down and hold our elected officials and the Governor accountable." "Rather than accept the job and business stifling proposals of Governor Malloy, Rob and Joe have pushed for less government and more freedom in the effort to get our economy moving again." "Rob Sampson and Joe Markley are who we need in Hartford fighting for our community and to keep Governor Malloy and the Majority Democrats in check."

Exhibit Four (State's Exhibit 7)

In the form of an over-sized postcard, the communication is paid for by the Sampson Committee only. The mailer cost \$2,731.14. It includes candidate Sampson's name and image. Included on the postcard are the following sentences: "Rob Sampson wants a New Direction and rejects Governor Malloy's policies!" "It's time to change course and STOP Governor Malloy and the majority Democrat's dangerous agenda!" "Rob has consistently fought Governor Malloy's reckless spending and voted against his budget which resulted in nearly \$4 Billion in new and increased taxes for Connecticut residents!"

Exhibit Five (State's Exhibit 8)

In the form of an over-sized fold out, glossy postcard, the communication is paid for by the Sampson Committee only. The mailer cost \$3,025.21. It includes candidate Sampson's name and image, as well as that of his opponent Corky Mazurek. Included on the postcard are the following sentences: "Rob Sampson has been a clear and consistent voice for Common Sense in Hartford, fighting Governor Malloy's destructive policies of wasteful spending and high taxes." Referring to opponent Mazurek: "His last vote as our State representative was to flip his own vote from no to yes and give an additional \$3 million dollars to Dan Malloy's campaign for Governor." "He supported Governor's Malloy's 'largest tax increase in history' state budget in 2012 saying 'The Democrats put forth a very good plan to mitigate the budget deficit.'" "He supports Governor Malloy's corporate welfare programs including \$400M in taxpayer funds taken from our community and small businesses to give to UTC saying 'Connecticut's economy is clearly the winner as a result of this legislation.'"

Exhibit Six (State's Exhibit 9)

In the form of a full page newspaper advertisement that includes candidate Sampson's name and image, the communication is paid

for by the Sampson Committee only. The advertisement cost \$805.90. Included in the ad is the following sentence: “I am also proud to have led the fight against the many bad policies put forth by Gov. Malloy and the Democrats in Hartford.

Analysis

14. On October 17, 2014, the Commission issued Advisory Opinion 2014-04 instructing and cautioning candidates regarding negative communications that feature candidates other than their opponents who are running for a different office. The Commission issued the Advisory Opinion to “respond to requests for clarification regarding the ability of candidates in the Citizens’ Election Program (“CEP”) to make expenditures for communications that refer to—and oppose or feature in a negative light—other candidates who are not their direct opponents.” The Advisory Opinion reiterated longstanding Commission advice that expenditures made by candidates for communications that featured candidates in other races need to be properly allocated among committees who can permissibly make such expenditures. See e.g. Declaratory Ruling 2011-03.

The Commission advised, in part, as follows:

Campaign finance law has long provided that a candidate committee may not make a contribution to another candidate committee. *See* General Statutes § 9-616 (a). In addition, a candidate committee may *only* make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i).

In addition to these provisions, the CEP requires that a candidate seeking public funds demonstrate a threshold of public support for that candidate’s candidacy from the candidate’s own constituents before receiving such funds. CEP regulations provide that participating candidates shall not spend funds for “[c]ontributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee. . . .” Regs. Conn. State Agencies § 9-706-2 (b) (8). Moreover, a CEP candidate voluntarily agrees that the committee’s campaign funds will be spent only to “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.” Regs. Conn. State Agencies § 9-706-1 (a). Additionally, CEP candidates agree to voluntary limits on their own expenditures. General Statutes §§ 9-703 (a) & 9-711 (g) (1). It is therefore particularly important for participating candidates to avoid spending campaign funds to promote another candidate and to refrain from accepting in-kind contributions in the form of advertising from other candidates that might cause an expenditure limit violation.

15. Because of the laws governing campaign finance, and in particular the laws and regulations that govern the public financing program and the expenditure of public funds, it is frequently necessary to determine when the content of a communication is an “expenditure” attributable another race.

16. An expenditure, by definition, relates to a candidate—it is either to oppose or to benefit such candidate—and as such, applying the law requires identifying to which candidate the expenditure relates, and by extension, which race they are in and for which office they are running.³

17. The standards for this determination are less stringent the further before an election the communication is made. For example, if the communication is made longer than 90 days before an election, then the communication must go beyond the mere mention of a candidate to be for their benefit. In such cases, the Commission applies various indicia to determine whether the communication promotes, attacks, supports or opposes the secondary candidate, and whether, in fact, some financial allocation is required. See e.g. Declaratory Ruling 2011-03. There are also fifteen exemptions from this definition of expenditure that must be applied. If any are present, then no allocation is required because it would not be considered an expenditure at all.

18. Within 90 days of an election, the legislature has provided a clean, bright-line rule that says when a clearly identified candidate is present in certain communications, then it is an expenditure to benefit (or oppose) the identified candidate. Even so, Advisory Opinion 2014-04 left room for certain factual scenarios where such an application might be inappropriate.⁴

19. CEP candidates have additional rules applied to them, as their publicly-provided campaign funds may be spent only to “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.”

20. In application, as the Advisory Opinion described in some detail, this means that when a candidate committee wishes to feature a candidate in another race, then they should find a

³ It is certainly true, as Respondents argue, that an expenditure that opposes a Democratic gubernatorial candidate would benefit not only the Republican gubernatorial candidate but all other gubernatorial candidates. It also may benefit various (non-Democratic) party committees as well. But contrary to their assertion that this fatally undermines the law’s application to the expenditures of legislative candidate committees (as described in Advisory Opinion 2014-04), it actually gives those committees far more options for the making of joint expenditures, making the law’s application, if anything, less problematic. The fact that an expenditure benefits more than one committee does not make it permissible when, as here, making an expenditure to benefit any one of those committees would be impermissible. A legislative candidate committee cannot make expenditures to benefit *any* gubernatorial candidate committee.

⁴ “Of course, in narrow circumstances, a candidate might choose to include another candidate who is running for election in campaign materials without creating such a joint expenditure. For example, when a candidate committee pays for an advertisement that includes an attack on the opponent of someone else in the candidate’s party, outside such candidate’s own race, there may be no need for allocation if there is no mention of the candidacy or record of the candidate being attacked and the communication is distributed only to individuals outside of the attacked candidate’s district. Such determinations will always be fact-specific.” Advisory Opinion 2014-04. None of these exceptions would apply in this case.

way to allocate that expenditure with another committee for which such expenditure would be permissible, i.e. make a joint expenditure. Candidate committees may make an unlimited number of joint expenditures, so long as they stay within overall expenditure limits.

21. Contrary to what was asserted by the Respondents, this would not require that, in order to make the expenditures in question, they make joint expenditures exclusively with the committee of the Republican opponent of Governor Malloy, Tom Foley (although that was certainly one viable option). Any party committee, which includes every town committee throughout the state including the five Republican town committees from the towns within the Respondents' districts, could have provided the funds to pay for the fraction of the cost of the mailers allocated to them. Upon questioning, Respondents admitted that no other committees were contacted about sharing such costs.

22. Respondents argue that these communications are solely concerned with their own races, and not the gubernatorial race. In essence, they argue that the communications do "directly further their election." In support of this they argue that their role is a check on the executive authority. To adopt this view, however, would permit legislative candidate committees to spend unlimited amounts of public money—money that was granted to them for their own races—on any executive race—and vice versa.⁵ As slippery slopes go, this one is particularly treacherous.⁶ This would make expenditure limits within the public financing program functionally meaningless. One of the conditions of receiving public funds is that expenditure limits be followed. The Respondents agreed to these terms.⁷

⁵ Election year 2014 already showed what appeared to be a trend in this direction. See File Nos. 2014-132, 2014-133, 2014-134, 2014-136, 2014-137, 2014-138, 2014-139, 2014-141, 2014-142, 2014-144, and 2014-149 (cases concerning the use of CEP funds to oppose candidates in races other than their own). These cases showed a pattern of strikingly similar efforts to make generalized attacks on Governor Malloy (to be distinguished from, e.g., *In the Matter of the Complaint of Bruce Suchinski*, File No. 2014-143, in which two political committees opposed a Malloy appointee, who was a candidate in a legislative race, and, in doing so, identified Malloy). By Respondent Markley's own admission, his grant funds (\$56,814), awarded on October 10th, were not entirely necessary for his own campaign. Senator Markley: "I was in a strong position electorally in 2014, I wasn't so much in need of promoting myself as educating the voters on where I stood and to explain where I stand relative to Dan Malloy was the most. . . the most educational, most important piece of information I could provide. . . ." Respondent Markley faced a minor party opponent in 2014, with no major party opponent. As a result, he received a 60% of the full grant amount of \$94,690. Exhibit 21.

⁶ For example, if the candidates espoused federalism, could they attack or support candidates for the Presidency or the U.S. Congress? As legislators their primary duty is to vote on legislation—wouldn't it be fair game to oppose any other legislator in any race that voted differently than themselves? The inevitable result of this reasoning is to erase the boundaries on how a candidate committee may spend its funds.

⁷ Among the certifications that the Respondents made were the following: "I hereby affirm, certify, and state that I intend to participate in the Citizens' Election Program (the "Program") established by Chapter 157 of the Connecticut General Statutes and that I understand my obligation to abide by and will abide by the Program's requirements, including the expenditure limits, which are set forth in General Statutes § 9-702 (c). . . . I certify that my candidate committee will expend any moneys received from the Citizens' Election Fund in accordance with the provisions of General Statutes § 9-607 (g), as amended, and with the regulations adopted by the State Elections Enforcement Commission ("SEEC") under General Statutes § 9-706 (e). . . . I certify that I understand that I am

23. The Respondents did allocate their expenditures amongst their own committees for several of the communications (Exhibits 1, 2 and 3), demonstrating that they understood that one candidate committee could not make expenditures to benefit another. However, they neglected to allocate when a candidate for governor was featured.

24. Respondents seem to be reading in an exception to the law that is not there. General Statutes § 9-601b provides that, when made within 90 days of an election,⁸ an expenditure is “[a]ny communication that (A) refers to one or more clearly identified candidates, and (B) . . . is sent by mail. . . .” It does not say “unless that clearly identified candidate is an incumbent Governor.” This statute was last amended in Public Act 13-180, at which time the definition of expenditure was *expanded* to include “any communication” (as opposed to “any advertisement,” as it formerly read) and several communications mediums were added, including mail. At the same time, it was *constricted* by having several exceptions added which covered clearly identified candidates that were simply endorsing other candidates. Public Act 13-180 Sec. 3. The legislature could easily have placed in another exception for sitting governors, or other statewide officers, or for federal candidates, or legislative leadership, but it did not. Both Respondents were in the legislature when these changes were passed. Testimony. The legislature is the proper body to amend the law, if it sees fit to do so.

25. Participating candidates must certify that all such rules will be followed when they subscribe to the Program and when they apply for their public grants.⁹ Respondents signed these certifications. Testimony, Exhibits 19, 27. The grants are awarded based on these certifications and on a showing that the candidates have, *inter alia*, received a threshold amount of support from within their districts by collecting small dollar contributions from residents of those districts. It is not extraordinary that the grant funds received based on those representations and in-district qualifying contributions must be spent on the race for which they were raised, and the laws and regulations followed as drafted.

26. Applying this analysis to the facts of this case, the Commission finds that Exhibit One above does not clearly identify a candidate in another race, or otherwise oppose a candidate who is not a direct opponent and therefore does not run afoul of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2 pursuant to the allegations of this Complaint. The Commission therefore dismisses the allegation regarding Exhibit One as to both Respondent committees.

27. The Commission finds that Exhibit Two through Exhibit Six above do clearly identify a candidate from another race (Governor Malloy) within 90 days of an election. *Testimony. Exhibits.* General Statutes § 9-601b (a) (2). When mentioned, Governor (and candidate) Malloy was consistently identified with “bad” and “destructive policies,” “reckless” and “wasteful spending,” as responsible for removing “Common Sense and fiscal responsibility” from state government, as well as for the “largest tax increase in history,” among other

required to comply with the requirements of the Program, including all Connecticut statutes, regulations and declaratory rulings.” Exhibits 19 and 27.

⁸ See General Statutes § 9-601b (b) (7), read in conjunction with General Statutes § 9-601b (a) (2).

⁹ The rules of the CEP are more stringent than campaign finance rules for nonparticipating candidates, but the application of General Statutes § 9-601b applies to all committees equally.

dubious accomplishments. General Statutes § 9-601b (a) (1). In other words, they opposed Governor Malloy, who was a candidate. Whether measured by either definition of “expenditure,” such communications were covered.

28. As such, these expenditures—or at least that portion of them that concerned themselves with the gubernatorial race—were impermissible for a CEP candidate committee to make. General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State Agencies § 9-706-1 and § 9-706-2.

29. Candidates agree upon declaring that they will participate in the Citizens' Election Program that they will reimburse the Citizens' Election Fund for any impermissible expenditure made by their candidate committee.¹⁰ The candidate bears the sole liability to repay any impermissible payments made by his candidate committee.¹¹ The Commission has the authority to seek reimbursement from the candidate of the total amount of payments that his candidate committee made impermissibly.

30. Pursuant to General Statutes § 9-7b (a) (2) (D), the available penalty for most of the violations at issue is "two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater." The above penalty provision is in addition to, and not in lieu of, Commission's ability to order the return of any improper payment under General Statutes § 9-7b (3) (a).

31. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors: (1) the gravity of the act or omission; (2) the amount necessary to insure immediate and continued compliance; (3) the previous history of similar acts or omissions; and (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

32. Exhibit Two cost \$941.48, allocated 1/2 to the Sampson Committee and 1/2 to the Markley Committee. Exhibit Three cost \$2,619.85, allocated approximately 5/6 to the Sampson Committee and 1/6 to the Markley Committee. Exhibit Four cost \$2,731.14 (Sampson Committee only). Exhibit Five cost \$3,025.21 (Sampson Committee only). Exhibit Six cost \$805.90 (Sampson Committee only). By these figures, Respondent Markley's committee spent \$925.21 on expenditures that were, in part, impermissible. Respondent Sampson's committee spent \$9,198.37 on expenditures that were, in part, impermissible. That portion of each expenditure that could have been apportioned to another committee—the value of that part that opposed candidate Malloy—is normally left to the expending

¹⁰ See SEEC Form CEP 10 —Affidavit of Intent to Abide by Expenditure Limits and Other Citizens' Election Program Requirements (showing candidates' certification that they understood that he would be "personally liable and must repay to the Citizens' Election Fund any moneys that are not expended in accordance with the provisions of Conn. Gen. Stat. § 9-607 (g), as amended, and with any regulations adopted by the SEEC under Conn. Gen. Stat. § 9-706 (e).") Exhibits 19 and 27.

¹¹ General Statutes § 9-703 (a) (2) (requiring candidate to repay any funds that were not expended in accordance with General Statutes § 9-607 (g) and regulations adopted by Commission related to expenditures for qualified candidate committees).

committee to ascertain.¹² Here, no allocation was attempted by the committees, but the overall amount of money spent (or, more specifically, the money not properly allocated) serves as a guide for the gravity of the act.

33. Respondent Sampson is found to have five instances of impermissible expenditures and Respondent Markley two. General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

34. There was no evidence that either had a history of noncompliance with campaign finance law. Additionally, Respondents did correctly disclose and report their committees' expenditures for the campaign literature in question.

35. The Commission stresses that had the Respondents arranged for joint expenditures with proper allocation in order to cover the costs of Exhibit Two through Exhibit Six that are subject of this Complaint, the communications would have been entirely permissible. This principle—and the law—applies to all committees, participating or not. Committees have purposes, and are not allowed to spend beyond them.

36. Moreover, the Commission's authority in regulating such communications is *not* with regard to regulating speech, but rather, merely to verify the appropriate campaign funds for each communication are properly allocated to such committees as are allowed to make these expenditures. This goal, however, is particularly urgent when, as in this instance, the candidate committees are participating in the CEP and therefore using public funds for their campaigns.

¹² “The Commission recognizes that balancing these indicia is not an exact science. The more costly a communication, the more important the allocation and documentation supporting that allocation will become. Traditionally, the Commission has not disputed a committee’s determination of its proportionate share of a joint expenditure unless the Commission found that allocation to be clearly erroneous.” Declaratory Ruling 2011-03.

RECOMMENDED ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent Markley shall pay a civil penalty in the amount of \$1,000 for each of two violations of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, for an aggregate civil penalty in the amount of \$2,000, payable to the State Elections Enforcement Commission, within 90 days of notice of this decision;
2. The Respondent Sampson shall pay a civil penalty in the amount of \$1,000 for each of five violations of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, for an aggregate civil penalty in the amount of \$5,000, payable to the State Elections Enforcement Commission, within 90 days of notice of this decision;
3. Respondent Roberts shall henceforth strictly comply with the requirements of General Statutes § 9-601b, § 9-607, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

Commissioner Michael Ajello
As Hearing Officer