

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Benjamin Ancona, Newington

File No. 2013-140

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Dannel P. Malloy, both individually and in coordination with agents, accepted contributions and made expenditures promoting his candidacy for re-election as governor in 2014, some of which were impermissible and all of which were not disclosed.¹

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. At all relevant times Respondent Dannel P. Malloy was the incumbent governor in the November 4, 2014 General Election.
2. At all relevant times, the Respondent was not a declared candidate for re-election and did not maintain a candidate committee in support of such re-election or an exploratory committee.
3. The gravamen of the Complainant here amounts to three cognizable allegations against the Respondent:
 - a. That the business entity Global Strategy Group ("GSG"), through the public statements of its employee Roy Occhiogrosso, has been actively working to promote the Respondent's re-election and produced a media communication, with the consent and coordination of the Respondent, which was a contribution made for the purpose influencing the re-election of the Respondent and which triggered the Respondent's duty to register a candidate committee and to report the contribution;
 - b. That the Respondent made private statements indicating that he planned on running for re-election and that such statements triggered his responsibility to form a candidate committee, which he failed to do within the statutory period; and

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

- c. That the Respondent solicited contributions on behalf of the entities “Connecticut Coalition for Achievement Now” (“ConnCAN”) and Prosperity for Connecticut by attending fundraisers on such groups’ behalf.

RELEVANT STATUTES

4. General Statutes § 9-601 (11) (Rev. to June 18, 2013) defines the term “candidate” under Chapters 155 and 157 and reads, in pertinent part:

“Candidate” means an individual who seeks nomination for election or election to public office whether or not such individual is elected, and for the purposes of this chapter and chapter 157, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) *solicited or received contributions, made expenditures or given such individual’s consent to any other person to solicit or receive contributions or make expenditures* with the intent to bring about such individual’s nomination for election or election to any such office. . . . (Emphasis added.)

5. “Expenditure” is defined in General Statutes § 9-601b (Rev. to June 18, 2013), as follows, in pertinent part:

(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 for the purpose of influencing 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 on behalf of any political party; . . .

(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of a primary or an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate; or

(3) The transfer of funds by a committee to another committee. . . .
(Emphasis added.)

6. "Contribution" is defined in General Statutes § 9-601a (Rev. to June 18, 2013), as follows, in pertinent part:

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

(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made for the purpose of influencing 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 on behalf of any political party;

(2) A written contract, promise or agreement to make a contribution for any such purpose;

(3) The payment by any person, other than a candidate or campaign treasurer, of compensation for the personal services of any other person which are rendered without charge to a committee or candidate for any such purpose;

(4) An expenditure that is not an independent expenditure; (Emphasis added.)

7. "Solicit" is defined in General Statutes § 9-601 (26) (Rev. to June 18, 2013), as follows, in pertinent part:

(26) "Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office, or (iv) serving

as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this subdivision.

8. "Independent Expenditure" is defined in General Statutes § 9-601c (Rev. to June 18, 2013), as follows, in pertinent part:

(a) As used in this chapter and chapter 157, the term "independent expenditure" means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

(b) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, there shall be a rebuttable presumption that the following expenditures are not independent expenditures:

(1) An expenditure made by a person in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(2) An expenditure made by a person for the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(3) An expenditure made by a person based on information about a candidate's, political committee's, or party committee's plans, projects or needs, provided by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, with the intent that such expenditure be made;

(4) An expenditure made by an individual who, in the same election cycle, is serving or has served as the campaign chairperson, campaign treasurer or

deputy treasurer of a candidate committee, political committee or party committee benefiting from such expenditure, or in any other executive or policymaking position, including as a member, employee, fundraiser, consultant or other agent, of a candidate, candidate committee, political committee or party committee;

(5) An expenditure made by a person whose officer, director, member, employee, fundraiser, consultant or other agent who serves the person in an executive or policymaking position also serves as or has served in the same election cycle as the candidate or the campaign chairperson, campaign treasurer or deputy treasurer of a candidate committee, political committee or party committee benefiting from such expenditure, or in any other executive or policymaking position of the candidate committee, political committee or party committee;

(6) An expenditure made by a person for fundraising activities (A) with or for a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, or (B) for the solicitation or receipt of contributions on behalf of a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(7) An expenditure made by a person based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by a candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of such candidate, candidate committee, political committee or party committee, to the person making the expenditure or such person's agent, with an express or tacit understanding that such person is considering making the expenditure;

(8) An expenditure made by a person for a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or such person's agent, has informed the candidate who benefits from the expenditure, that candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of the benefiting candidate or candidate committee, political committee, or party committee, concerning the communication's contents, or of the intended audience, timing, location or mode or frequency

of dissemination. As used in this subdivision, a communication clearly identifies a candidate when that communication contains the name, nickname, initials, photograph or drawing of the candidate or an unambiguous reference to that candidate, which includes, but is not limited to, a reference that can only mean that candidate; and

(9) An expenditure made by a person or an entity for consultant or creative services, including, but not limited to, services related to communications strategy or design or campaign strategy, to be used to promote or oppose a candidate's election to office if the provider of such services is also providing consultant or creative services to such candidate, such candidate's candidate committee, or to any opposing candidate in the same primary or election, or to such opposing candidate's candidate committee. For purposes of this subdivision, communications strategy or design does not include the costs of printing or costs for the use of a medium for the purpose of communications.

9. General Statutes § 9-604 reads, in pertinent part:

(a) Each candidate for a particular public office or the position of town committee member shall form a single candidate committee for which he shall designate a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603. . . .

(b) The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: . . . (2) the candidate finances the candidate's campaign entirely from personal funds and does not solicit or receive contributions, provided if said candidate personally makes an expenditure or expenditures in excess of one thousand dollars to, or for the benefit of, said candidate's campaign for nomination at a primary or election to an office or position, said candidate shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-608; (3) the candidate does not receive or expend funds in excess of one thousand dollars; . . . (Emphasis added.)

10. General Statutes § 9-608 (Rev. to June 18, 2013) reads, in pertinent part:

(a) (1) Each treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, provided, if such tenth calendar day is a Saturday, Sunday or legal holiday, the statement shall be filed on the next business day . . . (Emphasis added.)

11. General Statutes § 9-623 (Rev. to June 18, 2013) reads, in pertinent part:

...
(b) (1) If any campaign treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the campaign treasurer or candidate, as the case may be, shall pay a late filing fee of one hundred dollars.

...
(4) The penalty for any violation of section 9-603, 9-604 or 9-608 shall be a fine of not less than two hundred dollars or more than two thousand dollars or imprisonment for not more than one year, or both. (Emphasis added.)

12. General Statutes § 9-602 (Rev. to June 18, 2013) reads, in pertinent part:

(a) Except with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, *no contributions may be made, solicited or received and no expenditures may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, unless (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds,* (Emphasis added.)

13. General Statutes § 9-622 reads, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

...

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter; . . .

COUNT ONE: Alleged Expenditures by Global Strategies Group and/or Roy Occhiogrosso Amounting to Unreported Contributions to the Respondent

14. Turning to the Complainant's first allegation, he alleges, in pertinent part:

[Roy] Occhiogrosso and GSG [Global Strategies Group] have been acting as alter-egos for a Malloy campaign operation, as evidenced by GSG's recent conducting of a poll for ConnCAN. On February 13, 2013, GSG released a memorandum to the public about a poll it conducted for ConnCAN, an education advocacy group. According to the memorandum, the poll found that:

Voters see the Governor [Malloy] as a strong advocate for education reform. Voters give the Governor favorable ratings (54% favorable/36% unfavorable) and believe he is doing a good job when it comes to education. A majority of voters (54%) approve of the job he is doing when it comes to Connecticut's public schools. Parents are especially supportive of the Governor's efforts and rate his performance on schools favorably by a margin of nearly 2 to 1 (60% approve/31% disapprove).

According to the memorandum, the ConnCAN poll was conducted between January 23 and January 27, 2013, only a couple of weeks after Occhiogrosso left the Malloy administration and rejoined GSG as Managing Director. GSG publicly releasing a polling memorandum with selective favorable information about Malloy demonstrates that the poll was designed to collect political information for the purpose of influencing Malloy's reelection.

Malloy's political ties with ConnCAN and at least one of its major contributors are well-known. Jonathan Pelto, the Democratic former Deputy Majority Leader of the Connecticut House, wrote on February 13, 2013:

Last Spring, within 24 hours of Malloy's "education reform" bill becoming a Public Act, one of ConnCAN's founders held an extremely lucrative fundraiser for a political action committee called Prosperity for Connecticut. The PAC appears to be affiliated with Governor Malloy and the Governor has attended all, or most, of the

PAC's fundraising events, including a series of fundraising parties in Washington D.C. and New York City.

GSG's conducting the poll, ConnCAN's paying for the poll, and GSG's publicizing of its results, raise serious ethical and campaign finance-related questions for Malloy, Occhiogrosso and GSG. Considering the proximity in time from Occhiogrosso's departure from the Malloy administration and his starting at GSG, there is a substantial likelihood that the poll and Occhiogrosso and GSG's activities around that time were known to Malloy and done with his consent. In fact, it is likely that Occhiogrosso spent time and state resources communicating with Conn CAN or GSG about the poll while he was still working in the Malloy administration. It is very likely Malloy or Occhiogrosso communicated with one or more of ConnCAN's major contributors about ConnCAN paying for the poll and that Malloy received information about the poll prior to the poll's public release and before his budget speech. (Brackets added by the Complainant.)

15. The Complainant asserts that GSG's alleged release of a memorandum to the press in February 2013, citing the ConnCAN poll, constituted an expenditure by GSG and was done with the consent, coordination, or consultation of the Respondent such that it also constituted a reportable contribution to the Respondent's alleged candidacy. The Complainant submits that in addition to the poll itself, the prior campaign and working relationship between Mr. Occhiogrosso and the Respondent, as well as Mr. Occhiogrosso's social media activities and responses to press inquiries about the Respondent after Mr. Occhiogrosso left state employ and joined GSG constitute sufficient evidence to prove that a coordinated expenditure occurred.
16. Turning to the facts relevant to this allegation, as an initial matter, is important to note that the investigation revealed that it was Connecticut Coalition for Achievement Now ("ConnCAN") that commissioned the poll at issue here and bore the costs associated with it—not GSG as alleged by the Complainant. ConnCAN hired GSG as a vendor to help it develop and implement the poll as well as assist ConnCAN in promoting the results.
17. By way of background, ConnCAN is an entity, as that term is defined in General Statutes § 9-601 (19), which files as a nonprofit charitable organization for tax purposes under Section 501 (c) (3) of the United State Internal Revenue Code (26 U.S.C. 501 (c) (3)).
18. According to ConnCAN's website, its mission, in part, is "leading a movement to improve education outcomes for Connecticut's kids. We bring advocates, policy makers, parents and educators together to change the system and give all kids access to great public schools."²

² <http://www.conncan.org/about-us/our-mission>

19. According to ConnCAN's Chief Executive Officer Jenifer Alexander, ConnCAN successfully lobbied for education reform through the legislature in 2012.
20. According to Alexander, ConnCAN understood that the changes were hard fought and would need to be promoted so that any challenges in the upcoming 2013 regular legislative session could be defeated. After the December 2012 special legislative session, Ms. Alexander and her research and policy team, including but not limited to Director of Communications Brett Broesder and Director Governmental Affairs Jessica Stran determined that it would be useful to conduct a survey.
21. Alexander stated that it was her belief that Mr. Broesder recommended that ConnCAN choose GSG to help them develop and conduct the survey, as well as help them develop promotional material based on the results. Ms. Alexander asserted that although ConnCAN had not used GSG previously, the ConnCAN team knew GSG to have a good reputation and determined that it was best suited for the job.
22. According to Ms. Alexander, she was familiar with Roy Occhiogrosso but that she has never worked with him on prior matters nor was he involved with the survey effort. She asserts that the ConnCAN team worked only with GSG representatives Julie Hootkin and Ben Nowak on the survey. Hootkin and Nowak developed the survey and ran the drafts by Alexander. Questions were included about the Respondent, Senate President Pro Tempore Donald Williams and State Department of Education Commissioner Stefan Pryor because they were the highest ranking government officials actively working towards the reform effort that ConnCAN supported.
23. The ConnCAN survey was conducted from January 23-27, 2013 and an executive summary of the results was prepared for ConnCAN by GSG on or about February 6, 2013.
24. Ms. Alexander states that it was always the goal to release some statement to provide a vehicle for promotion and advocacy of education reforms. After the survey results and executive summary were analyzed by the ConnCAN team and their contacts at GSG, ConnCAN worked with GSG to develop the "key findings" press release that is the subject of this Complaint, which ConnCAN then posted on its website on or about February 13, 2013.
25. Alexander asserted that the Key Finding regarding the Respondent was released because he had advocated for the educational reform legislation and ConnCan understood there was going to be a budget fight in 2013 and it was going to be a difficult legislative session. ConnCan wanted the legislature to understand that the public supported the Governor's leadership on education matters so that it would be less inclined to "gut" key reforms through the budget process.

26. Turning to the Complainant's allegations, he asserts, essentially, that (1) the press release containing the "key findings" that was developed by ConnCAN and GSG was an "expenditure," as that term is defined in General Statutes § 9-601b, and (2) this expenditure was coordinated with the Respondent, through GSG's employee Roy Ochiogrosso, and therefore resulted in a contribution in the form of a coordinated expenditure, which required the Respondent to form a candidate committee.
27. The question here starts with a determination of whether the costs incurred for the poll and the subsequent promotion of the poll constituted an expenditure and, because it was allegedly coordinated, a contribution.
28. The definition of expenditure does not require that a person *already* be a candidate in order for monies spent to promote such person's candidacy to constitute an expenditure. Rather, it is spending money on promoting the nomination or election of any person that can trigger the need to register and disclose as a candidate, if the person whose nomination is being promoted is the one spending the money, either personally or by another with the consent, coordination, or consultation of such person (which spending constitutes a contribution on the person's behalf).
29. There is no specific exemption from the definition of "expenditure" under Connecticut law for media pieces that claim to contain the results of a poll. Like commercials, t-shirts, fund-raising expenses and pamphlets, whether a media piece qualifies as an expenditure depends upon its content and whether that content meets the definition of expenditure. See *In the Matter of a Complaint by Anthony Santino*, File No. 2013-042.
30. The question then is whether the communication at issue qualified as a coordinated expenditure. Connecticut's definition of expenditure requires something to be "for the purpose of influencing the nomination for election of any person." Connecticut courts, and the Commission, have read this provision to be informed and limited by relevant federal precedent regarding similar language in federal statutes. See e.g., *State v. Proto*, 203 Conn. 682, 699 (1987) (Connecticut's campaign finance law may be divined through recognized methods of statutory construction including consideration of commonly accepted meanings and federal case law interpreting similar statutes; using these methods court found Connecticut definitions of expenditure neither overbroad nor vague).
31. To the extent that the phrase "made for the purpose of influencing the nomination for election" as contained in the definition of contribution and expenditure needs further elucidation, the United States Supreme Court has held that words such as "'promote,' 'oppose,' 'attack,' and 'support' 'provide[d] explicit standards for those who apply them' and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *McConnell v.*

Fed. Election Comm'n, 540 U.S. 93, 170 n. 64 (2003). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 389 (D. Vt. 2012) (reading “for the purpose of . . . influencing an election . . . or affecting the outcome of an election” as simply, “supporting or opposing one or more candidates”). These standards, sometimes referred to as the “PASO test,” are what we apply to case such as the instant matter.³

32. The Commission also has issued further guidance in other contexts as to factors considered in deciding whether something promotes, attacks, supports or opposes. In the context of endorsements, the Commission has looked to these indicia to determine if a publicity piece promotes an endorsing candidate: the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication. See Declaratory Ruling 2011-3. In the context of the spending of public funds by incumbent candidates, the Commission has looked to the timing of the release, and whether it appears to be one of a series of communications that collectively seem to advocate for the re-election of an incumbent as well as whether there is mention of the candidacy of the person running; the person’s legislative record or policies; an exhortation to vote; or text identifying the record or accomplishments of the appearing candidate in a laudatory manner. See, e.g., *In the Matter of a Complaint by Robert Burke, Bethel*, File No. 2011-128.
33. The Commission recently considered facts somewhat similar to the instant case in *In the Matter of a Complaint by Anthony Santino*, File No. 2013-042. Indeed, the facts in *Santino* involved a potential 2014 gubernatorial candidate conducting and promoting a poll during approximately the same timeframe as the facts here and producing a media communication for dissemination.
34. In *Santino*, in which coordination with the individual candidate was not disputed—the candidate was also the treasurer for the entity making the expenditure—the press release at issue was based on a poll that asked specific questions about the upcoming 2014 race for governor, including but not limited to naming particular individuals as potential candidates and gauging their name recognition, favorability rating and “key issues” for the voters surveyed. The respondent entity then produced a so-called “Key Findings” memorandum for public release identifying only those results favorable to the respondent individual’s potential candidacy or unfavorable to the candidacy of his potential opponents. The respondent entity was a “major purpose group,” organized under Section 527 of the U.S. Internal Revenue Code

³ The so-called “PASO test,” was codified by the legislature recently in Public Act 13-180 of the 2013 Public Acts. See also 56 S. Proc., Pt. 15, 2013 Sess., P. 4736 (comments of Senator Musto “[I]t’s intended to encompass the things that federal case law specifically allows, which is to promote, attack, support, or oppose candidates”).

(26 U.S.C. § 527), as an entity whose major purpose is the election or defeat of a candidate or candidates.

35. In *Santino*, the Commission concluded that the “Key Findings” memorandum was an expenditure by or on behalf of the respondent individual as it promoted his potential candidacy and opposed the potential candidacies of his likely primary opponents, as well as his most likely opponent in the general election.
36. Turning to the facts at issue here, the release does cite specific data showing that the majority of respondents to the ConnCAN poll reported supporting “the Governor’s” reform efforts in the specific issue area of education. The Respondent’s title, but not his name, appears in the memorandum, but the Respondent himself does not appear, either through photographs or direct quotes. Moreover, unlike in *Santino*, in which the “horse race” for governor in 2014 was explicitly discussed, no content related to the 2014 election for governor or any other office is explicitly or implicitly mentioned. There was no mention of the Respondent’s candidacy. The focus of the communication is on the education reforms—not the election, any candidate or the Respondent’s record in general.
37. The release cited by the Complainant was published in or about February 2013, 18 months prior to the August 2014 Democratic primary and nearly 21 months prior to the November 2014 general election. The timing of the release occurred approximately 1 month into the 2013 session of the Connecticut General Assembly.
38. The communication was distributed via the ConnCAN website and as a press release that served as the basis of some news reports. It was not an advertisement broadcast by television, radio, newspaper, magazine or billboard within 90 days of an election. See General Statutes § 9-601b (a) (2). There were no other communications by ConnCAN that were alleged to be part of a concerted effort to ensure the re-election of Governor Malloy.
39. The costs of the poll and the press release were borne by an entity whose major purpose was *not* the election of candidates. Unlike in *Santino*, the entity here was organized under Section 501 (c) (3) of the United State Internal Revenue Code (26 U.S.C. 501 (c) (3)).⁴
40. Assuming the truth of the Complainant’s allegation of coordination by and between the Respondent and ConnCAN (through GSG and/or Mr. Ochiogrosso) and considering the communication’s content and context as a whole, the Commission does not conclude that it is more likely than not that it promotes, attacks, supports or opposes the candidacy of any

⁴ Although passed after the facts at issue in this case occurred, the Commission notes that in Public Act 13-180 of the 2013 Public Acts, the Connecticut legislature exempted from the definition of expenditure any lawful communication by a charitable 501 (c) (3) organization. General Statutes 9-601b (b) (13).

person and as such the Commission concludes that the evidence is insufficient to show that the communication was an expenditure.

41. Considering the aforesaid, the Commission concludes that the press release did not amount to an "expenditure" in support of a candidacy by ConnCAN or a "contribution" to any candidacy such that the Respondent would have been required to form a candidate committee and begin reporting back at the time the expenses were incurred.
42. Given this conclusion, the role the candidate or an agent of the candidate, if any at all, played in the communication is not a factor. An incumbent may associate with groups engaging in lobbying and issue advocacy as ConnCAN was doing. Accordingly, it is unnecessary to make any further inquiry into whether the poll or the press release were coordinated with the Respondent by or through GSG. and/or Mr. Ochiogrosso, as even assuming this fact to be true, this allegation fails. Count One should be dismissed.

COUNT TWO: Statements Triggering a Candidacy

43. In Count Two, the Complainant alleges, in pertinent part:

Since the beginning of the year, Malloy and others close to him, by their statements and actions, have made clear that Malloy is seeking reelection. However, he has yet to register a candidate committee and file reports as required by Connecticut law. On numerous occasions, Malloy has as much as said that he will seek reelection. For example, at the Jackson Laboratory groundbreaking in Farmington in January, Malloy said "I've been promised that in the fall of 2014 - which may be a particularly important time for me - there may be a ribbon-cutting as well." Malloy said more recently that his reelection plans were a subject he did not want to discuss until "as late as possible."

Mainstream media who are close to Malloy have stated that Malloy is seeking reelection, suggesting that he has told them privately that he is. For example, on June 19, 2013 political commentator Rachel Maddow's blog stated that "(i)n Connecticut, Gov. Dannel Malloy (D) will seek re-election in 2014." It is difficult to understand why Maddow, a nationally recognized journalist, would definitively state in her blog that Malloy will seek reelection if that was not made clear to her by Malloy or one of his agents. A reasonable person would conclude from Malloy and his allies' activities and statements that Malloy is seeking reelection in 2014.

44. The Complaint here asserts that the above statements are sufficient evidence to show that the Respondent became a “candidate” and as such should have formed a committee and begun reporting activity, but failed to do so. However, even assuming that any of the above is sufficient evidence of the Respondent’s intent to run for re-election, mere statements, alone do not deem an individual to be a “candidate,” as that term is defined in General Statutes § 9-601 (11). See, *In the Matter of a Complaint by Thomas Barnes, Bristol*, File No. 2009-157 (“The ‘public declaration’ of an individual who is not in an exploratory committee, without more, is insufficient to trigger the filing requirements in General Statutes § 9-604 (a) & (b)”).
45. In *Barnes*, the Respondent, an incumbent state senator, was quoted in an online publication as responding to a question about whether he was going to run for re-election, as follows: “[a]s long as those Republicans keep calling me names, I’m going to keep running. They keep shooting their mouths off. . . .”
46. The complainant in *Barnes* alleged that this quote constituted an affirmative declaration of the Respondent’s candidacy for re-election to the state senate and that he was required to either form a candidate committee or file a certification of exemption, as prescribed in General Statutes § 9-604. The Commission in *Barnes* held that:

where, as here, an individual is not in an exploratory committee, he must form a committee or file a certification within ten days only after becoming a “candidate.” This event occurs when an individual has “become eligible for a position on the ballot at an election or primary, or . . . solicited or received contributions, made expenditures or given [his] consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about such individual’s nomination for election or election” to office. *Id.* at ¶ 10. (Citing General Statutes §§ 9-601 (11) and 9-604.)

47. The Commission in *Barnes* went on to conclude that

even assuming that the Respondent’s statement constituted a declaration of his candidacy, the Complainant neither makes a claim, nor presents any evidence that the Respondent had otherwise “become eligible for a position on the ballot at an election or primary, or . . . solicited or received contributions, made expenditures or given [his] consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about [his] nomination for election or election [as senator]” prior to the January 19, 2010 filing of his registration statement.

48. Here, as in *Barnes*, the evidence is insufficient to support a finding that it was more likely than not that the Respondent had otherwise “become eligible for a position on the ballot at an election or primary, or . . . solicited or received contributions, made expenditures or given [his] consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about [his] nomination for [re-]election or [re-]election [as governor].” Accordingly, Count Two should be dismissed.

COUNT THREE: Solicitations of Contributions for Entities and/or Political Committees

49. In Count Three, the Complainant alleges, in pertinent part:

Malloy has participated in fundraising activities for both ConnCAN and Prosperity for Connecticut. Prosperity for Connecticut is a committee that intends to support Malloy's reelection with expenditures in his behalf and may have already done so. ConnCAN has already supported Malloy's reelection by incurring the expenditure for the poll. Malloy, having engaged in fundraising activity for a committee that is making expenditures that should have been made by his campaign and reported as such, makes Malloy a candidate under [General Statutes § 9-601 (11)] and requires that he form a candidate committee and commence periodic reporting to the SEEC.

50. The Complainant here appears to allege that the Respondent attended fundraisers for the entity Prosperity for Connecticut and that such attendance somehow constituted a contribution to the Respondent's alleged candidacy. This appears to be based on the assumption—without actual knowledge or proof or direction as to where such knowledge or proof might exist—that such committee “intends” to support the Respondent's re-election through expenditures on his behalf, as well as speculation that such committee “may have already done so.”

51. Until recently, the Commission had consistently held that “participating” in fundraisers constitutes a “solicitation” on behalf of the committee holding the fundraiser, even if such participation is limited to mere attendance. This definition was modified in Public Act 13-180 of the 2013 Public Acts, effective June 18, 2013, to exclude mere attendance at a fundraiser from the definition of “solicitation.”⁵ The allegations here are not specific as to whether or how many fundraisers occurred before or after the effective date of the change.

⁵ General Statutes § 9-601 (26), as modified by P.A. 13-180 of the 2013 Public Acts, now reads: (26) “Solicit” means (A) requesting that a contribution be made, (B) participating in any fundraising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to

52. The allegations also do not allege that any expenditures on behalf of the Respondent have been made with the monies solicited by the Respondent. Even assuming that the fundraisers occurred prior to the effective date of the change to the definition of "solicit," (and assuming that the Complainant's allegations of the Respondent's attendance are true) the activity alleged was not impermissible. Mere solicitation by an incumbent for a 501 (c) (3) charity or a political committee organized under state or federal law is not prohibited under Connecticut campaign finance law. Considering the aforesaid, the Complainant has failed to allege a violation upon which the Commission may grant relief. As such, Count Four should be dismissed.

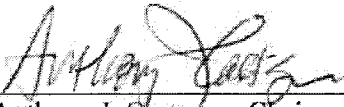
potential contributors, receiving contributions for transmission to any such committee, serving on the committee that is hosting a fundraising event, introducing the candidate or making other public remarks at a fundraising event, being honored or otherwise recognized at a fundraising event, or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office, (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this subdivision, or (v) mere attendance at a fundraiser.

ORDER

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

That the matter is dismissed.

Adopted this 18th day of June, 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission