

RETURN DATE: MAY 29, 2018 : **SUPERIOR COURT**
: **J.D. OF NEW BRITAIN**
JOE MARKLEY & ROB SAMPSON : **AT NEW BRITAIN**
v. : **MAY 7, 2018**
: **STATE ELECTIONS ENFORCEMENT** :
COMMISSION :

ADMINISTRATIVE APPEAL FROM
FINAL DECISION OF THE STATE
ELECTIONS ENFORCEMENT COMMISSION

To the Superior Court of the Judicial District of New Britain come Joe Markley and Rob Sampson, appealing from the final decision of the State Elections Enforcement Commission, dated February 14, 2018, with a Motion to Reconsider denied March 23, 2018, in the matter of a Complaint by John Mazurek (File 2014-170) finding violations of certain campaign finance statutes and regulation, and complain and say:

I. INTRODUCTION AND PARTIES

1. Joe Markley was an unopposed candidate for State Senator from the 16th Senatorial District in the 2014 general election cycle.
2. Rob Sampson was a candidate for State Representative from the 80th district in the 2014 general election cycle.
3. The State Elections Enforcement Commission (“Commission” or “SEEC”) is a state agency and commission with offices located at 20 Trinity Street, Hartford. It is tasked with enforcing, *inter alia*, General Statutes §§ 9-601b, 9-607, 9-705, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.

II. FACTUAL AND LEGAL BACKGROUND

1. The campaign committees for Markley and Sampson applied for and received grants from the Citizens Election Program (CEP).
2. John Mazurek filed a complaint against Markley and Sampson with the Commission

on December 2, 2014.

3. The complaint alleged that three joint campaign communications of the Markley and Sampson committees were distributed to households in the 80th legislative district. Those communications named Governor Dannel Malloy, who was seeking re-election that year, and were alleged to have attacked his record.
4. The Sampson committee was alleged to have distributed two additional communications addressing Malloy and his record in a similar manner.
5. The expenses for the three joint communications were split evenly by the two committees. The Sampson committee paid for the two communications that applied solely to Sampson.
6. These communications allegedly violate CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.
7. CGS § 9-601b provides, in relevant part, that an “expenditure” is “[a]ny communication that...refers to one or more identified candidates.”
8. CGS § 9-607 provides, in relevant part, that a candidate committee’s “lawful purposes” are limited to “the promoting of the nomination or election of the candidate who established the committee”.
9. CGS § 9-616 provides, in relevant part, that a “candidate committee shall not make contributions to, or for the benefit of...another candidate committee except that ...a pro rata sharing of certain expenses in accordance with” Connecticut law “shall be permitted”.
10. CGS §9-706 provides, in relevant part, that the “Commission shall adopt regulations...on permissible expenditures...for qualified candidate committees receiving grants from the” CEP “fund”.
11. In accordance with CGS § 9-706, the Commission has promulgated two relevant regulations, §§ 9-706-1 and 9-706-2.
12. 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 the Citizens' Election Fund requirements.

13. Regulations of Connecticut State Agencies §9-706-1 provides, in relevant part, that CEP "[p]articipating candidates and treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for...[c]ontributions, loans or expenditures to or for the benefit of another candidate, political party, or party committee."
14. The communications made by the Markley and Sampson committees allegedly ran afoul of these statutes and regulations because they mention Governor Dannel Malloy and the Governor's policies, and because their expenses were not shared with one of Governor Malloy's opponents pursuant to CGS § 9-616.
15. These communications referenced Markley and Sampson's opposition to certain of Governor Malloy's policies.
16. In response to Mr. Mazurek's complaint, the SEEC held a hearing on August 31, 2017.
17. After the hearing, the Commission issued a final order on February 14, 2018, finding that the communications' references to Governor Malloy can only be read as campaigning against the Governor's re-election and, accordingly, a pro rata share of the communication must be paid for by a party committee or a candidate opposed to Governor Malloy.
18. The Commission pointed to its own advisory opinion, 2014-04, issued October 17, 2014, which it claimed "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".
19. Taken together, CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2, and Advisory Opinion 2014-04 constitute a ban

- against any mention of the name of a candidate that is not a direct opponent, including where that person seeks office to another branch of government.
20. Ultimately, the Commission ordered Sampson and Markley to pay a substantial fine for their violations. Sampson was ordered to pay a penalty of \$5,000 and Markley was ordered to pay a penalty of \$2,000. The fine constituted a levy of \$1,000 per improper “joint expenditure”.
 21. Markley and Sampson were also ordered to “henceforth strictly comply with the requirements of CGS §§ 9-601b, 9-607, 9-616, 9-706, and Regs. Conn. State Agencies §§ 9-706-1 and 9-706-2.
 22. Markley and Sampson sought reconsideration of this order, which the SEEC denied on March 23, 2018, at a special meeting held without notice to Markley, Sampson or their attorney.

III – REASONS FOR THE APPEAL

1. Appellants deny that the communication was a joint expenditure to defeat Governor Malloy, and therefore deny that its costs must be shared within the meaning of CGS § 9-616.
2. Appellants assert that any prohibitions restricting any reference in a legislative campaign to a sitting governor or his policies violates the Separation of Powers clause of the Connecticut Constitution, which bestows upon the legislative branch a “separate magistracy” from the executive department. Conn Const. art II.
3. Appellants also claim that any restriction on the content of their political communications violate the First Amendment to the United States Constitution.
4. Appellants claim that voluntarily entering into the Citizens Election Program does not cause them to forfeit their right to exercise these constitutional rights, pursuant to the Doctrine of Unconstitutional Conditions.
5. Appellants claim that the Commission decision was arbitrary and capricious in its application of state election laws to chill free political speech
6. The state election laws allegedly violated are unconstitutionally vague and impermissible, as evidenced by the issuance of Advisory Opinion 2014-04.

IV AGGRIEVEMENT

1. Appellants Markley and Sampson have each been found to have violated state election laws, to the detriment of their reputations
2. Appellant Markley was fined \$2,000 for two such violations.
3. Appellant Sampson was fined \$5,000 for five such violations.
4. The Commission application of applicable laws and regulations is unconstitutional and will harm future candidates by restricting or chilling free political speech, and association.

V. AUTHORITY FOR APPEAL

1. This appeal is taken pursuant to the Uniform Administrative Procedure Act, Connecticut General Statute § 4-166 et seq.
2. Defendant Commission denied the Appellants Motion for Reconsideration of the decision on March 23, 2018, and this appeal is being filed and served within forty-five (45) days of that date, in accordance with CGS § 4-183(c).

PRAYER FOR RELIEF

WHEREFORE, Appellants Markley and Sampson pray that the Court

1. Sustain this appeal;
2. Declare the applicable statutes unconstitutional;
3. Overturn the finding of election law violation;
4. Rescind the fines assessed against the appellants.

Respectfully submitted,
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*Application for admission *pro hac vice*
pending.